

Platform work directive

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We want to discuss:

- ⇒ Effective presumption of employment
- ⇒ Revolutionary chapter on algorithmic management
- ⇒ Other useful provisions for trade unions





Presumption of employment





The core issue $\Rightarrow$ Correct employment status





The platform work model blurred the lines between:

- **Workers** (with all workers' rights and protections)
- **Self-employed** (with all the entrepreneurial freedoms)

The platform work model is characterised by:

- **Bogus Self-Employment** (with no protections and only illusions of freedom)





“The persistence of bogus self-employment
depends entirely on how Member States
transpose the Directive.”

Tea Jarc, ETUC Confederal Secretary





Article 4

*”Member States shall have **appropriate and effective** procedures in place to verify and ensure the determination of the correct employment status of persons performing platform work [..., including through the application of the **legal presumption of an employment relationship** [...]*”





Article 5

*”The contractual **relationship** between a digital labour platform and a person performing platform work through that platform **shall be legally presumed to be an employment relationship where facts indicating direction and control**, [...], are found. Where the digital labour platform seeks to rebut the legal presumption, **it shall be for the digital labour platform to prove that the contractual relationship in question is not an employment relationship** as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice”*

*[...] Member States **shall establish an effective rebuttable legal presumption of an employment relationship that constitutes a procedural facilitation for the benefit of persons performing platform work**. Moreover, Member States shall ensure that the legal presumption **does not have the effect of increasing the burden of requirements** on persons performing platform work or their representatives in proceedings to determine their correct employment status.*





Presumption of employment with a reversed burden of proof

- All Member States must introduce it.
- Those Member States who have it ALREADY must evaluate:





Presumption of employment with a reversed burden of proof.

- All Member States must introduce it.
- Those Member states who have it must evaluate:

⇒ Are the procedures **appropriate and effective**?

(Cost effective for workers? Swift? Not clogging up the judiciary system?)

ILO: Employment
Relationship
Recommendation, (No. 198)

Art 4. (e) National policy should at least include measures to: provide effective **access** of those concerned, in particular employers and workers to **appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms** for settling disputes regarding the existence and terms of an employment relationship





Presumption of employment with a reversed burden of proof.

- All Member States must introduce it.
- Those Member states who have it must evaluate:

⇒ Are the procedures **appropriate and effective**?

(Cost effective for workers? Swift? Not clogging up the judiciary system?)

⇒ Is it **procedural facilitation** for persons performing platform work?

(How does it differ from the procedure that you have now in place?)





What is the right procedure?

Administrative **x** Judiciary





Careful consideration of what PPPWs must present to apply the presumption

- If proof of direction of control is presented $\Rightarrow$ reclassification
(Procedure already existing in all Member States)
- If fact(s) are presented/found (**lower level of burden**) $\Rightarrow$ presumption





ETUC argues that administrative procedures, based on the presentation of facts, would be **effective** and **appropriate**:

- Reduces the burden on courts, ensuring quicker resolutions.
- Simplifies the process for workers, removing unnecessary legal hurdles.
- Clarifies the process for platforms creating their desired legal certainty.





!! Article 6: Supporting measures

- Guidance for all parties to explain the (new) procedures.
- Targeted controls (from individual to collective solution).
- Training for competent authorities (including technical expertise).





Algorithmic Management





⇒ "Revolutionary"

⇒ "Shifting paradigm"

⇒ "Fortifying workers' rights "





New rights for trade unions and ALSO for self-employed

PPPW  Workers

Reminder!!!!

Persons performing platform work = **Workers** AND **Self-employed**





Article 15 – Special arrangement for PPPWs representatives

1) Representatives of persons performing platform work other than workers' representatives shall be able to exercise the rights provided to workers' representatives under Article 8(2), Article 9(1) and (4), Article 10(4) and Article 11(2) only insofar as they are acting on behalf of persons performing platform work who are not platform workers, with regard to the protection of their personal data..

