THE EU DIRECTIVE ON PLATFORM WORK: IMPROVEMENTS AND REMAINING CHALLENGES RELATED TO OCCUPATIONAL SAFETY AND HEALTH

1 The EU Directive on Platform Work

In 2022, it was estimated that there were over 28 million platform workers in the EU, with the number likely to rise to over 43 million by 2025 (Council of the European Union, 2024a), as more economic sectors are platformised and digital technologies, including AI, become increasingly available. Platform work presents important challenges, including low and irregular pay, insecurity, algorithmic control and surveillance, data protection issues, lack of employment rights and protections, and limited collective representation (EU-OSHA, 2024). The regulation of platform work has thus become of paramount importance in order to be able to preserve the European social model in the context of increased digitalisation. The EU Directive on Improving Working Conditions in Platform Work[1] (COM/2021/762) (from now simply the directive) constitutes the first EU attempt at regulating platform work, and it forms part of a package of EU reforms aimed at regulating the digital economy that also includes the Digital Markets Act,[2] the Digital Services Act[3] and the Artificial Intelligence Act.[4]

The initial proposal for a directive was published by the European Commission on 9 December 2021. It contained measures to facilitate: the correct employment status of platform workers, through a presumption of dependent employment in case some mandatory criteria are met; improved transparency and accountability in algorithmic management, including through the human monitoring of algorithms; and a number of provisions regarding the collective representation of platform workers. The European Parliament drafted a report that was adopted on 12 December 2022, which amended the proposal in several ways. Most importantly: it removed the mandatory criteria for the determination of employment status, suggesting instead a list of non-mandatory criteria; it strengthened provisions in the realm of data protection; it strengthened the requirement of human oversight in decisions affecting workers; and it further promoted collective representation. After several attempts, the Council adopted its position on 12 June 2023. Contrary to the Parliament, the Council's position diluted many of the provisions contained in the Commission's proposal, including the criteria to trigger the presumption of employment. An initial interinstitutional compromise agreement was reached on 13 December 2023. However, this was later rejected until a new interinstitutional agreement was reached on 8 February 2024, only to be rejected by the Council the following week. A final agreement was reached on 11 March 2024, through a compromise text that dilutes some of the provisions of the Commission's initial proposal, especially as regards the presumption of employment (European Parliament, 2024).

The legislative path of the directive was therefore anything but straightforward, proving how controversial the regulation of platform work is and how different EU Member States disagree on how to best regulate this new form of work. In this context, this case study presents an analysis of the final text of the directive with a specific focus on provisions relevant to occupational safety and health (OSH) and it discusses the outstanding challenges that will come after its implementation.

2 The directive and OSH challenges

The directive addresses many of the challenges affecting platform workers in the EU by introducing regulations in a number of areas: employment status, algorithmic management, transparency and

[1] See: https://data.consilium.europa.eu/doc/document/ST-7212-2024-ADD-1/en/pdf
[2] See: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R1925
[3] See: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065&qid=1720616963412
[4] See: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0206

enforcement, and collective bargaining. This section presents a critical analysis of the directive specifically in relation to OSH challenges.

2.1 Employment status

Most employment rights and protections in EU Member States, including in OSH matters, depend on the person performing work being classified as an employee. Self-employed workers are entitled to a more limited set of rights and protections, though these vary from country to country (ISSA, 2023). In the vast majority of cases, platform workers are classified by digital labour platforms as self-employed, thus limiting the applicability of OSH regulations to which the majority of workers are entitled (EU-OSHA, 2024). This has appeared to be one of the most contested regulatory terrains, with digital labour platforms being accused of bogus self-employment and of misclassifying workers to reduce their costs and obligations, through the exploitation of loopholes in legislation (Bertolini, 2024). Many court cases around the EU and worldwide have revolved around the dependent employment classification of platform workers, often with conflicting and contradictory results (Hiessl, 2022).

Therefore, one of the key objectives of the directive has been to facilitate the correct employment classification of platform workers. Particularly, the directive established a legal presumption of employment as long as certain conditions are met. Nevertheless, this was the most contested part of the directive, with the Commission, the Parliament and the Council taking different approaches on which criteria would trigger the presumption or whether any criteria should be included at all (European Parliament, 2024). The final agreement leaves the definition of the conditions triggering the presumption to individual Member States, a decision whose potential consequences will be discussed in detail in the next section. The presumption of employment has the potential, depending on the conditions established by individual Member States, to reduce the risk of misclassification and to extend many employment rights and protections to platform workers. This has important implications for OSH.

