

## COMMENTARY

# Solving misclassification will not be enough to improve working conditions in the platform economy



FUTURE OF WORK ([HTTPS://WWW.EPC.EU/EN/SEARCH?TAG=509](https://www.epc.eu/en/search?tag=509)) / COMMENTARY

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***A large part of the European Commission's solution for improving working conditions in the platform economy is to ensure that platform workers can obtain accurate legal employment status and access the respective labour and social protection rights. But the final proposal must go beyond and also establish new rights on algorithmic management, provide credible solutions to support collective bargaining, and ensure the Commission's effective collaboration with platforms.***

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**What's wrong with platform work?** [accept & close](#)

Digital platforms like Uber, Deliveroo and Amazon Mechanical Turk have an important role in today's economy, making services more affordable to consumers and offering their clients greater access to talent with the right skills makeup. Through innovation, platforms contribute to Europe's digital transition and strengthen its competitiveness. With its low entry point, platform work helps boost employment rates under the right conditions by offering vulnerable people a path to regular employment. It is an alternative source of income that can be used for learning and continuous education.

And yet, compared to other traditional forms of work, platform workers face significant difficulties: legal uncertainty on their employment status, limited access to social protection and a lack of collective bargaining. COVID-19 aggravated these problems further, exposing some platform workers to higher health risks. The importance of a social safety net for the well-being of workers has never been so apparent.

Furthermore, the prevalence of algorithmic management – characterised by task allocation, implementation supervision and performance assessment using artificial intelligence (AI) – highlights systemic issues related to the lack of transparency and genuine work autonomy in the platform economy. All these challenges have prompted the European Commission to act.

The first-stage consultation with social partners between February and April 2021 concluded that EU action is needed to address the issues rife in platform work and ensure that its workers do not fall under a minimum labour standard. Next, the Commission published its [second consultation document](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2944) (https://ec.europa.eu/commission/presscorner/detail/en/ip\_21\_2944) on “possible action addressing the challenges related to working conditions in platform work” on 15 June 2021. This launches the second phase whereby social partners are provided with a set of possible EU actions to improve working conditions and share their views on how best to move this agenda forward.

## Fighting misclassification

In the overwhelming majority of cases, platforms classify their workers as self-employed. A crucial consequence is that platform workers do not have access to the same rights as employees. These workers face notable gaps in their access to social protection and are prohibited from collectively bargaining the rates for which they perform services.

However, according to the [Joint Research Centre](https://publications.jrc.ec.europa.eu/repository/handle/JRC118570) (https://publications.jrc.ec.europa.eu/repository/handle/JRC118570), a sizable majority of platform workers classify themselves as employees rather than self-employed. Even 25% of the total number of workers who gain most of their income through platform work self-classify as employees.

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An employment relationship implies a hierarchical relationship between worker and employer. In contrast, self-employed workers are autonomous and generally free to choose tasks, price and workload. But given the high degree of algorithmic control that platform companies can exert over their independent contractors, there are severe doubts about whether platform workers should be classified as self-employed.

## Taking platforms to court

A crucial part of the Commission plan to improve platform workers' labour conditions is to ensure that they can obtain accurate legal employment status and thereby gain access to the respective labour and social protection rights.

For now, platform workers who seek to challenge their imposed employment status can only do so in court, bringing evidence of their work being organised by the platform via a relationship of subordination. But because of the limited access to information regarding how platforms use algorithms to organise their work, it is hard for workers to mount compelling challenges.

The second consultation document proposes establishing a **rebuttable presumption of employment**: the default understanding of the relationship between platforms and their workers becomes one of employment. To counter this presumption, platforms would have to prove in court that the person is self-employed.

Other options include **shifting the burden of proof** from workers to platforms, or lowering the standard of evidence required for platform workers to challenge their employment status. Out-of-court options, where an impartial institution checks the employment status at the request of either workers or platforms, are also under consideration.

In all these solutions, the criteria and indicators used to classify platform workers' employment status must be well thought through. If chosen right, these procedures – especially the rebuttable presumption of employment – would ensure that workers who self-classify as employees gain access to rights like minimum wages and social protection.

