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From:	European Committee of the Regions
date of receipt:	23 June 2022
To:	General Secretariat of the Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work - <i>Opinion of the European Committee of the Regions</i>

Delegations will find attached the opinion adopted by the European Committee of the Regions on the above.

Other language versions, if needed, soon available on the following website:

<https://dmsearch.cor.europa.eu/search/opinion>



**European Committee
of the Regions**

SEDEC-VII/028

150th plenary session, 29 – 30 June 2022

OPINION

Improving working conditions in platform work

THE EUROPEAN COMMITTEE OF THE REGIONS

- agrees with the Commission's analysis that the misclassification of a worker's status and the consequences of this have an impact beyond the framework of platform work;
- welcomes the mechanism of the rebuttable presumption of an employment relationship and the reversal of the burden of proof provided for in the directive;
- emphasises the importance of the presumption of an employment relationship giving the platform workers concerned access to all the rights derived from legislation or collective agreements that guarantee the status of self-employed person or employee;
- reminds that 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. The criteria listed by the directive each characterise an element of direction and control, just one of which must be sufficient to trigger the presumption that there is an employer, which the employee or the employer may still contest if necessary. At the same time, the list of criteria is not exhaustive;
- welcomes the directive's provisions aimed at protecting platform workers from the risks associated with automated monitoring and decision-making systems and algorithmic management;
- calls on the European Commission to propose a regulatory framework to extend the algorithmic management rights granted to platform workers, both employed and self-employed, to all workers, including outside platform work;
- points out that platform workers are often prevented from exercising their fundamental rights to freedom of association and collective bargaining, not least due to the lack of shared means of communication and opportunities to meet online or in person. Appropriate communication channels and access rights for trade unions must therefore be ensured through labour platforms' digital infrastructure; is disappointed that the proposal for a directive makes no reference to local and regional authorities, even though in many Member States, it is sub-national authorities that are responsible for implementing labour legislation and determining the status of workers.

Rapporteur

Yonnec Polet (BE/PES) 1st Deputy Mayor of Berchem-Sainte-Agathe

Reference document

COM(2021) 762 final

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on

Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work

COM(2021) 761 final

Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work

**Opinion of the European Committee of the Regions –
Improving working conditions in platform work**

I. RECOMMENDATIONS FOR AMENDMENTS

COM(2021) 762 final

AMENDMENT 1

Recital 9

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
When platforms operate in several Member States or across borders, it is often unclear where the platform work is performed and by whom. Also, <i>national</i> 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, including in respect of labour law and social protection.	When platforms operate in several Member States or across borders, it is often unclear where the platform work is performed and by whom. Also, <i>the competent</i> authorities in the <i>Member States</i> 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, including in respect of labour law and social protection.

<i>Reason</i>
In several Member States, regional authorities are responsible for determining the status of workers.
Custom comment # 002/009 inserted by Schirru Valeria on 04-07-22 11:51:07. Please do not edit/delete/copy this comment: use always the macro instead.
(* AM 1 *)

AMENDMENT 2

Recital 16

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
This Directive should apply to persons performing platform work in the Union who have, or who based on an assessment of facts may be deemed to have, an employment contract or 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 of the European Union. This should include situations where the employment status of the person performing platform work is not clear, so as to allow correct determination of that status. The provisions on algorithmic management which are related to the processing of personal data should also apply to	This Directive should apply to persons performing platform work in the Union who have, or who based on an assessment of facts may be deemed to have, an employment contract or 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 of the European Union. This should include situations where the employment status of the person performing platform work is not clear, <i>or is incorrectly or fraudulently determined</i> , so as to allow correct determination of that status. The provisions on algorithmic management which are related to the

genuine self-employed <i>and other persons</i> performing platform work in the Union <i>who do not have an employment relationship</i> .	processing of personal data should also apply to genuine self-employed workers performing platform work in the Union.
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<i>Reason</i>
One of the aims of the directive is to make it possible to determine correctly the status of workers as self-employed persons or as employees.

