

Editorial

Platform work: a common challenge, and therefore an EU solution?

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By resolution of 16 September 2021 the European Parliament (EP) called upon the Commission to support platform workers. It is an interesting case, as the position of platform workers affects all EU Member States. In a 20-pager, the EP sets out the problem, rejects national solutions and unfolds suggestions for EU solutions.

The EP recognises the importance of platform work for both sides of the industry and the customers. It is positive for workers, as platform work can create employment, provide additional income, and lower barriers to entering the labour market. It helps employers, as platform work ensures business continuity. And customers see their demand for and supply of services matched. It is not surprising that platform work is not just here to stay but growing strong.

Having said that, it's not all champagne and caviar. Platform work gives rise to concerns, such as poor working conditions, inadequate social protection, unfair competition, undeclared work, deskilling and lack of occupational health and safety measures. The EP takes these risks seriously. If not tackled, they “*might jeopardise the entire European model of the social market economy*”.

The EP attributes much of these problems to the unclear status of the platform workers. They are, according to the EP, generally classified as formally self-employed. This is in fact often a misclassification, as they often do not possess the levels of professional independence characteristic of the self-employed. In consequence, the platform workers lack the usual and necessary protection granted to workers. Misclassification and the legal uncertainty that brings should be prevented.

The EP has little faith in solutions deriving from the individual Member States. They have developed different approaches, leading to fragmented rules and initiatives with negative effects for workers and companies.

Solutions should therefore come from the EU. At the same time, the EP's trust in EU solutions is limited as well. The EP argues that legislation in the Member States and at the European level is far from matching the speed at which the digital transformation is evolving.

But what should the EU do? The EP recognises that there is no general EU definition of ‘worker’. Falling back on a ‘common’ interpretation deriving from the different Member States is also not an option, as the meaning of the terms ‘worker’ and ‘self-employed’ are not uniformly defined in all Member States. The EP rejects the idea of introducing a special ‘third status’ for platform workers, as that would further distort competition between digital labour platforms and companies in the traditional economy. The platform workers should therefore either be classified as workers or genuinely self-employed persons depending on their actual situation.

The EP considers the current European framework unsatisfactory. There is a need for a new European framework, safeguarding fair working conditions, rights and social protection for platform workers. That framework could be complemented by national legislation or collective agreements.

The EP calls on the Commission to facilitate the correct classification of platform workers and to introduce a rebuttable presumption of an employment relationship for platform workers, in accordance with national definitions of the Member States, combined with the reversal of the burden of proof and possibly additional measures. Working conditions of platform workers should be improved, bogus self-employed status should be combated. Among other things, the EP also wishes to invest in collective bargaining, by investigating the possibilities to exclude self-employed platform workers from the restriction of competition (Article 101 TFEU). The EP encourages the setting up of cooperative legal forms which could lead to the bottom-up organisation of platform work.

A few things strike me. The EP uses strong language when arguing that steps must be taken to solve the matter: the entire European social model depends on it. That feels over the top. The EP also easily discards national solutions. I find that somewhat disappointing, as I believe that assessing best practices can be helpful.

The EP is all about EU solutions. That would make sense if platform work has a major cross-border component, and therefore cannot easily be resolved by the Member State alone. As far as I know, however, it is by and large a national challenge, although present (to a differing extent) in all Member States. Apparently, pressing national problems occurring in many Member States require EU solutions. Although I agree that the unclear status of the platform worker is a problem, and that platform workers seem to be classified as self-employed much too easily, I'm a bit more pessimistic about the solution to introduce a rebuttable presumption of an employment relationship for platform workers as the way forward. Although I'm not opposed, I do note that such a presumption is already in place in the Netherlands, and it does not prevent the legal uncertainty the EP is referring to. Moreover, many problems accompanying platform work identified by the EP should be resolved regardless of the legal status of the platform workers. Both workers and self-employed are, for instance, entitled to safe working conditions. Here, I think some additional research should be done. I do encourage excluding self-employed platform workers from the restriction of competition, perhaps with some features preventing abuse. Article 101 TFEU limits the possibilities of self-employed workers to take joint action, whilst such limitation is absent when it comes to workers. That makes the difference in legal position between workers and self-employed big, while the difference in practise between both groups is sometimes very small. The only one capable of removing this limitation is the EU, as the limitation derives from the TFEU, so EU action is indeed called for.

All in all, I'm mildly enthusiastic about the proposed solutions. I do feel that Member States should get more credit. National solutions are discarded easily. I'm less convinced than the EP that EU measures are better equipped to pave the way than national measures in predominantly national challenges, with the notable exception that EU rules blocking national solutions should be altered on the appropriate EU level. But perhaps I'm biased. After all, this magazine is all about sharing case law and therefore sharing legal solutions to national problems having an EU dimension. Often, I feel these solutions are inspiring and may at times set a proper standard that other Member States should follow. I therefore may have more faith in national solutions than the EP. That brings me to my final message of this editorial: please let the national case law on EU topics set out in this magazine inspire you!

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