⇒ Representatives of the self-employed have the same rights as workers' representatives when it comes to personal data protection





Article 7 – Limit/BAN on data processing

“Digital labour platforms shall not, by means of AMS and ADMS

- (a) process any personal data on the emotional or psychological state of PPPW*
- (b) process any personal data in relation to private conversations, including exchanges with other PPPW and the representatives of PPPW*
- (c) collect any personal data of a PPPW while that person is not offering or performing platform work;*
- (d) process personal data to predict the exercise of fundamental rights, including the freedom of association, the right of collective bargaining and action or the right to information and consultation as laid down in the Charter;*
- (e) process any personal data to infer the racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, emotional or psychological state, trade union membership, sex life or sexual orientation;*
- (f) process any biometric data, as defined in Article 4, point (14), of Regulation (EU) 2016/679, of a PPPW to establish that person’s identity by comparing that data to stored biometric data of natural persons in a database.” [...]*





Article 8 - Data protection impact assessment

1) *The processing of personal data by a digital labour platform by means of automated monitoring systems or automated decision-making systems is a type of processing which is likely to result in a high risk to the rights and freedoms of natural persons within the meaning of Article 35(1) of Regulation (EU) 2016/679. When carrying out, pursuant to that provision, the assessment of the impact of the processing of personal data by automated monitoring systems or automated decision-making systems on the protection of personal data of persons performing platform work, including on the limitations of processing pursuant to Article 7 of this Directive, digital labour platforms, acting as controllers as defined in Article 4, point (7), of Regulation (EU) 2016/679, shall seek the views of persons performing platform work and their representatives.*

2. *Digital labour platforms shall provide the assessment as referred to in paragraph 1 to workers' representatives.*





Article 8 - Data protection impact assessment

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2. *Digital labour platforms shall provide the assessment as referred to in paragraph 1 to workers' representatives. And representatives of PPPWs when it comes to personal data.*

 **Article 15**





Article 9 – Transparency of AMS and ADMS

⇒ Info about all decisions made by the algorithm (Art 9.1. a;b;c)

- Their existence...
- What they monitor...
- Who receives the data (third parties)...
- Grounds for decisions having an impact on workers...

⇒ When the info should be received (Art 9.3)

- Prior to implementation...
- First working day....

⇒ Who has access to all that info??





Article 9 - Transparency

1) Member States shall require digital labour platforms to *inform* persons performing platform work, platform workers' representatives and, *upon request*, national competent authorities, of the use of automated monitoring systems or automated decision-making systems.





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Spontaneously!!

Article 15

- ⇒ Strong pressure is needed from TU to ensure the right wording
- ⇒ Platforms likely to put obstacles ...(registration? proofs?)

*What happens
the first day of
the Directive?*





Article 10 – Human overview of AMS and ADMS

- 1) Member States shall ensure that DLP oversee and, with the involvement of **workers' representatives**, regularly and in any event *every two years*, carry out an *evaluation of the impact of individual decisions taken or supported by automated monitoring systems and automated decision-making systems on PPPWs* work, including, where applicable, on their working conditions and equal treatment at work.
2. Member States shall require DLP to ensure *sufficient human resources* for the *effective oversight* [...] The persons charged by the DLP with the function of oversight and evaluation shall have the *competence, training and authority* necessary to exercise that function, including for *overriding automated decisions*. [...].
3. Where the oversight [...] identifies a *high risk of discrimination* at work in the use of AMS and ADMS or finds that individual decisions taken or supported by AMS and ADMS systems *have infringed the rights of a PPPWs*, the DLP shall take the steps necessary, including, if appropriate, the *modification of the AMS and ADMS* of its use, in order to avoid such decisions in the future.
4. *Information* on the evaluation [...] shall be transmitted to **platform workers' representatives**. DLP shall also make that information available to **PPPWs** and the **national competent authorities** upon their request.
5. Any decision to *restrict, suspend or terminate the contractual relationship* or the account of a **PPPWs** or any other decision of equivalent detriment shall be taken by a *human being*.





