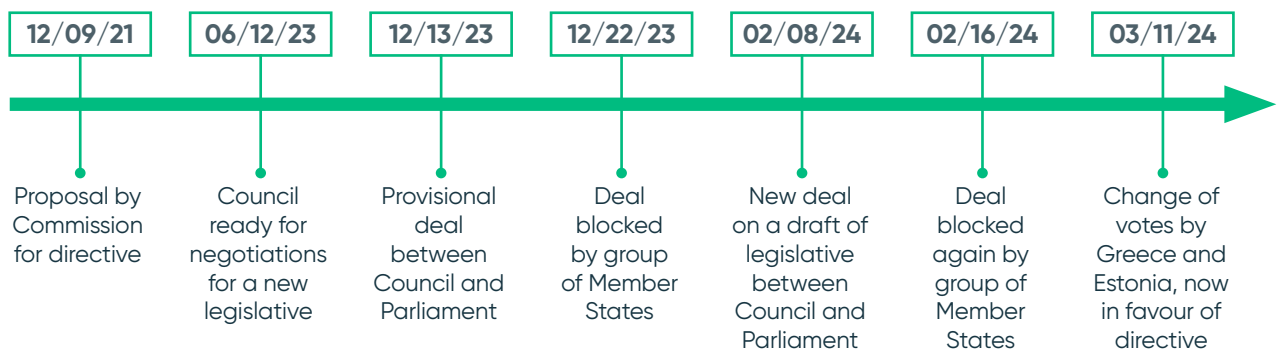


EU rules on platform work

1 Platform Work Directive: timeline and short overview of legislative process



Date	Event	Explanatory note
Dec 9, 2021	Proposal by Commission for new directive	Key issues of the directive are supposed to be: I. presumption of employment for digital platform workers who meet certain criteria II. granting platform workers new 'digital rights' in relation to algorithmic management
Jan 2021 - Feb 2023	Involvement of Committee on Employment and Social Affairs	Several readings and votes in the responsible Committee on Employment and Social Affairs resulting in reports to Parliament
June 12, 2023	Proposal by Council	The Ministers of Labour and Social Affairs of all EU Member States came to the agreement that working conditions for platform workers must be improved and refer to the two key issues Commission has laid down in its proposal. Council has expanded the Commission's five criteria to seven for the classification of workers as employees of which three have to be fulfilled in order to classify as an employee. Furthermore, the Member States added a provision to grant national authorities the discretion of not applying the presumption in certain cases.
Dec 13, 2023	Provisional deal between Council and Parliament	Council and Parliament have concluded a provisional deal, specifying the criteria (I.) and regulations on the use of algorithmic systems (II.) I. Two out of the following five criteria have to be met in order to classify as an employee. If two criteria are met, a rebuttable legal presumption of an employment relationship (as opposed to self-employment) applies:

Date	Event	Explanatory note
Dec 13, 2023		<ul style="list-style-type: none"> ■ A capped level of remuneration ■ Monitoring of performance, including the use of electronic devices ■ Control over the distribution and allocation of tasks ■ Control over working conditions and restrictions on choosing working hours ■ Restrictions on their freedom to organise their works and rules on their appearance or conduct. <p>II. The agreement ensures that workers are informed about the use of automated monitoring and decision-making systems. It also prevents digital labour platforms from processing certain kinds of personal data by means of automated monitoring or decision-making systems.</p> <p>Such data will include:</p> <ul style="list-style-type: none"> ■ Personal data on the emotional or psychological state of platform workers ■ Data related to private conversations ■ Data to predict actual or potential trade union activity ■ Data used to infer a worker's racial or ethnic origin, migration status, political opinions, religious beliefs or health status ■ Biometric data, other than data used for authentication
Dec 22, 2023	Deal blocked by group of Member States	<p>A larger group of Member States, including France, the Czech Republic, Ireland, Greece, Finland, Sweden and the three Baltic states blocked the formal adoption by Council of the proposed directive as it failed to secure a qualified majority in a Committee of Permanent Representatives (Coreper).</p> <p>The blocking Member States mainly reject the legal presumption. They were of the opinion that Spain, then holder of the Council's rotating presidency, has drifted too far from its own proposal from June.</p>
Feb 8, 2024	New deal on a draft of legislative between Council and Parliament	<p>A new deal was reached between the Council and Parliament under the new Belgium Council presidency.</p> <p>Change:</p> <ul style="list-style-type: none"> ■ Forbids platforms from dismissing workers based on automated decisions. ■ The criteria for the legal presumption have been deleted. ■ It is now the Member States' task to establish the legal presumption and the criteria thereof themselves.
Feb 16, 2024	Deal blocked again by group of Member States	<p>Yet again, the new deal was blocked by a coalition of Member States large enough to act as a blocking minority.</p>
March 11, 2024	Greece and Estonia voted in favour of the directive	<p>By changing their votes, Greece and Estonia lifted the blocking minority and the provisional agreement of Council and Parliament can now be finalised. The agreement now must be formally adopted by both institutions, which is not likely to cause any issues.</p>
April 2024	Plenary session of Parliament	<p>Parliament is likely to vote (in favour of the proposed directive) in its April plenary session.</p>

