

European Commission proposal for a directive on the working conditions of platform workers

ESIP position paper

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The European Social Insurance Platform (ESIP), which represents statutory social security institutions from 17 Member States and Switzerland, welcomes the European Commission proposal for a directive on improving the working conditions of platform workers. ESIP's members are committed to ensuring appropriate social protection for self-employed and atypical workers in line with the [2019 Council Recommendation on access to social protection](#).

The emergence of platform work creates a challenge for social protection systems. At the same time, the flexibility offered by platforms to generate income might correspond to the expectations of certain casual workers. Unless Member States give themselves the legal means to collect information on the work performed by platform workers, by obliging the platforms to communicate the necessary data, the phenomenon would remain difficult to quantify. The specific situation of platform workers qualified as solo-self-employed was further explored by ESIP in a [first study from 2019](#) and subsequently in [an updated study](#) in 2021, with a focus on unemployment and sickness benefits coverage. The two studies found that within social security, employment status remains an important divider which is put into question by platform work. The organisation of work via digital labour platform makes it difficult to identify the existence of an employer organising the work. However, in several Member States recent case law has clarified the work status of platform workers and the criteria for their qualification as employees.

The proposal put forward by the European Commission will also impact the social security coverage of platform workers by introducing a presumption of employment, which in some social protection systems can be associated with a wider coverage. However, in many others a very similar social protection coverage applies to both work statuses. The impact in terms of social protection thus varies greatly depending on the design of national social security schemes, and the branch or risk concerned. The biggest impact is likely to occur in the field of unemployment, specifically in countries where a voluntary opt-in to unemployment schemes is granted to self-employed workers or where there is neither mandatory nor voluntary access to unemployment schemes, but sometimes a residual system, as identified in the 2021 ESIP study.

In addition, in some cases, formal access to a social protection scheme might not be sufficient. Indeed, income thresholds and other qualifying conditions might apply to access social security benefits. The nature of some platform activity, with irregular work patterns and irregular or lower working hours could prevent workers from being entitled to some

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social security benefits. Uncertainty exists also as regards to the possibility to provide benefits for sickness and work incapacity, which requires verification which might be more difficult to comply with for platform workers who are conducting their work on their own.

Furthermore, ESIP would like to bring attention to points of uncertainty remaining in the current proposal and submit the observations below.

General comments on the determination of the employment status set in article 3 and on the legal presumption, its criteria set in article 4 and the possibility to rebut the legal presumption set in article 5

- We welcome the proposal for a Directive aiming to better protect digital platform workers and ensure a fair competition between platforms and other organisations with same activities.
- We welcome the fact that the procedure for determining employment status should be guided by the actual performance of work rather than their formal contractual relationship as set out in article 3.
- An indicative list of criteria could be a tool to provide guidance to national authorities competent to determine the employment status and support them to avoid the exploitation of loopholes. In this context, however, it should be noted that criteria already exist in most Member States to determine the work status of workers. Thus, the competent national administration(s) should be provided sufficient leeway in implementing the Directive, as they will be effectively assessing platform workers' actual performance of work. The European Commission should provide support to the competent national authorities in the process of implementation. In addition, the proposal should ensure compliance with the principle of subsidiarity and the Member States' exclusive competence in defining the fundamental principles of their social security systems.
- The implementation of the legal presumption and the possibility to rebut it is a crucial element of the proposal. However, it could create issues in different social protection systems due to its difficult implementation in administrative and/or judicial proceedings. A specific and detailed analysis of the presumption and its impact on the social security systems, as well as digital platform worker's own situation and best interest, should be conducted before its adoption.
- We would also like to raise awareness of the need to consider that in the case of a person pursuing similar work through and outside a platform, the person could be

considered employed for the work performed through the platform while being self-employed for the work pursued outside of the platform, which could lead to a more complex social security coverage.

- After the national transposition of the directive, it is key that the European Commission conducts a regular review of the implementation of the Directive, especially the specific provisions related to the presumption, if adopted, and the list of criteria to ensure it is still adapted to possible new business models. The focus must be to evaluate whether the Directive is future-proof and fulfils its objectives.

Articles 6 to 8 on algorithmic management:

- We welcome the introduction of an obligation for the digital labour platform to provide information to platform workers, as proposed in article 6. The fact that it applies to automated monitoring systems is particularly important as these have a direct impact on the emotional and psychological state of platform workers, and their occupational health and safety.
- The focus put in article 7 on the assessment of risks posed by automated systems to the safety and health of workers, and the introduction of appropriate prevention and protection measures is also welcomed. This provision would help minimise risks and prevent occupational accidents from the outset, in line with the Vision Zero goal supported by ESIP members competent in the field of occupational health and safety.

Article 11 on the declaration of platform work:

- The introduction of an obligation for digital labour platforms to declare work performed by platform workers to the competent social protection authority of the Member State where the work is performed is welcomed. As regards the relevant data to be shared with those authorities, in the field of social protection those should be at the same level of requirement as those of other employees.

Article 12 paragraph 3 on access to relevant information:

- The definition of a “reasonable period of time” for digital labour platform to provide further information that may be required by social protection authorities should be explicitly included in the proposal and set to be determined in accordance with the applicable national legislation.