

Regulatory challenges under EU law concerning the social protection of platform workers: Lessons learnt from the proposed Directive on improving working conditions in platform work

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Introduction

- The Commission's proposal of a Directive on improving the working conditions in platform in the context of the EU social initiatives.
- How the process of negotiation on the proposal for a Directive on platform work highlights:
 - 1) some of the challenges as it regards social protection faced by platform workers and social protection systems;
 - 2) the potential practical and legal limitations of EU law to address these challenges; and
 - 3) potential solutions to overcome these limitations (including the promotion of a more comprehensive approach to social protection under EU law, as well as taking into account other EU actions for inspiration).

Challenges as it regards social protection faced by platform workers

Addressed by the proposed Directive:

- Employment status misclassification (via a presumption of employment).
- Lack of transparency on the use of automated monitoring and decision-making systems.
- Lack of transparency on cross-border situations concerning platform workers who are employees.

Challenges as it regards social protection faced by platform workers

Not addressed by the proposed Directive (inter alia):

- Unclear liability in subcontracting chains (addressed by Parliament amend).
- Exclusion from social protection when correctly classified as self-employed persons or when performing marginal work.
- Lack of transparency on the use of automated monitoring and decision-making systems by social protection authorities.
- Lack of transparency concerning truly self-employed platform workers on cross-border situations (partially addressed by Parliament amendments).

Potential practical and legal limitations of EU law to address these challenges

- Legal basis: Art. 153(2)(b) TFEU (on working conditions) and (as it regards provisions on data protection) Art. 16(2) TFEU.
- Nevertheless, not implementing the provisions contained in the proposed Directive for social protection purposes would undermine the aims of the proposal (which include social protection, as noted in the Commission's Explanatory Memorandum).

Some potential solutions

- Issue of guidelines by the Commission on implementing the (if enacted) Directive on platform work that take into account the implementation for social protection purposes.
- Issue of additional EU Directives fully implementing the provisions of the proposed Directive in the field of social protection (based on Articles 48, 153(2)(c), 116 and 352 TFEU).
- Introduction of changes in already existing legislation (such as the Coordination Regulations) to take into account some of the specific challenges presented by situations like platform work.

Thank you for your attention.

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