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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Better working conditions for a stronger social Europe: harnessing the full benefits of  
digitalisation for the future of work**

## 1. Introduction

**Digitalisation enables innovative services, new business models and new forms of work organisation.** Spurred by large amounts of data and powerful technologies such as artificial intelligence (AI), digitalisation is connecting the world, boosting international cooperation and streamlining the way organisations operate and workers are managed.

**New technologies allow for the automation of much of the day-to-day administrative work and repetitive tasks that workers used to spend hours on** – enabling them to focus on more creative, analytical and strategic work that can give their organisation a competitive edge. Digitalisation is making telework and hybrid work a viable choice for a growing number of companies, allowing for more flexible work organisation and improved productivity, whilst contributing to the EU's green commitments. Digital labour platforms can efficiently match supply and demand for labour and create opportunities for clients, workers and self-employed people.

**Alongside these opportunities, the digital transformation also comes with challenges.** Working conditions in the EU are amongst the best in the world. Minimum requirements on working time, health and safety at work, social protection, and the equal treatment of persons (including equal pay between men and women) are all part of the European social model. However, the advent of digitalisation is affecting labour markets in ways which question this model. New forms of work organisation do not automatically translate into quality jobs.

**The principles underpinning our European social market economy should therefore not be taken for granted and should be protected.** Some people are increasingly disadvantaged, including many working through digital labour platforms who operate under precarious working conditions. New ways of organising work, such as platform work, make it more complex to correctly classify people as workers or self-employed. This leads to situations where some people are unfairly deprived of access to the rights and protections associated with the worker status. Others cannot enjoy the real autonomy of the self-employed status. As algorithmic tools are becoming more widespread in the world of work, issues related to surveillance, the use of data, equality and discrimination (e.g. gender biases embedded in the design of algorithmic tools), and the application of algorithmic management are increasingly coming to the fore.

**Following President von der Leyen's commitment<sup>1</sup>, the Commission is proposing a set of measures aimed at improving working conditions in platform work.**

**At the Porto Social Summit in May 2021, EU leaders renewed their commitment to put into practice the European Pillar of Social Rights.** The platform work package, alongside the Commission's initiatives on AI<sup>2</sup> and digital skills<sup>3</sup>, is a key element of our vision for

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<sup>1</sup> Political Guidelines for the Next European Commission 2019-2024. 'A Union that Strives for More. My Agenda for Europe.' Available [online](#).

<sup>2</sup> COM/2021/206 final. Available [online](#).

<sup>3</sup> European Skills Agenda. Available [online](#).

Social Europe in the digital age.<sup>4</sup> This vision is enshrined in the European Pillar of Social Rights and its accompanying Action Plan. The vision is one of a future in which the digital economy develops sustainably and delivers on the many promises it holds, and in which new business models bring more and better jobs, upholding high social standards.

## **2. Platform work – Why we need to act**

**Platform work represents a world of work in constant flux.** It enables many people to make a living or complement their income, including for people who otherwise struggle to access the labour market, such as low-wage earners, women, young people, people with disabilities, migrants or people with a minority racial or ethnic background. It creates opportunities to develop or broaden a client base, sometimes across borders. Platform work brings businesses a much wider access to consumers, opportunities to diversify revenues and develop new business lines, thereby helping them grow. For consumers it means improved access to products and services which would be otherwise hard to reach, as well as access to a new and more varied choice of services.

**The digital platform economy is growing quickly.** Between 2016 and 2020, its revenues grew almost fivefold from an estimated EUR 3 billion to circa EUR 14 billion.<sup>5</sup> Revenues could be even higher, with another study estimating them at EUR 20.3 billion.<sup>6</sup> Today, over 28 million people in the EU work through digital labour platforms. In 2025, their number is expected to reach 43 million.

**Platform work is far from homogeneous.** Digital labour platforms operate in a multitude of economic sectors: from the most visible “on-location” services such as ride-hailing, delivery or domestic work, through micro-tasks such as AI-training or data encoding, to highly skilled creative or specialist jobs such as architectural design, translations or IT development. Digital labour platforms also organise work in different ways, leaving varying degrees of autonomy and independence to people who work through them. Platform work is some people’s main activity, whereas for others it is a source of additional income. If all these people are to make the most of the new opportunities of platform work, it is essential that digital labour platforms across the EU operate within a clear legal framework.

