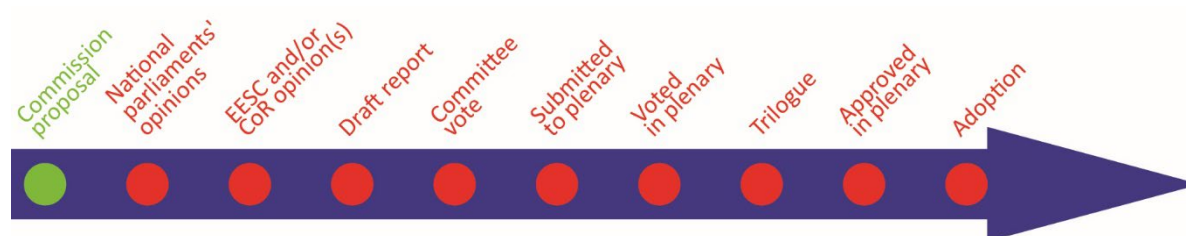


Improving the working conditions of platform workers

OVERVIEW

Platform work is an umbrella concept covering a heterogeneous group of economic activities completed through a digital platform. As platform workers' rights are not enshrined in EU labour law, this increasingly leads to problems related to various aspects of their work (working conditions, healthcare, unemployment, pensions) and human development (education, training, recognition of skills). To remedy this situation, the European Commission has submitted a proposal for a directive aimed at improving the working conditions of platform workers, clarifying their employment status and supporting the sustainable growth of digital labour platforms in the EU.

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 09.12.2021.
<i>Rapporteur:</i>	Elisabetta Gualmini (S&D, Italy)	2021/0414(COD)
<i>Shadow rapporteurs:</i>	Dennis Radtke (EPP, Germany)	
<i>Next steps expected:</i>	Publication of draft report	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')



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, currently employing more than 28 million people; 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. As a result, many people working through digital labour platforms face poor working conditions and inadequate access to social protection. Furthermore, platform workers risk being misclassified as self-employed despite working mostly or exclusively for one employer. There are also other issues related to platform work, such as the digital control exercised by platforms (use of algorithms to assign tasks, but also to monitor, supervise, evaluate and impose sanctions). 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 and relevant training, and as regards 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 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, 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 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 the new [Directive on transparent and predictable working conditions](#), which also mentions platform workers, who would fall within the scope of the 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 an [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 Europe, 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 on improving the working conditions in platform work for the end of 2021, 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 persons 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 or local start-ups. The majority of these platforms provide '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.

If the platform meets at least two of those criteria, it is 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. Platforms would have the right to contest this classification, with the burden of proof resting on them (principle of the rebuttable 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. Persons performing human monitoring would also have the right to contest automated decisions. These new rights would be granted to both workers and genuine self-employed persons.

The Commission's proposal also intends to bring more **transparency around platforms** by clarifying platforms' existing obligations to declare work to national authorities and by 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.

National parliaments

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

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](#), but differed on the need for concrete action at EU level. As summarised in the [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), with the following aims: ensuring that people working through platforms 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; ensuring fairness, transparency and accountability in algorithmic management in the context of platform work; enhancing transparency, traceability and awareness of developments in platform work; and improving enforcement of the applicable rules for all people working through platforms, including those operating across borders;
- A [Communication on 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 collectively

improve their working conditions. An eight-week public consultation on the document will be held with the stakeholders before the Commission adopts its final version.

In parallel, the Commission has 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.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Monika Kiss, Yann-Sven Rittelmeier: [Improving the working conditions of platform workers Pre-legislative synthesis of national, regional and local positions on the European Commission's initiative](#), EPRS, December 2021.

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

OTHER SOURCES

[Study to gather evidence on the working conditions of platform workers](#), 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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