AMENDMENT 3

Recital 18

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Digital labour platforms differ from other online platforms in that they organise work performed by individuals at the request, one-off or repeated, of the recipient of a service provided by the platform. Organising work performed by individuals should imply at a minimum a significant role in matching the demand for the service with the supply of labour by an individual who has a contractual relationship with the digital labour platform and who is available to perform a specific task, and 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. It <i>should be limited</i> 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 <i>and not merely a minor and purely ancillary</i> component.	Digital labour platforms differ from other online platforms in that they organise work performed by individuals at the request, one-off or repeated, of the recipient of a service provided by the platform. Organising work performed by individuals should imply at a minimum a significant role in matching the demand for the service with the supply of labour by an individual who has a contractual relationship with the digital labour platform and who is available to perform a specific task, and 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. It <i>shall apply</i> 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 component. <i>Ancillary services provided as part of the provision of a service whose primary purpose is to exploit or share assets, and which requires the organisation of work performed by individuals should be included in this definition, as long as they are necessary, essential and ordered through</i>

	<i>the platform.</i>
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<i>Reason</i>
The aim is to ensure that necessary and essential ancillary services that include a component of work performed by individuals can fall within the directive's scope when they are ordered through a platform.

AMENDMENT 4

Recital 23

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Ensuring correct determination of the employment status should not prevent the improvement of working 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.	Ensuring correct determination of the employment status should not prevent the improvement of working 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 <i>automatically</i> regarded as determining elements indicating the existence of an employment relationship, <i>without prejudice to the grounds listed in Article 4 on legal presumption.</i>

<i>Reason</i>
While the voluntary improvement of the working conditions of self-employed workers by platforms is welcome, it should not be used to circumvent the legal presumption or to reintroduce a notion of subordination. If voluntary improvements are included in the list of actions provided for in Article 4 on legal presumption, they must be able to be used to characterise the existence of an employment relationship.

AMENDMENT 5

Recital 25

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Criteria indicating that a digital labour platform controls the performance of work 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 and take into account national concepts of the employment relationship. The criteria should	Criteria indicating that a digital labour platform controls the performance of work 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 and take into account national concepts of the employment relationship. The criteria should

include concrete elements showing that the digital labour platform, for instance, determines in practice and not merely recommends the working conditions or the remuneration or both, gives instructions on how the work is to be performed or prevents the person performing platform work from developing business contacts with potential clients. In order for it to be effective in practice, two criteria should be always fulfilled to trigger the application of the presumption. 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 to work for any third party is characteristic of genuine self-employment. Therefore, de facto restricting such discretions by a number of conditions or through a system of sanctions, should also be considered as an element of controlling the performance of work. Closely supervising the performance of work or thoroughly verifying the quality of the results of that work, including through electronic means, which does not merely consist in using reviews or ratings by the recipients of the service, should also be considered as an element of controlling the performance of work. At the same time, digital labour platforms should be able to design their technical interfaces in a way to ensure good consumer experience. Measures or rules which are required by law or which are necessary to safeguard the health and safety of the recipients of the service should not be understood as controlling the performance of work.	include concrete elements showing that the digital labour platform, for instance, determines in practice and not merely recommends the working conditions or the remuneration or both, gives instructions on how the work is to be performed or prevents the person performing platform work from developing business contacts with potential clients. In order for it to be effective in practice, one criterion should be always fulfilled to trigger the application of the presumption. <i>This list of criteria can be complemented with additional practices considered to be controlling the performance of work in national legislation, case-law or practice.</i> 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 to work for any third party is characteristic of genuine self-employment. Therefore, de facto restricting such discretions by a number of conditions or through a system of sanctions, should also be considered as an element of controlling the performance of work. Closely supervising the performance of work or thoroughly verifying the quality of the results of that work, including through electronic means, which does not merely consist in using reviews or ratings by the recipients of the service, should also be considered as an element of controlling the performance of work. At the same time, digital labour platforms should be able to design their technical interfaces in a way to ensure good consumer experience. Measures or rules which are required by law or which are necessary to safeguard the health and safety of the recipients of the service should not be understood as controlling the performance of work.
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Reason
When digital labour platforms control certain elements of the performance of work, they act like

employers in an employment relationship. 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.

