

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

In December 2021, the European Commission presented a proposal for legislation to improve the situation of workers performing work through digital labour platforms.¹ There are over 500 platforms in the European Union, which create 28 million jobs.² The growing popularity of this form of earning money is directly related to the ongoing digitization and the increasingly common need for flexibility in employment. At the same time, it is important to recognize that this model of work is not new and has been used in the traditional economy.

The proposed directive sets out several conditions determining whether the existing relationship between the platform and the worker is an employment relationship. For a platform to be considered an employer, its relationship with the person carrying out the work would have to meet two of the five criteria laid down. Such legal requirements would lead to a change in the form of employment of some self-employed contractors into employees contracted by platforms. In our opinion, the introduction of provisions imposing on "platform workers" a specific formula of cooperation with the platform is unnecessary and, what is more - as our study shows - contrary to the will and expectations of the interested parties themselves.

Flexibility in employment is a precious value for many people. It is related to, inter alia, self-regulation of working time by the person performing the work, which is convenient for people who cannot take up full-time employment or at fixed times. Often, people experiencing difficulties entering the labour market decide to cooperate with the intermediary of digital platforms. This applies to young people with no professional experience or people of migrant origin. Limiting the earning potential of these groups of people, especially in the current context, would be inadvisable.

At the beginning of 2022, ZPP conducted a survey among platform workers, based on individual interviews. As much as 95 per cent of respondents confirmed their satisfaction with the economic activity performed via online platforms, and the terms of cooperation with them were described as understandable and fair respectively by 98 and 96 per cent of respondents.³ Moreover, despite the low market entry threshold, 93 per cent of respondents indicated that they were satisfied with their financial situation.

The main argument of the European Commission for the adoption of the directive is to strengthen the position of platform workers by improving their social protection and access to benefits conditional on having full-time employment.⁴ However, this goal does not meet the expectations of the workers themselves. Most respondents say they do not want a law that would require the platform to hire them full time.⁵

It should be noted that the proposal for the directive includes certain solutions that can be damaging to the development of services based on digital platforms. For instance, we are concerned about the obligation to apply the provisions of the jurisdiction territorially corresponding to the place of work. In the

¹ <https://data.consilium.europa.eu/doc/document/ST-14450-2021-INIT/en/pdf>

² <https://ec.europa.eu/social/BlobServlet?docId=24991&langId=pl>

³ <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/>

⁴ <https://ec.europa.eu/social/BlobServlet?docId=24991&langId=en>

⁵ <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/>

case of cross-border employment, workers often change their place of residence due to the nature of the work. Considering the treaty principle of free movement of workers, performing online work in one Member State should be regarded as equivalent in each Member State and its jurisdiction, irrespective of the declared workplace.

The legal presumption of the existence of an employment relationship is not beneficial to the functioning of enterprises. The draft directive leaves it to the Member States to determine the legal framework. This can lead to significantly different legal conditions in the Member States, creating severe obstacles to the uniform functioning of online platforms on the EU market.

In addition, the possibility of rebutting the presumption of an employment relationship may lead to an increase in legal disputes, which will be time-consuming and entail high administrative costs. It will be a mechanism with an increased risk of abuse, and thus it should be expected that a high percentage of disputes will not have a factual basis for its initiation.