



*Employers entrusted to deliver
Sustainability Growth Innovation*

Position Paper

SGI Europe priorities on the proposal for a Directive on platform work

26 September 2022

Executive summary

In recent years, the platformisation of the European economy has significantly taken up speed due to the naturally always ongoing development of the labour market, to the restrictive conditions of the pandemic and as a consequence of the ongoing twin transition. Digital labour platforms constitute a part of this platform economy, providing a wide scope of services and activities and flexible contractual relationships that provide a source of income for various individuals as service providers. For the forthcoming directive, **SGI Europe favours a balanced approach that accommodates the diversity of situations and social and other legislation in Member States and recognises the global impact of digitalisation on working conditions and service provision.**

SGI Europe upholds that **the Directive should recognise the range of different kind of services and activities and contractual relationships** within the platform economy, including ensuring fairer conditions for those who choose to take part in it. Therefore, SGI Europe believes that **the national legal frameworks are best suited to determine the nature of the contractual relationship between the individual and the platform** SGI Europe believes that the best way to provide legal certainty on the nature of that contractual relationship is within the national legal framework, which also allows for the various definitions of ‘employees’ and ‘employers’. We do not support the rebuttable legal presumption of employment, as proposed by the Commission.

The models of labour relations vary significantly across Europe, whereas the impact of digitalisation, including on working conditions must work across borders. Therefore, SGI Europe, on a general level supports **transparency, accountability and fairness** on algorithms and algorithmic management guided by the **human-in-control principle**. However, the provisions in the chapters in the directive proposal that deals with these questions must be slimmed down, to be more comprehensible and not be too burdensome. SGI Europe underlines the need to ensure consistency with other legal instruments that have been created with these principles in mind – e.g. GDPR¹, P2B² and the proposed AI Act³.

SGI Europe emphasizes that social legislation on the platform economy does not sufficiently **take into account different forms of platform undertakings**. The approach towards the platform economy should level the playing field for alternative business models, such as platform cooperatives. Their operating models often explicitly include positive socio-ecological impact on local communities, which is conducive for the resilience of the European social economy. Furthermore, platforms that *operate based on the interests of stakeholders*,

¹ [Regulation \(EU\) 2016/679](#) (General Data Protection Regulation)

² [Regulation \(EU\) 2019/1150](#) (Platform to Business)

³ [Proposal for the Artificial Intelligence Act](#) – forthcoming

not shareholders ensure the transparency of operations through shared ownership of intellectual property and democratic decision-making.

These alternative digital platforms do not serve the fiduciary duty to maximize profit for the shareholders. SGI Europe considers that these types of platforms should be able to operate in the legal frameworks that leave enough autonomy for the determination of the contractual relationship. **This would allow for and encourage the harnessing of digital tools within the social economy.**

For SGI Europe it is crucial that the directive clearly recognise, encourage and support social partners' work and collective bargaining solutions, including the well-functioning labour market models in Member States where this autonomous role for the Social Partners already are prevailing.

Rebuttable presumption of employment

- SGI Europe supports an **approach based on the principle of subsidiarity to determine the contractual relationship**. An overarching rebuttable presumption of employment is too far-reaching as it fails to take into account the diversity and complexity of economic activities undertaken via digital labour platforms. While it is important to provide the scope to determine the status on a national level for people who wish to do so and whose livelihood depends fully on platform contractual relationship, it is equally crucial that the directive considers other circumstances like genuine self-employed persons performing platform work who do not wish to reclassify as platform workers.
- SGI Europe insists that **the European Union should not define 'employees', 'employers', nor 'self-employment' or any other constitutive elements of the personal scope of the directive that are implied as per the criteria of Article 4**. The European Commission clearly oversteps its competences based on the principle of subsidiarity and the primacy of national law in legislation on social affairs.
- SGI Europe acknowledges the need to define criteria for determining the contractual relationship in the rapidly developing world of the platform economy **on a national level**. However, **it is crucial that the principle of subsidiarity guides the EU legislation on this topic**. The 27 national legal frameworks represent a diverse range of views on determining a contractual relationship in the platform economy, as is evident in the growing body of case law with divergent outcomes. Therefore, **the criteria introduced in Article 4 should be non-binding and non-exhaustive and leave the option for Member States to ultimately define the conditions** that constitute the contractual relationship.
- Regarding the legal presumption, SGI Europe is concerned that **the proposed criteria for determining the contractual relationship do not adequately reflect the realities** of the platform economy. The current text implicitly conceptualizes platform contractual relationship through the lens of on-demand delivery and transportation services. Moreover, the logic of setting five distinct criteria as if they reflect the universal nature of platform contractual relationship in conjunction with the compliance of at least two of

those criteria remains unclear and arbitrary. The final text should consider the member states' autonomy in setting the criteria (and concurrent compliance levels, if applicable) that would allow for the determination of a contractual relationship based on the principle of primacy of facts.