The criteria listed by the directive each characterise an element of direction and control, just one of which must be sufficient to trigger the presumption that there is an employer, which the employee or the employer may still contest if necessary. At the same time, the list of criteria is not exhaustive.

Custom comment # 003/009 inserted by Schirru Valeria on 04-07-22 12:01:30.

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(* AM 2 *)

AMENDMENT 6

Recital 32

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Digital labour platforms should be subject to transparency obligations in relation to automated monitoring and decision-making systems that are used to monitor, 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 working conditions, including access of persons performing platform work to work assignments, their earnings, their occupational 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. The obligation of the controller under Articles 13, 14 and 15 of Regulation (EU) 2016/679 to provide the data subject with certain information in relation to the processing of personal data concerning the data subject as well as with access to such data should continue to apply in the context of platform work. Information on automated monitoring and decision-making systems should	Digital labour platforms should be subject to transparency obligations in relation to automated monitoring and decision-making systems that are used to monitor, 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 working conditions, including access of persons performing platform work to work assignments, their earnings, their occupational 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. The obligation of the controller under Articles 13, 14 and 15 of Regulation (EU) 2016/679 to provide the data subject with certain information in relation to the processing of personal data concerning the data subject as well as with access to such data should continue to apply in the context of platform work. Information on automated monitoring and decision-making systems should also be provided to trade unions , representatives of persons

also be provided to representatives of persons performing platform work and to national labour authorities at their request, in order to enable them to exercise their functions.	performing platform work and to national and regional labour authorities at their request, in order to enable them to exercise their functions.
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<i>Reason</i>
Trade unions have a key role in defending workers' rights, and the directive must make explicit reference to them. <i>Labour authorities are also necessary and essential players in ensuring compliance with labour and social security regulations and improving working conditions.</i>

AMENDMENT 7

Recital 33

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Digital labour platforms should <i>not</i> be required to disclose the detailed functioning of their automated monitoring and decision-making systems, <i>including</i> algorithms, <i>or</i> 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.	Digital labour platforms should be required to disclose the detailed functioning of their automated monitoring and decision-making systems, <i>and</i> algorithms, <i>linked to working conditions. They should not be required to disclose</i> other detailed data that contains commercial secrets or is protected by intellectual property rights. However, the result of <i>these</i> considerations should not be a refusal to provide all the information required by this Directive.

<i>Reason</i>
Commercial confidentiality or intellectual property may not be invoked to prevent the proper implementation of this directive, or to circumvent certain provisions thereof, in particular those covered in Chapter III on algorithmic management and Chapter IV on transparency on platforms.

AMENDMENT 8

Chapter I General provisions, Article 1 Subject matter and scope, point 2

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
This Directive lays down minimum rights that apply to every person performing platform work in the Union who has, or who based on an assessment of facts may be deemed to have, an employment contract or 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. In accordance with Article 10, rights laid down in this Directive pertaining to the protection of	This Directive lays down minimum rights that apply to every person performing platform work in the Union who has, or who based on an assessment of facts may be deemed to have, an employment contract or 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. In accordance with Article 10, rights laid down in this Directive pertaining to the protection of natural persons in relation to the processing of personal

natural persons in relation to the processing of personal data in the context of algorithmic management also apply to every person performing platform work in the Union <i>who does not have an employment contract or employment relationship</i> .	data in the context of algorithmic management also apply to every person performing platform work in the Union <i>as a genuine self-employed worker</i> .
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<i>Reason</i>
One of the aims of the directive is to make it possible to determine correctly the status of workers as self-employed persons or as employees.

AMENDMENT 9

Chapter I, Article 2 – Definitions, point 1.5

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
‘representatives’ means the workers' <i>organisations</i> or representatives provided for by national law or practices, or both;	‘representatives’ means the workers' <i>trade unions</i> or representatives provided for by national law or practices, or both;

<i>Reason</i>
Trade unions play a key role in defending workers' rights, and the directive must make explicit reference to them.

