

## Position of the Union of Entrepreneurs and Employers (ZPP) on the report of the European Parliament for a Directive on improving the working conditions in platform work

Work carried out through digital labour platforms is developing in Europe with tremendous momentum. This is demonstrated by the pace of development of more than 500<sup>1</sup> platforms currently operating in the single EU market. The number of people who work through platforms is also growing rapidly. Currently, this is 28 million people, and it is expected that in 2025 there will be as many as 43 million "platform workers."<sup>2</sup> The above shows, how prospective market is the provision of services through digital labour platforms.

The European Commission presented on 9 December 2021 a proposal for a directive aimed at improving working conditions through digital platforms and supporting their sustainable development. In order to improve working conditions, the European Commission envisages for persons performing work, access to labour rights and social benefits.

This would be achieved through the reclassification of the employment status. Today, most of the contractors are engaged in professional activities through digital platforms on the basis of self-employment. The Commission proposal seeks to substantially change this proportion in favour of work based on an employment relationship, the existence of which would be presumed. The removal of this presumption would lie on the platform side, which is intended to remove the burden of action from the person performing work. Furthermore, the Directive contains rules regarding the verification of decisions taken by automated algorithms and the right to human verification, and regulates access by public authorities to data collected and processed by platforms.

The draft is currently under way in the European Parliament, which is working on its mandate for further interinstitutional negotiations. The rapporteur for the proposal concerning a directive on improving working conditions in the Committee on Employment and Social Affairs (EMPL) is Ms. Elisabetta Gualmini.

At EMPL committee meeting on 19 May 2022, the presented project resulted in a considerable indignation among representatives of platform companies' organizations, as was the case with experts and legislators on labour law and the digital economy. The report by Ms. Gualmini extends the set of criteria necessary to recognize the employment status of a person earning his/her living through a platform to a person working on the basis of an employment relationship. The Commission's proposal contains five conditions, two of which must be met in order to create a presumption of employment through the digital labour platform. The proposal by Ms. Gualmini deletes this provision from Article 4, by which the set of criteria is extended to a "non-exhaustive list" and transfers it to the recitals in the draft directive, i.e. to a non-binding part of the provisions.

The rapporteur's proposal is highly interfering with the relationship between platforms and their contractors. This is due to the strong opinion held by the Member regarding the self-employed, which was expressed in the explanatory memorandum to the project - "False self-employment in the platform economy leads to uncertainty, low wages, security risks and the refusal of any rights arising from the employment status, including social protection."<sup>3</sup>

<sup>1</sup> <https://ec.europa.eu/social/BlobServlet?docId=24991&langId=en>

<sup>2</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6605](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605)

<sup>3</sup> [https://www.europarl.europa.eu/doceo/document/EMPL-PR-731497\\_EN.docx](https://www.europarl.europa.eu/doceo/document/EMPL-PR-731497_EN.docx)

Extending the scope of the Directive to automated and partially automated monitoring and decision-making systems will in practice mean, that the vast majority of persons performing work will be within the scope of the Directive, since even the use of current common methods of organizing work by human resources departments (e.g. attendance reporting systems) will also be covered by the Directive.

The division of persons performing work into self-employed and employed on the basis of an employment relationship is incomplete. It does not take into account the existence of other forms of employment in the Member States. For example, in Poland function civil law agreements which would not be reflected in the division proposed in the Directive.

Moreover, the inconsistencies between the solutions presented in the proposal can be seen on the basis of the practice of working through platforms. In order to improve working conditions, the legislator has been driven largely by the model of operation of the largest digital labour platforms that act as an intermediary in supply or transport. Doubts arise when the above proposal is applied to other services such as repair, cleaning and care services. In this event, the platform only mediates in linking the consumers concerned and contracting parties. In view of the above, it is difficult to justify the reason why such a platform should employ a qualified professional, a cleaner or a care person. The platform is merely an intermediary and therefore it is not an entity in the labour relations of the self-employed.

The intermediation in linking contractors with consumers is not a new market mechanism. Persons performing the work of cosmetics sellers, to whom the intermediary companies supplied products, catalogues and contact databases, were not considered to be employed by those companies. So far, the status of self-employment in the context of the above-described work, has not been called into question. For this reason, it is difficult to understand the justification for regulating similar work, which has the only difference that it is done via the internet digital platform.

We welcome the initiative to regulate platform work. The European Union can become a pioneer in the field of legal solutions for this sector. However, from the moment the Commission presented its proposal, ZPP has drawn attention to the insufficient consideration of the voice of the "platform workers", which are to be affected by these regulations.

The majority of "platform workers" is satisfied with the current form of work done through digital labour platforms - this is the conclusion of a study carried out by ZPP among platform contractors.<sup>4</sup> The changes introduced by the Directive could lead to the loss of two main advantages for persons working through platforms, namely the flexibility and a low entry threshold.

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<sup>4</sup><https://zpp.net.pl/en/zpp-survey-95-of-platform-workers-are-satisfied-with-the-cooperation-with-the-platforms-most-of-them-are-against-compulsory-employment-contracts/>