However, in a recent European Court of Justice decision (<https://curia.europa.eu/juris/document/document.jsf?text=&docid=225922&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5390470>), judges looked at criteria like the platform worker's use of subcontractors; and their ability to accept or decline tasks from the platform, ~~to provide their services by competitors and fix their working hours.~~ It was concluded that the platform worker was indeed correctly classified as self-employed. This decision points to a potential caveat in the Commission's plan.

## Leaving problems unanswered

One major shortcoming of this approach is that it would not improve the conditions of platform workers who are classified as self-employed and are unlikely to change their employment status.

A set of well-defined criteria could incentivise platforms to change their contractual arrangement just enough to be able to defend their reliance on self-employment in court. Contractual realities would better resemble genuine self-employment, giving more control to platform workers. But they would also leave issues like access to social protection unanswered and thus undermine one of the key objectives of the Commission's proposal.

The upcoming proposal must go beyond employment status misclassification and double down on new rights related to algorithmic management, remove barriers to collective bargaining and ensure the Commission's effective collaboration with platforms.

## Regulating algorithmic management

The second consultation document outlines a list of possible new rights related to algorithmic management to improve platform workers' labour conditions. Providing more substantial rights will be crucial: platforms' work dimension is strongly affected by algorithms (<https://hiva.kuleuven.be/en/news/newsitems/report-study-to-gather-evidence-on-the-working-conditions-of-platform-workers>), especially for workers performing low-skilled, on-location tasks. Technological developments are radically reshaping how platform work is allocated, organised, monitored and performed. In turn, they are substantially impacting platform workers' autonomy and well-being.

Among the list of new rights included in the consultation document is the portability of one's rating, ensuring that platform workers would retain consumer feedback, even when changing platforms. This provision would allow the workers to move across different competing platforms more easily. It would also guarantee their autonomy, no longer having to depend on any particular platform for their income.

Other rules – a ban on the automatic termination of work-related contractual relationships; establishing internal procedures to guarantee timely and justified human oversight over algorithmic decisions, and ~~control~~ control over and accountability for decisions made by AI – are essential to increasing the autonomy of platform workers.

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For any upcoming initiative on platform work to be successful, these rights must be the centrepiece and applicable to all work mediated by platforms, regardless of the worker's

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employment status.

## Strengthening social dialogue

Lastly, the consultation document suggests strengthening collective bargaining to ensure that platform workers can claim their labour and social protection rights. However, in the absence of capacity building, removing legal barriers would be insufficient to protect them.

Platform workers, most of whom are classified as self-employed, face significant legal barriers to social dialogue. As service providers, self-employed workers who fix prices collectively could be classified as a 'cartel' and infringe on EU competition law. To solve this issue, another upcoming initiative related to the applicability of competition law will propose excluding certain self-employed workers from this specific challenge, including platform workers.

That being said, even with this significant barrier out of the way, that collective bargaining will, in practice, actually protect platform workers' rights is not guaranteed. First and foremost, the EU does not have an effective way of promoting social dialogue in its platform economy. Collective bargaining is hindered because platform workers have trouble identifying and connecting with one another. The lack of an embedded communication channel through which workers can connect represents a serious barrier.

The European Commission should make capacity-building a key concern. To this end, the European Social Fund+ could prove an excellent resource for trade unions that wish to expand their services to platform workers.

## Hard law, soft instruments

As is clear from the second consultation document, solving the employment status misclassification issue is the main component of the Commission solution to improving platform working conditions. If the criteria are chosen correctly, this approach would ensure that workers who feel misclassified have easy access to employee rights. And together with the proposed rights on algorithmic management, such classification criteria could nudge platforms to strengthen workers' autonomy and flexibility in their future contracts.

But this will not be enough. If the Commission is to truly improve the working conditions of the platform economy, its proposal must combine hard law with soft instruments. The latter should focus on facilitating a dialogue with platform operators to develop principles for qualitative platform work by way of a code of conduct or charter. Such a self-regulatory tool could cover social benefits and training in digital labour platforms. It

could also complement actions towards misclassification and algorithmic management, which should be resolved with a directive.

In the absence of such a soft instrument, there is a real risk that many platform workers will remain classified as self-employed. Some of the issues currently confronting them, such as the lack of access to social protection and training, would remain unaddressed.

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