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**NOTE**

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| From:    | Permanent Representatives Committee (Part 1)                                                                                                         |
| To:      | Council                                                                                                                                              |
| Subject: | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work<br>- <i>General approach</i> |

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**I. INTRODUCTION**

On 9 December 2021, the Commission submitted a proposal for a Directive on improving the working conditions in platform work<sup>1</sup>. The proposal seeks to:

- 1) improve the working conditions of persons performing platform work by facilitating the correct determination of their employment status through a rebuttable legal presumption (Chapter II),

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<sup>1</sup> ST 14450/21

- 2) improve the protection of the personal data of persons performing platform work by improving transparency, fairness and accountability in the use of automated monitoring or decision-making systems (Chapter III),
- 3) improve the transparency of platform work (Chapter IV) and put certain remedies and enforcement measures in place (Chapter V).

Under the relevant legal bases, *i.e.* Article 153(2)(b) TFEU, in conjunction with point (b) of Article 153(1), and Article 16(2) TFEU, the Council is to act by qualified majority, in accordance with the ordinary legislative procedure.

The European Parliament has not yet adopted its position at first reading. The current schedule in the EP foresees the approval of the rapporteur's report on 12 December 2022 by the EMPL Committee, followed by the approval in the January plenary.

The Economic and Social Committee adopted its opinion in its plenary session on 23 March 2022<sup>2</sup>.

The Committee of the Regions adopted its opinion in its plenary session on 30 June 2022<sup>3</sup>.

The European Data Protection Supervisor has issued formal comments on 2 February 2022<sup>4</sup>.

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<sup>2</sup> ST 11378/22

<sup>3</sup> ST 11328/22

<sup>4</sup> ST 5966/22

## II. DISCUSSIONS UNDER THE CZECH PRESIDENCY

The work of the Czech Presidency of the Council has built on the progress made under the Slovenian and French Presidencies, as set out in the progress report presented to the EPSCO Council in June this year<sup>5</sup>.

The Czech Presidency held five meetings of the Social Questions Working Party in order to scrutinize the proposal. Member States' concerns were addressed in five successive Presidency compromise texts<sup>6</sup>. Coreper examined the texts on 23 and 30 November as well as on 7 December 2022.

Intensive work concentrated on finding compromise solutions to accommodate various concerns raised by delegations in order to strike a proper balance in the text and garner the support of a broad majority of Member States. In broad terms, the Presidency pursued the following approach:

- 1) Based on the work done by the French presidency regarding the dual legal basis, the Czech Presidency defined and clarified the issue of personal scope throughout the text, making the distinction between two categories of persons. The first category concerns persons in an employment relationship, *i.e.* platform workers, and is governed by Article 153(1)(b) TFEU and Article 153(2)(b). The second category, *i.e.* persons performing platform work, concerns both persons in an employment relationship and self-employed persons, and is governed by Article 16 TFEU.

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<sup>5</sup> ST 9227/1/22

<sup>6</sup> STs 11593/22, 13303/22, 13830/22, 14514/22 and 14990/22.

- 2) Fully aware of the central role of the legal presumption in the proposal, the Presidency strived to find a balance between addressing concerns of Member States who feared that too many genuine self-employed would fall under the legal presumption and safeguarding the function of the presumption in easing the correct classification of the bogus-self-employed.

The main issues discussed in the SQWP are summarised in document 14514/22 and the main issues discussed at Coreper on 23 November 2022 are set out in document 14990/22.

### **III. PRESIDENCY COMPROMISE TEXT**

The Presidency is convinced that the text in annex represents a balanced reply to the diverging requests of the Member States and represents the centre of gravity between delegations. The text largely corresponds to the text submitted as document 14990/22 to Coreper on 30 November. It contains in this REV some limited changes, which have been introduced after Coreper on 7 December 2022. New text in this REV is highlighted in ***bold italics***, deletions are marked by *[...]*.

The main modifications compared to the Commission proposal are laid out below:

## ***Chapter I: Scope and purpose***

Following the path chosen under the French Presidency in order to introduce a clear distinction between the two legal bases, the Czech Presidency further strived to distinguish between provisions related to the improvement of working conditions of *platform workers* (based on Article 153(2)(b) TFEU – working conditions) and those related to the improvement of the protection of personal data of both workers and self-employed, i.e. *persons performing platform work* (based on Article 16 TFEU).

The Presidency further shaped the scope of the Directive by adding an additional criterion to the definition of a digital labour platform in order to include only those platforms that provide their services through the use of automated monitoring or decision-making systems. The purpose is to exclude from the scope those enterprises, mostly MSMEs, who use only very basic electronic means such as a website to conduct their business.

In order to address the fact, reported by delegations, that some digital labour platforms try to avoid the application of national legislation and jurisdiction by recruiting persons performing platform work through intermediaries, the Presidency added a provision on intermediaries. Given the different forms of subcontracting and intermediation combined with the agility of digital labour platforms in adapting to a changing regulatory environment, this provision obliges Member States to ensure the same level of protection also in the case of intermediation, while leaving it to the Member States to choose the appropriate measures. These may include the establishment of systems of joint responsibility, if appropriate.

## ***Chapter II: Legal presumption***

In response to the call of delegations to clarify the way the legal presumption and its rebuttal works, the Presidency has restructured Chapter II, while keeping most of the initial Commission text. The new text sets out the material conditions for the application of the legal presumption in Article 4, the procedural aspects, including its rebuttal, in Article 4a, and the supporting measures to be taken by Member States in Article 4b.

### *Criteria for triggering the presumption*

As to the material conditions of the legal presumption, the Presidency followed the call of delegations to make the criteria clearer and easier to apply. Therefore, some small textual adjustments were made to them, and the different elements contained in an open list in the former criterion (d) of Article 4 were split into three distinct criteria, increasing therefore the number of criteria from five to seven. Consequently, the number of criteria which need to be fulfilled for triggering the presumption was changed from two to three.

It was further clarified (by moving text from recital 25 to the operative part), that the platform shall not be considered to fulfil a criterion if it is only acting for complying with a legal obligation, including an obligation stemming from collective agreements.

### *Application of the presumption and its rebuttal*

The presumption shall be applied in all relevant proceedings where the employment status is at stake. It is in those proceedings in which the legal presumption is applied, that the rebuttal should be possible, based on the definition of an employment relationship in national law, collective agreements and practice in force, with consideration of the case-law of the Court of Justice.

While the presumption shall be applied as broadly as possible, the directive takes into account that the types of proceedings as well as the definition of “worker” vary in the different branches of law. The legal presumption shall not apply in tax, criminal and social proceedings, unless Member States decide to do so. At the same time, the Directive does not prevent Member States from extending the legal effects of a decision of reclassification taken based on the application of the presumption to any other field of law and in any other procedure.

### *Discretion of enforcement authorities*

To avoid unnecessary administrative burden and an overload, which would keep enforcement authorities away from fulfilling their other duties, enforcement authorities have a discretion whether to apply the legal presumption, if the double condition is fulfilled, that they act *ex-officio* and that it is evident that a rebuttal would be successful.

### *Suspensive effect*

Although the effects of a decision based on the application of the legal presumption should not be delayed by launching judicial or appeal procedures, the Presidency needed to take into account that a provision excluding a suspensive effect in appeal procedures would constitute a strong interference with national procedural law and present considerable difficulties in its implementation. Therefore, Article 4a(5) has been turned into a may-clause.