**However, the recent development of the labour platform economy has also brought new challenges to those who work through them.** These can range from a lack of transparency and predictability of contractual arrangements to health and safety challenges, the misclassification of the employment status, or inadequate access to social protection.

**There is a need for greater clarity with respect to the employment status of people working through digital labour platforms.** Nine out of ten digital labour platforms active in

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<sup>4</sup> The Commission’s work following up the European Parliament’s report on the right to disconnect is also part of such vision – European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)). Available [online](#).

<sup>5</sup> De Groen W., Kilhoffer Z., Westhoff L., Postica D. and Shamsfakhr F. (2021). Digital Labour Platforms in the EU: Mapping and Business Models. Study prepared by CEPS for DG EMPL under service contact VC/2020/0360. Available [online](#). Based on a smaller subset of 52 observations than the overall database of 516 platforms.

<sup>6</sup> PPMI (2021). Study to support the impact assessment of an EU initiative on improving working conditions in platform work. Available [online](#).

the EU are currently estimated to classify people working through them as self-employed. Many of these people have real autonomy in their work and value the flexibility and easy access to clients that digital labour platforms provide. Others, however, experience subordination to, and varying degrees of control by, the digital labour platforms they operate through, for instance as regards pay levels, working time organisation and other aspects of their working conditions. In these cases, it is not always clear if their employment status is correctly determined. The employment status should be based on the facts that characterise the relationship, regardless of the existence of a written contract or its terms and conditions. Employment status has consequences on what obligations fall on digital labour platforms and what rights should be granted to people working through them. People's preferences regarding the desired levels of autonomy, flexibility and protection may vary. It is therefore important that they have legal certainty regarding their status, allowing them to make conscious and voluntary choices.

**The use of “algorithmic management” practices on digital labour platforms brings specific challenges.** “Algorithmic management” refers to the use of algorithms i.e. automated systems for supporting or even replacing managerial functions such as monitoring and evaluating work. Algorithmic management is not limited to the platform economy. Automated systems are used in a growing number of ways in the wider labour market – from the very basic monitoring of work schedules, shifts and working hours to more complex applications dealing with task allocation and pay calculation.

**For digital labour platforms, algorithmic management is clearly inherent to their business model and can have a significant impact on working conditions.** Moreover, it can conceal subordination behind a claim of lack of human supervision. A person may be purportedly self-employed and thus lacking access to rights associated with the status of a worker, while in reality, the control exercised through algorithms deprives them of the autonomy enjoyed by a genuine self-employed person. Even in situations where the employment status is correctly classified, algorithms can play a determining role in terms of access to tasks and thus the level of earnings for the genuine self-employed. The close connection between algorithmic management and the working conditions in platform work calls for an immediate and dedicated policy response.

**Issues related to enforcement, traceability and transparency, including in cross-border situations, can contribute to poor working conditions and inadequate access to social protection.** National authorities have difficulties accessing data on digital labour platforms and on people working through them, e.g. the number of persons performing platform work on a regular basis, their contractual or employment status, or digital labour platforms' terms and conditions. The problem of traceability is especially relevant when digital labour platforms operate in several Member States, making it unclear where platform work is performed and by whom.

**Collective bargaining and collective agreements are key to improving working conditions. However, in the platform work context social dialogue remains very limited.** To some extent, the way in which platform work is carried out limits practical opportunities for collective representation and organisation. There is often no physical workplace involved, which means that people working through digital labour platforms rarely interact with each other, or at least not in an organised way. Often they may not even know their peers on a

given platform, or how to contact them. For self-employed people, an additional obstacle to collective bargaining arises from the current interpretation of EU competition law. Article 101(1) of the Treaty on the Functioning of the European Union prohibits agreements between undertakings that restrict competition. The self-employed are typically considered “undertakings” under EU competition law, meaning that, in practice, people working through digital labour platforms cannot usually negotiate collectively to improve their working conditions without the risk of infringing EU competition law.

**In the quest to tackle these challenges, the Commission is not starting from scratch. There are already various existing and proposed legal acts at European level, which are of high relevance for platform work.** These include the whole body of EU labour law and equal treatment law, as well as internal market instruments such as the General Data Protection Regulation<sup>7</sup>, which ensures a strong protection of personal data across the Union, the Platforms-to-Business Regulation<sup>8</sup> and the proposed Artificial Intelligence Act. However, the specific challenges outlined above require additional targeted actions.

