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Illusion of substance

The EU is strengthening the rights of platform workers. But companies are left with loopholes that not every member state wants to close

It came as a surprise for everyone involved when the EU Member States finally adopted the Platform Work Directive on Monday, 11 March – without the approval of France and Germany. This is particularly noteworthy as decisions in the Council are normally made by a qualified majority, meaning that at least 15 Member States must agree, which together must represent at least 65 per cent of the EU population. The fact that this time smaller states did not follow the voting behaviour of the two largest Member States and asserted their opposing interests is new and worrying from a German-French perspective.

Does this mean that the 'German vote' ceases to have effect? In any case, the signal to the other Member States is clear: things can get done without Germany and France. In Germany, the neo-liberal FDP has once again blocked the favourable vote of the traffic light coalition. As a result, even though the democratic SPD and the Greens welcome the Platform Directive, the federal government was unable to agree on a uniform position. Germany's abstention is seen as a rejection in Europe and damages the country's reputation. Whether this trend continues will soon be seen in further EU decisions, such as the EU Supply Chain Act. In this case too, the FDP is blocking the process.

The fact that the directive was nevertheless adopted is thanks to the voting behaviour of Estonia and Greece. While both Member States had previously rejected the directive, they surprisingly changed their stance 'in the spirit of compromise'. Which concessions brought about this spirit is not known. Estonia in particular, home of the global platform company Bolt, previously seemed to have little interest in greater regulation of online platforms.

Responsibility now lies with the Member

states

How should the adoption of the Platform Work Directive be assessed? Over a decade ago, platforms like Uber began to establish themselves in major European cities, such as Paris and London. However, it took the European Commission until 2021 to present its proposal to regulate platform work and improve the working conditions of platform workers. A central aspect and main point of contention in the negotiations, which dragged on for two years, was the employment status of platform workers. Many of the approximately 28 million people who work via online platforms are formally classified as self-employed, even though they work exclusively for a platform company and are clearly dependent. As a result, they are not entitled to a pension, minimum wage, sick pay, or other labour protection measures such as social and health insurance.

Until now, platform workers have had to go through lengthy and costly legal proceedings to prove that they are employees and therefore entitled to the associated rights. The new directive introduced a presumption of employment with a reversal of the burden of proof. This means that it is now up to the platform companies to prove that the workers are not employees.

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This is undoubtedly an important step for platform workers, but it should not be misunderstood to mean that platforms are now the ones who must initiate proceedings. It simply means that if, for example, a labour inspectorate finds that a worker is falsely self-employed and the platform is asked to employ the worker, it is the platform's responsibility to take legal action against it. However, the labour authority's ruling can also be suspended while the platform challenges it in court. Unfortunately, the directive gives each Member State a free hand in this regard. This is a major problem: platform workers often stay in a job for only a few months and are no longer working there when, years later, it is discovered that they were actually falsely self-employed and would have been entitled to an employment contract.

In addition, the directive states that the modalities of the presumption of employment should be determined by the Member States. It is not further specified how these should be structured — for example, whether

there should be criteria and how employment is defined in the context of platforms. This leaves the Member States with considerable flexibility in shaping the presumption of employment. This leads to the risk that different standards could be applied in different Member States, depending on how the Directive is interpreted and implemented into the respective national law. Given the strong lobbying of platform companies such as Lieferando or Volt, it does not take much imagination to assume that the interpretation will be in favour of these companies. As a result, platform workers in committed Member States, such as Spain, which have already introduced an employee-friendly law with the Rider Law, could potentially be better off than workers in countries like France, which were sceptical of the directive from the start.

The directive is therefore unlikely to ensure that, overnight, every platform worker will receive the employment status to which they are entitled. Rather, it is now up to the Member States to correct the directive's social weak spots in the implementation process, provided that no coalition partner blocks this. Trade unions also play a special role here, as they can enforce the presumption of employment through collective bargaining.

Regulating algorithmic management

A negative example from Belgium shows how important effective implementation measures are. A Belgian law on platform work, which is similar to the Commission's proposed directive, contains no implementing measures, not even the burden of proof on platforms. As a result, Belgian labour authorities had no mechanisms in place to take action against the platforms after they ignored the law. More than a year after the law was passed, no platform worker has been made an employee.

The Spanish Presidency's draft directive provided for such mechanisms – for example, that the competent authorities should carry out inspections of platform companies where a worker has been classified as falsely self-employed, or that applicants for false self-employment should receive support. Neither was included in the final text, meaning the directive lacks clear implementation instruments.

Another important chapter of the directive is dedicated to algorithmic management in the workplace. Many platform workers, such as food delivery workers and Uber drivers, receive their orders via apps, and they are located and their performance monitored via apps. Algorithms have replaced direct leadership from supervisors. It is therefore important to ensure transparency and set clear limits as to which data the algorithm is allowed to access – and more importantly, which it is not allowed to

access. The new directive provides for a complete ban on the processing of certain data sets, such as mental health or religious affiliation. In addition, private conversations or information outside of the person's professional activity are taboo.

Platform workers should be allowed to benefit from greater transparency and fairness regarding algorithmic management in the workplace. These rights should also apply to all workers, regardless of their economic sector.

From now on, important decisions, such as those regarding compensation, termination or blocking of accounts, must always be made by a human being. In addition, platform employees have the option of enlisting the help of a data expert to gain access to their data, in which case the costs must be borne by the platform. This innovation is ground-breaking and goes beyond the General Data Protection Regulation (GDPR). However, even the GDPR is often not being complied with. Therefore, it remains to be seen how easy it will be in practice for platform employees to obtain the requested information and whether the platforms will comply with the new regulations.

It is extremely important that this approach is being pursued further. Not only should platform workers be allowed to benefit from greater transparency and fairness regarding algorithmic management in the workplace, but these rights should apply to all workers, regardless of their economic sector. The EU's Platform Directive and AI Act, which the European Parliament approved on Wednesday, 13 March, are steps in the right direction, but they do not go far enough. Trade unions are therefore calling on the new Commission to propose a directive on AI in the workplace after the European elections.

By adopting this directive, the European Commission has committed itself to nothing less than a Europe-wide harmonisation of the platform economy with uniform standards. It must be made clear that this goal will not be achieved. Nevertheless, the Platform Directive is a step in the right direction towards fair platform work. However, it is not enough. What is needed now is comprehensive implementation at national level that focuses on the interests of the employed, as well as strong trade unions. There is also a need for regulations on algorithmic management in the workplace that go beyond the platform economy and apply to all employees.



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