

Technology Industries of Finland – Position Paper on Platform Work Directive

November 2022

Technology Industries of Finland (TIF) considers the Commission's proposal for directive on platform work to be a step in the right direction.

There is a significant potential for growth and innovation in the platform work industry – not only can it make existing work more efficient and scalable, but it may also enable the creation of new jobs. TIF recognises that platform work can function as an important tool in the technology industry, potentially solving issues such as labor and skills shortages.

The creation of common rules of the game at EU level could reduce uncertainty about the legal status of workers and their operating environment. As such, it may play a positive role in unleashing the potential of the platform work model. However, TIF has a number of concerns surrounding specific provisions of the Platform Work Directive (PWD), as these may undermine national competencies and the autonomy of the genuinely self-employed who perform their work via platforms. In its current form, the PWD may also inadvertently create legal uncertainty for non-platform businesses using digital tools.

To prevent unintentional adverse outcomes, the PWD will have to be amended. Below, TIF outlines amendments put forward by Members of the European Parliament on the Employment and Social Affairs (EMPL) Committee which the association believes will help to address potential pitfalls. These changes relate to the following issues:

Change 1: Clear Definitions (Article 2)

The Platform Work Directive is intended to regulate digital labour platforms and offer legal certainty for platform workers. The final legal text should therefore establish a robust legal definition of the terms so as to ensure clarity for market actors.

However, the definitions of “digital labour platforms” put forward in the original European Commission proposal and the European Parliament’s draft report are presently not fulfilling this objective in the view of TIF. In their current form, the association fears that they **risk extending the PWD to a wide range of companies that are not commonly understood to be “platforms”**.

In TIF’s understanding, a digital labour platform is principally defined by two inseparably connected features: first, that it connects the supply of a service (e.g., food, text editing, transport) with demand by means of a digital tool. Secondly, work assignments are allocated automatically via the use of algorithms. Yet this state of affairs is currently not reflected in the legislative text.

Under the Commission definition (Art. 2, paragraph 1, point 1), any recruitment of freelancers that relies on online tools (e.g., on company or job advertisement websites) could fall under the scope of the directive. The definition put forward in the EP draft report

(Amendments 65-68) is even more restrictive: virtually any person or company that uses digital devices or programmes as part of their work would risk being reclassified as a “digital labour platform” under its provisions.

With view to the definition of “platform worker”, TIF is further of the persuasion that the present definition put forward by the European Commission (Art. 2 paragraph 1, point 4) should take legal precedents established in Member States into account. National law continues to play a significant role in defining employment and must therefore be given due consideration in the PWD.

It is therefore of pivotal importance for the definition to be clarified: this would not only ensure the accidental inclusion of non-platform enterprises in the PWD, but help to ensure a sound understanding across the EU of what constitutes a “digital labour platform” and who may be considered a “platform worker”.

TIF believes that the following amendments to the EP draft report would address these considerations adequately:

- **Amendment 485 (EPP)**
- **Amendment 493 (EPP)**
- **Amendment 507 (ECR)**
- **Amendment 531 (EPP)**

Change 2: Due Consideration to National Level (Article 3)

TIF strongly believes that the **precedents and provisions set at national level for ascertaining the existence of an employment relationship must be appropriately integrated** into the framework of the PWD.

The Commission proposal (Article 3, paragraph 1) rightly acknowledges the importance national law and collective agreements in this context. TIF supports this provision, while suggesting to complement it by **including the precedents set by national courts**.

The association is therefore noting with concern that the draft report by the European Parliament seeks to remove references to national employment law in the Commission proposal (Amendment 73). It strongly recommends to MEPs and the Council to maintain the due consideration given to Member State law and case-law.

TIF believes that the following amendment to the EP draft report would address this point adequately:

- **Amendment 547 (EPP)**

Change 3: Effective EU Rules for Platform Work (Article 4)

TIF believes that **any definition of common EU rules for platform work must be genuinely common, exhaustive, and precise**. This would ensure that the PWD truly tackles bogus employment practices while also deepening the EU internal market. Genuinely

self-employed people using platforms would retain their status, wrongly classified workers would gain employment protection, and a fragmentation of rules along national lines would be avoided. In TIF's view, however, the legal presumption of employment proposed by the Commission (Article 4) will not achieve these objectives.

The PWD proposal by the European Commission establishes a legal presumption of employment when a digital labour platform is "[c]ontrolling the performance of work" by an individual completing assignments via said platform. In order to be seen as controlling the work performance, two of five essential criteria must be fulfilled as per the Commission. Platforms are thus not permitted to a) cap the earnings of platform workers, b) demand that they follow behavioural rules, c) control the quality, as well as d) the timing, and choice of their work assignment; and e) prohibit them from working with competitors.

While going in the right direction, the Commission proposal has room for improvement: first, the **criteria should be made more precise to avoid legal uncertainty**. In their present form, they are too vague and could even be seen to conflict with existing law. Freelancers using platforms may thus be obliged by national law to abide by certain rules of conduct in order to protect their health and safety or that of consumers (Article 4, paragraph 2, point b), despite their self-employment status. Secondly, TIF considers it vital that **three rather than two of the criteria must be complied with in order for the legal presumption of employment to apply**. Due consideration should also be given to collective agreements which, as the European Commission recently confirmed, do not necessarily affect self-employment status. This would again ensure that genuine freelancers would not be covered by the criteria.