**European co-legislators recognise the need for action at the EU level.** The European Parliament has called for an ambitious EU approach to address challenges in platform work. It has adopted an own-initiative report<sup>9</sup>, which calls for strong measures to address the risk of misclassification of the employment status and to tackle algorithmic management challenges in the platform work context. Member States<sup>10</sup>, too, acknowledge the need for stronger legal certainty on the rights and obligations of people working through digital labour platforms, and point to their unclear employment status as a key issue. The European Economic and Social Committee<sup>11</sup> and the Committee of the Regions<sup>12</sup> have also called for specific action on platform work.

**The Commission has listened to social partners and relevant stakeholders.** Trade unions and employers’ organisations generally agree with the overall objectives identified by the Commission and the need to tackle them. Workers’ representatives have demanded ambitious measures to tackle misclassification and want to be able to initiate social dialogue on issues related to algorithmic management. Business associations have cautioned against one-size-fits-all measures and stressed the need to build upon existing and forthcoming EU initiatives. The Commission has also undertaken extensive exchanges with those most directly involved in the platform economy – digital labour platforms and the people working through them. Digital labour platforms have called for clearer rules and an enabling framework that can ensure fairness without stifling innovation and job creation. People working through digital labour platforms have stressed their appreciation for the flexibility and opportunities offered by platform work, while asking for their social rights to be respected and strengthened.

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<sup>7</sup> Regulation (EU) 2016/679. Available [online](#).

<sup>8</sup> Regulation (EU) 2019/1150. Available [online](#).

<sup>9</sup> European Parliament report on “fair working conditions, rights and social protection for platform workers – new forms of employment linked to digital development”. [2019/2186\(INI\)](#). Available [online](#).

<sup>10</sup> Debate on platform work in the Employment and Social Affairs Council on 3 December 2020. Main results available [online](#).

<sup>11</sup> EESC opinion: Fair work in the platform economy (Exploratory opinion at the request of the German presidency). Available [online](#).

<sup>12</sup> CoR opinion: Platform work – local and regional regulatory challenges. Available [online](#).

**The measures proposed in this package reflect the analyses and discussions above. They include:**

- a **proposal for a directive** on improving working conditions in platform work;
- **draft guidelines** on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons, which cover those working through digital labour platforms;
- **calls for new measures, as outlined below, on national authorities, social partners and all relevant stakeholders** to achieve better working conditions for those who work through digital labour platforms.

The Commission is proposing a set of strong tools to improve the working conditions in platform work, including with the view to support the conditions for sustainable growth of digital labour platforms in the European Union. **The proposed Directive puts forward measures to address the risk of misclassification of the employment status in platform work.** It addresses algorithmic management challenges in platform work, as well as challenges related to transparency and traceability. **The draft guidelines aim at ensuring that competition law does not stand in the way of collective negotiations over pay and other aspects of the working conditions of solo self-employed persons in a weak position.**

**Action at EU level needs to be complemented by other relevant actors.** The Commission will support and monitor the transposition of the Directive and ensure proper application and enforcement by the Member States. However, additional measures are needed to foster fairness in platform work. This is why the Commission puts forward in this Communication calls for Member States, digital labour platforms, the social partners, to work together to further reinforce and complement the proposed directive and guidelines.

### **3. EU action on platform work – What does it mean for those working through digital labour platforms reclassified as workers?**

**Among the 28 million people who are estimated to work through digital labour platforms, most people are genuinely self-employed. However, there may be up to 5.5 million people who are “false” self-employed.**<sup>13</sup> That means that, while their contracts with the digital labour platforms they work through describe them as self-employed, in reality they are subject to control and supervision, which are characteristic of the ‘worker’ status. These people may be in a particularly precarious situation. If they want to challenge their employment status classification they need to go to court and prove that the contractual description of their status is false. This is not an easy endeavour, as it can be time and money consuming, and is especially challenging for people in a weak labour market position, such as low-wage earners, young workers or those with a migrant background. To date, there have been more than 100 court decisions and 15 administrative decisions dealing with the employment status of people working through digital labour platforms.<sup>14</sup> In most cases, the

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<sup>13</sup> SWD(2021)396. Impact Assessment report accompanying the proposal for a Directive on improving working conditions in platform work, Section 2.1 and Annex 5.

