

Equinet Directive Summary

Platform Work Directive



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General information

Digital Labour Platforms and Platform Work

Following Article 2(1), ‘**digital labour platform**’ means any **natural or legal person** providing a service which meets all of the following requirements:

- (a) it is provided, at least in part, at a distance **through electronic means**, such as a website or a mobile application;
- (b) it is provided at the **request of a recipient of the service**;
- (c) it involves, as a necessary and essential component, the **organisation of work performed by individuals in return for payment**, irrespective of whether that work is performed online or in a certain location;
- (d) it involves the use of **automated monitoring or decision-making systems**

Following Article 2(2), ‘**platform work**’ means any **work organised through a digital labour platform** and performed in the Union by an individual **on the basis of a contractual relationship between the digital labour platform or an intermediary and the individual**, irrespective of whether a contractual relationship exists between the individual or an intermediary and the recipient of the service.

An analysis by the European Commission from 2021 found that there are **more than 500 digital labour platforms** active and the sector employs more than **28 million people** - a figure expected to reach 43 million by 2025.

Misclassification of platform workers

Currently, the majority of the EU's platform workers are **formally self-employed**. However, according to Recital 7 of the Directive, court cases in several Member States have shown the **persistence of misclassification of the employment status in certain types of platform work**, in particular in sectors where digital labour platforms exert a certain degree of direction or control. Numbers indicate that **up to 5.5 million people may be wrongly classified as self-employed**. Following Recital 6, misclassification of the employment status has consequences for the persons affected, as it is likely to **restrict access to existing labour and social rights**.

For this reason, Articles 4 and 5 of the Directive introduce a rebuttable **presumption of an employment relationship** (as opposed to self-employment) that is triggered when **facts indicating control and direction** are present, according to national law and collective agreements, and taking into account EU case law. Persons working through digital platforms, their representatives, or national authorities may invoke this legal presumption and initiate proceedings to determine their correct employment status. **The responsibility to prove that there is no employment relationship rests with the digital platform.**



Algorithmic Management

As stated in Recital 8, automated monitoring and decision-making systems powered by algorithms **increasingly replace functions that managers usually perform** in businesses, such as allocating tasks, the pricing of individual assignments, determining working schedules, giving instructions, evaluating the work performed, providing incentives or imposing sanctions. Digital labour platforms in particular use such algorithmic systems as a standard way of organising and managing platform work through their infrastructure.

According to Recital 4, new forms of digital interaction and new technologies in the world of work can result in technology enabled surveillance, increase power imbalances and opacity about decision-making, as well as entail **risks for** decent working conditions, health and safety at work, **equal treatment** and for the right to privacy. Indeed, the use of algorithms in platform work can have **serious equality implications**. For example, if decisions, such as salary or working conditions, are based on rating by customers, they are **open to discriminatory influences and stereotypes** by the person rating the service. Furthermore, algorithms may also consider criteria, such as workers' availability or their response time to demands, which can have **discriminatory outcomes due to structural inequalities**.¹

Persons performing platform work subject to such algorithmic management often do **not have access to information** on how the algorithms work, which personal data are being used and how their behaviour affects decisions taken by automated systems.

Consequently, the Directive introduces the requirement to **inform** platform workers and their representatives in a transparent manner **about the algorithmic systems in place and how they work** (Article 9). Likewise, persons performing platform work have the **right to obtain an explanation for decisions taken or supported by algorithmic systems** (Article 11(1)) and to request the review of such decisions (Article 11(2)). Where the decision infringes the rights of a person performing platform work, the digital labour platform shall **rectify that decision without delay** and in any case within two weeks of the adoption of the decision. Where such rectification is not possible, the digital labour platform shall **offer adequate compensation** for the damage sustained (Article 11(3)).

Furthermore, under Article 10, automated monitoring and decision-making systems need to be **monitored and regularly evaluated by qualified staff**, who enjoy special protection from adverse treatment. Human oversight is also guaranteed for significant decisions such as the suspension of accounts.

Moreover, digital labour platforms will **not be able to process certain kinds of personal data**, such as:

- personal data on the emotional or psychological state of platform workers
- data related to private conversations

¹ Janneke Gerards and Raphaële Xenidis 'Algorithmic discrimination in Europe: Challenges and opportunities for gender equality and non-discrimination law' (European Union 2021), pp. 55 and 56.



