**Follow-up to the European Parliament non-legislative resolution on fair working conditions, rights and social protection for platform workers - New forms of employment linked to digital development**

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**2. Reference number:** 2019/2186 (INI) / A9-0257/2021 / P9\_TA-PROV(2021)0385

**3. Date of adoption of the resolution:** 16 September 2021

**4. Competent Parliamentary Committee:** Committee on Employment and Social Affairs (EMPL)

**5. Brief analysis/assessment of the resolution and requests made in it:**

The resolution raises concerns that people working through platforms often do not benefit from the legal and social protections due to the misclassification of their employment status and stresses the need to improve working conditions of all people working through platforms, including the genuine self-employed. It calls on the Commission to present a legislative proposal to ensure fair and transparent working conditions for platform workers, giving them adequate access to social protection, right to collectively bargain, and organise and address issues related to algorithmic management.

With respect to misclassification, the resolution urges the Commission to introduce into its forthcoming proposal a rebuttable presumption of an employment relationship for platform workers, in accordance with national definitions as set out in the Member States. It underlines the need for social protection for all workers, including self-employed and calls on the Member States to immediately implement the Council Recommendation on access to social protection for workers and the self-employed[[1]](#footnote-1). The resolution also recalls the right to collective bargaining as one of the fundamental rights for all workers. It indicates that EU competition law must not hinder the improvement of the working conditions (including the setting of remuneration) and social protection of solo self-employed platform workers through collective bargaining, and urges the Commission to clarify that collective agreements fall outside the scope of competition law in order to ensure they can unionise and negotiate collectively, and to guarantee a better balance in bargaining power and a fairer internal market. Finally, the resolution calls on the Commission to ensure that the use of algorithms in work is transparent, non-discriminatory, trustworthy and ethical. It underlines that any changes to task assignments, ratings, deactivation procedures and pricing should be communicated to platform workers and their representatives.

**6. Response to requests and overview of action taken, or intended to be taken, by the Commission:**

The Commission welcomes the Parliament’s resolution and confirms that it has already addressed the recommendations put forward by it, in particular in its proposal for a directive on improving the working conditions in platform work and its draft guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed people adopted on 9 December 2021.

***European legal framework***

**Paragraph 4**

The Commission acknowledges the European Parliament’s concerns on the need to address the working conditions in platform work, while promoting innovation and the creation of new business models.

The purpose of the Commission proposal for a directive on improving the working conditions in platform work[[2]](#footnote-2) is to improve the working conditions of persons performing platform work by ensuring correct determination of their employment status, by promoting transparency, fairness and accountability in algorithmic management in platform work and by improving transparency in platform work, including in cross-border situations, while supporting the conditions for the sustainable growth of digital labour platforms in the Union.

The draft guidelines on the application of EU competition law to collective agreements[[3]](#footnote-3) regarding the working conditions of solo self-employed people should also provide legal certainty by clarifying that competition law does not stand in the way of collective agreements to improve the working conditions of certain self-employed people.

**Paragraph 5**

The Commission has proposed the introduction of a rebuttable presumption of employment status (including a shift in burden of proof), for persons performing platform work through digital labour platforms which control certain elements of the performance of their work. The Member States will need to introduce the presumption in their national legal framework. Competent authorities verifying compliance with or enforcing relevant legislation will be able to rely on that presumption in all relevant administrative and legal proceedings. Such presumption can be rebutted by digital labour platforms as well as persons performing the platform work who argue that the relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member State in question, with consideration to the case law of the Court of Justice. The Member States are asked to take supporting measures to ensure the effective implementation of the legal presumption, such as guidance for digital labour platforms, persons performing platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it.

The Commission’s proposal for a directive will not lead to the introduction of special employment status, or third status, at EU level for people working through platforms.