AMENDMENT 10

Chapter I, Article 2(2) – Definitions, point 2

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
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. It <i>shall be limited</i> to providers of a service for which the organisation of work performed by the individual constitutes <i>not merely a minor and purely ancillary component</i> .	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. It <i>shall apply</i> to providers of a service, <i>including an ancillary service</i> , for which the organisation of work performed by the individual constitutes <i>a necessary and essential component</i> .

<i>Reason</i>
The aim here is to ensure consistency with recital 18 and to ensure that necessary and essential ancillary services that include a component of work performed by individuals can fall within the scope of the directive if they are ordered through a platform.

AMENDMENT 11

Chapter II, Article 4 — Legal Presumption, point 1

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
The contractual relationship between a digital labour platform that controls, within the meaning of paragraph 2, the performance of work and a person performing platform work through that platform shall be legally presumed to be an employment relationship. To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems. The legal presumption shall apply in all relevant administrative and legal proceedings. Competent authorities verifying compliance with or enforcing relevant legislation shall <i>be able to</i> rely on that presumption.	The contractual relationship between a digital labour platform that controls, within the meaning of paragraph 2, the performance of work and a person performing platform work through that platform shall be legally presumed to be an employment relationship. To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems. The legal presumption shall apply in all relevant administrative and legal proceedings. Competent authorities verifying compliance with or enforcing relevant legislation shall rely on that presumption, <i>while the contractual relationship is assessed and determined at national level.</i>

<i>Reason</i>
While Member States are ultimately responsible for assessing and determining a contractual relationship and may establish a framework of measures to implement the directive, in accordance with their national legal and judicial systems, use of the presumption is not optional. It is the basis for the evaluation of the classification of the contractual relationship between a digital labour platform and a person performing work through that platform, which is one of the main aims of the text.

AMENDMENT 12

Chapter II, Article 4 — Legal Presumption, 2

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Controlling the performance of work within the meaning of paragraph 1 shall be understood as fulfilling at least <i>two</i> of the following: (a) effectively determining, or setting upper limits for the level of remuneration; (b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work; (c) supervising the performance of work or verifying the quality of the results of the work including by electronic means; d) effectively restricting the freedom, including	Controlling the performance of work within the meaning of paragraph 1 shall be understood as fulfilling at least <i>one</i> of the following: (a) effectively determining, <i>or</i> setting upper limits for the level of remuneration <i>or the price of a service;</i> (b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work; (c) supervising the performance of work or verifying the quality of the results of the work including by electronic means; d) effectively restricting the freedom, <i>by</i>

through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes; (e) effectively restricting the possibility to build a client base or to perform work for any third party.	<i>prioritising future job offers</i>, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours, <i>work pattern</i> or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes; (e) effectively restricting the possibility to build a client base, <i>including from among the platform's clients</i>, or to perform work for any third party. <i>This list of conditions can be complemented with additional practices considered to control the performance of work in national legislation, case-law or practice.</i>
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<i>Reason</i>
When digital labour platforms control certain components of the performance of work, they act as employers in an employment relationship. 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. The criteria listed in Article 4 each independently characterise an element of direction and control, and just one of them must be sufficient to trigger the presumption of there being an employer, which the worker or employer may still contest if necessary. With regard to the first criterion, determining or limiting the price of a service is tantamount to determining or limiting the level of a worker's remuneration, regardless of their status. With regard to the fourth criterion, the refusal of a task and the availability of the worker and his or her working hours are used by some platforms as conditions for allocating future work offers, which allows them to indirectly control the organisation of the work of the people working through the platform and to restrict their freedom to organise their working hours, a freedom that these individuals have when they are self-employed. Similarly, self-employed workers are free to organise their priorities and breaks, and thus to set their working patterns. If this freedom is limited, the platform is behaving as an employer. As regards the fifth criterion, the freedom to build business relationships with potential clients is an intrinsic aspect of being self-employed. If this freedom is curtailed, and the platform retains market exclusivity with its clients, it is acting as an employer. The list of criteria is not exhaustive.