<sup>14</sup> These took place in BE, DE, DK, ES, FI, FR, IE, IT, NL and SE. – European Centre of Expertise in the field of labour law, employment and labour market policies (ECE). “Case Law on the Classification of Platform Workers: Cross-European Comparative Analysis and Tentative Conclusions”, May 2021. Available [online](#).

rulings have confirmed that they were misclassified as self-employed and should actually be considered as workers.<sup>15</sup>

**The employment status is the gateway to existing labour and social rights.** The misclassification of false self-employed people prevents them from enjoying rights to which they would be entitled as workers. These rights include the right to a minimum wage where applicable, collective bargaining, working time regulations, occupational safety and health protection, equal pay between men and women and the right to paid leave, as well as improved access to social protection against work accidents, unemployment, sickness and old age. Misclassification is not only unfair for the workers affected, it can also have negative repercussions for society as a whole.

This is why **one of the key provisions of the proposed directive is a rebuttable presumption of an employment relationship.** The presumption applies to all digital labour platforms that exercise control over the people who work through them. The proposal puts forward a number of criteria of such control and, related to it, subordination, providing more legal certainty at EU level. The proposal includes obligations on the Member States to adopt measures to ensure that the presumption is effective, can be enforced as well as rebutted. **It is estimated that between 1.7 million and 4.1 million out of the 5.5 million people who are at risk of misclassification might, as a result of the proposed Directive, be reclassified as workers and will thus gain access to various labour law protections, and benefit from better protection against social risks** (see box below). Those who are not reclassified might see their contractual conditions changed to be in line with the characteristics of the genuine self-employed status.

**A correct employment status classification requires better information on applicable rules and obligations.** People working through digital labour platforms may often be unaware of their rights and obligations, for example in the areas of labour law, social security and taxation. Digital labour platforms have expressed discontent with the regulatory uncertainty and lack of transparency they face vis-à-vis applicable national rules. Member States are best placed to ensure clarity and transparency on the rules they set.

In order to complement the measures put forward by the directive, **the Commission invites Member States to:**

- provide advice and guidance to people working through digital labour platforms on the fiscal, social security and/or labour law obligations of their platform activity;
- set up dedicated information channels, such as information websites and hotlines, to provide said advice;
- ensure improved transparency for the digital labour platforms active in their territory on the national rules governing the classification of employment status;
- facilitate the development of small and medium-sized digital labour platforms, for example by providing access templates, including relevant and sufficiently comprehensive information on the applicable legal framework.

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<sup>15</sup> SWD(2021)396. Impact Assessment report accompanying the proposal for a Directive on improving working conditions in platform work, Annex 10.

**Those working through digital labour platforms will also benefit from new protections against the pitfalls of algorithmic management.** The lack of autonomy and the surveillance it induces in platform work can have a negative impact on the working conditions of people subject to it, for instance in terms of psychosocial stress (as people working through digital labour platforms can feel constantly monitored and evaluated without proper justification), risk of accidents (as algorithms may incentivise potentially dangerous behaviour, for instance by offering bonuses for faster deliveries) and access to tasks. Digital labour platforms contribute to these challenges through their terms and conditions, which may unilaterally regulate pay, working time, dispute resolution, customer service etiquette and more, while using technological means to monitor, evaluate and discipline people's work. This leads to unclear responsibilities and lack of redress mechanisms regarding sometimes unintelligible and unaccountable decisions, for instance concerning work sanctions and contract terminations.

**The proposed Directive establishes a new set of rights on algorithmic management.** 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 stemming from the use of such systems (like the termination and suspension of accounts or decisions with similar effects). The proposal also calls for digital labour platforms to consult workers' representatives on substantial changes in work organisation related to the introduction or use of algorithms. These measures will specify and complement what is already ensured through the General Data Protection Regulation (GDPR) in terms of the protection of personal data, and complement what the proposed Artificial Intelligence (AI) Act will do, both to increase the availability of information about the automated systems they might be subjected to and to protect them from the risk of discrimination and bias, in the knowledge that algorithmic management is gradually spreading beyond platform work.

**Social partners have an important role to play.** The Commission will support social dialogue in platform work, through capacity-building activities for social partners, so that they can initiate social dialogue on algorithmic management in the context of the new information and consultation rights proposed in the directive. Platform work is characterised by the lack of a common workplace where workers can get to know each other and communicate with each other and with their representatives. The proposed Directive will therefore demand digital labour platforms to establish digital communication channels, in line with their work organisation, where people performing platform work can exchange with each other and be contacted by their representatives.

**The Commission also calls:**

- on Member States to support social partners in reaching out and representing people working through digital labour platforms, in line with national practices and traditions and the autonomy of social partners;
- on digital labour platforms to promote social dialogue, by actively supporting the collective representation of people working through them.