First, reclassified workers will have the right to be paid at least the **minimum wage**. Many platform workers are low-paid and have very insecure and volatile income. This has been shown to have an impact on their mental health, through increased stress, insecurity and anxiety, as well as work intensification (EU-OSHA, 2022). Moreover, as they are often paid on a piece rate, without any guaranteed earnings, some of them, especially in the ride-hailing and delivery sectors, might incur risky behaviours, such as excessive speeding or not respecting road rules, with severe consequences for their physical health and that of others (Christie and Ward, 2023). Being entitled to a minimum hourly pay could mitigate those risks, by guaranteeing a more secure and stable income.

Second, **working time** regulations will apply to them. Many platform workers have been found to work long and unsocial hours, with important risks to their mental and physical health, including stress, anxiety and fatigue as well as risk of accidents (Bérastégui, 2021). However, as employees, they will be entitled to daily and weekly breaks and to a maximum number of work hours, thus mitigating the above-mentioned risks.

Third, they will be entitled to free **health and safety equipment**. Some types of on-location platform work entail important physical risks (including accidents, injuries, illnesses) that require adequate protections. In most cases, self-employed platform workers have to pay for their own health and safety equipment (e.g. helmet, lights, masks, gloves), including their replacement, as platforms do not assume this obligation (Fairwork, 2024).

Fourth, they will be entitled to **health and safety training**. Health and safety training facilitates preventing many of the work-related risks mentioned above. However, digital labour platforms in most cases do not have the obligation to provide this type of training to self-employed workers and when they do, they often provide minimal and superficial training, often not adequate to train workers against on-the-job risks (Fairwork, 2024).

Fifth, they will be entitled to **social security**. Social security protects from a wide range of social risks with OSH relevance, including: accident, injury, invalidity, sickness, maternity and paternity leave, and old age. In most countries, the self-employed are excluded from a wide range of social security schemes or are enrolled in less protective ones (ISSA, 2024). Although platforms might provide private insurance schemes, they are often much less generous in terms of both amounts and duration, compared to statutory ones (Fairwork, 2020). As employees, they will have access to social protection against many social risks (EU-OSHA, 2024).

Sixth, they will have access to **protection against discrimination**. In some countries, self-employed workers only have access to minimal protection against discrimination (Fairwork, 2024). As employees, they will be entitled to full protection provided by the legislation in each country, which would generally include age, gender, race, sexuality, religion or belief, and disability.

Seventh, they will have access to **clear and transparent contract terms**. While self-employed contracts are generally regulated by commercial law, employment contracts are regulated by labour law. As such, the mandatory information they have to contain is more strictly regulated, reducing the opportunity for digital labour platforms to exclude themselves from certain obligations and liabilities, also in relation to OSH, while at the same time improving the transparency of the contractual relationship, thus making it easier for workers to make a legal claim in case of contract breach.

The presumption of an employment relationship can thus be a watershed for OSH in the platform economy of the EU. However, to what extent the presumption will drive a reclassification of platform workers will depend on the specific criteria established by national legislations, an issue that will be discussed in Section 3.

2.2 Algorithmic management

Some of the main OSH issues associated with platform work revolve around algorithmic control and digital surveillance. Digital labour platforms make wide use of algorithms and other automated systems to assign, direct, control and monitor work, often with little human oversight and limited transparency and accountability (Wood, 2021; Woodcock, 2021). Algorithmic management has been associated with a lack of job control, perceptions of organisational injustice, occupational overload, low social support and pronounced power asymmetries that, in turn, are linked with a number of health outcomes, including stress, anxiety and fatigue (EU-OSHA, 2022). Digital surveillance technologies are an essential prerequisite for algorithmic management, as automated or semi-automated decision-making requires a substantial amount of accurate data. Platforms therefore harvest large amounts of data from workers, often with limited transparency and accountability. Workers are generally unaware of which data are gathered and how they are used, which might cause anxiety and uncertainty (van Doorn and Badger, 2020).

The directive makes important strides in regulating algorithmic management, introducing a set of safeguards for the use of such systems. By doing so, it also has the potential to improve psychosocial working conditions. As this section will discuss, the directive is likely to reduce perceptions of organisational injustice, rebalance power asymmetries and allow workers to gain a sense of control over their job — all well-known risks associated with algorithmic management in platform work (Bérastégui., 2021).

