ETUI Policy Brief

The EU Platform Work Directive

What's new, what's missing, what's next?

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European Economic, Employment and Social Policy

2024.06 | August

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Policy recommendations

- The adoption of the Platform Work Directive by the European Parliament and the Council of the European Union (EU) enhances the EU and national labour law systems by introducing a number of concrete advancements. They include a presumption of employment for platform workers, clearer rules on algorithmic management and data rights, stronger collective labour rights, and robust enforcement safeguards.
- By granting algorithmic management and collective rights to genuinely self-employed platform workers, the Directive significantly expands the personal scope of application of labour rights. This initiative should be seen as one of the first steps towards redesigning the normative paradigms that govern labour law.
- By establishing a comprehensive framework for algorithmic management and data rights at both the individual and collective levels, the Directive highlights the urgent need for a new EU instrument regulating data-driven technology in the workplace, applicable to workers across all conventional sectors.
- Given the broad discretion left to national legislators, it is crucial that trade unions, employers and labour advocates take advantage of the Directive's groundwork to prevent the emergence of fragmented, burdensome and ineffective regimes during (and after) the two-year transposition period, which will start from the moment the Directive is published in the Official Journal of the EU and thus is likely to end in autumn 2026.

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Introduction

It took almost a full EU legislature to conceive, develop and ultimately adopt the EU Directive on Platform Work. Following social dialogue consultations, the Commission presented a legislative proposal in December 2021, with two fundamental principles. First, novel instruments were deemed necessary to avoid the common risk of misclassification of platform workers. The latter indeed tend to be engaged on the basis of (bogus) self-employment models. Typically, this deprives them of labour protections and lays them open to precariousness and vulnerability. Second, the integration of automated monitoring and automated decision-making systems (ADMS) into the workplace was considered a source of new risks for workers. Such data-driven infrastructures both amplify and obfuscate traditional managerial prerogatives. Digital platforms have adopted, tested and fine-tuned practices of constant surveillance, capricious management, unpredictable scheduling and opaque discipline. Such an augmentation of employer powers is a key legal challenge, as it replaces conventional command-and-control approaches with less visible and more oblique prerogatives. This displaces the more familiar controlling factors and legal guardrails.

The European Commission's initial proposal for a directive met with a mixed reaction. Academics and labour advocates, including the European Trade Union Confederation (ETUC) and European Parliament rapporteur MEP Elisabetta Gualmini, welcomed, albeit with reservations, what appeared to be potentially a promising and innovative reform of EU labour and (workers') data protection law. During discussions at the Council of the EU level, more cautious or even hostile positions emerged on the employers' side, for example, from Business Europe and Move EU (a business association representing transport platforms, including Uber and Bolt), as well as from influential government representatives, notably France.

After months of inter-institutional negotiations, the European Parliament and the Council adopted a compromise text in spring 2024. The result is a Directive that establishes a floor of individual and collective rights, including a number of advanced algorithmic management (AM) safeguards. It takes a comprehensive approach to defining its scope of application, covering also workers who are generally left at the margins of EU and national labour law. While in its first chapters it is firmly anchored in the traditional binary divide between the self-employed and employees, it partially overcomes this distinction in relation to the provisions concerning automated monitoring and automated decision-making systems.

This policy brief examines the main innovations introduced by the Directive, assesses its contribution to the EU *acquis* and identifies the main weaknesses and potential threats to its effectiveness that would need to be addressed during the two-year implementation period following its formal adoption.

A bold stance on misclassification risks and platforms' accountability

Based on vertical, spatially dependent and pre-digital work arrangements, the institution of the 'employment relationship' generally covers those who work under the direction and control of an employer. It therefore struggles to capture forms of work that do not clearly reflect a condition of subordination. This limitation has been widely recognised since the emergence of the first forms of non-standard work, and has been exacerbated by platform economy arrangements. Indeed, app-based work and algorithmic management obscure the true nature of the relationship between worker and platform, challenging the viability and application of existing legal paradigms.