Custom comment # 004/009 inserted by Schirru Valeria on 04-07-22 12:05:46.

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(* AM 3R *)

AMENDMENT 13

Chapter II, Article 4 — Legal Presumption, point 3

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Member States shall take supporting measures to ensure the effective implementation of the legal presumption referred to in paragraph 1 while	Member States shall take supporting measures to ensure the effective implementation of the legal presumption referred to in paragraph 1 while

taking into account the impact on start-ups, avoiding capturing the genuine self-employed and supporting the sustainable growth of digital labour platforms. In particular they shall: (f) ensure that information on the application of the legal presumption is made publicly available in a clear, comprehensive and easily accessible way; (g) develop guidance for digital labour platforms, persons performing platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5; (h) develop guidance for enforcement authorities to proactively target and <i>pursue</i> non-compliant digital labour platforms; (i) strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of labour law, while ensuring that such controls and inspections are proportionate and non-discriminatory.	taking into account the impact on start-ups, avoiding capturing the genuine self-employed, <i>fully respecting the autonomy of social partners</i>, and supporting the sustainable growth of digital labour platforms. In particular they shall: (f) ensure that information on the application of the legal presumption is made publicly available in a clear, comprehensive and easily accessible way; (g) develop guidance for digital labour platforms, persons performing platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5; (h) <i>develop guidance for digital labour platforms and for persons performing platform work to ensure that the sector of activity to which they belong is correctly determined and to enable the full implementation of the legislation and collective agreements applicable to that sector;</i> (i) develop guidance for enforcement authorities to proactively target and <i>prosecute</i> non-compliant digital labour platforms; (j) strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of labour law, while ensuring that <i>the bodies responsible for enforcing legislation are given the necessary staff and training to ensure that</i> such controls and inspections are <i>effective</i>, proportionate and non-discriminatory.
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<i>Reason</i>
In order to ensure legal certainty and transparency for the parties concerned, it is essential to allow the presumption to clarify, beyond the status of employer, employee or self-employed, which standards, both legislative and those arising from collective agreements, fully respecting the autonomy of social partners, apply to workers and the platform. <i>At the same time, enforcement authorities should be able to initiate legal proceedings against non-compliant digital labour platforms.</i> In addition, digital platform work may be highly dispersed, both geographically and in time, which may make monitoring it difficult with fewer staff. Moreover, such monitoring may require knowledge specific to the workings of the platform, in which the competent authorities need to be trained so that they can carry out this task <i>in a manner that produces good results.</i>

AMENDMENT 14

Chapter II, Article 5 – Possibility to rebut the legal presumption

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Member States shall ensure the possibility for any of the parties to rebut the legal presumption referred to in Article 4 in legal or administrative proceedings or both. 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 the digital labour platform. Such proceedings shall not have suspensive effect on the application of the legal presumption. 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.	Member States shall ensure the possibility for any of the parties to rebut the legal presumption referred to in Article 4 in legal or administrative proceedings or both. 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 the digital labour platform, <i>which must then demonstrate why the contractual relationship for which its status as employer is established under Article 4 should not be classified as an employment relationship.</i> Such proceedings shall not have suspensive effect on the application of the legal presumption. 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.

<i>Reason</i>
In order to ensure the effectiveness of the legal presumption provided for in Article 4, the detailed rules governing its rebuttal must be regulated. The burden of proof on the platform must therefore be strengthened, and must in no way weaken the legal presumption itself.

Custom comment # 005/009 inserted by Schirru Valeria on 04-07-22 12:20:40.

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(* AM 4R *)

AMENDMENT 15

Chapter III, Algorithmic management, Article 6 – Transparency on and use of automated monitoring and decision-making systems, point 3

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Digital labour platforms shall provide the	Digital labour platforms shall provide the

information referred to in paragraph 2 in the form of a 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 platform workers' request. The information shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language.	information referred to in paragraph 2 in the form of a 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 platform workers' request. The information shall be presented in a concise, transparent, intelligible and easily accessible form, <i>in the official language(s) of the Member State in which the worker performs their work</i> , using clear and plain language.
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<i>Reason</i>
Being able to receive the information referred to in this article in the official language(s) of the country where the worker works is essential to enable them to understand this information properly.

