The world of work is in permanent change, brought about by both green and digital transitions, and by demographic changes, globalisation, and the impact of COVID-19. New forms of work organisation and employment relationships are emerging, bringing new opportunities and challenges. Platform work is one of these new forms of work organisation that is a growing phenomenon, enabled by fast-developing technology, presenting both opportunities and challenges.

Platform work provides for additional jobs and income to people whose access to the labour markets may be more difficult. It also enables some to combine work with family or other obligations. However, platform work may also lead to uncertainties about income levels, inadequate access to social protection or precarious working conditions. People working through platforms are often subject to automated decisions made by algorithms without having a possibility to question the decision and seek redress. They have also limited access to collective representation and bargaining.

In her political guidelines, President von der Leyen stressed the need to improve the working conditions of people working through platforms. The Commission Work Programme 2021 announced a legislative initiative under Article 153 to be presented by the end of 2021. The Commission is therefore gathering evidence in preparation of the initiative, as reiterated in the European Pillar of Social Rights Action Plan, which was recognised by EU Leaders at the Porto Social Summit of May 2021 as providing useful guidance for the implementation of the European Pillar of Social Rights.

**Objectives of the legislative initiative:**

The envisaged initiative on platform work would aim to ensure that people working through platforms have decent working conditions - in line with the high standards guaranteed in the EU - in terms of occupational safety and health, social protection, fair income, the protection of personal data, transparency and predictability, and equal treatment. It would also aim to create favourable conditions for sustainable growth of digital labour platforms in the EU.

In particular, the initiative would aim to:

1. Ensure that people working through platforms have – or can obtain – the correct legal employment status in light of their relationship with the platform and gain access to labour and social protection rights thereof.
(2) Ensure fairness, transparency and responsibility in algorithmic management.

(3) Enhance knowledge of developments in platform work and provide clarity on the applicable rules for all people working through platforms operating across borders.

Social partners’ consultation

Article 154(2) of the Treaty on the Functioning of the European Union (TFEU), requires the Commission to consult labour and management before submitting proposals in the social policy field and based on Article 153 of TFEU. In the first stage, the Commission consults the social partners on the possible direction of EU action, whilst in the second stage, the focus is on its content. This process enables the European social partners to directly influence social policy proposals.

In line with Article 154(2) TFEU, the first stage social partners’ consultation was carried out between 24 February and 7 April 2021. Both trade unions and employers’ organisations agreed with the identified challenges in platform work and the need to tackle them. Nevertheless, they had diverging views on the possible solutions. The second stage consultation, open between 15 June and 15 September, seeks social partners’ views on the content and possible instruments for an EU action. Unless social partners decide to enter into negotiations, the Commission will put forward a legislative proposal on the working conditions of people working through platforms by the end of 2021, following the consultation of social partners.

In June 2020, the Commission also launched an initiative to ensure that EU competition law does not stand in the way of improving working conditions through collective agreements for the self-employed who need it.

In addition to the formal social partners’ consultation, the Commission has undertaken extensive exchanges with different stakeholders including digital labour platforms and platform workers’ representatives. The last round of these exchanges is planned to take place after the second stage social partners’ consultation. Provided social partners do not decide to enter into negotiations, the Commission will consult the digital platforms and the representatives of platform workers’ organisations on 20 and 21 September respectively.

Possible directions of EU action

Based on the results of the above mentioned consultations and the analytical work, the Commission could conclude that there is a need for further action at EU level. The following three main avenues for work are under analysis:

1. Addressing misclassification in employment status

Facilitating the correct classification in employment status of people working through platforms would address many of the challenges related to access to decent working conditions and social protection. The establishment of an employment relationship remains a gateway to many existing rights and protections, both at Member State and EU level. The initiative could include tools to help platforms and people working through platforms to correctly establish the classification of employment status in line with national definitions. The following options are being analysed:

- **A rebuttable presumption of an employment relationship** would have the effect that the underlying contract between the platform and the person working through it is deemed an employment relationship. To counter that presumption,
platforms would have to establish in a legal procedure before a court that the person is in fact self-employed.

- Another option would be a **shift in the burden of proof** or lowering the standard of proof required for people engaged in platform work or for their representatives in legal proceedings. The person working through the platform would not automatically be considered to be in an employment relationship, but would have to establish very few basic facts from which it can be presumed that an employment relationship exists (prima facie evidence), in which case it would be for the platform operator to prove that the person is in fact self-employed.

- An **administrative procedure** to examine the employment status could spare people working through platforms the cost and risk involved in legal proceedings and thus lower the burden of reclassification action. It could be open to both parties of the contractual relationship, and possibly other actors such as worker representatives, and would result in an administrative ruling valid for all parties involved – still open, however, to a challenge in court.