**Paragraph 8**

Following the decision of social partners in the two phases of formal consultations[[4]](#footnote-4) not to enter into negotiations, the Commission has proposed a directive to improve working conditions in platform work. The proposal aims to ensure that people working through digital labour platforms have – or can obtain – the correct employment status with the platform in line with the principle of primacy of facts and gain access to the applicable labour and social protection rights, where relevant. It also aims to ensure fairness, transparency and accountability in algorithmic management in the platform work context and improve transparency in platform work, including in cross-border situations. The Commission has also presented draft guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons, including those which cover people working through digital labour platforms. The draft guidelines aim at ensuring that EU competition law does not hinder collective negotiations over remuneration and other aspects of the working conditions of solo self-employed persons in a weak position.

The Commission welcomes the call for a safe and healthy working environment. The EU directives in the area of occupational safety and health (OSH)[[5]](#footnote-5), which apply to workers, lay down minimum requirements to be implemented in all Member States to ensure adequate levels of protection as regards health and safety at work. The proposed directive further reinforces those requirements by requiring digital labour platforms to evaluate the risks of automated monitoring and decision-making systems to the safety and health of platform workers, in particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks, to assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment and to introduce appropriate preventive and protective measures. Regarding the self-employed, the 2003 Council Recommendation concerning the improvement of the protection of the health and safety at work of self-employed workers[[6]](#footnote-6) stresses that the self-employed, irrespective of whether they work alone or with workers, may be subject to health and safety risks similar to those experienced by workers, and encourages the Member States to promote their safety and health and include them in the scope of their national legislation.

**Paragraph 9**

The Commission recognises the importance of clarifying the employer responsibilities in the platform work context. The proposed introduction of a rebuttable presumption will ensure that digital labour platforms, which control certain elements of the performance of work, are presumed to be employers. Furthermore, the proposed directive establishes that the determination of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work.

**Paragraph 10**

In the proposed directive, the Commission clarifies that the correct determination of the employment status should be based on the principle of the primacy of facts, i.e. guided primarily by the facts relating to the actual performance of work taking into account the use of algorithms in the organisation of platform work, irrespective of how the relationship is classified in any contractual arrangement that may have been agreed between the parties involved.

***Fair and transparent working conditions***

**Paragraph 12**

The Commission welcomes the call to foster interoperability across platforms. As ensuring data portability would go beyond the scope of a labour law instrument, the Commission in its Communication[[7]](#footnote-7) accompanying the proposed directive calls on platforms to operationalise the provisions of the General Data Protection Regulation (GDPR) on data portability in the context of voluntary codes of conduct. The proposed directive specifies and complements existing personal data protection provisions and ensures improved transparency of algorithmic management in the platform work context. It provides access to information for people working through platforms and their representatives on how algorithms are used and how they influence working conditions. Measures put forward will also support the exercise of human monitoring of automated decisions and human review of significant decisions taken or supported by an automated decision-making system. Where platform workers consider that such decisions infringe their rights, they will have the right to request the digital labour platform to review those decisions. The digital labour platform will need to rectify such decisions without delay if they infringe worker’s rights or, where such rectification is not possible, offer adequate compensation The Commission’s proposal for an Artificial Intelligence (AI) Act[[8]](#footnote-8), when adopted by the co-legislators, will ensure that certain AI systems intended to be used in the field of employment, including in the platform work context, are ethical and non-discriminatory.

The Commission recognises the importance of in-platform private communication channels and the Commission proposal foresees their establishment within the digital infrastructure of platforms, while respecting the protection of personal data and refraining from accessing or monitoring those communications.

**Paragraph 13**

The Regulation (EC) No 883/2004 on the coordination of social security systems and its implementing Regulation (EC) 987/2009 lay down the common rules to protect people’s social security rights when moving within Europe. This includes the aggregation of periods and the export principles (Articles 6 and 7 of the 883/2004 Regulation), as enshrined in Article 48 of the Treaty on the Functioning of the European Union (TFEU). These rules cover cross-border persons working through platforms, whatever status they hold in order to perform their activity (employed or self-employed), in the same way as other employed or self-employed persons. Given that the virtual nature of digital labour platforms poses challenges to enforcement of those rules, the proposed directive includes an obligation for digital labour platforms, which are employers, to declare the work performed by platform workers to the competent labour and social protection authorities of the Member State in which the work is performed and to share relevant data with those authorities.