The Directive has taken meaningful steps to address this issue by introducing a so-called 'presumption of employment'. Article 5(2) requires EU Member States to 'establish an effective rebuttable legal presumption of employment that constitutes a procedural facilitation to the benefit of persons performing platform work'. This implies that national definitions are not broadened, leaving all domestic models untouched, including those adhering to a narrow notion of subordination (Aloisi et al. 2023). At the same time, the Directive now compels national legislators to introduce procedural mechanisms through which individuals in the platform economy ('persons performing platform work' in the Directive) are presumed to be in an employment relationship. Importantly, the Directive does not require that this presumption be linked to any specific criteria. This lays the groundwork for a legal device that is general and adaptive in nature and, in principle, accessible to all those working in the platform economy, whether on location (for example, ride-hailing, food delivery) or online (for example, cloud work).

Platforms will have an opportunity to object to reclassification and rebut the presumption if they can prove that 'the contractual relationship in question is not an employment relationship'. However, platforms will not be able to rely merely on the wording of the contract and its depiction of the worker's tasks and activities, as Article 4 (re)establishes the crucial principle of the primacy of facts, drawing on the International Labour Organization's Recommendation 198 (2006).

The introduction of a presumption of employment is a groundbreaking innovation. On the other hand, the Directive also contains shadows that threaten to undermine its effectiveness. The first pertains to the fact that activation of the presumption, although formally general, is subject to a double filter: it applies only to platforms 'organising work' (Article 1(3)) and only in the presence of 'facts indicating control and direction' (Article 5(1)). Given that organisation, control and direction are already strong indicators of the existence of an employment relationship, the presumption may have the effect of capturing mainly those who are already quite patently in a situation of subordination to the platform (for example, food delivery workers), while potentially excluding some of those who would probably benefit most from such a presumption (for example, online platform workers).

Another potential shortcoming is the wide margin of discretion that the Directive leaves to Member States. It is to be welcomed (ETUC 2024; Georgiou 2023) that EU lawmakers decided to abandon the originally stricter articulation of the presumption, which could be activated only in the presence of at least two of the five criteria listed in the Directive (determining or setting upper limits of remuneration, rules on appearance and conduct, performance review, organisation of work, including working hours, restriction on performing work for third parties and clients). However, the Directive does not unequivocally prevent similarly narrow catalogues from being introduced by national legislators (as has already occurred in Belgium and Portugal). In this event, workers would have to go through an additional, third filter before the presumption could be meaningfully triggered.

Such national regimes could be challenged before the Court of Justice of the European Union (CJEU), relying on the safeguard established in Article 5(3) whereby the presumption shall not 'have the effect of increasing the burden of requirements on persons performing platform work, or their representatives, in proceedings ascertaining their employment status'. A potential remedy would be to ask the CJEU to provide its interpretation of the notion of 'burden' in the context of a preliminary ruling procedure (Article 267 TFEU). Still, much will depend on how the CJEU will balance the different interests and legal principles at stake, including the principle of subsidiarity and proportionality, as well as Member States' procedural autonomy in governing the exercise of EU law.

Finally, Article 5(3) states that 'the legal presumption should not apply to proceedings which concern tax, criminal and social security matters'. This implies that it can be activated only where the definition of worker status is functional in the attribution of labour rights and not the application of social security, tax or criminal law provisions. While Member States may opt out of this exception, it is clear that the Directive's material scope risks being too narrow and fragmented across different jurisdictions.

Despite these potential limitations, the procedural streamlining introduced with the presumption is a credible legal tool to address the risk of misclassification of employment status. However, business models in the platform economy have also blurred the effectiveness of labour law systems on the firm side. Platforms are increasingly relying on subcontracting chains, in which worker hiring and organisation are completely outsourced to one or more intermediaries (Wray 2021). This fragmentation of the corporate structure in fact allows platforms to erect contractual barriers that shield them from their obligations as employers. This practice has been widely observed in ride-hailing and food delivery, and is increasingly the subject of judicial litigation at the national level, especially in Spain (Hießl 2023).

Here too, the Directive recognises the disruptive effect on labour protections and intervenes to regulate the legal ramifications of subcontracting. To this effect, Article 3 establishes that the presumption of employment can be invoked against intermediaries. Just as importantly, it requires that Member States put in place adequate 'mechanisms which shall include, where appropriate, joint and several liability systems'. While this provision does not go so far as to bypass contractual intermediation and assign the role of employer directly to

platforms, it pierces the veil of unscrupulous intermediation. Moreover, it leaves a wide margin of discretion to national legislators, allowing for the introduction of more substantive norms on illicit labour brokering.