### ***Chapter III: Automated monitoring or decision-making systems***

The second building block of the proposal is the protection of personal data of persons performing platform work, being subject to the use of automated monitoring or decision-making systems by the digital labour platform. Automated monitoring systems and automated decision-making systems have found their definition in Article 2.

Articles 6-8, laying down rules for the protection of personal data of persons performing platform work, have been streamlined and their structure has been improved. To that effect, the Presidency notably modified the former Article 6(5) and moved it up as new Article 5a. The provision is now simpler and bans the processing of certain types of personal data by means of automated monitoring or decision-making. It thus provides for a higher level of protection than the one set out in the General Data Protection Regulation. Articles 6 – 8 provide for rules to be applied in addition to General Data Protection Regulation. The powers and protection of the persons ensuring the human monitoring of automated monitoring or decision-making have been improved by attributing them the right to override automated decisions and protecting them against adverse treatment for exercising their functions.

Further to this, the provisions related to occupational safety and health have been moved from the former Article 7(2) to the new Article 8a, which now deals with the relationship of this directive with Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

The relationship with Regulation (EU) 2019/1150 on business user of online mediation services (in Article 8(5)) and Directive 2002/14/EC (in Article 9) on informing and consulting employees related to automated monitoring or decision-making systems have been made simpler and clearer.

#### ***Chapter IV: Transparency on platform work***

In the chapter on transparency on platform work, the relationship of the new obligation of platform to declare work performed for platforms to the Member State, where the work is performed, with already existing obligations under Union law has been clarified. In addition, the digital labour platforms have been obliged to inform national authorities about the intermediaries they are working with.

#### **CONCLUSION**

The Council is invited to reach a general approach on the compromise text as set out in the Annex of this document and to mandate the Presidency to enter into negotiations on the file with representatives of the European Parliament.

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on improving working conditions in platform work

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153 (2), point (b), in conjunction with Article 153 (1), point (b), and Article 16(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>7</sup>,

Having regard to the opinion of the Committee of the Regions<sup>8</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>7</sup> OJ C , , p.

<sup>8</sup> OJ C , , p. .

Whereas:

- (1) Pursuant to Article 3 of the Treaty on European Union, the objectives of the Union are, amongst others, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming at full employment and social progress.
- (2) Article 31 of the Charter of Fundamental Rights of the European Union ('the Charter') provides for the right of every worker to working conditions which respect his or her health, safety and dignity. Article 27 of the Charter protects the workers' right to information and consultation within the undertaking. Article 8 of the Charter provides that everyone has the right to the protection of personal data concerning him or her. Article 16 of the Charter recognises the freedom to conduct a business.
- (3) Principle No 5 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017<sup>9</sup>, provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training; that, in accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context is to be ensured; that innovative forms of work that ensure quality working conditions are to be fostered, that entrepreneurship and self-employment are to be encouraged and that occupational mobility is to be facilitated; and that employment relationships that lead to precarious working conditions are to be prevented, including by prohibiting abuse of atypical contracts. The Porto Social Summit of May 2021 welcomed the Action Plan accompanying the Social Pillar<sup>10</sup>.

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<sup>9</sup> Interinstitutional Proclamation on the European Pillar of Social Rights (OJ C 428, 13.12.2017, p. 10).

<sup>10</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'The European Pillar of Social Rights Action Plan', COM(2021) 102 final, 4.3.2021.

- (4) Digitalisation is changing the world of work, improving productivity and enhancing flexibility, while also carrying some risks for employment and working conditions. Algorithm-based technologies, including automated monitoring or decision-making systems, have enabled the emergence and growth of digital labour platforms.
- (5) Platform work is performed by individuals through the digital infrastructure of digital labour platforms that provide a service to their customers. By means of the algorithms, the digital labour platforms may control, to a lesser or greater extent – depending on their business model – the performance of the work, its remuneration and the relationship between their customers and the persons performing the work. Platform work can be performed exclusively online through electronic tools (‘online platform work’) or in a hybrid way combining an online communication process with a subsequent activity in the physical world (‘on-location platform work’). Many of the existing digital labour platforms are international business actors deploying their activities and business models in several Member States or across borders.

- (6) Platform work can provide opportunities for accessing the labour market more easily, gaining additional income through a secondary activity or enjoying some flexibility in the organisation of working time. At the same time, *platform work is rapidly evolving, resulting in new business models and forms of employment that sometimes escape the existing paradigms. Such novelties are exemplified in the field of Union competition law, where the Commission has adopted Guidelines on its application to collective agreements regarding the working conditions of solo self-employed persons. For these reasons, it is important to accompany this process with adequate safeguards for persons performing platform work, irrespective of the nature of the contractual relationship, avoiding discrimination and promoting new opportunities.* Notably, platform work [...] can blur the boundaries between employment relationship and self-employed activity, and the responsibilities of employers and workers. Misclassification of the employment status has consequences for the persons affected, as it is likely to restrict access to existing labour rights. It also leads to an uneven playing field with respect to businesses that classify their workers correctly, and it has implications for Member States' industrial relations systems, their tax base and the coverage and sustainability of their social protection systems. While such challenges are broader than platform work, they are particularly acute and pressing in the platform economy.

- (7) Court cases in several Member States have shown the persistence of misclassification of the employment status in certain types of platform work, in particular in sectors where digital labour platforms exert a certain degree of control over the remuneration and performance of work. While digital labour platforms frequently classify persons working through them as self-employed or ‘independent contractors’, many courts have found that the platforms exercise de facto direction and control over those persons, often integrating them in their main business activities and unilaterally determining the level of remuneration. Those courts have therefore reclassified purportedly self-employed persons as workers employed by the platforms.
- (8) Automated monitoring or decision-making systems powered by algorithms increasingly replace functions that managers usually perform in businesses, such as allocating tasks, giving instructions, evaluating the work performed, providing incentives or imposing sanctions. Digital labour platforms use such algorithmic systems as a standard way of organising and managing platform work through their infrastructure. Persons performing platform work subject to such algorithmic management often lack information on how the algorithms work, which personal data are being used and how their behaviour affects decisions taken by automated systems. Workers’ representatives and labour inspectorates do not have access to this information either. Moreover, persons performing platform work often do not know the reasons for decisions taken or supported by automated systems and lack the possibility to discuss those decisions with a contact person or to contest them.
- (9) When platforms operate in several Member States or across borders, it is often unclear where the platform work is performed and by whom. Also, national authorities do not have easy access to data on digital labour platforms, including the number of persons performing platform work, their employment status, and their working conditions. This complicates the enforcement of applicable rules.

- (10) A body of legal instruments provides for minimum standards in working conditions and labour rights across the Union. This includes in particular Directive (EU) 2019/1152 of the European Parliament and of the Council<sup>11</sup> on transparent and predictable working conditions, Directive 2003/88/EC of the European Parliament and of the Council<sup>12</sup> on working time, Directive 2008/104/EC of the European Parliament and of the Council<sup>13</sup> on temporary agency work, and other specific instruments on aspects such as health and safety at work, pregnant workers, work-life balance, fixed-term work, part-time work, posting of workers, among others.
- (11) Council Recommendation 2019/C 387/01<sup>14</sup> on access to social protection for workers and the self-employed recommends Member States to take measures ensuring formal and effective coverage, adequacy and transparency of social protection schemes for all workers and self-employed.
- (12) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>15</sup> ('General Data Protection Regulation') ensures the protection of natural persons with regard to the processing of personal data, and in particular provides certain rights and obligations as well as safeguards concerning lawful, fair and transparent processing of personal data, including with regard to automated individual decision-making.