Horizontal internal market legal instruments such as the Platform to Business (P2B)[[9]](#footnote-9) Regulation and the proposed Digital Services Act (DSA)[[10]](#footnote-10), might also be applicable to digital labour platforms, but might not address the specific challenges posed for the working conditions of people working through them. At the same time, the provisions of the P2B Regulation will apply to genuine self-employed persons that qualify as business users of online platforms, where these provisions overlap with those of the proposed directive.

***A healthy and safe working environment***

**Paragraph 14**

False self-employed who, as a result of the proposed directive, will be reclassified as workers, will gain access to protections ensured through the EU OSH directives. The proposed directive further reinforces protection of safety and health with regard to the use of automated monitoring and decision-making systems. It obliges digital labour platforms, which are or would be presumed to be employers of certain persons working through them, as a result of the rebuttable presumption, to evaluate risks to the safety and health of platform workers, in particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks, to assess whether the safeguards of such systems are appropriate for the risks identified in view of the specific characteristics of the work environment and to introduce appropriate preventive and protective measures. It also forbids the use of automated monitoring and decision-making systems that in any manner, puts undue pressure on platform workers or otherwise puts at risk the physical and mental health of platform workers.

As regards the right to disconnect, in the framework of its follow-up to the European Parliament resolution on the right to disconnect (2019/2181(INL)), the Commission will continue to explore the context and evolution of telework and of the right to disconnect, within the context of the future of work. It will facilitate debate and exchange of good practices with social partners, Member States and other relevant stakeholders. The evidence collected will feed into the Commission’s considerations for a potential EU action.

***Adequate and transparent social protection***

**Paragraph 16**

The Council Recommendation on access to social protection[[11]](#footnote-11) recommends to the Member States to ensure formal and effective coverage of social protection for all workers and the self-employed regardless of the type of employment relationship as well as adequate level of protection and transparency of the conditions and rules. It therefore supports the situation of the self-employed. Most Member States have submitted national plans on corresponding measures to be taken at national level to implement the recommendation. A first overview of the plans has been published[[12]](#footnote-12). The national reports will feed into the Commission’s review of the progress made in the implementation of this recommendation to be presented to the Council by November 2022.

***Representation and collective bargaining rights***

**Paragraph 18**

The proposed directive reinforces representation and collective rights. It introduces an obligation for digital labour platforms to create the possibility for persons performing platform work to contact and communicate with each other, and to be contacted by their representatives, through the platforms’ digital infrastructure or similarly effective means (Article 15). It also ensures that workers and their representatives are informed and consulted on the introduction of or substantial changes in the use of automated monitoring and decision-making systems (Article 9).

**Paragraph 20**

The Commission has presented draft guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed people, including self-employed people working through digital labour platforms. The draft guidelines aim at clarifying that EU competition law does not hinder collective negotiations over remuneration and other aspects of the working conditions of the solo self-employed persons in a weak position.

***Training and skills***

**Paragraph 21**

Some persons working through platforms have limited access to training due to their self-employed status. To increase the training opportunities of all working-age adults, irrespective of their employment status, the Commission has adopted a proposal for a Council recommendation on individual learning accounts[[13]](#footnote-13). The objective is to ensure that adults have the opportunity to keep building the skills they need to maintain or secure sustainable employment in Europe’s changing labour market throughout their working life. The recommendation covers working-age adults legally residing in a Member State, independently of their educational level, current labour force status or type of employment relationship, including those working through platforms. Moreover, in its proposal on micro-credentials[[14]](#footnote-14), the Commission has considered the role of micro-credentials in supporting the professional development and mobility of people in non-standard forms of work, such as those in the platform economy. The proposed directive also clarifies that where a digital labour platform decides – on a purely voluntary basis or in agreement with the persons concerned – to pay for training measures or similar benefits to self-employed persons working through that platform, those benefits as such should not be regarded as determining elements indicating the existence of an employment relationship.

