

Legal Alert



**Preliminary deal reached
on improving platform
work conditions**

The European Union has recognised the market situation of so-called 'platform workers' and its actions are directed towards improving the employment conditions and social rights of those working in this model.

A preliminary deal on the Platform Work Directive was confirmed on 11 March 2024.

Background and objectives of the Directive

As it follows from an analysis made available by the European Commission ("EC"), the digital labour platform sector employed more than 28 million people in 2021, a figure that is expected to reach 43 million by 2025. Currently, at least 5.5 million platform workers might be misclassified as self-employed, which means that they do not enjoy labour rights or social protection. The majority of those platform workers are not covered by an employment relationship with either the platform owners or the recipients of services.

For the above reasons, in December 2021, the EC proposed a draft Directive, the adoption of which is expected to contribute in particular to improving employment conditions, the granting of social benefits, increased transparency and the protection of the personal data of those employed through digital labour platforms.

What is a digital labour platform?

In the light of the proposed Directive under (as proposed by the Commission) means any natural or legal person providing a commercial 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, irrespective of whether that work is performed online or in a certain location;
- d) involves the use of automated monitoring or decision-making systems.

Examples of platforms intended to be covered by the Directive are those providing services in the area of, for example, passenger transport or food delivery.



Legal presumptions

The Commission's original proposal provided for a legal presumption of employment if certain criteria listed in the text of the Directive were met. Member States had the possibility to add further criteria to the list. The current version of the Directive reached in the preliminary deal does not provide for a list of criteria whose fulfilment would indicate an employment relationship.

A contractual relationship between a digital labour platform and a platform worker is to be legally recognised as an employment relationship when the facts indicate control and direction, in accordance with national law, collective agreements or practice in force in the Member States and taking into account the case law of the Court of Justice.

Member States are required to establish an effective, rebuttable legal presumption of an employment relationship as a procedural convenience for platform workers. Member States are also to ensure that the legal presumption does not increase the burden of requirements imposed on digital platform workers or their representatives in proceedings establishing their employment status.

Workplace algorithms and data protection

The use of automated monitoring or decision-making systems to organise the work of individuals is characteristic of digital work platforms. The Directive therefore also regulates human resources management and the protection of personal data.

The Directive imposes, i.a., an obligation to inform platform workers of the use of automated monitoring and decision-making systems. The systems are to be monitored by qualified personnel and, in the case of important decisions such as the suspension of accounts, the decision is to be taken by a human being.

Some personal data will not be able to be processed by digital labour platforms through automated monitoring or decision-making systems.

Implementation into national law impact

Once the Directive is formally adopted, Member States will have two years to implement its provisions into their national legislation.

The consequences of the adoption of the Directive will largely depend on how it is implemented in Polish law. It can already be pointed out that the provisions to be enacted on the basis of the Directive may significantly limit the possibility to undertake gainful activity on the basis of civil law contracts.

The establishment of an employment relationship between the digital labour platform and its service provider (the platform worker) for the digital labour platform will entail all the obligations that national law imposes on employers. The platform worker, on the other hand, will obtain all the rights (and obligations) of an employee.



While litigation will be necessary to establish the employment relationship, lawsuits by platform workers, due to their large number, may affect the workload of the labour courts. However, it is not excluded that the national legislator will adopt a different solution for the establishment of the employment relationship between a platform and its worker.

The adoption of the Directive is likely to force digital labour platforms to change the rules of cooperation with their service providers. This, in turn, may have consequences for consumers in the form of price increases for the services provided by the platforms.

We can help

This summary contains a compilation of the most important information.
If you have any further questions, please feel free to contact our team



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