AMENDMENT 16

Chapter III, Algorithmic management, Article 6 – Transparency on and use of automated monitoring and decision-making systems, point 5

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
5. Digital labour platforms shall not process any personal data concerning platform workers that are not intrinsically connected to and strictly necessary for the performance of the contract between the platform worker and the digital labour platform. In particular they shall not: (a) process any personal data on the emotional or psychological state of the platform worker; (b) process any personal data relating to the health of the platform worker, except in cases referred to in Article 9(2), points (b) to (j) of Regulation (EU) 2016/679; (c) process any personal data in relation to private conversations, including exchanges with platform workers' representatives; (d) collect any personal data while the platform worker is not offering or performing platform work.	5. Digital labour platforms shall not process any personal data concerning platform workers that are not intrinsically connected to and strictly necessary for the performance of the contract between the platform worker and the digital labour platform. In particular they shall not: (a) process any personal data on the emotional or psychological state of the platform worker; (b) process any personal data relating to the health of the platform worker, except in cases referred to in Article 9(2), points (b) to (j) of Regulation (EU) 2016/679; (c) process any personal data in relation to private conversations, including exchanges with platform workers' representatives; (d) <i>use any data collected to establish or infer membership in or affiliation to a trade union or participation in a trade union activity;</i> e) collect any personal data while the platform worker is not offering or performing platform work.

<i>Reason</i>
Beyond exchanges with workers' representatives, it is essential to prevent the use of workers' data

aimed at limiting, preventing or penalising workers' organisation and collective action.

Custom comment # 006/009 inserted by Schirru Valeria on 04-07-22 12:25:13.

Please do not edit/delete/copy this comment: use always the macro instead.

(* AM 5 *)

AMENDMENT 17

Chapter III, Algorithmic management, Article 7 – Human monitoring of automated systems, point 2

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Without prejudice to Council Directive 89/391/EEC and related directives in the field of safety and health at work, digital labour platforms shall: (a) evaluate the risks of automated monitoring and decision-making systems to the safety and health of platform workers, 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.	Without prejudice to Council Directive 89/391/EEC and related directives in the field of safety and health at work, digital labour platforms shall: (a) evaluate, <i>involving and consulting workers or through their representatives</i>, the risks of automated monitoring and decision-making systems to the safety and health of platform workers, in particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks; (b) assess, <i>involving and consulting workers or through their representatives</i>, whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment; (c) introduce, <i>involving and consulting workers or through their representatives</i>, appropriate preventive and protective measures. (d) <i>Digital labour platforms shall make the above-mentioned information available to labour authorities, social protection authorities and other authorities responsible for health and safety at work, and to the representatives of persons performing platform work when carrying out their representative duties.</i>

Reason

While it is essential that digital labour platforms assess and prevent the risks posed by automated monitoring and decision-making systems to the safety and health of platform workers, self-regulation is insufficient. It is equally essential to involve labour, social protection and other authorities responsible for health and safety at work in this process, ***along with workers themselves and their representatives.***

Custom comment # 007/009 inserted by Schirru Valeria on 04-07-22 12:30:38.

Please do not edit/delete/copy this comment: use always the macro instead.

