

Improving working conditions of persons working through digital labour platforms

2021/0414(COD) - 23/12/2022 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Employment and Social Affairs adopted the report by Elisabetta GUALMINI (S&D, IT) on the proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

Correct determination of the employment status

The report stated that Member States should have appropriate and effective procedures in place to verify and ensure the correct determination of the employment status of persons performing platform work, with a view to applying the presumption of an employment relationship for the purpose of ascertaining the existence of such a relationship as defined by applicable law, collective agreements or practice in force in the Member States.

Legal presumption

A person performing platform work should be either a platform worker or a genuinely self-employed person. The contractual relationship between a digital labour platform and a person performing platform work through that platform should be legally presumed to be an employment

relationship and therefore digital labour platforms should be presumed to be employers. To that effect, Member States should establish a framework of measures, in accordance with their national legal and judicial systems, in order to ensure that the legal presumption can be relied upon

by competent authorities and bodies that verify compliance with or enforce relevant legislation as well as by persons performing platform work and their representatives.

Member States should provide for an inspection by labour inspectorates or the bodies responsible for the enforcement of labour law every time a person performing platform work is newly recognised as platform worker, within one month of such recognition, in order to verify the status of the other persons performing platform work for the same digital labour platform.

Algorithmic management

Members consider that the use of algorithmic scheduling systems heightens the use of precarious, short shifts and unstable and unpredictable schedules. Algorithm-based technologies may produce power imbalances and opacity about decision-making, as well as technology-enabled surveillance which could exacerbate discriminatory practices and entail risks for privacy, workers' health and safety and human dignity and may lead to adverse consequences for working conditions and the exploitation of workers.

Algorithmic management that entails automated decision-making that has significant effects on individuals without input from human managers is unlawful under Union law

Human oversight of automated systems

The committee report stresses, in this regard, that Member States should ensure that digital labour platforms provide for human oversight of all decisions affecting working conditions. Digital labour platforms should evaluate the risk of discrimination resulting from decisions taken by those systems, including in replicating gender, racial and other social biases in the selection and treatment of different groups.

Human review of decisions significantly affecting working conditions

Member States should ensure that platform workers have the right to receive an explanation from the digital labour platform for any decision taken or supported by an automated decision-making system that significantly affects the platform workers working conditions. The explanation should be presented in a transparent and intelligible manner, using clear and plain language in due time and at the latest on the first day of application of the decision.

Cooperation in cross-border cases

The report states that competent labour, social protection and tax authorities should exchange information with respect to persons performing platform work in a Member State different from that in which the digital labour platform is established. For cases having a cross-border relevance, the European Labour Authority should facilitate and support cooperation between the competent national authorities in charge of monitoring the enforcement of labour mobility and social security coordination legislation.

Subcontracting liability

In order to prevent undeclared work as well as the misuse of subcontracting (such as rented identities to migrants or minors) as a means by which to circumvent this Directive, Member States should introduce legal provisions on subcontracting that provide for joint and several liability and effective access to redress across subcontracting chains, ensuring that the contractors in a subcontracting chain may be held liable to pay wages, social security contributions and financial penalties in addition to or in place of the direct employer.