EU Platform Work Directive

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Fast food. Fast service. Fast job? Delivery services have been around for a long time. During the Covid pandemic, however, online platforms for ordering food, groceries and transport services have exploded. Examples include Lieferando, Gorillas, Uber and Bolt. Around 500 platforms exist in the EU. In 2022, 28 million employees worked via such platforms, 5.5 million of them in Germany. The number is expected to rise to 43 million employees in 2024. Within four years, the revenue of the platform economy in the EU has increased fivefold, reaching a value of EUR 14 billion in 2020. The ever-increasing convenience of the recipients of the service is offset by the often poor working conditions of platform workers. It is often uncertain whether labour laws apply to them. In order to bring clarity, the EU adopted a directive on 11 March 2024 to improve working conditions in platform work (*Platform Directive*).

Platform work as a new form of work

Platform work is a form of work in which organisations or individuals come into contact with another person via a digital labour platform in order to solve specific problems or provide services in return for payment. The person who provides services via the platform is a platform worker. Platform workers carry out a wide variety of activities such as deliveries, translations, data entry, childcare, elderly care or taxi journeys. There does not have to be a contractual relationship between the service recipient and the platform worker.

The platforms are subject to the phenomenon known as the *gig economy*. Here, clients hire freelancers for a short period of time or for a small number of jobs, while the contractors jump from job to job.

Platform workers

Platform workers perform platform work. Platform work is any work that is organised via a digital labour platform and performed in the EU by a person on the basis of a contractual relationship with the platform. Platform workers are the performers between the service recipient and the platform. The income of platform workers is often below the minimum wage. According to the platforms, they are self-employed, not employed.

A self-employed person organises their own work and must pay for their own social security, i.e. pay taxes and social security contributions (health insurance, pension insurance, unemployment insurance). Labour laws that serve to protect employees, such as acts on working hours or holiday, do not apply to the self-employed. If, on the other hand, they are employees, the employer must pay taxes and social security

contributions, comply with labour laws and is subject to secondary contractual duties of care arising from the employment contract. In the event of illness, employees are covered by continued remuneration from the employer and sick pay from the health insurance fund.

In reality, however, the activities of platform workers are often organised like an employment relationship. Platform workers are usually organisationally integrated into the platform, bound by instructions from the platform operator and receive instructions regarding their appearance and conduct. Platform workers are therefore often categorised as bogus self-employed. Multi-level models on the part of the platforms are intended to avoid this. The platform workers are employed via several subsidiaries and therefore have several clients, an indication of genuine self-employment – or they are actually employed there. A platform on which food can be ordered could use a logistics company as an intermediary, a platform that arranges rides could use a car hire company. However, this model is considered a circumvention, meaning that the client is considered the employer. It is questionable whether one of the intermediary companies or the booking platform is the employer.

New EU Platform Work Directive

Due to the lack of clarity surrounding platform work, the EU has issued the new Platform Work Directive. The purpose of the Directive is to improve the working conditions of people who perform platform work by ensuring that their employment status is correctly determined and by promoting transparency and fairness. The Platform Work Directive sets out minimum rights for platform workers in the EU. The Directive is applicable as soon as a digital labour platform organises platform work in the EU, regardless of where it is established, including from third countries.

Legal presumption of an employment relationship

According to the Platform Work Directive, platform workers are considered employees as long as the platform cannot prove that they are self-employed. The designation by the parties has no influence on the legal categorisation of the employment relationship. The facts underlying the work performance are decisive. An employment relationship exists if two of the following points apply:

- Determination of remuneration by the platform;
- Request of the platform employee to comply with certain rules regarding appearance and behaviour;
- Monitoring work performance or checking the quality of work results;
- Restriction of the freedom to organise work (in particular working hours, absence times), to accept or reject tasks or to use subcontractors;
- Restriction on the ability to build up a customer base or carry out work for third parties.

Transparency obligations towards employees

Digital labour platforms use algorithms to manage and organise their staff. In future, they must inform platform workers that they use automated monitoring systems to electronically control, monitor and evaluate work performance. They must also inform them that they use automated decision-making systems to make or support decisions that have a significant impact on working conditions, in particular on platform workers' access to work assignments, their earnings, their safety and health at work, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account with the platform.

Platform operators must provide information that such systems are in operation or are being introduced. When using automated monitoring systems, the operator must specify the categories of activities that are controlled, monitored or evaluated by such systems, including the evaluation by the service recipient. When using automated decision-making systems, the operator must specify the categories of decisions made or supported by such systems. It must also disclose the parameters according to which the automated decision-making takes place, including the way in which the personal data or the behaviour of the platform worker influence the decisions. If the

platform operator restricts, suspends or terminates the platform worker's account, it must inform him of the reasons for the decision. The same applies to the refusal of remuneration for work performed by the platform worker, the contractual status of the platform worker or any decision with a similar effect.
Platforms must make the information available to the workee on the first working day at the latest, otherwise in the event of significant changes and at any time at the request of the platform worker. The platform shall provide the information in a concise, transparent, comprehensible and easily accessible form in clear and simple language in a document. This may also be an electronic document.

Monitoring automated systems

Platforms must regularly monitor and evaluate the impact of individual decisions made or supported by automated monitoring and decision-making systems on working conditions. To this end, platforms must ensure that they have sufficient and qualified personnel.

Review of automated decisions

If an automated decision-making system makes or supports a decision that has a significant impact on the working conditions of platform workers, the worker may request an explanation of the decision from the platform. The platform must then provide the employee with a written justification for the decision made. If the employee is not satisfied with the justification, they can request a review of the decision by the platform. The platform must respond to the request within one week at the latest.

Improved data protection

The Platform Work Directive strengthens data protection. Platforms may not process personal data about platform workers that is not inextricably linked to and strictly necessary for the fulfilment of the contract between the platform worker and the platform. In particular, they may not process personal data of workers about

- the emotional or psychological state;
- health, except for Article 9 (2) GDPR;
- private conversations; and
- also may not collect any personal data if the platform worker does not perform platform work or does not offer to perform such work.

Transparency obligations towards authorities

Until now, authorities have had little information about platforms – not about the number of people who regularly perform platform work, their contractual status or the general working conditions set by the platform. As a result, the authorities were barely able to act. The new Platform Work Directive requires platforms that are employers to report the work performed by platform workers and share relevant data. They must comply with the regulations and procedures of the respective EU Member State in which the platform work is performed. The Member State labour, social security and other relevant authorities are responsible. They ensure that the platforms comply with the regulations.

Sanctions

The competent supervisory authorities are authorised to impose sanctions in the form of fines in the event of an infringement of the Platform Work Directive. The amount depends on data protection law and can be up to EUR 20 million or up to 4% of the total global annual turnover generated in the previous financial year, whichever is higher. It can be assumed that the amount for 'group-affiliated' companies will be based on the group's annual turnover, as is the case under data protection law.

Outlook

Not every platform is socially questionable – there are numerous platforms that actually serve purely as a placement service, e.g. for computer experts for specific jobs.

As the legal act is designed as a directive, it is not directly applicable, but the Member States must transpose it into national law within the next two years. National legislators have room for manoeuvre when it comes to implementation and can therefore tighten the rules. The German digital association *bitkom* criticises that this will result in a patchwork of national regulations in the EU. As the platforms will now have to employ the workers themselves and in accordance with the law, this will result in higher personnel costs and more organisational effort for the platforms. As a result, only the large platforms will remain in existence or the costs will be passed on to the service recipients. However, it is to be welcomed that the EU has created a set of rules for platform work at all.

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