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<sup>11</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

<sup>12</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

<sup>13</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

<sup>14</sup> Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01) (OJ C 387, 15.11.2019, p. 1).

<sup>15</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (12a) Regulation (EU) 2019/1150 of the European Parliament and of the Council<sup>16</sup> promotes fairness and transparency for ‘business users’ using online intermediation services provided by operators of online platforms. [The European Commission has proposed further legislation laying down harmonised rules for providers and users of artificial intelligence systems]<sup>17</sup>.
- (12b) Directive 2002/14/EC of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community establishes a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Union.
- (13) While existing Union legal acts provide for certain general safeguards, challenges in platform work require some further specific measures. In order to adequately frame the development of platform work in a sustainable manner, it is necessary for the Union to set minimum standards to address the challenges arising from platform work. Measures facilitating the correct determination of the employment status of persons performing platform work in the Union should be introduced, and transparency on platform work should be improved, including in cross-border situations. In addition, persons performing platform work should be provided a number of rights aiming at promoting transparency, fairness and accountability in algorithmic management. This should be done with a view to improving legal certainty and aiming at a level playing field between digital labour platforms and offline providers of services and supporting the sustainable growth of digital labour platforms in the Union.

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<sup>16</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

<sup>17</sup> [COM(2021) 206 final, 21.4.2021.]

- (14) The Commission has undertaken a two-stage consultation of the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the improvement of working conditions in platform work. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level in this area by adapting the current legal framework to the emergence of platform work.
- (15) In addition, the Commission held extensive exchanges with relevant stakeholders, including digital labour platforms, associations of persons performing platform work, experts from academia, Member States and international organisations and representatives of civil society.
- (15a) This Directive aims to improve the working conditions of platform workers and to protect the personal data of persons performing platform work by regulating the use of algorithmic management in the context of platform work. Both objectives are being pursued simultaneously and, whilst mutually reinforcing and inseparably linked, one is not secondary to the other. As regards Article 153(1)(b) TFEU, this Directive sets out rules aimed at supporting the correct determination of the employment status of persons performing platform work and improving transparency on platform work, including in cross-border situations. As regards Article 16 TFEU, this Directive establishes a framework to improve the protection of natural persons performing platform work regarding the processing of their personal data by increasing transparency, fairness and accountability of relevant algorithmic management procedures in platform work.

- (16) This Directive should apply to persons performing platform work in the Union, independently of their employment status.
- (17) This Directive should establish mandatory rules that apply to all digital labour platforms, irrespective of their place of establishment and irrespective of the law otherwise applicable, provided that the platform work organised through that digital labour platform is performed in the Union.
- (18) Digital labour platforms differ from other online platforms in that they use automated monitoring or decision-making systems to organise work performed by individuals at the request, one-off or repeated, of the recipient of a service provided by the platform. Automated monitoring and decision-making systems collect personal data of persons performing platform work and take or support decisions that affect work conditions. Organising work performed by individuals should imply at a minimum a significant role in matching the demand for the service with the supply of work by an individual who has a contractual relationship with the digital labour platform and who is available to perform a specific task. This can include other activities such as processing payments. Online platforms which do not organise the work performed by individuals but merely provide the means by which service providers can reach the end-user, for instance by advertising offers or requests for services or aggregating and displaying available service providers in a specific area, without any further involvement, should not be considered a digital labour platform. The definition of digital labour platforms should not include providers of a service whose primary purpose is to exploit or share assets, such as short-term rental of accommodation, or to resell goods or services, nor those who organise the activities of volunteers. It should be limited to providers of a service for which the organisation of work performed by the individual, such as transport of persons or goods or cleaning, constitutes a necessary and essential and not merely a minor and purely ancillary component.

- (18a) In some cases, persons performing platform work do not have a direct contractual relationship with the digital labour platform, but are in a relationship with an intermediary through which they perform platform work through digital labour platform. Such a way to organize platform work often results ***in a vast array of different and complex triangular relationships, as well as*** in blurred responsibilities between the digital labour platform and the intermediaries concerning platform work. Persons performing platform work through intermediaries are exposed to the same risks in terms of misclassification of their employment status and automated monitoring or decision-making systems as persons performing platform work directly for the digital labour platform. Member States should therefore ***lay down adequate measures, including by establishing systems of joint responsibility, if appropriate, in order to*** ensure that, under this Directive, they enjoy the same level of protection as persons performing platform work who have a direct contractual relationship with the digital labour platform.
- (19) To combat false self-employment in platform work and to facilitate the correct determination of the employment status, Member States should have appropriate procedures in place to prevent and address misclassification of the employment status of persons performing platform work. The aim of those procedures should be to ascertain the existence of an employment relationship as defined by national law, collective agreements or practice with consideration to the case-law of the Court of Justice, and, where such employment relationship exists, to ensure full compliance with Union law applicable to workers as well as national labour law and collective agreements. Where self-employment or an intermediate employment status – as defined at national level – is the correct employment status, rights and obligations pursuant to that status should apply.

- (20) In its case law, the Court of Justice has established criteria for determining the status of a worker<sup>18</sup>. The interpretation by the Court of Justice of those criteria should be taken into account in the implementation of this Directive. The abuse of the status of self-employed persons, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. False self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship. The Court of Justice has ruled<sup>19</sup> that the classification of a self-employed person under national law does not prevent that person from being classified as a worker within the meaning of Union law if their independence is merely notional, thereby disguising an employment relationship.

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<sup>18</sup> Judgments of the Court of Justice of 3 July 1986, *Deborah Lawrie-Blum v Land Baden-Württemberg*, C-66/85, ECLI:EU:C:1986:284; 14 October 2010, *Union Syndicale Solidaires Isère v Premier ministre and Others*, C-428/09, ECLI:EU:C:2010:612; 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, C-413/13, ECLI:EU:C:2014:2411; 9 July 2015, *Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH*, C-229/14, ECLI:EU:C:2015:455; 17 November 2016, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, C-216/15, ECLI:EU:C:2016:883; 16 July 2020, *UX v Governo della Repubblica italiana*, C-658/18, ECLI:EU:C:2020:572; and order of the Court of Justice of 22 April 2020, *B v Yodel Delivery Network Ltd*, C-692/19, ECLI:EU:C:2020:288.

<sup>19</sup> Judgements of the Court of Justice of 13 January 2004, *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment*, C-256/01, ECLI:EU:C:2004:18 ; 11 November 2010, *Dita Danosa v LKB Līzings SIA*, C-232/09, ECLI:EU:C:2010:674 and 4 December 2014 *FNV Kunsten Informatie en Media v Staat der Nederlanden*, C-413/13, ECLI:EU:C:2014:2411

- (21) The principle of primacy of facts, meaning that the determination of the existence of an employment relationship should be guided primarily by the facts relating to the actual performance of work, including its remuneration, and not by the parties' description of the relationship, in accordance with the 2006 Employment Relationship Recommendation (No 198) of the International Labour Organisation, is particularly relevant in the case of platform work, where contractual conditions are often unilaterally determined by one party.
- (22) When the existence of an employment relationship is established based on facts, the party acting as employer should be clearly identified and that party should fulfil all the obligations resulting from its role as employer.
- (23) Ensuring correct determination of the employment status should not prevent the improvement of conditions of genuine self-employed persons performing platform work. Where a digital labour platform decides – on a purely voluntary basis or in agreement with the persons concerned – to pay for social protection, accident insurance or other forms of insurance, training measures or similar benefits to self-employed persons working through that platform, those benefits as such should not be regarded as determining elements indicating the existence of an employment relationship.
- (24) Direction and control, or legal subordination, is an essential element of the definition of an employment relationship in the Member States and in the case-law of the Court of Justice. When digital labour platforms control the execution of work, they act like employers in an employment relationship. Therefore, contractual relationships of this kind should be deemed, by virtue of a legal presumption, to be an employment relationship between the platform and the person performing platform work through it. As a result, the digital labour platform should treat the person performing platform work as a worker having all the rights and obligations in accordance with that status as laid down in relevant Union law, national law, collective agreements and practice, unless the digital labour platform successfully rebuts the presumption.

