

The questions presented by the proposed Directive and guidelines on platform work

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The EU social package on platform work

- 1) Proposal for a Directive on improving the working conditions in platform work.
- 2) Communication from the Commission 'Draft guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons'.
- 3) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work'.



**General
issues on the
proposed
Directive**

Personal scope

- The use of the hybrid definition of 'worker' in the notion of 'platform worker'.
- The notions of 'platform work' (includes self-employment) 'platform worker' (excludes self-employment) and 'person performing platform work' (includes self-employment).
- The notion of 'digital labour platforms':

Any natural or legal person providing a commercial 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, irrespective of whether that work is performed online or in a certain location.

- Exclusion of 'providers of a service whose primary purpose is to exploit or share assets'.

Material scope and legal basis

In which instances may social security be included in the material scope of the Directive?

- Article 153(1)(b) TFEU (working conditions).
- AND Article 16(2) TFEU insofar as it addresses personal data processed by automated monitoring and decision-making systems.



The presumption of employment relationship contained in the proposed Directive

Presumption as solution?

- Is the requirement to fulfil 2 out of 5 of these indicators too restrictive?
- Alternative: Changes suggested by the EMP Committee
- How would it work => automaticity or not
- Role of the authorities
- The ideal solution? Experiences from other MS where already in place
- Relationship between labour law, social security law and tax law

Possibility of rebuttal

- No requirements established for allowing the rebuttal (risk of abuse).
- Differences depending on who brings the claim:

Member States shall ensure the possibility for any of the parties to rebut the legal presumption referred to in Article 4 in legal or administrative proceedings or both.

Where the digital labour platform argues 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 State in question, with consideration to the case-law of the Court of Justice, the burden of proof shall be on the digital labour platform. **Such proceedings shall not have suspensive effect on the application of the legal presumption.**

Where the person performing the platform work argues 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 State in question, with consideration to the case-law of the Court of Justice, **the digital labour platform shall be required to assist the proper resolution of the proceedings, notably by providing all relevant information held by it.**

- Note: Possibility of suspension in the later case and burden of proof?



**Algorithmic
management
in the
proposed
Directive**

Unclear personal and material scope of Articles 11 and 12

Article 11 (declaration of platform work)

Without prejudice to Regulations (EC) No 883/2004¹⁹ and 987/2009²⁰ of the European Parliament and of the Council, Member States shall require digital labour platforms which are employers to declare work performed by platform workers to the competent labour and social protection authorities of the Member State in which the work is performed and to share relevant data with those authorities, in accordance with the rules and procedures laid down in the law of the Member States concerned.

Article 12(1) (access to relevant information on platform work)

Where labour, social protection and other relevant authorities exercise their functions in ensuring compliance with legal obligations applicable to the employment status of persons performing platform work and where the representatives of persons performing platform work exercise their representative functions, Member States shall ensure that digital labour platforms make the following information available to them: (a) the number of persons performing platform work through the digital labour platform concerned on a regular basis and their contractual or employment status; (b) the general terms and conditions applicable to those contractual relationships, provided that those terms and conditions are unilaterally determined by the digital labour platform and apply to a large number of contractual relationships.

Note: Less protective than Articles 64(2)-(3) AI Act and Article 58 GDPR.

Conflict between the draft directive and the GDPR?

Article 6(1)(b):

Without prejudice to the obligations and rights of digital labour platforms and platform workers under Directive (EU) 2019/1152, Member States shall require digital labour platforms to inform platform workers of:

(b) automated decision-making systems which are used to take or support decisions that significantly affect those platform workers' working conditions, in particular their access to work assignments, their earnings, their occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account.

Article 22(1) GDPR: Prohibition of automated decisions unless certain conditions are fulfilled. Not replicated in the draft directive.

Some GDPR rights missing: access to one's data and data portability

Enforcement issue: DPA or employment authorities?

No information and consultation duties for self-employed platform workers' representatives

Article 9(1):

Without prejudice to the rights and obligations under Directive 2002/14/EC, Member States shall ensure information and consultation of platform workers' representatives or, where there are no such representatives, of the platform workers concerned by digital labour platforms, on decisions likely to lead to the introduction of or substantial changes in the use of automated monitoring and decision-making systems referred to in Article 6(1), in accordance with this Article.

Article 10(1):

Article 6, Article 7(1) and (3) and Article 8 shall also apply to persons performing platform work who do not have an employment contract or employment relationship.

Algorithmic management and physical or mental health risks

Article 7(2):

[Digital labour platforms] shall not use automated monitoring and decision-making systems in any manner that puts undue pressure on platform workers or otherwise puts at risk the **physical** and **mental health** of platform workers.

How may this may be measured?

Draft guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons

Collective bargaining for self-employed

- What is the position of the competition authorities?
- What do current national experiences tell us?
 - => How many and how broad a scope of protection?
 - => The special case of Denmark with the Hilfr-agreement and the possibility of choosing status and starting with low coverage.
- Prospective use - trade unions and right to conflict
 - => the case of Denmark

Collective agreements and algorithmic management

- Technical innovation and data processing in collective agreements?
- Synergies between the competition guidelines and the labour law directive?