



# The role of the EU in adapting social law to the digital transformation of work

Lessons learned from the proposed Directive on platform work

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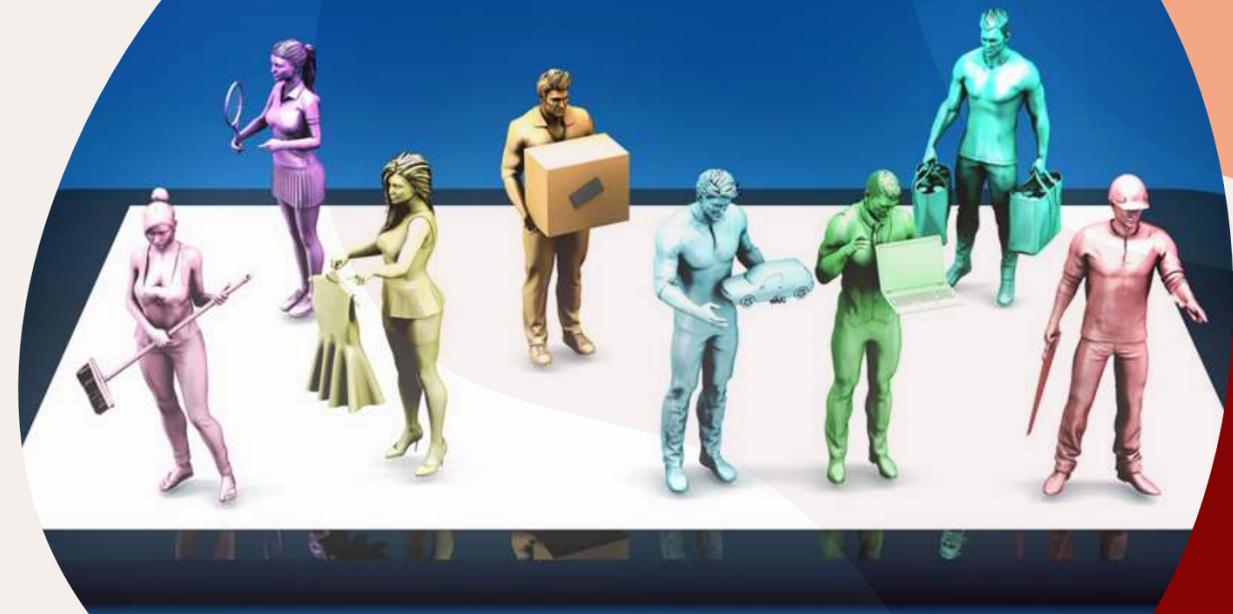
# Platform work as an example of opportunities and challenges brought by technology

Tech-enabled shift to global and gig economy.

Digital labour platforms' business model relies on:

- **Technical capabilities:** Digital intermediation of on-demand work via algorithmic management.
- **Narratives:** Regulatory arbitrage and entrepreneurship discourse.
- **Economic strategies:** Taking advantage of monopsony, monopoly and information asymmetries.

This business model, in turn, challenges key social protection aspects.



## The social protection relevance of the proposed Directive on improving working conditions in platform work

- The Commission's concern on platform workers' social protection.
- Direct legal basis: Arts. 153(1)(b) and 16(2) TFEU.
- Social protection is partially covered. But exact scope is unclear.
- A more comprehensive coverage of social protection may be achieved via an indirect or ancillary legal basis.
- This option, however, may be controversial (particularly regarding the legal presumption).

## Challenges to autonomy

The notion of 'autonomy' is key in determining employment status, which impacts social protection entitlements and obligations.

Digital labour platforms challenge autonomy through indirect methods of control and information inequalities.

The proposed Directive addresses this by:

- establishing a rebuttable presumption of employment relationship in platform work;
- requiring digital labour platforms to report on algorithmic management.

Limitations:

- Too narrow scope of the legal presumption.
- Appropriateness of more enforcement mechanisms (e.g. automatic inspections) and provisions on social protection authorities' processing of platform work data.



## Challenges to social protection access

Platform workers often experience (formal and/or effective) **exclusion** from social protection due to some social protection systems':

- dependence on **employment status** for determining compulsory formal coverage (particularly in categorical or work-related schemes);
- lack of **adaptation** to specific features of platform work when designing requirement for access (e.g. income or insurance thresholds);
- challenges for the **enforcement** and application of social protection norms (both in internal and cross-border situations).

The proposed Directive focuses on the latter (although its provisions may be motivated also by the first two aspects).

It also addresses other forms of protection (as it regards mental health and relationship needs).

**Limitations:** Main focus and legal basis.



## Challenges to transparency

Challenges concerning **transparency in algorithmic management**:

- Exercise of indirect or hidden control (relevant for legal status).
- Potential violations of data protection norms.
- Other asymmetries of power and/or information.

Proposed Directive's approach: **Reporting and consultation** obligations (with some prohibitions on data processing).

**Limitations:** Data protection in the behaviour of relevant authorities.

Challenges concerning **transparency in platform work information**:

- Lack of enforcement of some social protection rules due to issues detecting platform work (especially if fragmented).
- Information asymmetries.

Proposed Directive's approach: Requiring platforms to **declare** work performed by platform workers they employ, as well as key **platform work information** (number of regular platform workers and terms and conditions).

**Limitations:** Article 11 only applies to employees, and not clarification on public authorities' behaviour concerning data protection.



## Conclusions

- Platform work presents numerous challenges for the functioning of social protection systems.
- The Commission seems willing to address some of these social protection challenges (i.e. those related to enforcement and transparency) via the proposed Directive.
- The legal basis used allows for some social protection impact.
- However, resorting to an indirect or ancillary legal basis may be necessary for full social protection impact.
- More (complementary) legislative action is arguably needed.



Thank you for your  
attention

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