- A similar tool would be the **certification of work-related contracts** carried out at the request of either party by labour authorities or by independent bodies. The certification would produce the presumption of a correct classification of the employment relationship (as either worker, self-employed or a possible third status) for labour, social protection and tax authorities, which only a court could reverse.

2. **Introducing new rights related to algorithmic management**

Algorithmic management presents distinct challenges in platform work, and is also becoming more prevalent beyond the platform economy. It is a new phenomenon not yet fully tackled in labour law at EU and national level. An EU initiative could therefore envisage introducing new rights in this area, building upon and in full consistency with existing\(^1\) and proposed\(^2\) instruments.

Options being analysed include:

- improved information for the people affected by algorithmic management and their representatives on the way algorithms manage work;
- guaranteeing timely and justified human oversight, control and accountability of decisions with significant implications for affected people;
- ensuring appropriate channels for redress (e.g. by setting up internal procedures or mediation structures within companies);
- reinforcing information and consultation rights on algorithmic management systems;
- ensuring the right to privacy while off duty, as well as the effective application of other relevant GDPR principles and requirements in the workplace;
- promoting ratings portability, in particular by increasing the effective use of the right to data portability; and
- excluding automatic termination of work-related contractual relationships or practices with equivalent effect.

3. **Tackling cross-border challenges and other measures**

\(^1\) These include relevant EU labour and social acquis, as well as General Data Protection Regulation (GDPR) and Platform to Business Regulation.

\(^2\) Such as Artificial Intelligence Act or Digital Services Act.
National authorities face challenges when it comes to cross-border platform work. With platform companies often operating in several Member States and offering services across borders, verification of compliance with existing laws and their enforcement may be challenging for national administrations, in particular those responsible for labour inspection, social security and taxation.

Options under analysis include:

- The initiative could consider either a register of, or transparency obligations for, platforms, which could provide key information such as the active terms and conditions, the number of people working through them and their employment status.
- To facilitate the tasks of authorities, platforms could be required to report certain data regarding transactions they facilitate (i.e. task duration, pay per task, etc.). Member States could ensure access to the reported information for relevant national authorities for the purposes of enforcing rights and obligations. Information could also be exchanged between Member States when the provision of services has taken place in a Member State other than that of the platform company’s (potential) place of registration.
- To support the portability of social security rights and address challenges in the identification of people working through platforms across borders or in two or more Member States for social security coordination purposes, the relevance of platform work could be taken into account in the pilot under the European Social Security Pass, which was announced in the European Pillar of Social Rights Action Plan.
- People working through platforms in a cross-border context also need accurate information on rules and obligations. The initiative could provide interpretation or guidance regarding the application of existing EU legislation to people working through platforms, including for instance rules on applicable law and jurisdiction or social security coordination.

Social partners have an important role to play in the context of platform work. To support the representation of people working through platforms, and the platforms themselves in Member State social dialogue practices, the EU could also encourage Member States and social partners to stimulate social dialogue in platform work and to support capacity building in this context.

Finally, clarity on rules and a broader data basis can contribute to better enforcement and compliance. The initiative could encourage Member States to provide advice and guidance to people on rights and obligations resulting from their platform activity in relation to tax and social security matters. Data collection and exchange of best practices on platform work and algorithmic management could also be a way forward.

**Personal scope of the initiative**

Several options could be envisaged for the personal scope of the EU initiative. Depending on their design and objective, the measures could target all people working through digital labour platforms, regardless of employment status, or be limited to workers (including those people with a misclassified employment status). An EU initiative could cover all digital labour platforms active in the EU, or focus on certain types of platform work or certain types of platform business models.
Questions for discussion

In light of these considerations, you are invited to reflect on the following questions:

- What are your views on the possible directions for EU action in the three aforementioned avenues for work?
- What could be the personal scope of the initiative? Which category of people working through platforms should be targeted? What types of platforms?
- What would be the most appropriate instrument to achieve the specific objectives for the three areas?

Background: Second stage consultation of social partners on EUROPA:
https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=10025

Agenda

15.00 – 15.10 Introduction

- Welcome and greetings, by Commissioner Nicolas Schmit, European Commission
- Introduction by moderator Joost Korte, Director General, DG EMPL

15.25 – 16.50 Discussion around the main objectives of the initiative

- Addressing misclassification in employment status
- Introducing new rights related to algorithmic management
- Cross-border transparency and other measures such as ombudsman, codes of conduct etc.

16.50 – 17.00 Wrap-up and conclusions