(* AM 6 *)

AMENDMENT 18

Chapter III, Algorithmic management, Article 8 – Human review of significant decisions, point 1

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
Human <i>review</i> of significant decisions 1. Member States shall ensure that platform workers have the right to obtain an explanation from the digital labour platform for any decision <i>taken or</i> supported by an automated decision-making system that significantly affects the platform worker's working conditions, as referred to in Article 6(1), point (b). In particular, Member States shall ensure that digital labour platforms provide platform workers 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 platform worker with a written statement of the reasons for any decision <i>taken or</i> supported by an automated decision-making system to restrict, suspend or terminate the platform worker's account, any decision to refuse the remuneration for work performed by the platform worker, any decision on the platform worker's contractual status or any decision with similar effects.	Human <i>oversight</i> of significant decisions 1. Member States shall ensure that platform workers have the right to obtain an explanation, <i>in the official language(s) of the Member State in which the worker performs their work,</i> from the digital labour platform for any decision supported by an automated decision-making system that significantly affects the platform worker's working conditions, as referred to in Article 6(1), point (b). In particular, Member States shall ensure that digital labour platforms provide platform workers 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. <i>Digital labour platforms shall ensure that any decision to restrict, suspend or terminate the platform worker's account, any decision affecting and changing the working conditions of the platform worker, such as refusing or changing the remuneration for work performed by the platform worker, any decision on the platform worker's contractual status or any decision with similar effects including restrictions on working time, is not based solely on automated processing.</i> Digital labour platforms shall provide the platform worker with a written statement of the reasons for any decision supported by an automated decision-making system to restrict, suspend or terminate the platform worker's account, any decision to refuse <i>or change the working conditions of the platform worker, such as</i> the remuneration for work performed by the platform worker, any decision on the platform worker's contractual status or any decision with similar effects. <i>Such platforms shall provide the platform worker with the contact details of the contact person designated by the digital labour platform to</i>

	<i>discuss and clarify the facts, circumstances and reasons that led to the decision.</i> <i>Digital labour platforms shall provide the platform worker, at his or her request, with the history of the evaluations or ratings provided by the recipients of their services, while guaranteeing their right to be forgotten and to rectification under the General Data Protection Regulation¹.</i>
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<i>Reason</i>
The worker's rights and obligations must be clearly set out, addressing more than the mere submission of the request by the worker. Moreover, in addition to the right to have a decision supported by algorithms <i>objectively and rationally</i> justified, platform workers must have the right to a decision taken by a human manager or supervisor, capable of taking into account the context in which it applies, going beyond factors provided for by an algorithm. This right not to be subject to a decision based solely on automated processing is recognised in Article 22 of the General Data Protection Regulation (GDPR). It should also be noted that the portability of workers' data is essential for their professional development. It is therefore important that platform workers can demonstrate their experience and the quality of their work on a platform to another employer or platform. Lastly, digital labour platforms must provide access to a contact person, including practical information.

AMENDMENT 19

Chapter III, Algorithmic management, Article 9 — Information and consultation, point 3

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
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 has more than 500 platform workers in a Member State, the expenses for the expert shall be borne by the digital labour platform, provided that they are proportionate.	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 has more than 50 platform workers in a Member State <i>in line with the scope of Directive 2002/14/EC as laid down in its Article 3(a)</i>, the expenses for the expert shall be borne by the digital labour platform, provided that they are proportionate.

¹ Regulation (EU) 2016/679.

<i>Reason</i>
Directive 2002/14, referred to in Article 9(1), provides in its <i>Article 3(a)</i> for derogations for SMEs, referring to thresholds of 20 and 50 workers. It would seem sensible to incorporate these thresholds laid down in EU law into the draft directive, in order to avoid the multiplication of different thresholds in legislative instruments applying to the same companies and to ensure the clarity of the applicable provisions. The threshold of 500 platform workers creates administrative and financial constraints for the access of platform workers and their representatives to an expert when defending their rights to information and consultation.

AMENDMENT 20

Final provisions, Article 20 — Non-regression and more favourable provisions, point 2

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
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 only apply insofar as such national rules are compatible with the rules on the functioning of the internal market.	2. This Directive <i>lays down minimum requirements and may not prevent a Member State from maintaining or introducing more stringent protective measures for workers.</i> It 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 only apply insofar as such national rules are compatible with the rules on the functioning of the internal market.

<i>Reason</i>
Pursuant to Article 153.2b TFEU, the Directive lays down minimum requirements for improving working conditions in platform work. Member States therefore can maintain or introduce any other more favourable measures applying to platform workers but also to all workers.

