

In the EU, platform workers scored a victory

Digital labour platforms have exploited European workers and societies long enough. With a new initiative, the EU now takes the side of workers

For over a decade, digital labour platforms operating in Europe have obtained enormous profits from a business model based on downward competition on labour and the externalisation of social costs and risks. By forcing workers to declare themselves as self-employed when in reality there's a clear employment relationship, digital labour platforms are evading – among other employers' responsibilities – the payment of the minimum wage or sector-specific salary agreed by collective bargaining, as well as the social security contributions. This 'innovation' is what allows them to offer lower prices for their services.

These developments have had a detrimental effect on European societies: not just by eroding the working conditions and quality of life of workers, but also by affecting traditional industry and public revenues. Now, this model is spreading to ever new sectors, with huge impacts on the sustainability of traditional business through unfair competition.

On 9 December 2021, the European Commission proposed a new EU Directive to guarantee labour rights in the digital economy. In general, it's an ambitious attempt to regulate a business model through which digital labour platforms have made huge profits by evading their most basic obligations as employers – at the expense of workers, traditional employers, and underfunded public services.

The Commission's proposal is particularly welcome as it has come a long way since 2016, when it first proposed a 'European agenda for the collaborative economy'. At that time, the Commission – clearly under the influence of the lobbying of major digital labour platforms – accepted the narrative that these companies were 'inventing' a new sector, creating jobs, and providing flexibility. It was encouraging those EU member states expressing concerns around working conditions not to regulate hastily to avoid 'killing the economy'.

What does the Directive entail?

Now, however, the proposed Directive takes the side of workers. At its core, it aims to establish a rebuttable presumption of an employment relationship between workers and the platforms, thereby shifting the burden of proof from worker to employer. This means that a platform should be considered an employer unless the digital labour platform can prove the opposite.

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To be effective, the platform opposing the presumption should be forced into a process of ‘rebut’. That’s when digital labour platforms open the black box of their algorithm to prove they are not subordinating workers. This way, those digital labour platforms that are operating with genuine self-employed workers will not see their business model affected – and it will bring full clarity to genuine self-employed on which platforms to work with.

For the European trade union movement, guaranteeing an employment contract and the respect of workers’ labour rights while allowing genuine self-employed work has been at the core of our advocacy in the past two years. This is so important because the current situation cannot continue like this: all workers in digital labour platforms are assumed to be self-employed if the platform decides so and they and their unions have to take companies to court to prove their status of employees. This is a costly, lengthy, and burdensome procedure which only a minority of workers can afford.

Besides, this process does not result in a change of the platform’s business model, let alone in an improvement of the conditions of the platform’s other workers. Normally, the claimant merely receives a lump sum based on the minimum wage and the digital labour platform continues to profit from the externalisation of all risks at the expenses of the protection of its workers. That’s why the presumption of employment relationship is a game changer, putting an end to this loophole.

Under the proposed legislation, the algorithms used to allocate jobs and manage workers will no longer be a black box. Digital labour platforms will have duties regarding the explanation of their algorithms to workers and their trade unions, and they will also have to subject to collective bargaining. Common rules will need to be determined with the unions on how the algorithm affects the organisation of working conditions.

A good start, but more is needed

In this regard, the proposal for a Directive of the European Commission is a good start. But the European Parliament and the European Council need to improve it. One of the main shortcomings of the draft legislation are the set of criteria to trigger the presumption of employment relationship.

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The current text states that two conditions should be met by a digital labour platform to activate this presumption. That's again a burdensome procedure which would render the rebut useless and could result in maintaining a situation similar to the existing one, with workers still responsible for having their rights recognised. Moreover, the criteria chosen are rigid and don't capture the reality of how digital labour platforms subordinate workers. With the current formulation, digital labour platforms could simply use the criteria to slightly adjust their terms and conditions so as to avoid being affected by the legislation.

More importantly, it is impossible for EU member states to correctly determine the reality of the employment relationship without a proper investigation of how the algorithm organises the work. If shifting the burden of proof from the workers to the employer is the commonly accepted principle, then the thorough evaluation of the employment status is only possible at the moment of the rebuttal procedure. If digital labour platforms are willing to rebut the existence of an employment relationship with their workers, they should then open up their algorithm to the relevant administrative or judicial administration.

The current proposal for an EU Directive takes the concerns of the trade union movement into account and aims at improving the working conditions of workers in platforms. However, it is not perfect and should therefore be improved by the European Parliament and the Council. To make sure that this happens, the European trade union movement will work hard to defend the rights and interest of workers, and counter digital labour platforms' lobbying tactics to maintain their current unsustainable business model.



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