Advancing algorithmic management and workers' personal data rights

If the 'employment status' chapter of the Directive still revolves around the traditional dichotomy between self-employed and subordinate workers, the provisions on automated managerial functions and data rights have more universal personal scope. In fact, most of these provisions apply to all persons performing platform work, regardless of their contractual status.

Chapter III of the Directive is a unique innovation as it reflects the drafters' urgent desire to address the limitations of the EU General Data Protection Regulation (GDPR), whose effectiveness at the workplace level is inadequate (Abraha 2022). The employment-related carve-outs in important provisions in fact challenge the GDPR's suitability to regulate certain data-driven managerial decisions. The PWD improvements include: (i) outright bans on the processing of certain categories of data; (ii) robust transparency and explanation rights; and (iii) stronger involvement schemes for workers' representatives.

A new list of red lines

The Directive introduces a prohibition on the processing of any personal data related to emotional or psychological state (Article 7(1)(a)) and data related to private conversations, including exchanges with trade union representatives (Article 7(1)(b)), and activities carried out for the purpose of predicting the exercise of the fundamental right of association, the right to collective bargaining and the right to information and consultation (Article 7(1)(d)). Moreover, a temporal limitation applies: no data can be collected while the person performing platform work is not working or seeking work (Article 7(1)(c)).

In addition, the Directive recapitulates and extends prohibitions on the processing of any personal data to derive information such as racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, health, union membership or sexual orientation (Article 7(1)(e)), as well as the processing of any biometric data to establish a person's identity, as in the case of facial recognition in login practices (Article 7(1)(f)). While the GDPR also prohibits these practices, its Article 9(2) allows for exceptions when it comes to the data controller's prerogative to exercise certain rights in the field of employment. A decisively broader stance is taken in the Directive, as Article 7(3) specifies that those stringent bans apply to systems affecting persons performing platform work 'in any manner'.

The Directive also prohibits decisions to limit, suspend or terminate the contractual relationship or the account, or 'any other decision having equivalent effect', unless made by a human being (Article 10(5)). This is yet a significant step forward compared with the GDPR, which prescribes a ban on decisions 'based solely on automated processing, including profiling which produces legal effects

concerning [the data subject] or similarly significantly affects him or her', but allows exceptions by virtue of a 'contractual necessity' clause (Article 22(2)). Moreover, the GDPR leaves room for ambiguity, as it fails to effectively capture AM systems combining automated and (real) human components. Article 10 of the Directive overcomes these interpretative dilemmas and refers to 'decisions taken or supported' by algorithmic management systems.

The Directive also introduces a ban on automated systems putting undue pressure on workers or creating risks to their safety and physical and mental health (Article 12(3)). However, this restriction applies only to those in an employment relationship with the digital work platform, and thus strikes a dissonant note to the inclusive approach to AM and data rights.

Transparency and explanation rights

Under the new Directive, digital labour platforms must provide information on the use of automated monitoring and decision-making practices (Article 9). Transparency rights per se are not new to EU law, having been established in several GDPR provisions. Nevertheless, the ambiguity surrounding notions such as 'solely automated', 'meaningful human intervention' and 'similarly significantly affecting data subjects' underscores the low suitability of existing norms in the work environment. Again, the Directive takes a clear stance by referring to 'all types of decisions supported or taken by ADMS, including when such systems support or take decisions not affecting persons performing platform work in a significant manner'. Moreover, the scope of the right to information is so broad as to include, beyond the mere notification of adoption, the categories of data and actions monitored, supervised or evaluated by such systems, the categories of decisions made or supported therein, the main parameters and the relative weight of each parameter. The right to information also extends to recruitment or selection procedures (Article 9(5)).

The Directive requires that platforms justify decisions, thus solving the puzzle of the existence of such a right in the GDPR. Digital labour platforms must provide an explanation for any decision made or supported by AM without undue delay (Article 11(1)), in a transparent and comprehensible manner. This covers a wide range of decisions affecting the contractual relationship, from suspension or termination of the account, to refusal of payment and to changes in employment status. The right to review and obtain rectification of such decisions is also established (Article 11(2)(3)). Finally, and drawing from the GDPR, the Directive introduces a right to a 'human interface' in the form of a contact person with the necessary competence, training and authority to discuss and clarify the facts, circumstances and reasons that have led to a given decision (Article 11(1)).

