



TOGETHER FOR A FAIR DEAL FOR WORKERS

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Platform Work Directive: a milestone towards innovation that delivers for all.

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The timing could not be more crucial against the backdrop of the lead candidates gearing up for their campaigns, many of them claiming that a social Europe is within reach. The path to victory, however, was far from straightforward. In this monumental struggle for workers' rights, the adversaries were not traditional foes, but rather the formidable multi-million-dollar digital labour platforms that have come to dominate the contemporary economic landscape not only due to their innovative technological solution but mainly because of their disregard for rules and regulations that other businesses are obliged to obey to.

This victory is not just a policy milestone; it's a testament to the resilience of collective efforts against the challenges posed by the evolving nature of work and the power dynamics within the European economic sphere.

After months and months of extensive discussions in media, policymaking fora, and conferences (and corridors) about the presumption of employment, it is still a topic that can provoke misunderstandings among observers. Understanding how this provision can genuinely benefit workers and their representatives is key, especially when considering the last-ditch efforts of digital platforms to oppose it until the very last second. The significance of this victory lies not only in the debates it sparked but also in the tangible impact it promises to have on the lives of workers across the continent.

Equally groundbreaking are two provisions within the directive that have never been seen before. The first entails the regulation of algorithmic management, a critical step towards addressing the power imbalances inherent in the digital labour realm. By acknowledging and regulating the algorithms that often govern work assignments and conditions, the directive paves the way for a fairer and more transparent working environment. Additionally, the directive extends collective rights to all individuals engaged in platform work (persons performing platform work), including those who are genuinely self-employed. This move is a powerful acknowledgement of the diverse nature of work in the gig economy and ensures that all workers, regardless of their employment status, are granted essential rights and protections. Those provisions mark a turning point in the EU approach to labour rights, recognising the evolving landscape of work in the 21st century.



Presumption of employment

European Trade Union Confederation put the [demand of establishing the rebuttable presumption-of-employment relationship](#) on the table at the beginning of the discussions and never took a step back. Securing that legal and procedural tool, which does not exist in most of the Member States, was undoubtedly the most difficult step throughout the process and a victory that can be claimed. The implications of the Directive are unmistakable: compelling every member state to institute the presumption of employment relationship, while crucially safeguarding workers from an undue increase in burdens.

The first criticism levelled at the approved version of the Directive is its lack of European harmonisation.

If we look at what has disappeared in the course of the negotiations as European elements, it is almost exclusively the question of the criteria for triggering the presumption of employment relationship. As we advocated, the co-legislators have left them out, opting instead for a streamlined approach guided solely by the national definition of workers and facts indicating control and direction.

As a reminder, the Commission's initial proposal introduced 5 criteria, 2 of which had to be fulfilled to trigger the presumption, but left the outcome of the reclassification to be decided according to national definitions. In the Council's mandate, the threshold for triggering was 3 out of 7. With these versions of the Directive, we were heading for 27 different applications anyway, with the only harmonising element being the criteria acting as a barrier for accession of workers' rights.

The disappearance of the criteria leads some to believe that the Member States can decide at their own discretion the conditions under which workers can access the presumption, as well as what is covered by the "facts indicating control and direction" required for reclassification procedures.

What is clear is that Member States cannot reintroduce the European criteria that have disappeared. States that were reluctant to adopt the Directive and embrace the presumption of employment status cannot, for example, demand 3, 4 or 5 criteria to activate the presumption. If this was the legal interpretation of the approved text, France and others would not have put the brakes on its adoption, nor would the platform lobbies. As article 5.2 of the Directive states, the presumption must facilitate access to reclassification and this procedure cannot not increase the burden already existing in reclassification proceedings.

This means that neither the definitions of workers nor the self-employed will change as a result of this Directive and the procedural ease afforded to workers is a game-changer.



What workers did not get from the Directive, however, were strong accompanying and implementation measures. The supporting measures described in Article 6 are much weaker than the European Trade Union Confederation had hoped. The stronger the support measures, the quicker the problem of the abuse of bogus self-employed workers would have been eradicated. The weaker they are, the longer it will take to implement them, and it will give more time to the platforms to build strategies to avoid them. Effective public policy cannot rely on 5 million workers to go to court to gain access to their employment contracts.

Nevertheless, the Directive clearly calls on the Member States to put in place procedures to "identify, target and prosecute" platforms that do not comply with the rules (article 6.b) and to carry out checks and inspections on platforms where a reclassification has already been decided (article 6.c). It is not the automatic inspection of all platforms that the ETUC had hoped for, nor is it the automatic inspection of platforms where a case of bogus self-employment has been discovered (as provided for in the agreement reached under the Spanish Presidency), however it is a targeted approach that Member States cannot easily circumvent and that will speed up the process for countless vulnerable workers.

Finally, algorithmic management is not just a black box

Algorithms are an essential infrastructure for digital labour platforms in organising work. Although less debated in the public sphere, the chapter on algorithmic management contains pioneering provisions regulating automated monitoring and decision-making systems powered by algorithms. This goes in the right direction to further safeguarding the dignity, privacy, and working conditions of platform workers. It is also a chapter that forces platforms to invest in human resources controlling that system and as such was also very unpopular among platform lobbyists.