**Paragraph 22**

In order to facilitate Europe’s digital transformation, the Commission has put forward strategic digital objectives for 2030, in its Communication[[15]](#footnote-15) and subsequent legislative proposal on a “Path to the Digital Decade”[[16]](#footnote-16). These should prepare Europe for the roll-out of the next generation of broadband infrastructure with gigabit speeds, including 5G, as well as for the digital transformation of public and private sectors, to enable an array of new innovative services that should transform the manufacturing, energy, vehicle manufacturing, digital government services and health sectors. To provide people in Europe with the skills necessary for the digital transition, the proposal sets 2030 targets on basic digital skills (80% of EU population) and on the number of ICT (Information and Communication Technologies) specialists (20 million in the EU). In addition, the European Pillar of Social Rights Action Plan[[17]](#footnote-17) calls for at least 60% of adults participating in training every year by 2030. The Strategy for the Rights of Persons with Disabilities 2021-2030[[18]](#footnote-18) highlights the right of persons with disabilities to participate in all forms of employment on an equal basis with others. Furthermore, the Coordinated Plan on Artificial Intelligence 2021 Review[[19]](#footnote-19) (Section 8) provides for a multitude of measures to be taken by the Commission and the Member States, in order to nurture talent and improve the supply of computing and AI skills in the larger context of promoting digital competences.

***Algorithms and data management***

**Paragraph 25**

The proposed directive establishes a new set of rights on algorithmic management in the context of platform work. These will ensure workers, their representatives and labour inspectorates are better informed about the use of automated monitoring and decision-making systems, and the impact they have on working conditions. They will be able to resort to concrete procedures and remedies when faced with significant decisions on their working conditions stemming from the use of such systems (like the termination and suspension of accounts or decisions with similar effects). The proposal also calls for platforms to consult workers and workers’ representatives on substantial changes in work organisation related to the introduction or use of algorithms. Furthermore, the proposal for an Artificial Intelligence Act addresses inherent challenges of high-risk AI systems, such as bias and opacity, and aims to ensure that AI systems placed on the market and used in the EU, including in the context of platform work, are safe and respect fundamental rights.

**Paragraph 26**

The new Directive on Copyright in the Digital Single Market (Directive 2019/790) lays down specific rules to improve the remuneration of authors and performers. The Member States had to implement the directive by 7 June 2021. The implementation of the new directive is a priority for the Commission. The Commission has opened infringement procedures against all Member States that have not yet adopted the necessary national rules. The infringements procedures are ongoing.

**Paragraph 28**

People working through digital labour platforms who are workers or will be reclassified as workers as a result of the legal presumption of employment in the proposed directive fall under the scope of the Working Time Directive.[[20]](#footnote-20) The Commission recalls that under this directive periods of ‘stand-by’, during which workers remain available to their employer, can qualify as ‘working time’ in the meaning of this directive. This is the case, when the worker is obliged to resume work immediately or in a very short time after being contacted and when the conditions imposed on the worker during ‘stand-by’ periods are incompatible with their relaxation and leisure.

**Paragraph 29**

As ensuring data portability would go beyond the scope of a labour law instrument, the Commission in its Communication accompanying the proposal for a directive calls on platforms to operationalise GDPR provisions on data portability in the context of voluntary codes of conduct.

**Paragraph 32**

When it comes to innovative solutions in the field of social security coordination, the European Social Security Pass (ESSPASS) pilot project was launched in March 2021 to explore a digital solution allowing citizens to prove their social security coverage and entitlements across borders, thus facilitating the verification process by competent actors and institutions. Any potential initiative, which may follow, would also concern platform workers.

**Paragraph 33**

The Commission has adopted the Social economy action plan[[21]](#footnote-21), which aims to improve the enabling conditions for the social economy across Europe, including improved visibility and recognition and access to finance and markets. The action plan covers all types of social economy organisations, including social economy platforms that use digital technologies to achieve green or social impact, such as platform work cooperatives, an example of participatory-governed businesses which use digital platforms to facilitate citizen engagement and the selling of goods and services, aiming to achieve better working conditions for their members.