2 Detailed content of the planned directive

1. Legal presumption

Under the new provisional agreement, as mentioned before, it is now the Member States' task to establish a legal presumption of employment in their legal systems. The criteria must be determined according to national law and collective agreements, while taking into account EU case-law. To that effect, Member States must introduce a procedural facilitation to the benefit of persons performing platform work. Furthermore, it must be ensured that the legal presumption does not have the effect of increasing the burden of requirements on persons performing platform work in proceedings ascertaining their employment status.

If, under nationally established criteria, the worker were to be presumed as an employee, he or she would gain access to the applicable labour and social protection rights. In German employment law, this particularly means among others dismissal protection, continued remuneration during sick leave, paid vacation days, maternity protection as well as parental leave and mandatory employer share to the social security system.

However, the **presumption shall be rebuttable**, hence, can be contested by both platform and workers. Where the digital labour platform argues against an employment relationship, the burden of proof will be on the digital labour platform. If a worker contests the legal presumption, the digital labour platform shall be required to assist the proper resolution of the proceedings, notably by providing all relevant information held by it.

2. Algorithmic management

The directive ensures **the platforms' duty to inform their workers of the use and key features of automated monitoring systems**. The information to be provided includes the categories of actions monitored, supervised and evaluated and the main parameters that such systems consider for automated decisions. Furthermore, the directive forbids the platforms to process any personal data concerning their workers that are not intrinsically connected to and strictly necessary for the performance of their contract, thus, taking into account the workers' data protection rights.

The new rules on algorithmic management make sure that a person performing platform work cannot be dismissed based on a decision taken by an algorithm or an automated decision-making system. Instead, platforms have to ensure human oversight on important decisions that directly affect the persons performing platform work.

Additionally, the directive ensures that the relevant provisions on transparency on automated monitoring and human monitoring also apply to workers who do not classify as employees and/or do not have an employment contract or employment relationship, i.e. the genuine self-employed.

3. Transparency on platform work

The directive requires digital labour platforms which are employers to **declare work performed by platform workers to the competent labour and social protection authorities of the Member State in which the work is performed**. This is particularly relevant for digital labour platforms which are established in another country than the one where platform work is performed.

The platforms are also obligated to provide information or make such accessible to labour, social protection and other relevant authorities ensuring compliance with legal obligations. This information includes the number of persons performing platform work (on a regular basis) and their contractual or employment status, as well as the general terms and conditions applicable to those contractual relationships.

4. Provisions on remedies and enforcement

The directive includes a number of provisions that ensure the **access to effective and impartial dispute resolution** and a right to redress, either in any judicial or administrative procedure to enforce any of the rights or obligations under the directive.

5. Promotion of collective bargaining

The draft directive encourages Member States to promote collective bargaining in platform work and the exercise of the right hereto. This shall include measures to ascertain the correct employment status of platform workers and the facilitation of exercising the workers' rights related to the aforementioned algorithmic management.

3 Political positions and possible further development

The legal presumption has made the directive a divisive law. On the one hand, platforms fear costs to accommodate the updated status and some governments fear the increasing administrative burden and slowing down the Gig Economy. On the other hand, Parliament has a maximalist, workers-friendly approach that would have made it harder for platforms to circumvent the legal presumption, strengthened the transparency requirements on algorithms and ramped up penalties for non-compliance.

As a result of the change in votes of Greece and Estonia, now in favour of the directive, it is very likely to be adopted formally and therefore become EU law. Due to the formal and rather declaratory character of the ratification, it is also likely that it comes into force before the EU elections in June 2024.

However, the Member States have been given a seemingly very broad scope for implementation. Under the new directive, it is up to the implementation into national law when the legal presumption applies.

The next step is to translate the draft directive into the EU languages and the translated versions of the text to be formally adopted by signature of the President of the Council and the President of the Parliament. Then, the directive will be published in the Official Journal and will enter into force on the date specified in the text.

After publishing, Member States will have two years to incorporate the provisions of the directive into their national legislation. If they fail to do so, legal measures can be taken by the European Commission, e.g. the initiation of an EU infringement procedure.

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