**As algorithms further shape work beyond digital labour platforms and as technological developments accelerate, the Commission will continue monitoring the situation and consider further actions if needed..** Tackling algorithmic management in platform work is a natural first step. It is inherent to the business model of digital labour platforms, and plays a key role in the working conditions of people working through them. At the same time, the varied ways in which algorithmic management is used in the wider employment context brings about challenges that go beyond the specificities of platform work. The Commission will therefore continue analysing the phenomenon and will keep an eye on the potential future need to regulate the use of algorithms in the wider world of work.

#### **The impact of the directive on platform workers – How do the new rights work in practice?**

In cases where the organisation of work through a platform fulfils always two of the criteria enlisted in the directive, people who work through that platform will be presumed to be workers. The platform is then expected to enable them to enjoy the applicable rights which come with that employment status. Member States will need to set up clear procedures to ensure that this is the case. Moreover, public authorities, such as labour inspectorates or social protection institutions, will be able to rely on and enforce the presumption.

The reclassified worker will enjoy the full set of rights guaranteed to workers, e.g. at least the national or sectoral minimum wage, where applicable, the right to guaranteed rest time, paid holidays and safety and health protection. Access to social protection, which the worker status guarantees, means support in cases of unemployment, sickness and health care; maternity, paternity and parental leave; invalidity, old-age and survivors' benefits and benefits relating to accidents at work and occupational diseases. Platform workers will therefore be able to rely on a social safety net, should the need arise.

Platform workers will also obtain new or more specific rights with respect to algorithmic management. They will better understand how tasks are allocated, how prices are set, and it will become easier for them to question automated decisions taken by algorithms, and get a solution should problems arise. Changes to the way algorithms influence work organisation will be more transparent. Rules ensuring that personal data is not unduly collected will be further reinforced. The people concerned will be able to contest all automated decisions affecting their working conditions and access to redress mechanisms will become clearer.

Thanks to the channels for information exchanges that the digital labour platforms will need to set up in compliance with the proposed Directive, platform workers will be able to contact each other and communicate on matters related to their work, thus improving collective representation.

#### **4. EU action on platform work – What does it mean for the genuine self-employed?**

**Of the estimated 28 million people working through digital labour platforms in the EU, 5.5 million may be misclassified. The remaining 22.5 million people are deemed to be**

**correctly classified, either as workers or as self-employed. The overwhelming majority of them are classified as self-employed.**<sup>16</sup> As such, they appreciate the flexibility and autonomy, as well as the easily accessible job opportunities, offered by digital labour platforms. While they do not necessarily face the same issues as misclassified workers in terms of employment status, they may nevertheless experience difficulties regarding the new challenges that algorithmic management poses to their independence and to the regulatory framework within which their work usually takes place. In this context, **genuine self-employment on digital labour platforms should be promoted and protected at the same time.**

**The draft guidelines on the application of EU competition law aim to ensure that EU competition law does not stand in the way of collective bargaining** for solo self-employed persons in a weak position. The initiative, which addresses this issue in the wider world of work and which is therefore not limited to digital labour platforms, is intended to provide legal certainty on the applicability of EU competition law to collective bargaining by the self-employed. It would enable certain self-employed people to negotiate collectively their working conditions (including remuneration) vis-à-vis counterparties, when they are not consumers. These draft guidelines will be subject to an open public consultation to gather feedback by relevant stakeholders before their adoption.

**The measures on algorithmic management in the proposed Directive will also apply to the genuine self-employed.** Understanding how somebody's behaviour influences automated decisions on task attribution can affect access to future work opportunities, irrespective of the employment status. Improving algorithmic transparency and ensuring human monitoring and review of significant automated decisions is therefore also important for the genuine self-employed.

The measures outlined above complement what the EU has already been doing to tackle challenges to self-employment. The Council Recommendation on access to social protection for workers and the self-employed<sup>17</sup> calls on Member States to ensure that workers and the self-employed have formal and effective access to adequate social protection. National implementation plans<sup>18</sup> show that gaps remain in formal social protection coverage for the self-employed. This is especially the case for access to unemployment benefits, benefits related to accidents at work and occupational diseases and paternity benefits. In this context, **the Commission strongly encourages and will continue to support Member States in further strengthening social protection of the genuine self-employed. They are instrumental for the EU's economic growth, as they drive business innovation and entrepreneurialism.**

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<sup>16</sup> SWD(2021)396. Impact Assessment report accompanying the proposal for a Directive on improving working conditions in platform work, Section 2.1 and Annex 5.