First, digital labour platforms will have to provide detailed **information about the use of automated decision-making systems**. This information shall be provided in a ‘transparent, intelligible and easily accessible form, using clear and plain language’ (GDPR, Article 12(1)) and made available to workers, workers’ representatives and national authorities prior to their implementation. This will allow different stakeholders to have the information necessary to assess any negative impact the use of automated decision-making might have as regards OSH, such as excessive workloads or discriminatory practices. In itself, this provision also has the potential to reduce power asymmetries between the platform and the workers by allowing workers to gain clarity over automated decision-making processes and outcomes.

Second, **the use of automated decision-making shall be subjected to human oversight and evaluation**, especially as concerns its impact on working conditions and discrimination at work. Adequate resources shall be made available so that the person evaluating will have adequate training and competence to make the evaluation and, if needed, **to override automated decisions**. This will allow for a human evaluation of automated decision-making, including its impact on OSH and, in case an undue risk is identified, to modify or discontinue to use of the automated system. Further, human oversight is likely to improve psychosocial working conditions and more specifically organisational justice and power imbalance, as procedural opacity has been used by platforms to dodge bargaining and enforce unfair practices on a ‘take it or leave it’ basis (Bérastégui, 2021).

Third, workers will have the **right to obtain an explanation** about any decision taken or supported by any automated process and to ask for a **human review of the decision**. This provision strengthens the workers’ agency when it comes to automated decisions affecting them and can help mitigate OSH

risks associated with automated decisions (EU-OSHA, 2022). Again, this provision is likely to rebalance power asymmetries and improve fairness at work, as one of the most commonly reported sources of frustration for platform workers is the lack of means of contesting platforms' unfair decisions or clients' unethical behaviours (Bérastégui, 2021). Finally, this measure allows platform workers to gain a sense of control over their work as they can seek redress in case of unfair decisions.

Fourth, **a section is devoted specifically to OSH**. It specifies that digital labour platforms shall:

- evaluate risks of automated decision-making and monitoring as regards OSH, and pay specific attention to ergonomic and psychosocial risks, as well as work-related accidents;
- assess whether safeguards to those systems are adequate given the specificities of the work environment; and
- introduce appropriate preventive and protective measures (Council of the European Union, 2024b).

In order for the above to be implemented, the directive prescribes platforms to inform and consult with platform workers and Member States to establish adequate reporting channels from platforms. All of the above also apply to any change and modification to the automated decision-making system.

Finally, the directive **reinforces data protection**, already within the strong framework of the General Data Protection Regulation (GDPR), through an impact assessment that will have to be shared with workers and workers' representatives. The impact assessment shall guarantee the principle of data collection minimisation[5] as well as transparency and accountability in the way the data are harvested and used.

What is important to highlight is that these provisions will apply to all platform workers, regardless of employment status, and will thus have a wider impact on the number of workers positively affected compared to the presumption of employment previously discussed.

2.3 Transparency, enforcement and collective bargaining

Digital labour platforms often operate without providing adequate transparency and accountability. Public authorities struggle to get information on how many platform workers are active on a platform as well as the basic conditions and terms they are subjected to. Moreover, platform workers often find it difficult to seek redress when the platform violates contract terms or basic rights, also when it comes to OSH, as the platform might not provide adequate information, have established effective communication channels or have created effective procedures, thereby causing stress and anxiety. In this regard, the directive establishes important steps forward in the protection of platform workers.

First, platforms will be required to **provide relevant information to public authorities**, including the number of workers working through the platform, the basic terms and conditions, the hours worked and the earnings of individual workers and, in case the platform uses subcontractors, details about the subcontractors. Second, platforms will have to provide **relevant clarifications and details to individual workers** about the information that was provided. Both provisions will make it easier for authorities to be able to gather the necessary information on OSH-related matters and thus improve enforcement and policymaking in this regard.

