

# EU negotiators agree platform work rules on algorithms, then member states reject the deal

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Council of the EU

Press release 13 December 2023 09:30

Rights for platform workers: Council and Parliament strike deal

This press release has been updated on 22 December 2023.

The Council and the European Parliament have reached a provisional agreement on a proposed directive to improve working conditions for platform workers . In the event that the deal struck today is confirmed by both institutions before going through the formal adoption procedure, it will help millions of them gain access to employment rights .

The directive introduces two key improvements: it helps determine the correct employment status of people working for digital platforms and establishes the first EU rules on the use of algorithm systems in the workplace .

Today's agreement represents a huge step forward for gig workers in the EU. Once confirmed by the Council and the Parliament, it will provide better overall protection for platform workers. In particular it will help ensure that those workers who have wrongly been classified as self-employed have easier access to their rights as employees under EU law.

Yolanda Díaz, Spanish Second Deputy Prime Minister and Minister for Work and Social Economy

Correct classification of self-employed workers

Currently, the majority of the EU's 28 million platform workers, including taxi drivers, domestic workers and food delivery drivers, are formally self-employed . Nevertheless, a number of them have to abide by many of the same rules and restrictions as an employed worker. This indicates that they are in fact in an employment relationship and should therefore enjoy the labour rights afforded to employees under national and EU law.

The provisional agreement reached with the Parliament today addresses these cases of misclassification and eases the way for such workers to be reclassified as employees. Under the agreement, workers will be legally presumed to be employees of a digital platform (as opposed to self-employed) if their relationship with the platform fulfils at least two out of five indicators set out in the directive. These indicators include:

upper limits on the amount of money workers can receive

supervision of their performance , including by electronic means

control over the distribution or allocation of tasks

control over working conditions and restrictions on choosing working hours

restrictions on their freedom to organise their work and rules on their appearance or conduct

According to the agreed text, member states may add further indicators to this list as a matter of national law.

In cases where the legal presumption applies, it will be up to the digital platform to demonstrate that no employment relationship exists according to national law and practice.

More transparent use of algorithms

Digital labour platforms regularly use algorithms for human resources management . As a result, platform workers

are often faced with a lack of transparency on how decisions are taken and how personal data is used.

The deal reached with the Parliament ensures that workers are informed about the use of automated monitoring and decision-making systems. It also prevents digital labour platforms from processing certain kinds of personal data by means of automated monitoring or decision-making systems. Such data will include:

personal data on the emotional or psychological state of platform workers

data related to private conversations

data to predict actual or potential trade union activity

data used to infer a worker's racial or ethnic origin, migration status, political opinions, religious beliefs or health status

biometric data, other than data used for authentication

Under the new rules, these systems need to be monitored by qualified staff, who enjoy special protection from adverse treatment. Human oversight is also guaranteed for significant decisions such as the suspension of accounts.

#### Next steps

The provisional agreement will now have to be endorsed by the Council and the Parliament. It will then be formally adopted by both institutions following legal-linguistic revision. After the formal steps of the adoption have been completed, member states will have two years to incorporate the provisions of the directive into their national legislation.

UPDATE: However, on 22 December 2023 the Spanish presidency concluded that the necessary majority on the provisional agreement among member states' representatives (Coreper) could not be reached. The Belgian presidency will resume negotiations with the European Parliament in order to reach an agreement on the final shape of the directive.

#### Background

The platform economy has grown exponentially in recent years, with revenues increasing from an estimated €3 billion to around €14 billion between 2016 and 2020 and the number of platform workers expected to reach 43 million by 2025.

While the growth of digital platforms has benefitted both businesses and consumers, it has led to the development of a grey zone for many platform workers when it comes to their employment status. According to the Commission, around 5.5 million workers currently classified as self-employed are in a de facto employment relationship with digital platforms and should therefore be entitled to the same labour and social rights granted to employees under EU law.

Moreover, the use of algorithms in platform work has raised questions about the processing of workers' data and the transparency and accountability of decision-making.

The Commission's proposal for a directive was published on 9 December 2021, with the aim of:

ensuring that people working through platforms have – or can obtain – the correct employment status in light of their actual relationship with the digital labour platform, and gain access to the relevant labour and social protection rights

ensuring fairness, transparency and accountability in management via algorithms in the context of platform work

enhancing transparency, traceability and awareness of developments in platform work and improve enforcement of the relevant rules for all people working through platforms, including those operating across borders

Employment and social affairs ministers agreed on the Council's general approach at their meeting on 12 June 2023. Negotiations with the European Parliament began on 11 July 2023 and conclude with today's agreement.

EU rules on platform work (background information)

Spotlight on digital platform workers in the EU (infographic) Spotlight on digital platform workers in the EU (infographic)

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