- data to predict actual or potential trade union activity
- **personal data to infer racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, the emotional or psychological state, trade union membership, a person's sex life or sexual orientation**
- biometric data, other than data used for authentication (Article 7(1))

Importantly, most of the provisions on algorithmic management **apply to persons performing platform work irrespective of the nature of their contractual relationship** (Article 1(2)).

Relevance for Equality Bodies

Recitals

Two of the recitals refer to EU instruments in the area of equality and non-discrimination:

- Recital 2 refers to **Article 21 of the Charter which provides for the right to non-discrimination.**
- Recital 3 refers to **Principle No 5 of the European Pillar of Social Rights** and workers' **right to fair and equal treatment** regarding working conditions and access to social protection and training.

Relevant provisions regarding equality and for Equality Bodies

The text does not mention Equality Bodies specifically. However, several provisions could be of relevance to their work.

In particular, Article 19 requires Member States shall ensure that representatives of persons performing platform work **and legal entities which have, in accordance with national law or practice, a legitimate interest in defending the rights of persons performing platform work, may engage in any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive.**

Other relevant provisions, depending on the transposition of the Directive into national law, may be the following:

The competences of national authorities with regard to the correct classification of employment status:

- Apart from persons performing platform work and their representatives, **competent national authorities are also entitled to initiate appropriate actions or proceedings, in accordance with national law and practice, in order to ascertain the employment status of a person if it considers that this person might be wrongly classified.** (Article 5(5)).



- Member States shall [...] develop **guidance** and establish **appropriate procedures** in line with national law and practice **for competent national authorities**, including on the **collaboration between different competent national authorities**, to proactively identify, target and pursue digital labour platforms which do not comply with rules on correct determination of the employment status (Article 6(b)).
- Member States shall [...] provide for **effective controls and inspections** conducted by **national authorities**, in line with national law or practice, and in particular provide, where appropriate, for controls and inspections **on specific digital labour platforms** where the existence of an employment status of a person performing platform work has been ascertained by a competent national authority, while ensuring that such controls and inspections are proportionate and non-discriminatory (Article 6(c)).
- Member States shall [...] **provide for appropriate training for competent national authorities** and provide for the **availability of technical expertise in the field of algorithmic management** (Article 6(d)).

With regard to automated monitoring or decision-making systems:

- As mentioned before, Member States shall **require digital labour platforms to inform in a transparent, intelligible and easily accessible form** persons performing platform work, platform workers' representatives and, **upon request, competent national authorities, of the use of automated monitoring or decision-making systems** (Article 9(1)). Such information includes for example the fact that such systems are in use, which data or actions are monitored and which decisions taken or supported by such systems as well as the data and parameters taken into account by such systems, including the way in which the personal data or behaviour of the person performing platform work influence the decisions.
- As previously mentioned, Member States shall ensure that the **impact of individual decisions taken or supported by automated monitoring and decision-making systems on persons performing platform work**, including, on their working conditions and **equal treatment at work**, is **overseen and regularly evaluated** (Article 10(1)).
 - Where the oversight or the evaluation identifies a **high risk of discrimination** at work in the use of automated monitoring and decision-making systems or finds that individual decisions taken or supported by automated monitoring and decision-making systems have infringed the rights of a person performing platform work, the digital labour platform shall take the necessary steps, including, if appropriate, a **modification of the automated monitoring and decision-making system or a discontinuance** of its use. **Information on the evaluation** shall be **transmitted to** platform workers' representatives as well as to persons performing platform work and the **competent national authorities** upon their request. (Article 10(3)).
- The platform workers' representatives may be **assisted by an expert of their choice**, in so far as this is necessary for them to examine the matter that is the subject of information and consultation and formulate an opinion (Article 13 (3)).



- **The data protection authorities and other competent national authorities shall, where relevant, cooperate** in the enforcement of this Directive, within the remit of their respective competences, in particular where questions on the impact of automated monitoring or decision-making systems on persons performing platform work arise (Article 24(2)).

With regard to enforcement and remedies:

- Member States shall ensure that persons performing platform work, including those whose employment or other contractual relationship has ended, have **access to timely, effective and impartial dispute resolution and a right to redress**, including adequate compensation for the damage sustained, in the case of infringements of their rights arising from this Directive (Article 18)).