Collective governance of workplace data rights

Commentators have strongly criticised the primarily individualised nature of the GDPR. This risks it becoming a blunt weapon in a context in which information is distributed asymmetrically and data is eminently relational. To this must be added the low feasibility of access to evidence due to technical

obstacles and fear of retaliation. The Directive represents a significant step forward, coming close to concretising what has long been advocated as the imperative to 'negotiate the algorithm' (De Stefano 2018).

Articles 8 to 13 provide for important prerogatives for workers' representatives and, in line with the universalistic nature of these provisions, extend their exercise to representatives of (genuine) self-employed workers. However, this innovative expansion of collective labour rights beyond their traditional scope is not complete, as certain important rights remain accessible only to those in an employment relationship (Table 1).

Table 1 **Collective labour rights for self-employed workers in the Platform Work Directive**

Article	Collective rights for workers' representatives	Inclusion of representatives of self-employed workers
Art. 8(2)	Information on data protection impact assessment	✓
Art. 9(1)	Information on the use of automated monitoring and decision-making	✓
Art. 9(4)	Information on automated monitoring and decision-making and their features, use and changes affecting working conditions	✓
Art. 10(1)	Oversight of the impact of individual decisions taken or supported by automated monitoring and decision-making	✕
Art. 10(4)	Information concerning evaluation of the impact of ADMS	✓
Art. 11(2)	Right to ask for a review of decisions taken or supported by ADMS	✓
Art. 12(2)	Information, consultation and participation rights in relation to occupational safety and health (OSH) risk assessment and introduction of preventive measures	✕
Art. 13	Information and consultation rights on decisions that are likely to lead to the introduction or substantial changes in ADMS	✕

Source: authors' elaboration.

Indeed, Article 15 stipulates that only providers with worker status have the right to be assisted by representatives in monitoring the impact of AM on working conditions (Article 10(1)), to take part in risk assessments of occupational safety and health (Article 12(2)) and to exercise information and consultation rights on the introduction of, or substantial changes in the use of, automated monitoring and decision-making (Article 13). The result is a fragmented framework that hampers the coherence of the regulatory landscape and creates the risk of burdensome and ineffective duplication of representation systems.

To obviate these limitations, trade unions and workers' representatives could start to exercise the prerogatives conferred in Article 20, which mandates platforms to establish communication channels in which all persons performing platform work (regardless of their contractual status) can communicate privately and securely, and interact with representatives. However, as these channels will be hosted in the platforms' digital infrastructure and are subject to GDPR rules,

it will be crucial to ensure that the communication tools are effective and not a mere box-ticking exercise.

Enforcement measures: a glass half-full

Enforcement provisions in the Directive are relatively extensive, with a dedicated chapter and other relevant mechanisms scattered throughout the text. These include supporting measures to ensure the effective implementation of the legal presumption, including regular inspections (Article 6), platform information duties concerning the number of persons working through the platform, their employment situation and the use of intermediaries (Article 17), access to dispute resolution and right of redress (Article 18), possibility for workers' representatives and national authorities to initiate proceedings to ensure compliance with the rights and obligations of the Directive (Articles 5 and 19), rules on judicial access to evidence (Article 21), protection against retaliation (Articles 22 and 23), extension of the supervisory competence of existing data protection authorities, and duty of transnational cooperation of public authorities on the implementation of the legal presumption (Article 24).

The Directive thus goes further than most EU labour law instruments, thereby recognising the problematic level of compliance in this area. Moreover, the mechanisms established by the Directive showcase an unusually strong collective dimension, enhancing the role of social partners and workers' representatives as vehicles for enforcement. For instance, workers' representatives and social partners can play a supporting role in the context of judicial and administrative proceedings, have the right to receive government guidance on the functioning of the legal presumption, as well as information on the composition of platforms' workforce, and are protected against adverse treatment resulting from the exercise of their rights. Importantly, employee and self-employed representatives are put on an equal footing.

These potentially effective prerogatives risk being watered down by the national legislators' wide margin of discretion, however. A notable example concerns the possibility for workers' representatives to activate judicial or administrative procedures to enforce the rights established in the Directive (Articles 5(4) and 19), whose implementation will have varying degrees of effectiveness depending on the scope of national procedural rules. Worker representatives' involvement may therefore range from mere intervention in support of individual workers to the possibility of acting on behalf of wider groups.