***Other recommendations***

**Paragraph 34**

While the Commission does not propose to establish a European quality label for platforms implementing good practices, in its Communication accompanying the proposed directive it calls on platforms to establish codes of conducts, which could have a similar effect of supporting users, workers and consumers to make informed choices as to which platform to use, taking into account the quality of working conditions.

**Paragraph 35**

In addition to specific data on people working through platforms, the Commission is also supporting the collection and publication of data on non-standard forms of work and access to social protection, in the context of EU-wide survey (EU-LFS, EU-SILC) as well as in the context of the monitoring framework on access to social protection[[22]](#footnote-22). The Commission also monitors and supports the Member States efforts in collecting and publishing national data on access to social protection.

**Paragraph 36**

The European Network of Public Employment Service (PES) encourages discussions amongst its members about ways for a sustainable inclusion of workers in the labour market. A PES Network Working Group on ‘new forms of work’ addressed the growing relevance of platform work in the current and future labour market. The outcomes of the Working Group have been shared with the Council and the European Parliament as input to the ongoing discussions on this topic. A cooperation network formed by public employment services (EURES) has been set up to facilitate employment mobility among the Member States. It maintains a database of jobs as a useful means to search and apply for jobs in the EU, EEA and Switzerland.

**Paragraph 39**

The proposed directive will improve the traceability and transparency of platform work, including in cross-border situations, by establishing specific provisions on the declaration of work performed by platform workers to the competent labour and social protection authorities of the Member State in which the work is performed, and on accessibility of relevant information to relevant authorities and representatives of people performing platform work.

1. Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed 2019/C 387/01 [↑](#footnote-ref-1)
2. Proposal for a directive on improving working conditions in platform work COM(2021) 762 [↑](#footnote-ref-2)
3. Draft Guidelines on the application of EU competition law on collective agreements regarding the working conditions of solo self-employed persons C(2021)8838 [↑](#footnote-ref-3)
4. First phase consultation of social partners under Article TFEU on possible action addressing the challenges related to working conditions in platform work (C(2021) 1127 final); Second phase consultation of social partners under Article TFEU on possible action addressing the challenges related to working conditions in platform work (C(2021) 4230 final) [↑](#footnote-ref-4)
5. Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, and related directives [↑](#footnote-ref-5)
6. Council recommendation of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed workers 2003/134/EC [↑](#footnote-ref-6)
7. Communication (COM(2021) 761) Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work [↑](#footnote-ref-7)
8. Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts COM/2021/206 final [↑](#footnote-ref-8)
9. Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services [↑](#footnote-ref-9)
10. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC COM/2020/825 final [↑](#footnote-ref-10)
11. Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed 2019/C 387/01 [↑](#footnote-ref-11)
12. Available [here](https://ec.europa.eu/social/main.jsp?catId=1312&langId=en) [↑](#footnote-ref-12)
13. [COM(2021) 773](https://intragate.ec.europa.eu/decide/sep/entrance?view-serial-number=COM(2021)773) [↑](#footnote-ref-13)
14. [COM(2021) 770](https://intragate.ec.europa.eu/decide/sep/entrance?view-serial-number=COM(2021)770) [↑](#footnote-ref-14)
15. Communication “2030 Digital Compass: the European way for the Digital Decade” COM/2021/118 final [↑](#footnote-ref-15)
16. Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the 2030 Policy Programme “Path to the Digital Decade” COM/2021/574 final [↑](#footnote-ref-16)
17. Communication “The European Pillar of Social Rights Action Plan” COM/2021/102 final [↑](#footnote-ref-17)
18. Communication “Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030” COM/2021/101 final [↑](#footnote-ref-18)
19. Coordinated Plan on Artificial Intelligence 2021 Review COM(2021) 205 final [↑](#footnote-ref-19)
20. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [↑](#footnote-ref-20)
21. COM(2021) 778 [↑](#footnote-ref-21)
22. European Commission (2020) Access to social protection for workers and the self-employed Version 0 of the monitoring framework [↑](#footnote-ref-22)