Assessment

- The **presumption of an employment relationship** would have **several benefits** for platform workers:
 - Importantly, this would mean that they would be **covered under national non-discrimination legislation pertaining to employees only**. Furthermore, certain principles, such as **equal pay, would also be relevant** for them. This also includes the Pay Transparency Directive.
 - While being formally employed would give platform workers **better access to labour and social rights in many countries**, for instance including maternity or unemployment benefits, persons might still not meet the requirements to access social protections, such as maternity leave, due to the **fragmented and part-time nature of platform work**.
- As it will be **up to each member state to decide how to implement** the presumption and the criteria that will be used to determine sufficient control and direction, this will undoubtedly lead to **variations from country to country**.
- The requirements regarding transparency, human oversight and human review concerning algorithmic management can contribute to **workers having more information about potential discriminatory algorithms**, meaning that they would be better able to protect themselves from algorithmic discrimination. However, in case of non-compliance with the provisions, they would need to **enforce their rights**. Depending on the situation of the platform worker, this might be difficult for them. This is therefore, where **Equality Bodies could potentially play an essential role**.
- It is also important to read the provisions on algorithmic management **in the context of the AI Act**. According to the AI Act, AI systems intended to be used to make decisions affecting terms of work-related relationships, the promotion or termination of work-related contractual relationships, to allocate tasks based on individual behaviour or personal traits or characteristics or to monitor and evaluate the performance and behaviour of persons in such relationships, fall under **Annex III and**



are deemed high-risk. Consequently, they need to comply with all the requirements set out in the Act for high-risk systems. It will therefore be interesting to see how this will affect the enforcement of the provisions regarding algorithmic management in the Platform Work Directive. While the AI Act aims at maximum harmonization, it serves as a minimum harmonisation instrument for work allowing for negotiation of additional and stronger AI-specific protections via collective agreements and amendments in labour law (article 2.11).

Further information

- The full text of the Directive can be accessed [here](#)
- European Council: [EU rules on platform work](#)
- European Parliament: [Parliament adopts Platform Work Directive](#)
- ILO: [An unfinished task? Matching the Platform Work Directive with the EU and international “social acquis”](#)
- ETUI: [Regulating algorithmic management - An assessment of the EC’s draft Directive on improving working conditions in platform work](#)
- European Policy Centre: [Regulating platform work: How will this impact migrant workers?](#)



Equinet Member Equality Bodies

ALBANIA

Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA

Austrian Disability Ombudsman
www.behindertenanwalt.gov.at

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.gov.at

BELGIUM

Institute for the Equality of Women and Men
www.igvm-iefh.belgium.be

BELGIUM

Unia (Interfederal Centre for Equal Opportunities)
www.unia.be

BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman of Bosnia and Herzegovina
www.ombudsmen.gov.ba

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Office of the Ombudswoman
www.ombudsman.hr

CROATIA

Ombudsperson for Gender Equality
www.prs.hr

CROATIA

Ombudsman for Persons with Disabilities
www.posi.hr

CYPRUS

Commissioner for Administration and Human Rights (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Public Defender of Rights
www.ochrance.cz

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.volinik.ee

FINLAND

Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GEORGIA

Public Defender of Georgia (Ombudsman)
www.ombudsman.ge

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Irish Human Rights and Equality Commission
www.ihrec.ie

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

KOSOVO*

Ombudsperson Institution
www.oik-rks.org

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

MALTA

Commission for the Rights of Persons with Disability
www.crpdp.org.mt

MALTA

National Commission for the Promotion of Equality
ncpe.gov.mt

MOLDOVA

Equality Council
www.egalitate.md

MONTENEGRO

Protector of Human Rights and Freedoms (Ombudsman)
www.ombudsman.co.me

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORTH MACEDONIA

Commission for Prevention and Protection against Discrimination
www.kszd.mk

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Commissioner for Human Rights
bip.brpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
cite.gov.pt/web/pt

ROMANIA

National Council for Combating Discrimination
www.cncd.ro

SERBIA

Commissioner for Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

Slovak National Centre for Human Rights
www.snspl.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.si

SPAIN

Council for the Elimination of Ethnic or Racial Discrimination
www.igualdadynodiscriminacion.igualdad.gob.es

SPAIN

Institute of Women
www.inmujeres.gob.es

SWEDEN

Equality Ombudsman
www.do.se

UKRAINE

Ukrainian Parliament Commissioner for Human Rights
www.ombudsman.gov.ua

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
www.equalityni.org

** This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.*



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