Further, the directive introduces a number of provisions for the **adequate enforcement of platform workers' rights**, also in OSH matters. Member States shall make sure workers are granted access to impartial dispute resolution and the right to redress. Workers' representatives shall also be granted the right, in line with national legislation, to enforce rights and obligations. Member States shall also ensure that platforms create channels of communication between workers, and between workers and representatives, without accessing or monitoring those channels. This measure will also allow for the mitigation of the risk of social isolation and lack of social support. Moreover, Member States shall ensure that any confidential evidence relevant for a legal proceeding is disclosed by a platform. All these measures will facilitate an adequate information flow for the legal enforcement of workers' rights and for the prosecution of a platform in case of legal violations. This means that any regulatory provision, including in relation to OSH, will be more easily enforced. Lastly, the directive contains a number of provisions to protect the workers in case of legal redress, including the prohibition of dismissal or termination of contract on the grounds that they exercised their rights.

[5] See: https://www.edps.europa.eu/data-protection/data-protection/glossary/d_en

Finally, the directive makes an explicit provision for the **promotion of collective bargaining**. Hitherto, many countries restrict the ability of self-employed workers to collectively bargain (EU-OSHA, 2024). This provision will make it easier for both self-employed and employed platform workers to collectively negotiate with platforms. Collective bargaining has historically been a very important tool for the improvement of working conditions and many important improvements in labour standards, including in OSH matters, are achieved through collective negotiation between social partners (Bertolini and Dukes, 2021).

3 Implementing the directive: remaining OSH challenges

As shown in the previous section, the directive presents important improvements in the regulation of platform work in the EU, addressing some of the OSH challenges of platform work and making provisions for the mitigation of relevant OSH risks. However, some outstanding OSH challenges remain unaddressed or only partly addressed. This section will critically discuss OSH challenges concerning the implementation of the directive.

First, as previously highlighted, the criteria triggering the presumption of employment are left to individual Member States to establish. Some countries, such as Spain, already have a legal framework that establishes the reclassification of many platform workers as employees. In the wake of the first publication of the directive proposal by the Commission, other countries have also enacted their criteria. For instance, Malta enacted criteria in line with the Commission's initial proposal, others added additional ones (Portugal, Belgium, Croatia), while others only partially adopted those criteria (Luxembourg) (ISSA, 2023). It is still to be seen which criteria other countries will adopt and how strict they will be. What is certain though, is that the reclassification of platform workers will look very different in different Member States, with some countries having a high number of platform workers reclassified as employees and others having a situation that will likely remain mostly unchanged compared to now. For OSH, this means that the challenges associated with the self-employed status of platform workers will persist in those countries where only a few workers (or none) will be reclassified.

Second, no matter the criteria established at the national level to trigger the presumption of employment, many platform workers will likely continue to be classified as self-employed. This will most likely be the case for those employed in the domestic and care sector, as well as those performing online work, as platforms in these sectors use a marketplace model and workers can be argued to be genuinely self-employed. At the same time, as has already happened in some countries, such as Belgium (Wray, 2023), platforms might be able to circumvent the new rules, either by claiming that these rules do not apply to their existing organisational model or by slightly amending their organisational model to avoid the application of certain criteria (for instance, by introducing a substitution clause or by making it easier for workers to cancel a task). For all of these workers, the OSH risks associated with the self-employment status will remain unchanged. Some improvements might come from collective bargaining. There are already some examples of company collective agreements signed by self-employed platform workers, such as in Denmark, the one signed between the translation services platform Voocali and the union HK Privat (Eurofound, 2024) and, also in Denmark, the one signed by the cleaning platform Hilfr and the union 3F (Uni Global Union, 2018). However, these remain the exception rather than the rule, and advancements are likely to be made mostly in countries with stronger unions and collective representation mechanisms. Thus, unless national legislation takes a step towards extending some rights and protections also to self-employed platform workers, many OSH challenges will persist for a large share of the platform workforce.

Third, the directive makes very limited reference to the use of subcontractors. However, as more workers will be reclassified as employees, this type of work arrangement will be increasingly common across many Member States. This is already the case in many sectors and countries (for instance, a number of food delivery platforms, such as Just Eat and Glovo, already use a subcontractor model in many of the countries where they operate, while ride-hailing platforms, like Uber, are operating through fleets of subcontractors in countries like Germany and Spain). The use of subcontractors can contribute to diluting platforms' responsibilities and obligations towards workers, also as concerns OSH, as has already happened in other industries (EU-OSHA, 2024). The European Parliament's report suggested the inclusion of stricter regulations in the use of subcontracting, but these were later discarded in the negotiations over the final text. Thus, unless individual Member States adopt stricter rules on the use and monitoring of subcontractors, digital labour platforms are likely to undermine workers' rights and protections, also regarding OSH as in the case of other regulatory realms.