<sup>17</sup> Council Recommendation of 8 November 2019 (2019/C 387/01). Available [online](#). The Recommendation covers unemployment, sickness and health care, maternity and paternity, invalidity, old-age and survivors' benefits and benefits related to accidents at work and occupational diseases.

<sup>18</sup> Member States were recommended to implement the principles of the Recommendation and to submit a national plan setting out the corresponding measures by 15 May 2021. The national implementation plans can be consulted [online](#).

The Council Recommendation on improving the protection of the health and safety at work of the self-employed<sup>19</sup> promotes the prevention of occupational accidents and diseases among the self-employed. The Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity<sup>20</sup> also lays down specific rights for the self-employed (i.e. maternity allowances, protection against discrimination, etc.).

**Furthermore, the EU internal market *acquis* also offers relevant protections for the self-employed.** The Platforms-to-Business (P2B) Regulation<sup>21</sup> aims to ensure that self-employed people working through digital labour platforms are treated in a transparent and fair way and that they have access to effective redress in the event of disputes. The General Data Protection Regulation<sup>22</sup> requires that all personal data processing is lawful, fair and transparent and limited to what is necessary. It also grants a number of data protection rights, such as the right to be informed about personal data processing and of access to one's own personal data, the right to rectification (including the right to have one's data corrected), the right to restrict the processing of one's data, the right to data portability and the right not to be subject to a decision based solely on automated processing of personal data when such decision has legal effects or similarly significant effects.

#### **The impact of the Directive on genuine self-employed people – How do the new rights work in practice?**

As an indirect effect of the Directive, some of the digital labour platforms which currently exercise some degree of control over people who work through them may change their business model to create the conditions for genuine self-employment. The Directive will provide incentives for digital labour platforms to further clarify their contractual relationships, if necessary, in order to put them more firmly on the path of either the self-employed or employed status. When necessary, the self-employed will also receive support to clarify their status. The Directive is expected to cement the autonomy of the self-employment and support their ability to take advantage of their entrepreneurial possibilities, e.g. by developing their client pool. Those who are already genuine self-employed will retain the benefits related to their employment status.

All self-employed people working through platforms will obtain similar rights to workers with respect to algorithmic management, most notably on the transparency of automated systems deployed and on mechanisms to redress and review algorithmically-driven decisions. Having more clarity on the mechanisms underpinning the assignment and proposal of tasks will help them to improve income security and predictability.

## **5. EU action on platform work – What does it mean for businesses?**

**Conservative estimates suggest that there are more than 500 digital labour platforms active in the EU.** These are innovative companies that offer services catering to emerging

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<sup>19</sup> Council Recommendation of 18 February 2003 (2003/134/EC). Available [online](#).

<sup>20</sup> Directive (EU) 2010/41

<sup>21</sup> Regulation (EU) 2019/1150. Available [online](#).

<sup>22</sup> Regulation (EU) 2016/679. Available [online](#).

consumer preferences, including notably ‘on demand’ services. They often build their client base and competitive position through the speed, efficiency and flexibility of their service provision. They bring dynamism to the EU’s economy, building on the perks of digitalisation and can act as important levers in the green and digital transitions. However, their innovation potential risks being thwarted by the fragmentation of existing regulatory frameworks, which challenge cross-border expansion and prevents digital labour platforms from making the most of the Single Market’s economies of scale and scope.

**Innovation should take place in a truly competitive and fair environment.** For competition to yield positive outcomes in terms of consumer choice, low prices and workers’ well-being, businesses should compete on the basis of the quality of the service they provide and their productivity, rather than on the working conditions of their workers. Currently, however, some digital labour platforms build part of their competitive advantage not only on the innovation of their services, but also on the low cost of their labour, by contracting people who should actually be workers as self-employed. Misclassification results in fewer costs than what would be due otherwise: on average, companies employing their workers face 24.5% higher costs in the form of tax and social protection contributions.<sup>23</sup>

**The proposed Directive ensures fair treatment of workers as well as a level-playing field and legal certainty for businesses.** It brings more clarity on who should be considered as a worker and where the obligations of digital labour platforms lie, thereby avoiding lengthy court cases and granting digital labour platforms legal certainty on how they can conduct their business across the EU. The rebuttable presumption and criteria of employment put forward by the Directive will ensure that digital labour platforms operating through false self-employed people follow the same regulations as platforms and traditional businesses employing their workers, and therefore do not benefit from an unjustified competitive advantage. The proposed Directive includes measures to prevent undue burdens on SMEs. EU law will be complemented by guidance provided by the Member States.