- (25) Criteria indicating that a digital labour platform controls the execution of work and that a person performing platform work is likely to be in an employment relationship should be included in the Directive in order to make the legal presumption operational and facilitate the enforcement of workers' rights. Those criteria should be inspired by Union and national case law. The criteria should include concrete elements showing that the digital labour platform determines the upper limits of the level of remuneration or its range, requires the respect of rules with regard to appearance or conduct, gives instructions on how the work is to be performed, [...] restricts the discretion to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or prevents the person performing platform work from developing business contacts with potential clients, including by using a number of conditions or through a system of sanctions. ***The criteria should also comprise concrete elements showing that the digital labour platform closely supervises the performance of work, also by thoroughly verifying the quality of the results of the work of persons performing platform work. This includes assessing or regularly taking stock of the work performance or work progress which can also be performed by electronic means, such as camera surveillance, location tracking, counting keystrokes or taking screenshots or using other functions in computers or smartphones. Supervision does not include, on the contrary, the use of electronic tools for matching the person performing platform work and the recipient of the service, asking recipients of the service or person performing platform work to confirm the successful achievement of a task in order to release payment or allowing customers to review or rate the service, merely suggesting a route for a journey or a delivery, or give the possibility to the customer or the person performing platform work to report any difficulty encountered, in particular related to safety.*** At the same time, the criteria should not cover situations where the persons performing platform work are genuine self-employed. Genuine self-employed persons are themselves responsible vis-à-vis their customers for how they perform their work and the quality of their outputs. The freedom to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or not to be limited in working for any third party is to be considered one of the characteristics of genuine self-employment.

- (25a) Member States should, in accordance with their national legal and judicial systems, establish a framework of supporting measures to ensure the effective implementation of the legal presumption. In order for the presumption to be effective in practice, three of the criteria indicating that the person performing platform work is likely to be considered in an employment relationship should be always fulfilled to trigger its application. The purpose of these criteria is to provide a set of easily understandable indications that point to the likely existence of an employment relationship and thus facilitate the access of the person performing platform work to the relevant rights derived from the existence of an employment relationship by means of the legal presumption.
- (25b) While it is key to minimise the risk of jeopardising the effective application of the legal presumption, a criterion fulfilled by a digital labour platform strictly as a result of compliance with requirements under Union law, national law or collective agreements, notably regarding the health and safety of the recipients of the service, should not be understood as indicating that the criteria of the legal presumption are fulfilled within the meaning of this Directive.
- (25c) In order to ensure access to Union law applicable to workers, the legal presumption should apply in all relevant administrative or judicial proceedings where the employment status of the person performing platform work is at stake. ***While this Directive does not impose any obligation on Member States to apply the legal presumption in tax, criminal and social security proceedings, nothing in this Directive should prevent Member States, as a matter of national law, from applying that presumption in those or other administrative or judicial proceedings or from recognising the results of proceedings in which the presumption has been applied for the purposes of providing rights to reclassified workers under other areas of law.***

(26) [...]

(27) [...]

(28) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down in the law, collective agreements or practice in force of the respective Member State with consideration to the case-law of the Court of Justice, even though criteria indicate that a person performing platform work is likely to be in an employment relationship. In judicial or administrative proceedings, where the legal presumption applies, Member States should ensure the possibility to rebut the legal presumption by proving, on the basis of the aforementioned definition, that the relationship in question is not an employment relationship. Digital labour platforms have a complete overview of all factual elements determining the legal nature of the relationship, in particular the algorithms through which they manage their operations. Therefore, they should have the burden of proof where they argue that the contractual relationship in question is not an employment relationship. In addition, when the person performing platform work who is the subject of the presumption seeks to rebut the legal presumption, the digital labour platform should be required to assist that person, notably by providing all relevant information held by the platform in respect of that person. A successful rebuttal of the presumption in judicial or administrative proceedings should not preclude the application of the presumption in subsequent judicial proceedings or appeals, in accordance with national procedural law.

- (28a) While the legal presumption should apply in proceedings initiated by a person performing platform work where the employment status *is* at stake, authorities in charge of verifying the compliance with or enforcing relevant legislation acting on their own initiative, such as labour inspectorates, should have the discretion not to apply that presumption, if it is evident that the presumption would be successfully rebutted. A national framework to reduce litigation and increase legal certainty is important.
- (28b) Member States should be able to provide that judicial or administrative proceedings initiated by the digital labour platforms in order to challenge the decision of a judicial or administrative authority taken on the basis of the application of the legal presumption do not have a suspensive effect on the relevant decision.
- (28c) In the interest of legal certainty, the legal presumption should not have any retroactive legal effects before the transposition date of this Directive and should therefore only apply to the period starting from that date, including for contractual relationships entered into before and still ongoing on that date. Claims relating to the possible existence of an employment relationship before that date and resulting rights and obligations until that date should therefore be assessed only on the basis of national law and Union law predating this Directive.
- (28d) Effective implementation of the legal presumption through appropriate measures, such as disseminating information to the public, developing guidance and providing for effective controls and inspections is essential to ensure legal certainty and transparency for all parties involved. These measures should avoid reclassification of genuine self-employed, take into account the specific situation of start-ups to support the entrepreneurial potential and the conditions for the sustainable growth of digital labour platforms in the Union.

- (29) In the context of platform work, persons performing platform work are often subject to decisions taken through or with the support of automated monitoring or decision-making systems. Consent of persons performing platform work to the processing of personal data is not always freely given, as persons performing platform work not systematically have a genuine free choice or are able to refuse or withdraw consent without detriment concerning their contractual relationship, despite such consent not being necessary to perform platform work, and there is an imbalance between the person performing platform work and the digital labour platform running the automated monitoring or decision-making systems. While Regulation (EU) 2016/679 establishes the general framework for the protection of natural persons with regard to the processing of personal data, it is necessary to lay down specific rules addressing the concerns that are specific to the processing of personal data by use of automated monitoring or decision-making systems in the context of platform work. In particular, digital labour platforms should not process any personal data on the emotional or psychological state of the person performing platform work, process any personal data in relation to their private conversations, and should not collect any personal data while the person performing platform work is not offering or performing platform work. In this context, terms relating to the protection of personal data in this Directive should be understood in light of the definitions set out in Regulation (EU) 2016/679.
- (30) [...]
- (31) [...]