Fourth, the directive makes encompassing changes as regards algorithmic management. As already stated, the directive's provisions on algorithmic management are not confined to employed platform workers. At the same time, those provisions leave less room for Member States to adapt them according to their national context, thus guaranteeing a more uniform application of the directive across the EU. The outstanding question is how much the algorithmic 'black-box' will be open to scrutiny (Moore and Joyce, 2020). Platforms often hide the functioning of algorithms behind claims over proprietary rules or of confidentiality. At the same time, there are technical obstacles in ensuring algorithmic transparency (Gaudio, 2022; Das Acevedo, 2020). It remains to be seen to what extent these can be bypassed in order to guarantee transparency and accountability in automated decision-making. At the same time, authorities and workers' representatives will need to provide adequate resources for the training of those in charge of assessing automated decision-making, to make sure they will have the adequate skills and competencies to assess potential risks associated with the use of these automated tools and to recommend adequate solutions.

Fifth, the directive does not establish clear rules on the use of semi-automated decision-making systems, that is systems that utilise both human and automated decisions. While the European Parliament's report included among its suggestions the inclusion of 'semi-automated' systems, this was discarded in the final agreement. To what extent these systems might be subjected to the same scrutiny and assessment of fully automated systems is likely to depend on the way the directive will be adopted by individual Member States, as well as by individual courts. At the same time, platforms might introduce basic human oversight to fall outside the scope of automated decision-making regulations, without introducing meaningful changes into their processes.

Sixth, the directive includes important provisions as regards collective representation and states clearly defined rights for workers' representatives. Nevertheless, it does little to deal with situations where platform workers' representatives do not exist or have limited power and capacity. This is the case in some countries across the EU, but also in some sectors of the EU platform economy, such as domestic and care work as well as online work. In that respect, we might expect sectors and countries with stronger unions and collective representation mechanisms to see a closer monitoring of platforms and a stronger enforcement of the rights enshrined in the directive compared to others. On the one hand, this might create an inhomogeneity, both between sectors and countries, in the way rights and protections established in the directive are applied in practice and, on the other hand, it might still leave many workers to have to enforce those rights individually. Thus, it is recommended that individual Member States establish effective monitoring and enforcing mechanisms especially in those countries and sectors where collective representation is weak or non-existent.

Finally, monitoring and enforcement require adequate expertise to be effective. In the platform economy, as already mentioned, they also require highly sophisticated technical skills in order to gauge how digital technologies and automated systems function and the outcomes they might generate. Hitherto, many labour inspectorates and other enforcement bodies across the EU lack or are deficient in this expertise or unable to overcome technical obstacles in evaluating algorithmic outcomes. Although the directive recommends sufficient resources to be given to enforcement authorities, it will depend on individual Member States to guarantee that monitoring and enforcement bodies have adequate resources and expertise to carry out these complex technical tasks.

4 Key takeaways

To conclude, the directive constitutes an important step forward in guaranteeing more rights and protections, in OSH and beyond, for millions of platform workers across the EU. It promises to reduce the risk of workers' misclassification and to shift the burden of proof of employment classification to platforms. It introduces a series of measures that will make algorithmic management more transparent and accountable not only to individual workers but also to unions and public authorities. It further strengthens the informational requirement platforms have to provide in order to operate and it strengthens regulatory enforcement while, at the same time, facilitating the collective representation of platform workers. All these measures can be regarded a turning point in the regulation of platforms in the EU and it represents one of the world's first examples of regulations of this kind.

Nevertheless, the impact of the directive on OSH will strongly depend on its implementation across different Member States. What we are likely to see is a non-uniform application, with some countries strongly improving working conditions of platform workers and others making limited progress. At the same time, a number of OSH challenges are only partly dealt with by the directive. Many platform

workers who will continue to be classified as self-employed will keep being excluded from basic employment and social rights, including OSH regulations. The regulation of subcontractors remains inadequately addressed and the regulation of automated decision-making systems might encounter relevant backlash from platforms while at the same time being difficult to enforce in practice. More generally, effective enforcement will depend on national legislation and local collective representation. Overall, the directive can be considered an important first step, but hardly the last one, in guaranteeing fair and decent working conditions in the platform economy, both as regards OSH and more broadly.

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