Conclusion

Having presented the main rights and obligations established by the Platform Worker Directive, it is time to take stock of the main novelties, highlight their potential and point out critical issues and gaps that should be addressed at the national level during the transposition period and by EU policymakers in the near future.

First, **what is new?** The innovative character of the Directive is undeniably strong. Groundbreaking provisions facilitate the reclassification of platform

workers, and an entire chapter establishes new algorithmic management and data rights (most of which also cover self-employed workers), relatively strong enforcement safeguards and a robust collective rights dimension. The overall assessment sketched out in this policy brief suggests that the Directive has the potential to tangibly improve working conditions in the platform economy.

Beside introducing new rights, the Directive intervenes to adjust the material and personal scope of existing legal frameworks, improving their effectiveness in relation to the platform work context. One of the most notable contributions is that it has revitalised the data protection framework with employment-specific measures. The Directive fills the gaps in the 'omnibus' EU data protection framework established in the GDPR, largely because it was not designed to deal with AM systems in the workplace (Abraha 2022). Moreover, the AM and data provisions in the Directive also provide workers and their representatives with a valuable toolkit that could be mobilised strategically in employment status proceedings.

Another potentially ground-breaking move is the partial abandonment of the employee/self-employed dichotomy in relation to AM and collective rights. This unorthodox opening should be read in conjunction with the Commission's 2022 Guidelines on competition law and collective bargaining, which green-light collective bargaining for (most) solo self-employed. At the same time, it is important to ensure that this expansion in the coverage of labour-related rights does not turn into new hybrid categories, but reflects a genuine step forward in the direction of recalibrating and extending the scope of employment protection.

Turning to **what is missing**, two main criticisms can be made. The first is linked to the point made above, and concerns the Directive's incomplete coverage of self-employed platform workers, especially regarding occupational safety and health and collective representation systems. This exacerbates the already high fragmentation of labour systems, hampering their consistency and effectiveness. The second criticism concerns the wide margin of discretion left to national legislators, partly unavoidable because the Directive was adopted as a minimum harmonisation instrument. There is a risk, for example, that Member States will introduce a 'qualified' presumption of employment, subject to excessive thresholds for activation, or that they will rely on weak enforcement mechanisms that fail to take sufficient account of the collective dimension.

These considerations point to **what is next**. During the transposition phase which will likely end in 2026 it will be crucial that trade unions, employers and labour advocates mobilise in favour of inclusive and cohesive frameworks. For example, national legislators could use the 'more favourable provisions' clause (Article 26) to fully include self-employed workers in the scope of AM and collective rights and to fill gaps in enforcement systems. Similarly, in order to ensure that the presumption of employment acts as an effective procedural facilitator – as required by the Directive in Article 5 – it is vital that Member States adopt as broad a mechanism as possible. This implies a presumption that is based on a versatile interpretation of the facts indicating control and direction, that is not formalised in narrow lists of criteria, and that can be activated in all legal proceedings where worker status is linked to substantive or procedural rights.

Finally, with the adoption of the Directive, EU lawmakers have set out an ambitious blueprint for enhancing workplace data rights (Adams-Prassl et al. 2023), raising expectations for a future EU policy initiative that could proceed on the track opened up by the Directive, while addressing all workers without distinction. The Directive demonstrates that the time is ripe for adopting a workplace-centred personal data protection tool that could address the distinct, sensitive characteristics of work environments (Ponce Del Castillo and Naranjo 2022). Full transparency, clear no-go areas, human-driven final calls, information and consultation rights are identified as important supplements. Will the Directive serve as a pilot programme for the introduction of a much-needed framework for data technologies in workplaces? If platform workers, including the self-employed, need more robust data safeguards than those provided by the GDPR, workers in conventional sectors also deserve a new generation of rights to limit the intrusion and domination of automated systems.

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All links were checked on 29.07.2024.

Cite this publication: Rainone S. and Aloisi A. (2024) The EU Platform Work Directive: what's new, what's missing, what's next?, Policy Brief 2024.6, ETUI.

The ETUI Policy Brief series is edited jointly by Kurt Vandaele and Bart Vanhercke. The editor responsible for this issue is Kurt Vandaele, kvandaele@etui.org

This electronic publication, as well as previous issues of the *ETUI Policy Briefs*, is available at www.etui.org/publications. You may find further information on the ETUI at www.etui.org.

ISSN 2031-8782

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