- (32) Without affecting the rights and obligations stemming from Regulation (EU) 2016/679, this Directive provides for additional safeguards concerning the use of automated monitoring or decision-making systems in the context of platform work. Digital labour platforms should be subject to transparency obligations in relation to automated monitoring or decision-making systems that are used to collect data, supervise or evaluate the work performance through electronic means; and automated decision-making systems which are used to take or support decisions that significantly affect persons performing platform work working conditions, including their access to work assignments, their earnings, their safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account. In addition to what is provided in Regulation (EU) 2016/679, information concerning such systems should also be provided where decisions are not solely based on automated processing, provided that they are supported by automated systems. It should also be specified which kind of information should be provided to persons performing platform work regarding such automated systems, as well as in which form and when it should be provided. Information on automated monitoring or decision-making systems should also be provided to representatives of platform workers and to national labour authorities, in order to enable them to exercise their functions.
- (33) This information obligation should not require digital labour platforms, to disclose the detailed functioning of their automated monitoring or decision-making systems, including algorithms, or other detailed data that contains commercial secrets or is protected by intellectual property rights. However, the result of those considerations should not be a refusal to provide all the information required by this Directive.

- (34) [...]
- (35) Digital labour platforms make extensive use of automated monitoring or decision-making systems in managing persons performing platform work. Monitoring by electronic means can be intrusive and decisions taken or supported by such systems, such as those related to the offer of assignment of tasks, the earnings, their safety and health, their working time, their access to training, their promotion or status within the organisation and contractual status, directly affect the persons performing platform work, who might not have a direct contact with a human manager or supervisor. Digital labour platforms should therefore monitor and regularly evaluate the impact of individual decisions taken or supported by automated monitoring or decision-making systems on working conditions. Digital labour platforms should ensure sufficient human resources for this purpose. The persons charged by the digital labour platform with the function of monitoring should have the necessary competence, training and authority to exercise that function and in particular the right to cancel automated decisions. They should be protected from dismissal, disciplinary measures or other adverse treatment for exercising their functions. In addition to obligations under Article 22 of Regulation (EU) 2016/679, Article 7(1) and (3) of this Directive provides for distinct obligations, which apply in the context of platform work.

- (36) Article 22(3) of Regulation (EU) 2016/679 requires data controllers to implement suitable measures to safeguard data subjects' rights and freedoms and legitimate interests in cases where the latter are subject to decisions based solely on automated processing. That provision requires, as a minimum, the data subject's right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.
- (37) This Directive provides for rules in addition to Regulation 2016/679 in the context of algorithmic management in platform work. Persons performing platform work should have the right to obtain an explanation from the digital labour platform for a decision, the lack of decision or a set of decisions taken or supported by automated systems that significantly affect them. For that purpose the digital labour platform should provide the possibility for them to discuss and clarify the facts, circumstances and reasons for such decisions with a human contact person at the digital labour platform. In addition, if a digital labour platform restricts, suspends or terminates the account of a person performing platform work, refuses the remuneration for work performed by that person, or affects his or her contractual status, the digital labour platform should provide the person performing platform work with a written statement of reasons for that decision. as such decisions are likely to have particularly significant negative effects on persons performing platform work, in particular their potential earnings. Where the explanation or reasons obtained are not satisfactory or where persons performing platform work consider their rights infringed by any decision that significantly affects them, they should also have the right to request the digital labour platform to review the decision and to obtain a substantiated reply without undue delay. Where such decisions infringe those persons' rights, such as labour rights, the right to non-discrimination or to the protection of their personal data, the digital labour platform should rectify such decisions without undue delay or, where that is not possible, provide compensation for the damage sustained, and take the necessary steps to avoid similar decisions in the future.

- (38) Council Directive 89/391/EEC<sup>20</sup> introduces measures to encourage improvements in the safety and health of workers at work, including the obligation for employers to minimise risks and to assess the occupational health and safety risks. As automated monitoring or decision-making systems potentially can have significant impact on the physical and mental health of platform workers, digital labour platforms should evaluate those risks, assess whether the safeguards of the systems are appropriate to address those risks and take appropriate preventive and protective measures. They should avoid that the use of such systems results in undue pressure on workers or puts their health at risk. In order to strengthen the effectiveness of these provisions, the digital labour platform should make their risk evaluation and the assessment of the mitigating measures available to platform workers, their representatives and the competent authorities.
- (39) As the introduction of or substantial changes in the use of automated monitoring or decision-making systems by digital labour platforms have direct impacts on the work organisation and individual working conditions of platform workers, it is key to ensure that rights and obligations on information and consultation, and in particular those laid down under Directive 2002/14/EC, can be directly exercised by platform workers' representatives and, where there are no representatives, by platform workers. Additional measures are necessary to ensure that digital labour platforms inform and consult platform workers or their representatives before such decisions are taken, at the appropriate level and, given the technical complexity of algorithmic management systems, with the assistance of an expert chosen by the platform workers or their representatives in a concerted manner where needed. The information and consultation measures as contained in Directive 2002/14/EC remain unaffected by this Directive.

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<sup>20</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

- (40) Persons who do not have an employment relationship constitute a significant part of the persons performing platform work. The impact of automated monitoring or decision-making systems used by digital labour platforms on the protection of their personal data and their earning opportunities is similar to that on platform workers. Therefore, the rights in Articles 6, 7 and 8 of this Directive pertaining to the protection of natural persons in relation to the processing of personal data in the context of algorithmic management, namely those regarding transparency on automated monitoring or decision-making systems, restrictions to process or collect personal data, human monitoring and review of significant decisions, should also apply to persons performing platform work who do not have an employment relationship. The rights pertaining to health and safety at work and information and consultation of platform workers or their representatives, which are specific to workers in view of Union law, should not apply to them. Regulation (EU) 2019/1150 provides safeguards regarding fairness and transparency for self-employed persons performing platform work, provided that they are considered business users within the meaning of that Regulation. With regards to human review of significant decisions, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.
- (41) In order to ensure that digital labour platforms comply with labour legislation and regulations, in particular if they are established in another country than the Member State in which the platform worker is performing work, digital labour platforms should declare work performed by platform workers to the competent authorities of the Member State in which the work is performed. This obligation should not replace the obligations of declaration or notification established by other Union instruments.

- (42) Information on the number of persons performing platform work through digital labour platforms, information on their contractual or employment status and the general terms and conditions applicable to those contractual relationships is essential to support relevant authorities in correctly determining the employment status of persons performing platform work and in ensuring compliance with legal obligations as well as representatives of platform workers in the exercise of their representative functions and should therefore be made accessible to them. Those authorities and representatives should also have the right to ask digital labour platforms for additional clarifications and details regarding the information provided.
- (43) An extensive system of enforcement provisions for the social acquis in the Union has been developed, elements of which should be applied to this Directive in order to ensure that persons performing platform work have access to effective and impartial dispute resolution and a right to redress, including compensation for the damage sustained. Specifically, having regard to the fundamental nature of the right to effective legal protection, persons performing platform work should continue to enjoy such protection even after the end of the employment or other contractual relationship giving rise to an alleged breach of rights under this Directive.
- (44) Representatives of persons performing platform work should be able, in accordance with national law and practice, to represent one or several persons performing platform work in any judicial or administrative proceedings to enforce any of the rights or obligations arising from this Directive. Bringing claims on behalf of or supporting several persons performing platform work is a way to facilitate proceedings that would not have been brought otherwise because of procedural and financial barriers or a fear of reprisals.