**For digital labour platforms, the possibility to work with genuine self-employed people will not be significantly affected.** Where digital labour platforms operate through self-employed people, their terms and conditions should truly allow for the autonomy and entrepreneurialism that genuine self-employment entails. This in turn does not exclude providing some payments in kind, for example through additional contributions to insurances or learning and development opportunities. What applies in the offline economy should also apply and be enforced in the online economy. Other businesses, including those that directly compete with digital labour platforms in the same sectors of activity, though in a “brick and mortar” rather than digital setting, have to comply with the same rules.

**The current impossibility to port rating/reputational systems between digital labour platforms thwarts competition between them,** as it gives disincentives people to work through newly established digital labour platforms. This lack of competition is also often mirrored in the relationship between people working through a same platform. As people often use multiple digital labour platforms to offer their services, the issue of the portability or interoperability of ratings is an important question which influences their opportunities for career and business development. The so-called ‘lock-in effects’ prevent people from

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<sup>23</sup> Eurostat (2021). Wages and labour costs. Available [online](#).

switching to other digital labour platforms for fear of losing their hard-won online reputation gained through clients' ratings. 'Superstar effects', on the other hand, mean that people who are newcomers on a platform have a hard time challenging the established position of their competitors, since they cannot bring with them references they might have gained elsewhere. This favours incumbent digital labour platforms but also, within one platform, it favours those who have been working the longest through it.

In light of this, **the Commission will support the setting up of a Code of Conduct by facilitating dialogue among all interested parties.** This could include logistical support for an industry-led process to ensure the portability of rating/reputational systems, for example by bringing together all interested parties in dedicated events.

**The Commission also calls on digital labour platforms to:**

- facilitate the exercise of the right to data portability under the GDPR by ensuring the technical possibilities for such portability, and to extend the possibility to transmit/port data to reputational data. This could be achieved through an industry-led Code of Conduct.
- cooperate across industries and develop common IT-based formats and solutions to further improve the transparency and traceability of platform work, for example within the proposed Code of Conduct.

#### **The impact of the proposed Directive on businesses – The perspective of a digital labour platform**

Digital labour platforms often have a multi-national dimension, connecting workers and clients across Europe and beyond. Due to legal fragmentation, digital labour platforms have to comply with a wide range of different national laws and court rulings, which hampers their expansion on the EU market.

Thanks to the proposed Directive, digital labour platforms will benefit from increased legal clarity and certainty. In the longer term, this will reduce litigation costs and the administrative burden. Through the common criteria for the rebuttable presumption at EU level, digital labour platforms will have increased certainty on the status of those working through them. This will facilitate business planning and help them organise how they operate, giving them the confidence to scale up, expand across borders, and take advantage of the opportunities that exist in the Single Market.

False self-employment gives a substantial and unjustified competitive advantage to some digital labour platforms, vis-à-vis both traditional businesses and digital labour platforms that operate with an employment model. Digital labour platforms that currently classify the people working through them correctly will benefit from a level playing field, e.g. with respect to taxes or social security contributions. While in the short term digital labour platforms will face costs related to reclassification, in the medium to long term they will also benefit, through reduced compliance costs and increased legal certainty. Indeed, digital labour platforms operating through false self-employment are increasingly facing substantial fines and reclassification orders in several Member States.

## 6. EU action on platform work – What does it mean for national authorities?

**Clarity on the employment status and the related tax and social security contributions will support the sustainability of public budgets.** Member States are expected to gain up to EUR 4 billion in annual contributions as a result of the reclassification measures.<sup>24</sup> They will also bear lower costs in terms of the non-contributory benefits that public authorities may need to award to unprotected workers in order to address, for instance, social exclusion or medical costs. As such, the correct classification of employment status can have a positive impact for all taxpayers as a whole.

In order to facilitate the work of national authorities (such as labour inspectorates, social protection institutions and tax agencies) in enforcing the provisions of the proposed Directive and existing laws, the proposed Directive includes provisions which aim to guarantee the transparency and traceability of platform work, including in cross-border situations. These provisions should ensure that digital labour platforms which act as employers are aware of their obligations to declare the work where it is performed. The proposed Directive requires digital labour platforms to make information on the Terms and Conditions for people working through them, the number of people working through them and under what employment status they operate accessible to labour, social protection and other relevant authorities and representatives of people performing platform work. This information will have to be updated on a regular basis and further clarified if requested by relevant authorities.