To ensure that the criteria are legally robust, TIF would recommend for lawmakers to refer to the ruling of the Court of Justice of the European Union in the Yodel case (C-692/19) in April 2020 when reworking them. The precise criteria created in the Yodel case, which identify the specificities of platform labor, could help in clarifying the proposal.

The approach chosen in the draft report of the European Parliament (Amendments 76, 78) – to eliminate the Commission provisions to show a control of the performance of work – is in TIF's view wholly counterproductive, as it would not only make anyone performing platform work as an employee but, taken together with the changes to Article 2, reclassify many freelancers who do not interact with platforms as "platform workers". It should therefore be rejected.

TIF believes that the following amendments to the EP draft report would address these considerations adequately:

- **Amendment 605 (EPP)**
- **Amendment 608 (Renew)**
- **Amendment 616 (EPP)**
- **Amendment 619 (Renew)**
- **Amendment 625 (EPP)**
- **Amendment 626 (Renew)**
- **Amendment 627 (EPP)**
- **Amendment 638 (EPP)**

- **Amendment 640 (EPP)**
- **Amendment 647 (Renew)**
- **Amendment 648 (EPP)**
- **Amendment 649 (EPP)**
- **Amendment 650 (EPP)**
- **Amendment 657 (EPP)**
- **Amendment 658 (Renew)**
- **Amendment 661 (EPP)**

Change 4: Easy Redress for the Genuinely Self-Employed (Article 5)

TIF believes that safeguards should be established to ensure that **genuinely self-employed persons relying on platform work cannot be classified as employees against their will**. It should therefore be ensured that they can easily challenge a wrongly triggered legal presumption of employment.

To further strengthen this principle, the final version of the Platform Work Directive also ought to contain a provision that the presumption of employment does not apply until after any legal challenge to it has been resolved. This would ensure that freelancers do not risk facing uncertainty over their ultimate employment status during the course of their challenge. Under the Commission proposal – which the EP draft report follows – no such so-called “suspensive effect” is foreseen in either the scenario of the freelancer (Article 5, paragraph 3) or the platform (Article 5, paragraph 2) contesting the presumption. In the latter case, it is even explicitly ruled out. This ought to be rectified as well to avoid placing an unnecessary administrative and financial burden on persons performing platform work.

TIF believes that the following amendments to the EP draft report would address these considerations adequately:

- **Amendment 745 (EPP)**
- **Amendment 747 (Renew)**
- **Amendment 757 (EPP)**

Change 5: Harmonising Data Transparency and Safety (Article 6)

TIF supports the ambition behind the Platform Work Directive to **protect persons engaged in platform work from the misuse of automated monitoring and decision-making systems** employed by such platforms. It is important that they can understand what influence such systems have over their ability to and the way they perform their work. It must also be possible for anyone working via a platform – be they employees or freelancers – to understand what personal data are collected about them and when.

The Commission’s proposal on these issues goes in the right direction. Certain clarifications should be made, however, to ensure that the propositions made in this context do not cause unintended consequences. This concerns in particular the scope of information duties, protection of sensitive company data, and alignment with other EU legislation.

While it is necessary for persons performing platform work to be aware if monitoring systems used by platforms assess the quality of their work, this information requirement should not be extended to the mere fact of monitoring itself since this is without alternative. Likewise, for operational reasons, it is not always practically possible for digital labour platforms to inform employees or freelancers on the first day of their work of all functions of their automated monitoring and decision-making system. This also applies to other aspects relating to notification duties of platforms (Article 8). The Platform Work Directive should offer additional flexibilities here.

It is furthermore vital to ensure that platforms are not required to provide information about their automated systems and algorithms that could open them up to the risk of security breaches. It should therefore be very clearly delineated what kind of information platforms must publish and which they can withhold for reasons of safety.

In a similar vein, it must be ensured that the PWD is compatible with existing and upcoming EU legislation. This includes the Artificial Intelligence Act and the General Data Protection Regulation (GDPR). At present, especially the alignment with the GDPR is not sufficiently specified in the text put forward by the Commission. To facilitate legislative solution that creates unity in the internal market, any elements that duplicate or slightly alter the wording on the GDPR should be avoided. Otherwise, the directive may create unnecessary legal uncertainty to an area where general harmonised data protection union law and national labour-related legislation meet.

The legislation should furthermore be adapted to further strengthen safeguards against the use of automated monitoring and decision-making systems for discriminatory ends and to clarify that platforms must only collect necessary personal data of workers and freelancers while they are using the software provided by the platform.

TIF believes that the following amendments to the EP draft report would address these considerations adequately:

- **Amendment 778 (Greens/EFA)**
- **Amendment 782 (ECR)**
- **Amendment 783 (EPP)**
- **Amendment 787 (ECR)**
- **Amendment 795 (EPP)**
- **Amendment 803 (Renew)**
- **Amendment 809 (EPP)**
- **Amendment 812 (EPP)**
- **Amendment 813 (Renew)**
- **Amendment 825 (ECR)**
- **Amendment 828 (EPP)**
- **Amendment 879 (Renew)**
- **Amendment 887 (EPP)**
- **Amendment 891 (EPP)**