- (45) Platform work is characterised by the lack of a common workplace where workers can get to know each other and communicate with each other and with their representatives, also in view of defending their interests towards the digital labour platform. It is therefore necessary to create digital communication channels, in line with the digital labour platforms' work organisation, where persons performing platform work can exchange with each other and be contacted by representatives of platform workers. Digital labour platforms should create such communication channels within their digital infrastructure or through similarly effective means, while respecting the protection of personal data and refraining from accessing or monitoring those communications.
- (46) In administrative or judicial proceedings regarding the correct determination of the employment status of persons performing platform work, the elements regarding the organisation of work allowing to establish the employment status and in particular whether the digital labour platform controls certain elements of the performance of work may be in the possession of the digital labour platform and not easily accessible to persons performing platform work and competent authorities. National courts or competent authorities should therefore be able to order the digital labour platform to disclose any relevant evidence which lies in their control, including confidential information, subject to effective measures to protect such information.
- (47) Given that Article 5a, 6, Article 7 and Article 8 of this Directive provide for rules in addition to Regulation (EU) 2016/679 in the context of platform work to ensure the protection of personal data of person performing platform work, the national supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 should be competent to monitor the application of those safeguards. The procedural framework of Regulation (EU) 2016/679 should apply for the enforcement of the additional rules of this Directive, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and penalties, including the competence to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.

- (48) Automated monitoring or decision-making systems used in the context of platform work involve the processing of personal data of persons performing platform work and affect the working conditions and rights of the platform workers among them, which raises issues of data protection law as well as of related fields of law, like labour law. Data protection supervisory authorities and other competent authorities should therefore cooperate in the enforcement of this Directive, including by exchanging relevant information with each other, without affecting the independence of data protection supervisory authorities.
- (48a) In order to make the protection by this Directive effective, it is essential to protect persons performing platform work, who exercise their respective rights granted by the Directive, from dismissal and equivalent measures.
- (49) Since the objective of this Directive, namely to improve working conditions in platform work, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (50) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain provisions which are more favourable for persons performing platform work. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the general level of protection in the field covered by this Directive.
- (50a) The autonomy of the social partners is to be respected. It should therefore be possible for the social partners to consider that in specific situations related to platform workers' working conditions different provisions are more appropriate, for the pursuit of the purpose of this Directive, than certain standards set out in Articles 8a, 9, 11 and 12 of this Directive. Member States should therefore be able to allow the social partners to maintain, negotiate, conclude and enforce collective agreements which differ from certain provisions contained in those Articles, while respecting the overall protection of platform workers.
- (51) In implementing this Directive Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small and medium-sized enterprises. Member States should assess the impact of their transposition measures on start-ups and on small and medium-sized enterprises in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden. Member States should also publish the results of such assessments.

- (52) The Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive. They should also, in accordance with national law and practice, take adequate measures to ensure that the social partners are effectively involved and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.
- (53) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,<sup>21</sup> Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (54) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>22</sup> and delivered an opinion on 2.02.2022<sup>23</sup>,

HAVE ADOPTED THIS DIRECTIVE:

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<sup>21</sup> OJ C 369, 17.12.2011, p. 14.

<sup>22</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>23</sup> ST 5966/22

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

##### Subject matter and scope

1. The purposes of this Directive are to improve the working conditions of platform workers and the protection of persons performing platform work regarding the processing of their personal data through the use of automated monitoring or decision-making systems.
  - 1a. These purposes are pursued by:
    - introducing measures to facilitate the correct determination of the employment status of persons performing platform work;
    - improving transparency, fairness and accountability in the use of automated monitoring or decision-making systems for persons performing platform work; and
    - improving transparency on platform work, including in cross-border situations.
2. [...]
3. This Directive applies to persons performing platform work in the Union, to digital labour platforms organising platform work performed in the Union, irrespective of the platform's place of establishment and irrespective of the law otherwise applicable.

4. With respect to representatives of persons performing platform work other than those representing platform workers, this Directive shall apply only to the extent that a representation of persons performing platform work is provided for by national law and practices.

## *Article 2*

### Definitions

1. For the purposes of this Directive, the following definitions shall apply:
  - (1) ‘digital labour platform’ means any natural or legal person providing a service which meets all of the following requirements:
    - (a) it is provided, at least in part, at a distance through electronic means, such as a website or a mobile application;
    - (b) it is provided at the request of a recipient of the service;
    - (c) it involves, as a necessary and essential component, the organisation of work performed by individuals in return for payment, irrespective of whether that work is performed online or in a certain location;
    - (d) it involves the use of automated monitoring or decision-making systems.
  - (2) ‘platform work’ means any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual or an intermediary, irrespective of whether a contractual relationship exists between the individual or an intermediary and the recipient of the service;

- (3) 'person performing platform work' means any individual performing platform work, irrespective of the nature of the contractual relationship or its designation by the parties involved;
- (4) 'platform worker' means any individual performing platform work who has an employment contract or is deemed to have an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice;
- (4a) 'intermediary' means any natural or legal person who establishes a contractual relationship, including by subcontracting, with a person performing platform work or a digital labour platform for the purposes of making platform work available through that digital labour platform;
- (5) [...]
- (6) [...]
- (6a) 'automated monitoring systems' means systems which are used to collect personal data on persons performing platform work, supervise or evaluate their work performance through electronic means;
- (6b) 'automated decision-making systems' means systems which are used to take or support decisions that significantly affect persons performing platform work, in particular the offer or assignment of tasks to them, their earnings, their safety and health, their working time, their access to training and their contractual status, including the restriction, suspension or termination of their account.

2. The definition of digital labour platforms laid down in paragraph 1, point (1), shall not include providers of a service whose primary purpose is to exploit or share assets or to resell goods or services.

### *Article 2a*

#### Intermediaries

Member states shall ensure that the use of intermediaries does not lead to a reduction in the protection afforded by this Directive to persons performing platform work.

## CHAPTER II

### EMPLOYMENT STATUS

#### *Article 3*

##### Correct determination of the employment status

1. Member States shall have in place procedures to verify and ensure the correct determination of the employment status of persons performing platform work, with a view to ascertaining the existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice, and ensuring that platform workers enjoy the rights deriving from relevant Union law, national law, collective agreements and practice applicable to workers.
2. The determination of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, taking into account the use of automated monitoring or decision-making systems in the organisation of platform work, irrespective of how the relationship is classified in any contractual arrangement that may have been agreed between the parties involved. Where the existence of an employment relationship is established based on facts, the party assuming the obligations of the employer shall be clearly identified in accordance with national legal systems.

## Article 4

### Legal presumption

1. The relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be an employment relationship, if at least three of the criteria below are fulfilled:
  - (a) The digital labour platform determines upper limits for the level of remuneration;
  - (b) The digital labour platform requires the person performing platform work to respect specific rules with regard to appearance, conduct towards the recipient of the service or performance of the work;
  - (c) The digital labour platform supervises the performance of work including by electronic means;
  - (d) The digital labour platform restricts the freedom, including through sanctions, to organise one's work by limiting the discretion to choose one's working hours or periods of absence;
    - (da) The digital labour platform restricts the freedom, including through sanctions, to organise one's work by limiting the discretion to accept or to refuse tasks;
    - (db) The digital labour platform restricts the freedom, including through sanctions, to organise one's work by limiting the discretion to use subcontractors or substitutes;
  - (e) The digital labour platform restricts the possibility to build a client base or to perform work for any third party.