In addition, **the Commission will:**

- support the sharing of good practices in the context of its mutual learning programme, as well as support to the activities of the European Labour Authority within the scope of its mandate;
- continue to support Member States with the application of, and guidance on, social security coordination rules, where necessary.
- through EU programmes (such as Horizon Europe), continue to invest in research that can identify innovative and high quality forms of work and examine risks and opportunities for people working through digital labour platforms and businesses alike.

Further work on digitalisation in the field of social security coordination is also ongoing. **The Commission has launched a pilot project on the European Social Security Pass** which will help to address challenges in the portability of social security rights and could leverage the proposed framework for a European Digital Identity (EUeID)<sup>25</sup> to help identify them.

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<sup>24</sup> SWD(2021)396. Impact Assessment report accompanying the proposal for a Directive on improving working conditions in platform work, Section 6.1 and Annex 5.

<sup>25</sup> COM/2021/281 final. Available [online](#).

In order to make the most of this new framework on platform work, **the Commission calls on Member States to:**

- provide support for enforcement – such as guidelines or dedicated trainings for inspectorates concerning the challenges stemming from algorithmic management;
- uphold social security coordination rules;
- improve data collection on platform work and develop bilateral channels to share relevant data with other Member States.

## **7. This goes beyond our borders**

**The EU is leading by example.** Our Union has already set the tone on a global level for addressing key issues such as personal data protection and the regulation of artificial intelligence systems. Our pioneering approach has placed humans at the centre of technology. This package is no different – with it, the Commission aims at contributing to future global standards for high-quality platform work.

**As many digital labour platforms are global, cooperation across jurisdictions is key.** Setting global standards can improve legal clarity for digital labour platforms across the globe and therefore boost the sustainable growth of the platform economy. Some types of platform work are global by nature – people carrying out online platform work can perform their assigned tasks from anywhere in the world. The Commission therefore encourages a global governance of platform work. Digital labour platforms operate across multiple jurisdictions, and so should policy-makers.

**The EU will work with its global partners to bring about decent working conditions in platform work across the world.** The International Labour Organization is a natural partner in this endeavour. Building upon its previous exchanges and collaboration on the topic, the Commission will propose a dedicated event to bring forward the global platform work policy agenda. The impact of digitalisation and globalisation on the future of work has been at the heart of our discussions with the **Organisation for Economic Co-operation and Development (OECD)**. The time is now ripe to take our discussions to the next level, as we seek to tackle the global challenges related to platform work. The EU is also promoting a human-centred, inclusive, fair and sustainable digital transformation and future of work in the **context of the G7 and G20 fora.**

The Commission will also promote better working conditions in platform work in its bilateral agenda, building upon earlier exchanges with the US and Canada to promote international cooperation on platform work.

## **8. Conclusions**

**Digital labour platforms play an important role in Europe's economic future, including for the green and digital transitions.** However, in order to be sustainable, technological progress must go hand in hand with the respect for existing social principles and Europe's ambition for further social progress. This package seeks to address the challenges posed by platform work to our social model and ensure conditions for a sustainable development of the platform economy in Europe – where its benefits can be reaped more readily in a more integrated Single Market, and its downsides prevented and tackled.

**As a result of the proposed measures, more people working through digital labour platforms will benefit from improved income security and predictability, better working-time protections, and a safer working environment.** They will be better able to build up an old-age pension, have access to a social safety net to rely upon in times of need, and no longer fear unfair decisions taken or supported by means of automated systems. Those who remain or become genuine self-employed will be empowered to make their own choices on their working conditions, and use platform work as a way to build entrepreneurial careers.

**In addition, all people working through digital labour platforms – whether employed or self-employed – will better understand and influence the way in which algorithms are used to manage their work.** Work performed through digital labour platforms, including across borders, will become more traceable and transparent. This will empower national authorities and social partners to play a more active role in the platform economy.

**The proposed measures will require digital labour platforms, workers and national authorities to adjust.** However, these adjustments will pay off, helping to harness the many benefits of the digital transformation and protecting the European social market economy over time. Guided by the European Declaration on Digital Rights and Principles for the Digital Decade and by the European Pillar of Social Rights, the EU has the means and direction it needs to succeed in this endeavour.