It also introduces new standards for occupational safety and health, such as addressing ergonomic and psychosocial risks, alongside the adoption of privacy and data protection measures.

Long negotiations were needed for the Directive to ban certain dangerous activities currently used by digital labour platforms, including the use of personal data to analyse the emotional or psychological condition of individuals engaged in platform work, whether they are currently working or not. It mandates that platforms evaluate how automated monitoring and decision-making processes affect the data privacy of platform workers and consider their perspectives in this assessment.

Importantly, it requires that platform workers, their representatives, and the relevant national authorities be informed about the objectives, limitations, and applications of automated monitoring or decision-making systems. The directive ensures the right to



human intervention in automated systems and guarantees the right to receive explanations for decisions made by automated decision-making systems.

The chapter, therefore, stands as an important element that contributed to ensuring that technological progress serves to enhance, not undermine, the rights and well-being of workers in the digital age.

What is ahead

As we find ourselves on the brink of a transformative moment, awaiting the European Parliament's approval to set the Directive into motion, the road ahead is filled with potential. Once the European Parliament gives its final nod, the Directive will enter into force, granting Member States a two-year window for its transposition.

Of course, the battle of transposition and implementation will be just as fierce as that of the legislative procedure. The platforms and their lobbies are already changing the broken record in their communications to conclude that the agreement merely validates the status quo. While a fortnight ago they were calling for the rejection of a text that would lead to greater legal uncertainty and cascading reclassifications, once adopted this same text, which has not moved a comma, would validate their narrative that nothing is changing for them. The trick is too big to fool the public.

There is nothing to prevent the Directive from being properly applied apart from a lack of political courage. The competent authorities must not wait for the courts to be clogged up before applying the Directive.

Initially, the ETUC proposed that each Member State should draw up a list of platforms that fall within the scope of the Directive, inform them of this and proactively check that they comply with the correct employment status during the period of transposition and implementation of the Directive. It is easier to check 100 platforms in 2 years than to have to deal with thousands of administrative or legal proceedings. Then, at cruising speed, each new platform can be checked when it launches its activity. Also, if the organisation of work changes in the future, workers and their unions will always be able to initiate these procedures themselves, thanks to the rights conferred on them by the Directive. This is still possible to fight for at national level.

In concrete terms, the adoption of the Directive means that Spain will be able to extend the Ley Riders to other sectors where platforms are active as soon as it is published.

In France, where thousands of reclassification cases are clogging up the courts, government can simply to use the Directive and ensure that platforms comply with existing and future court rulings.



In the Netherlands, workers have won in the courts against Uber, Deliveroo and Helpling. It is up now to the government to use the Directive to enforce the law.

In Belgium, in December 2023, Deliveroo lost its appeal and must reclassify its employees. It is up to the Belgian government to enforce this court decision as quickly as possible.

The unions will continue to play their part. Each court or administrative decision proving the subordination between platforms and workers in one country in application of the Directive will be a source of information and motivation to win the same rights in other countries. With access to algorithmic transparency, workers and their unions will also find it easier to prove the existence of a subordinate relationship. The Directive therefore offers a tool for concrete solidarity between workers, who can unite in their fight for respect and dignity.

Reflecting on the lessons from the past 800 days, it's clear that platforms wield considerable influence, adeptly lobbying both at the state and EU levels. However, as we shift gears into the transposition and implementation phase, trade unions are ready to elevate their game. As analysts and commentators have aptly noted, there's always a risk of loopholes being exploited, and platforms are likely to employ this strategy. To counter this, trade unions will advocate for the establishment of an expert group on transposition, a tripartite body tasked with delineating clear boundaries to safeguard workers' rights.

Moreover, we'll intensify our efforts to pressure the Commission into spearheading a platform for member states willing to collaboratively navigate the transposition and implementation process, ensuring robust involvement from social partners.

Lastly, our resolve remains unwavering as we continue to compel platforms to the negotiation table. They must recognize the imperative of genuine social dialogue and fair collective agreements that uphold the dignity and rights of all workers. The resounding defeat of digital labour platforms in their bid to deny employment status to those in cleaning, delivery, ride-hailing and other roles they perform through the app signifies a paradigm shift. The concrete evidence presented during the institutional negotiations of this file, as well as in dozens of successful court cases dismantled their foundational argument. It is now evident that these platforms function as employers for platform workers, just as they are for the thousands overseeing operations in headquarters and operational centres.

Seizing this opportune moment, the time has come for a recalibration of relationships. Platforms do not have to wait until the directive is transposed, spend millions of euros for their lawyers to find loopholes, or rely on their strength to ignore the rulings.

It is high time to sit down at the negotiation table, employers, and trade unions together, to work on the transposition and to forge and finalize collective agreements.



We appeal to responsible platforms: No one wants to stop you from innovating, as long as you respect the rules. As unions, we are ready to discuss the most effective application of the Directive's provisions, so that they lead to concrete improvements in workers' rights by allowing platforms to develop responsibly. Some of you will persist in obstructing the Directive, its transposition and implementation. You may decide to choose another path. Our door is open.