- 2a. When a digital labour platform fulfils any of the criteria referred to in paragraph 1 solely as a result of its compliance with a legal obligation under Union law, national law or collective agreements, that criterion shall not be deemed fulfilled for the purpose of this Article.
3. [...]
4. [...]

#### *Article 4a*

##### Application of the presumption and rebuttal

1. The legal presumption shall apply in all relevant administrative or judicial proceedings where the correct determination of the employment status of the person performing platform work is at stake.

The legal presumption shall not apply to tax, criminal and social security proceedings.

However, Member States may apply the legal presumption in those proceedings as a matter of national law.

2. When verifying compliance with or enforcing relevant legislation on their own initiative, competent national administrative authorities shall enjoy a discretion not to apply the presumption, when it is manifest that it would be successfully rebutted in accordance with paragraph 3.

3. Member States shall ensure, in proceedings where the presumption applies, the possibility for any of the parties to rebut the legal presumption.

To this effect:

- a) where the digital labour platform argues that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member State in question, with consideration to the case-law of the Court of Justice, the burden of proof shall be on that digital labour platform;
  - b) where the person performing the platform work argues that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member State in question, with consideration to the case-law of the Court of Justice, the digital labour platform shall be required to assist the proper resolution of the proceedings, notably by providing all relevant information held by it.
4. With regard to contractual relationships entered into before and still ongoing on the date set out in Article 21(1), the legal presumption referred to in Article 4 shall only apply to the period starting from that date.
  5. Where a digital labour platform challenges an administrative or judicial decision determining the employment status of a person performing platform work on the basis of the application of the presumption, Member States may provide that such a proceeding shall not have a suspensive effect on that decision.

## *Article 4b*

### Framework of supporting measures

Member States shall establish a framework of supporting measures in order to ensure the effective implementation of the legal presumption referred to in Article 4. In particular, they shall:

- (a) ensure that information on the application of the legal presumption is made publicly available in a clear, comprehensive and easily accessible way;
- (b) develop guidance for digital labour platforms, persons performing platform work and social partners to understand and put in practice the legal presumption including its rebuttal;
- (c) in line with national law or practice, develop guidance for competent national authorities to proactively target and pursue non-compliant digital labour platforms;
- (d) in line with national law or practice, provide for effective controls and inspections conducted by national authorities, while ensuring that such controls and inspections are proportionate and non-discriminatory.

## *Article 5*

[...]

## CHAPTER III

### MANAGEMENT BY AUTOMATED MONITORING OR DECISION-MAKING SYSTEMS

#### *Article 5a*

Limitations on processing of personal data by means of automated monitoring or decision-making systems

1. Digital labour platforms shall not, by means of automated monitoring or decision-making systems:
  - (a) process any personal data on the emotional or psychological state of the person performing platform work;
  - (b) process any personal data in relation to private conversations; including exchanges with platform workers' representatives;
  - (c) collect any personal data while the person performing platform work is not offering or performing platform work.

## *Article 6*

### Transparency on automated monitoring or decision-making systems

1. Member States shall require digital labour platforms to inform persons performing platform work of the use of automated monitoring or decision-making systems.

This information shall concern:

- (a) as regards automated monitoring systems:
  - (i) the fact that such systems are in use or are in the process of being introduced;
  - (ii) the categories of actions supervised, evaluated or for which data is collected by such systems, including evaluation by the recipient of the service;
- (b) as regards automated decision-making systems:
  - (i) the fact that such systems are in use or are in the process of being introduced;
  - (ii) the categories of decisions that are taken or supported by such systems;
  - (iii) the main parameters that such systems take into account and the relative importance of those main parameters in the automated decision-making, including the way in which the personal data or behaviour of the person performing platform work influence the decisions;
  - (iv) the grounds for decisions to restrict, suspend or terminate the account of the person performing platform work, to refuse the payment for work performed by them, as well as for decisions on their contractual status or any decision with similar effects.

3. Digital labour platforms shall provide the information referred to in paragraph 1 in the form of a written document which may be in electronic format. They shall provide that information at the latest on the first working day, as well as in the event of substantial changes and at any time upon the request of the person performing platform work. The information shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language.
4. Digital labour platforms shall also make the information referred to in paragraph 1 available to platform workers' representatives. They shall also make this information available to competent national authorities upon their request.
5. [...]

## *Article 7*

### Human monitoring of automated systems

1. Member States shall ensure that digital labour platforms monitor and regularly evaluate the impact of individual decisions taken or supported by automated monitoring or decision-making systems on persons performing platform work.
2. [...]
3. Member States shall require digital labour platforms to ensure sufficient human resources for monitoring and evaluating the impact of individual decisions taken or supported by automated monitoring or decision-making systems. The persons charged by the digital labour platform with the function of monitoring and evaluating shall have the necessary competence, training and authority to exercise that function, including for overriding automated decisions. They shall enjoy protection from dismissal or its equivalent, disciplinary measures or other adverse treatment for exercising their functions.
4. Information on the evaluation pursuant to paragraph 1 shall be made available to persons performing platform work and to platform workers' representatives. They shall also make this information available to the competent national authorities upon their request.

## *Article 8*

### Human review of significant decisions

1. Member States shall ensure that persons performing platform work have the right to obtain an explanation from the digital labour platform for any decision taken or supported by an automated decision-making system that significantly affects them without undue delay. Member States shall ensure that digital labour platforms provide persons performing platform work with access to a contact person designated by the digital labour platform to discuss and to clarify the facts, circumstances and reasons having led to the decision. Digital labour platforms shall ensure that such contact persons have the necessary competence, training and authority to exercise that function.

Digital labour platforms shall provide the person performing platform work with a written statement of the reasons for any decision taken or supported by an automated decision-making system to restrict, suspend or terminate that person's account, any decision to refuse the payment for work performed, any decision on the contractual status of the person performing platform work or any decision with similar effects, without undue delay.

2. Where persons performing platform work are not satisfied with the explanation or the written statement of reasons obtained or consider that the decision referred to in paragraph 1 infringes their rights, they shall have the right to request the digital labour platform to review that decision. The digital labour platform shall respond to such request by providing the person performing platform work with a substantiated reply in the form of a written document which may be in electronic format without undue delay and in any event within two weeks of receipt of the request.
3. Where the decision referred to in paragraph 1 infringes the rights of a person performing platform work, the digital labour platform shall rectify that decision without delay and in any event within two weeks or, where such rectification is not possible, offer compensation for the damage sustained. The digital labour platform shall take the necessary steps, including, if appropriate, a modification of the automated decision-making system, in order to avoid such decisions in the future.
4. This Article does not affect disciplinary and dismissal procedures laid down in national law and practices and collective agreements.
5. This Article shall not apply to persons performing platform work who are also 'business users' within the meaning of Regulation (EU) 2019/1150.

## *Article 8a*

### Safety and health

1. Without affecting Council Directive 89/391/EEC and related directives in the field of safety and health at work, with regard to platform workers, digital labour platforms shall:
  - (a) evaluate the risks of automated monitoring or decision-making systems to their safety and health, in particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks;
  - (b) assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment;
  - (c) introduce appropriate preventive and protective measures.
2. Digital labour platforms shall not use automated monitoring or decision-making systems in any manner that puts undue pressure on platform workers or otherwise puts at risk the physical and mental health of platform workers.