Algorithmic management and transparency

- The models of labour relations vary significantly across Europe, whereas the impact of digitalisation, including on working conditions must work across borders. Therefore, SGI Europe, on a general level supports **transparency, accountability and fairness** on algorithms and algorithmic management guided by the **human-in-control principle**. However, the provisions in the chapters in the directive proposal that deals with these questions must be slimmed down, to be more comprehensible and not be too burdensome.
- To ensure legal certainty, the provisions of Chapter III ought to be viewed as complementary with, for instance, GDPR, Platform to Business, Artificial Intelligence Act, Data Act.
- The approach to **have humans in control of the eventual outcomes of algorithmic monitoring and decision making (Articles 7 and 8) is welcomed on a general level**. The proposed text of the Directive is well aligned with the human-in-control principle agreed upon by the 2020 European Social Partners' *Framework Agreement on Digitalisation*.
- SGI Europe **supports the transparency clauses on automated monitoring and decision-making systems as they determine the nature of the contractual relationship and the degree of subordination, or lack thereof**. Algorithmic transparency should cover the main constitutive elements of the contractual relationship on digital labour platforms, e.g. task assignment and distribution, price-setting, advertising, ratings and interactions...The digital labour platforms should be required to disclose the functioning of their automated monitoring and decision-making systems which are based on (personal) data collection, in line with the rights of data subjects as per GDPR. Equally important, SGI Europe appreciates the fact that the determination of a contractual relationship is based on an assessment of the use of algorithmic tools and how they express the level of control. Hence, **the legal certainty of the status of the contractual relationship is dependent upon obligations to disclose the correct functioning of the algorithms**.
- SGI Europe supports that **in the case of platform employees**, whose contractual relationship should be determined through the national legal frameworks (law, collective agreements), **rights to information and consultation should apply**.
- SGI Europe **agrees with the transparency provisions that make platform companies disclose the information on their operations to relevant national, local, tax, social or labour authorities**. This contributes to levelling the playing field between digital labour platforms, and traditional public and private undertakings that comply with the relevant national legislation.

- However, the list of relevant information to be disclosed to labour, social protection and other relevant authorities **should leave room for the subsidiarity principle to apply and for the Member states to adapt to their national circumstances.**

Collective bargaining

- For SGI Europe it is crucial that a/ the directive clearly recognise, encourage and support social partners' work and collective bargaining solutions, including in the well-functioning labour market models in Member States where this autonomous role for the Social Partners already are prevailing. It is of utter importance that this is manifested in the directive through provisions that fully entail and ensure the social partners' roles, possibilities and abilities to negotiate, conclude or enforce their collective agreements in line with national laws and practices. The social partners should be able to deviate from the directive as long as the overall result of the directive is uphold/ reached,

Conclusion

SGI Europe maintains that 'platform work' as such constitutes a diverse set of undertakings which can be formalised through a variety of contractual relationships. Therefore, SGI Europe does not support any cross-European endeavours of a global presumption of employment between the digital platforms and individuals providing services. This should be decided on the national level in line with national laws and practices.

The Directive should allow for more flexibility for social partners to determine the working conditions in platform work through collective agreements in keeping with the national social dialogue practices.

At the same time, **SGI Europe recognises the growing importance of the digital economy and its social implications.** Therefore, the Directive should be meticulously consistent with other legislation on digitalisation, to provide for legal certainty. Furthermore, algorithmic management systems require frameworks that function on the human-in-control principle. The obligation to disclose the collection of data, and, hence the functioning of algorithms contributes to more transparent conditions of any contractual relationship, in line with already existing EU legislation.

Digitalisation of the European economy has created new challenges for social legislation. The forthcoming Directive should create a level playing field between platform- and traditional enterprises across various sectors. SGI Europe supports a well-balanced approach towards legislating the platform economy. This would allow to **harness the potential of the digital transition while promoting the potential role of social**

partners in collectively determining the working conditions on digital labour platforms in line with Member States' frameworks.

The directive should fully entail and ensure the social partners' roles and possibilities and abilities to negotiate, conclude or enforce their collective agreements in line with national laws and practices. The social partners should be able to deviate from the directive as long as the overall result of the directive is upheld/ reached.