



GMS Flash Alert

Employment Law

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European Union – Update on a Directive for Platform Workers

On 11 March 2024, employment and social affairs ministers in the EU-27 member states confirmed agreement on a new directive to improve working conditions for “platform workers.”¹ Platform workers are sometimes known as “gig workers” and include the likes of rideshare drivers, app-based freelancers, and those who find work through digital platforms, etc.²

The directive addresses the employment status of a platform worker, it makes use of algorithms in human resources management more transparent, it helps to monitor automated systems, and platform workers and their representatives are given a right to contest automated decisions.³

WHY THIS MATTERS

A new European directive on working conditions for platform work, if formally adopted, will stipulate how employment status is determined for individuals working through digital platforms. It is currently assumed that there are more than 5 million workers in the so-called platform economy who are wrongly categorised as “self-employed.”

Companies that are working with self-employed contractors and similar arrangements should monitor developments in the area of platform work, because these rules may impact the employment status of their current and future contracts with individuals they classify as self-employed.

Highlights of the Proposed Directive

Employment Status

It is estimated that more than 28 million persons are working in digital labour platforms across the EU.⁴ One of the central topics in this directive revolves around the correct determination of employment status for platform workers. The chapter about employment status of platform workers has undergone significant changes from the original proposal for the directive. The directive will no longer outline elements for determining employment status, because that responsibility is now given to each EU member state.

EU member states will establish a legal presumption of employment in their legal systems, to be triggered when facts indicating control and direction are found. Understanding the relationship between the individual performing services and who controls and directs him/her is essential to the determination of the employment status – is the individual performing services for instance legally employed or self-employed. Those facts will be determined according to national law and collective agreements, while taking into account EU case law.

Persons working through digital platforms, their representatives, or national authorities may invoke **this legal presumption** and claim they are misclassified. The responsibility to prove that there is no employment relationship rests with the digital platform.

EU member states will provide **guidance to digital platforms and national authorities** when the new measures are being put in place.

Algorithmic Management

Algorithmic management contains necessary safeguards for protecting persons performing platform work against the risks linked to the use of automated monitoring and decision-making systems. These safeguards include, among other things:

- prohibition of processing of certain types of data (e.g., personal data on the emotional and psychological state of a person performing platform work, biometric data etc.);
- enhanced transparency on automated monitoring and decision-making systems for persons performing platform work and their representatives;
- decisions to restrict, suspend, or terminate the contractual relationship or the account of a person performing platform work or decisions of equivalent detriment will be taken by a human being.

Background Information

The European Commission published a proposal for rules to regulate working conditions for platform workers in December 2021. Negotiations between the European Parliament and the European Council were concluded with an agreement in February 2024.

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Next Steps

The directive will be finalised in all official languages and formally adopted by the Council and the European Parliament. After the formal steps of adoption are completed, EU-27 member states will have two years to transpose the directive into their national legislation.

Several media outlets had reported recently that the agreement for rules on platform work fell apart due to EU member states rejecting the proposal.⁵ One of the main complaints was that the criteria set out for the determination of employment status for platform workers were unclear and vague.

In the press release that announces that the agreement is now reached⁶ the chapter concerning determination of employment status for platform workers is changed significantly and now sets out that the question of employment status for platform workers will be determined by each EU member state. This will undoubtedly lead to variations from country to country, where some countries will deem a situation as self-employment while others will deem the same working situation as employment,

Companies that are using services that are performed by self-employed individuals through digital platforms should follow this development closely and may wish to consider assessing if those individuals in their employ have correctly-assigned employment status.

FOOTNOTES:

1 European Council: Platform workers: "[Council confirms agreement on new rules to improve their working conditions](#)," 11 March 2024.

2 For prior coverage, see [GMS Flash Alert 2023-250](#), 21 December 2023.

3 Council of the European Union: "[Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work](#)" (8 March 2024).

4 European Commission: "[COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a Directive of the European Parliament and of the Council On improving working conditions in platform work](#)" (9 December 2021).

5 J. Liboreiro, "[EU deal on platform workers falls apart, pushing law into limbo](#)," in *EuroNews* (online), 16 February 2024.

See the follow-up article by C. Kroet, "[EU Policy. Deal on platform workers, after previous agreement fell apart](#)," in *EuroNews* (online), 11 March 2024.

6 European Council: Platform workers: "[Council confirms agreement on new rules to improve their working conditions](#)," 11 March 2024.

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