## *Article 9*

### Information and consultation

1. Without affecting the rights and obligations under Directive 2002/14/EC, Member States shall ensure information and consultation of platform workers' representatives or, where there are no such representatives, of the platform workers concerned by digital labour platforms, on decisions likely to lead to the introduction of or substantial changes in the use of automated monitoring or decision-making systems.
2. [...]
3. The platform workers' representatives or the platform workers concerned may be assisted by an expert of their choice, in so far as this is necessary for them to examine the matter that is the subject of information and consultation and formulate an opinion. Where a digital labour platform employs more than 500 workers in the Member State concerned, the expenses for the expert shall be borne by the digital labour platform, provided that they are proportionate. Member States may determine the frequency of requests for an expert and the upper limit of expenses to be borne by the digital labour platform, while ensuring the effectiveness of the assistance.

## *Article 10*

[...]

## CHAPTER IV

### TRANSPARENCY ON PLATFORM WORK

#### *Article 11*

##### Declaration of platform work

Member States shall require digital labour platforms which are employers to declare work performed by platform workers to the competent authorities of the Member State in which the work is performed, in accordance with the rules and procedures laid down in the law of the Member States concerned. This shall not affect specific obligations under Union law according to which work shall be declared to relevant bodies of the Member State in cross-border situations.

#### *Article 12*

##### Access to relevant information on platform work

1. Member States shall ensure that digital labour platforms make the following information available to competent national authorities as well as to representatives of platform workers:
  - (a) the number of persons performing platform work through the digital labour platform concerned on a regular basis and their contractual or employment status;
  - (b) the general terms and conditions, determined by the digital labour platform, applicable to those contractual relationships, which apply to a large number of contractual relationships;
  - (c) the intermediaries the digital labour platform has a contractual relationship with.

2. The information shall be provided for each Member State in which persons are performing platform work through the digital labour platform concerned. The information shall be updated at least every six months, and, as regards paragraph 1, point (b), each time the terms and conditions are substantially modified.
3. The competent authorities set out in paragraph 1 and representatives of platform workers shall have the right to ask digital labour platforms for additional clarifications and details regarding any of the information provided. The digital labour platforms shall respond to such request within a reasonable period of time by providing a substantiated reply.
4. With regard to digital labour platforms which are micro, small or medium-sized enterprises, Member States may provide that the periodicity for updating information in accordance with paragraph 2 is reduced to once every year.

## CHAPTER V

### REMEDIES AND ENFORCEMENT

#### *Article 13*

##### Right to redress

Without affecting Articles 79 and 82 of Regulation (EU) 2016/679, Member States shall ensure that, persons performing platform work, including those whose employment or other contractual relationship has ended, have access to effective and impartial dispute resolution and a right to redress, including compensation for the damage sustained, in the case of infringements of their rights arising from this Directive.

#### *Article 14*

##### Procedures on behalf or in support of persons performing platform work

1. Without affecting Article 80 of Regulation (EU) 2016/679, Member States shall ensure that representatives of persons performing platform work and legal entities which have, in accordance with national law or practice, a legitimate interest in defending the rights of persons performing platform work, may engage in any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive. They may act on behalf or in support of one or several persons performing platform work in the case of an infringement of any right or obligation arising from this Directive, in accordance with national law and practice.
2. [...]

- 2a. When necessary for the defence of the rights of persons performing platform work with regard to the protection of their personal data, digital labour platforms shall make the information referred to in Article 6, paragraph 4 and Article 7, paragraph 4, available to representatives of persons performing platform work other than representatives of platform workers.

### *Article 15*

#### Communication channels for persons performing platform work

Member States shall take the necessary measures to ensure that digital labour platforms create the possibility for persons performing platform work to contact and communicate with each other, and to contact and communicate with worker's representatives, through the digital labour platforms' digital infrastructure or similarly effective means, while complying with the obligations under Regulation (EU) 2016/679 and Directive 2002/58/EC. Member States shall require digital labour platforms to refrain from accessing or monitoring those contacts and communications.

### *Article 16*

#### Access to evidence

1. Member States shall ensure that in the proceedings referred to in Article 4a, national courts or competent authorities are able to order the digital labour platform to disclose any relevant evidence which lies in their control.
2. Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the proceeding. They shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.
3. [...]

## *Article 17*

### Protection against adverse treatment or consequences

Member States shall introduce the measures necessary to protect persons performing platform work, including those among them who are their representatives, from any adverse treatment by the digital labour platform and from any adverse consequences resulting from a complaint lodged with the digital labour platform or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

## *Article 18*

### Protection from dismissal

1. Member States shall take the necessary measures to prohibit the dismissal or its equivalent and all preparations for dismissal or its equivalent of persons performing platform work, on the grounds that they have exercised the rights provided for in this Directive.
2. Persons performing platform work who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in this Directive, may request the digital labour platform to provide duly substantiated grounds for the dismissal, or the equivalent measures. The digital labour platform shall provide those grounds in writing without undue delay.

3. Member States shall take the necessary measures to ensure that, when persons performing platform work referred to in paragraph 2 establish, before a court or other competent authority or body, facts from which it may be presumed that there has been such a dismissal, or equivalent measures, it shall be for the digital labour platform to prove that the dismissal, or equivalent measures were based on grounds other than those referred to in paragraph 1.
4. [...]
5. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or other competent authority or body to investigate the facts of the case.
6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member State.

### *Article 19*

#### Supervision and penalties

1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be responsible for monitoring and enforcing the application of Articles 5a to 8 of this Directive, in accordance with the relevant provisions in Chapters VI, VII and VIII of Regulation (EU) 2016/679. The ceiling for administrative fines referred to in Article 83(5) of that Regulation shall be applicable to infringements of Articles 5a to 8 of this Directive.

2. The authorities referred to in paragraph 1 and other competent national authorities shall, where relevant, cooperate in the enforcement of this Directive, within the remit of their respective competences, in particular where questions on the impact of automated monitoring or decision-making systems on persons performing platform work arise. For that purpose, those authorities shall exchange relevant information with each other, including information obtained in the context of inspections or investigations, either upon request or at their own initiative.
3. Without prejudice to paragraph 1, Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to provisions of this Directive or of the relevant provisions already in force concerning the rights which are within the scope of this Directive. The penalties provided for shall be effective, proportionate and dissuasive.

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 20*

##### Non-regression and more favourable provisions

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to workers within Member States.
2. This Directive shall not affect the Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to platform workers, or to encourage or permit the application of collective agreements which are more favourable to platform workers, in line with the objectives of this Directive. As regards persons performing platform work who are not in an employment relationship, this paragraph shall apply insofar as such national rules are compatible with the rules on the functioning of the internal market.
3. This Directive is without prejudice to any other rights conferred on persons performing platform work by other legal acts of the Union.

#### *Article 20a*

Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of persons performing platform work's personal data under Articles 6, 7 and 8 of this Directive. Member States may allow the social partners to maintain, negotiate, conclude and enforce collective agreements, in accordance with national law or practice, which, while respecting the overall protection of platform workers, establish arrangements concerning platform work which differ from those referred to in Articles 8a, 9, 11 and 12 of this Directive.

## *Article 21*

### Transposition and implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years after entry into force] at the latest. They shall immediately inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.
3. Member States shall, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing this Directive.
4. Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

## *Article 22*

### Review by the Commission

By [5 years after entry into force], the Commission shall, after consulting the Member States, the social partners at Union level and key stakeholders, and taking into account the impact on micro, small and medium-sized enterprises, review the implementation of this Directive and propose, where appropriate, legislative amendments.

## *Article 23*

### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

## *Article 24*

### Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

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