Article 10 – Human overview of AMS and ADMS

Is it enough if we (TU) create an account?

Article 15

4. *Information* on the evaluation [...] shall be transmitted to *platform workers' representatives*. DLP shall also make that *information available* to *PPPWs* and the *national competent authorities* upon their request.





Article 11 – Human review.

- ⇒ Right for PPPWs to human review for **all decisions** taken by ADMS
- ⇒ Access for PPPWs to a person to **discuss and clarify** the decision
 - “the person” must speak the language of that country
- ⇒ Rights for PPPWs and their representative to request a **review** of the decision
 - DLP has two weeks for a written answer
 - Adequate compensation due if the decision was wrong or can not be rectified
 - ADMS should be modified or discontinued (to prevent NEW wrong decision)





Article 12 – Occupational health and safety

⇒ Measures only concerning ADMS and platform workers

- Prevention measures
- Evaluation of psychological and ergonomic risks

Art 12.3.

‘Digital labour platforms shall not use AMS and ADMS in a manner that puts undue pressure on platform workers or otherwise puts at risk the safety and physical and mental health of platform workers.’

!!! TU must argue that this is discriminatory

⇒ Scope for extending measures for all PPPWs





Article 13 – Information and Consultation

- ⇒ Right for platform workers' representatives to be informed and consulted
 - Introduction or any changes to AMS and ADMS
 - In line with Directive 2002/14

- ⇒ Right for platform workers' reps to be assisted by the expert
 - Paid by the DLP if there are more than 250 workers





BEYOND presumption and algo-management





Article 17: Access to relevant information on platform work

⇒ Info available to PPPWs , authorities & representatives of PPPWs

- Number of PPPWs (level of activity, employment status)
 - Average duration of activity, number of hours, income,
 - Intermediaries chain
 - General conditions
- Every 6 months
- Every update





Article 18: Right to redress

- Right to adequate compensation
(for all infringements of right arising from Directive)
- Including those whose employment or other contractual relationship has ended





Article 19: Procedures on behalf or in support of persons performing platform work

*“Without prejudice to Article 80 of GDPR Regulation Member States shall ensure that **representatives of persons performing platform work** and legal entities which have, in accordance with national law or practice, **a legitimate interest in defending the rights of persons performing platform work** are able to engage in any judicial or administrative **procedure** to enforce any of the rights or obligations arising from this Directive. Member States shall ensure that such representatives and legal entities are able to act on behalf or in support of **one or several persons performing platform work** in the case of the infringement of any right or obligation arising from this Directive, in accordance with national law and practice”*





- **Administrative **OR** judiciary**

⇒ New right for the TU to represent outside labour courts
(civic court in case of data protection dispute)

- **One or several PPPWs**

⇒ Possibility of class action
(How does it differ from the procedure that you have now in place?)





Article 20: Communication channels

- Secure **digital channel** for PPPWs & Reps
- Monitoring **x** providing content moderation

⇒ Third party CAN be responsible for the channel
(Platform can outsource it to TUs)





Article 21: Access to evidence

- Courts and competent authorities have access to evidence
- **!!** Only the court can order disclosure of **confidential information**





Article 22: Protection against adverse treatment

- Protection against any adverse treatment

⇒ MS will need **Trade Union help** to identify examples

- *Lower rate*
- *Longer distances (less attractive offers)*
- *Lower number of offers*

Link to Article 6

*Capacity building for
competent authorities*





Article 23: Protection against dismissal

*“Member States shall take the measures necessary to prohibit the **dismissal or termination** of the contract of persons performing platform work, **or equivalent action, and all preparations therefor**, on the grounds that they have exercised the rights provided for in this Directive [...]”*

- ⇒ MS will need **Trade Union help** to identify examples
- *Shadow ban ... (not a disconnection)*





Article 24: Supervision and penalties

- Penalties should be **dissuasive** and **proportionate**

⇒ Pressure needed to make an effective change in DLP model





Thank you.

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