



EU Proposes New Protections for Gig Workers

By Leah Shepherd

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Under a new proposal, gig workers in the EU would gain the status and rights of employees, rather than being considered self-employed.

On Dec. 9, the European Commission published a proposal that would dramatically shift how digital platforms must manage their gig workers. If passed, the proposal could affect about 4 million people, changing their classification from self-employed to employee, the commission estimated.

All platform workers would be considered employees if two of these five criteria are met:

- The platform determines the pay.
- The platform requires workers to follow rules regarding appearance, conduct toward clients or performance of the work.
- The platform uses electronic means to supervise and assess job performance.
- The platform restricts work times or the freedom to turn the app off.
- The platform requires exclusivity or noncompetition.

If reclassified as employees, gig workers would gain the right to a minimum wage, where it exists; safety protections; paid leave; and unemployment benefits. Companies can challenge this reclassification, but the legal burden of proving that there is no employment relationship rests on them.

The proposal also "would allow all platform workers, irrespective of their status, to collectively negotiate their salaries and other terms," noted Jean-Francois Gerard, a lawyer with Freshfields Bruckhaus Deringer in Brussels.

Valdis Dombrovskis, executive vice president of the European Commission, said, "People are at the heart of this business model, and they are entitled to decent working conditions and social protection."

The rule is meant to "increase certainty for digital labor platforms to grow and to protect the rights of people working in the platform economy, so that everyone can make the most of this opportunity," he added.

"With more and more jobs created by digital labor platforms, we need to ensure decent working conditions for all those deriving their income from such work," said Margrethe Vestager, a European commissioner.

Next Steps

In the next few months, the European Parliament will debate the proposal. If it's passed, countries would have two years to incorporate the rule into their national law. It's possible countries within the EU will apply the guidelines differently.

"The guidelines are merely proposals of the European Commission, and it will take a long legislative process before they are enforced at EU level," Gerard explained. "Under EU law, a directive is not directly applicable in member states. Each member state will be required to establish the presumption of employment in accordance with its national legal and judicial system."

Gerard added, "There will be more case law with decisions going in all directions, including ruling in favor of the platforms. In a decision in December 2021, an employment court in Brussels found that Deliveroo riders in Belgium cannot be reclassified as employees."

UK Decision

Meanwhile, the U.K.'s Supreme Court ruled in February 2021 that Uber drivers must be considered "workers," rather than self-employed. Under U.K. law, "worker" is a middle classification between employee and self-employed. Workers have certain protections—like minimum wage, paid leave and whistleblower protections—but they don't retain all the legal rights that employees have, like unemployment benefits.

"Decisions such as the February 2021 one can be referred to as precedents, but only in a limited way," Gerard said. "A judge having to rule on another case will need to take a close look at the facts specific to that new case, no matter what the contract states."

He added, "Interestingly, [the EU proposal] is silent on the third category option. Rather, the EU is sticking to a binary approach. There are only two categories: genuine self-employed or full employees."

Long-Term Effects

The EU proposal especially impacts the ride-hailing industry and the food-delivery industry. Some digital platforms argue that making gig workers employees will hamper flexibility and cause job losses.

The legal changes and potential costs of the EU proposal "may lead to platforms changing their business model or even leaving a market or region, as was the case in Spain end of last year with Deliveroo no longer operating in Spain," Gerard said. "So yes, there might be job cuts. Operating costs are indeed a big issue in the platform industry. But there are examples of successful platforms having recruited all workers as employees, so it remains to be seen what the long-term impact of the case law and new legislation will be."

Morag Ofili, a lawyer with the firm Harbottle & Lewis in London, said, "By not having to deal with rising minimum wages and pension auto-enrollment, the gig economy has benefited from a competitive advantage. The [U.K.] ruling goes some way to removing this advantage, and companies that have previously thought of themselves as agents will have to increase their prices to cover the additional costs associated with the ruling."

As the legal framework evolves, Gerard advised, "Consistency with the chosen approach is key. For example, if you decide to go for a self-employed model, then you need to accept that workers will enjoy some degree of freedom in organizing their work."

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