
Jobs and digital platforms, proposals for new EU regulations. Tassinari (ACLI): “We are on the right track.” Faioli (Cattolica): “Italy has existing tools”

“In a Europe that is in danger of becoming too small in this area, it is important that issues like this are regulated at European level, with common rules. I think we are on the right track”. **Stefano Tassinari**, ACLI national vice-president in charge of labour and the third sector, comments on the green light given yesterday by EU labour ministers to the general guidelines agreement on the proposal for a directive on the improvement of working conditions for platform workers. **Michele Faioli**, Associate Professor of Labour Law at the Università Cattolica and expert advisor to the National Economic and Labour Council, says it is an “excellent signal.” The European Parliament agreed a negotiating position at the end of February. The Council's approval in Luxembourg yesterday is the final green light for the trilogues - informal tripartite negotiations between the Commission, Parliament and Council - to define new EU rules granting employment rights to people working in the gig economy by spring 2024, marking the end of the legislative period. "The directive - the expert explained - is a step forward in a long and complicated process characterised by different perspectives on its content from individual states, member states' trade unions and designated employers' representative bodies." "The Directive," Faioli continues, "provides for a mechanism of rebuttable presumption which allows the worker to ask the judge or the inspectorate for recognition of the rights attached to the status of worker in the event that certain indicators of subordinate employment are met. This requires a court case or an inspection by the inspectorate. There is no automatism, the legislator - whether at European or national level - is not allowed to do this". In essence, he points out,

"This is a directive that aims to reduce the burden of proof for digital platform workers."

In the presentation of its proposal for a directive in December 2021, the European Commission pointed out that over 28 million people in the EU work through digital labour platforms. And their number is expected to reach 43 million people in 2025, (+52%). One of the aspects requiring improvement is to correctly determine workers' employment status. As a matter of fact riders, taxi drivers, domestic workers are genuinely self-employed. The Commission estimates that approximately 5.5 million of them have an employment relationship with digital platforms and should therefore be granted the legal employment status that corresponds to their actual work arrangements. That is why, the European Council recalled in a note, "they should enjoy the labour rights and social benefits they are entitled to under national and EU law". "This is a positive initiative because it seeks to define the standards applicable to this type of work," said Tassinari, adding that "in absolute terms they would not be considered as subordinate employment. However, they will be if they meet the criteria of subordinate work, a scenario very similar to that envisaged by Italian law." "There is a wide variety of digital platforms and there is a wide variety of jobs on digital platforms. And the directive does little to address the issues of defining a platform worker, identifying platforms and supervisory responsibilities. It sets guidelines that are left to national legislators," Faioli pointed out. Most EU governments (the ministers of Germany, Spain, Greece, Estonia and Latvia all abstained in the yesterday's vote) stipulate that “workers are legally assumed to be employees of a digital platform (and not self-employed) if their employment relationship with the platform meets at least three of the seven criteria set out in the directive.” These criteria include: setting upper limits for the level of remuneration; limitations regarding the possibility of turning down work; specific rules with regard to appearance or conduct; supervising the performance of work, including by electronic means; imposing sanctions; restricting the freedom to choose one's working hours or absence period; and restricting the possibility to build a client base, including from among the platform's clients, or to

perform work for any third party. While on the one hand it signals a tightening of the rules regulating this sector, on the other, Tassinari explained, “forms of self-employment are not ruled out, but the most important thing is to ensure that self-employment does not conceal bogus self-employment, as is often the case.” The EU labour ministers highlighted the importance of “transparency obligations in relation to automated monitoring and decision-making systems”, and the fact that the algorithms must “be monitored by qualified personnel, who enjoy special protection from adverse treatment.”

According to Tassinari, “the aspect of human monitoring of automated systems, algorithms, and AI evolution is an interesting point.” “The directive - he said - is a step forward, but it will be necessary to examine the overall European legislative framework and how it will be applied at national level.” His words are echoed by the Vice President of the Christian Association of Italian Workers (ACLI), according to whom “It will be necessary to follow closely how the European rules take shape on the ground, together with their implementation at national level, and how they harmonise or complement national legislation”. In addition, he noted, “the reaction of companies will also need to be monitored”. This is no small matter, given that the abstention of some countries appears to be motivated by concerns about the potential impact of the new legislation on companies in the sector. But for Tassinari,

“it's important to adopt common rules, starting with the European Pillar of Social Rights (EPSR),

which, together with the Next Generation EU, marks an important milestone for the EU in developing policies that are not limited to budgetary issues, but also begin to focus more on rights and duties, on citizenship. It's very important for Europe to play a central role on these issues.” In terms of the impact the new regulations may have in our country, for the Cattolica University Professor “the directive will not be implemented or will be implemented very mildly owing to a 2015 regulation that already provides for the recognition of digital platform workers' rights, adopted by the Court of Cassation.” This was complemented by Law 128/2019 which provides for the recognition of differentiated labour rights for riders. Therefore “I doubt that the directive will have a strong impact in our country. Italy's legislative framework already includes provisions that allow for the protection of workers - used in Labour Courts for the past 4-5 years.” In terms of quality of work, Tassinari concludes: “In Italy in particular, we are paying the price for years in which the focus has been on job preservation at all costs. But this has not promoted employment growth. On the contrary, it lowered incomes and slowed down economic and demographic growth. It is no longer possible to discuss work as long as it is any work, at any cost. When the price determines the value of work, a vicious circle is created. Competition must be based on the ability to create dignified and efficient working conditions, based on merit, honesty and compliance with regulations.”

Alberto Baviera