AMENDMENT 21

Final provisions, Article 22 – Review by the Commission

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
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,	By [5 years after entry into force], the Commission shall, after consulting the Member States, the social partners at Union level and key stakeholders, <i>including the European Committee of the Regions,</i> and taking into account the impact on

review the implementation of this Directive and propose, where appropriate, legislative amendments.	micro, small and medium-sized enterprises, review the implementation of this Directive and propose, where appropriate, legislative amendments.
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<i>Reason</i>
Local and regional authorities, which the European Committee of the Regions represents at European level, are able to take action to improve the working conditions of platform workers.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS,

1. welcomes the package of measures "to improve the working conditions in platform work and to support the sustainable growth of digital labour platforms in the EU" proposed by the European Commission on 9 December 2021;
2. agrees with the Commission's analysis that the misclassification of a worker's status and the consequences of this have an impact beyond the framework of platform work, although they are particularly serious and urgent in the platform economy;
3. emphasises that algorithmic management and its consequences for workers, both employed and self-employed, also have an impact beyond the framework of platform work, where they are intrinsic to the platforms' business model;
4. notes that its opinion² on work on digital platforms highlighted the challenges for platform workers posed by these two phenomena;
5. welcomes the fact that the European Commission's proposal for a directive proposes a general framework to tackle the misclassification of employment status in the context of platform work and establishes new material rights for people performing platform work to ensure fairness, transparency and accountability in algorithmic management;

Rebuttable presumption of an employment relationship

6. welcomes the mechanism of the rebuttable presumption of an employment relationship and the reversal of the burden of proof provided for in the directive to correctly determine the employment status of persons performing platform work; thus, the contractual relationship is ultimately assessed and determined at national level;
7. emphasises the importance of the presumption of an employment relationship giving the platform workers concerned access to all the rights derived from legislation or collective agreements that guarantee the status of self-employed person or employee, including the right to training;

² COR-2019-02655.

8. also emphasises that application of the presumption of an employment relationship requires platforms to fulfil their obligations, under the applicable national law, in terms of labour and income taxation, due diligence and corporate social responsibility;
9. believes that the rebuttable presumption of an employment relationship will also benefit genuine self-employed workers, in that it will require platforms to stop any subordination of these workers and provide them with all the flexibility implicit in their status;

Algorithmic management

10. welcomes the directive's provisions aimed at protecting platform workers from the risks associated with automated monitoring and decision-making systems and algorithmic management;
11. welcomes, in this context, the proposed rules on remedies and enforcement. There have been and continue to be enforcement shortcomings, particularly in cases with an international dimension. International enforcement is difficult, especially in relation to platform companies. Efficient cooperation must be ensured between Member State authorities and legal rights must be enforceable in a timely manner across borders;
12. welcomes the fact that the proposal does not affect national definitions of workers and that the proposed procedure is intended to ascertain whether the contractual relationship is an employment relationship in accordance with national definitions;
13. stresses the importance of a decision taken by a human person for any decision relating to human resources, such as a worker's earnings or promotion or the restriction or suspension of their work;
14. notes the increased use of algorithmic management and automated monitoring and decision-making systems outside platform work;
15. calls on the European Commission to propose a regulatory framework to extend the algorithmic management rights granted to platform workers, both employed and self-employed, to all workers subject to automated monitoring and decision-making systems in the course of their work, including outside platform work;
16. calls for a system to be made available through labour platforms' digital infrastructure for platform workers to provide feedback on automated monitoring and decision-making systems. This could be a key indicator and component for effectively monitoring automated systems, thus contributing both to quality assurance in terms of fundamental rights protection and to higher job satisfaction;

Protection for the self-employed

17. emphasises the need for digital platforms to provide full information on working conditions and any relevant significant decisions to platform workers in the official language(s) of the Member State in which the worker performs their work, and whenever possible, in the platform worker's language or the most widely spoken language of the region;
18. calls on the Member States to fully implement Council Recommendation 2019/C 387/01 on access to social protection³ for workers and the self-employed in order to ensure formal and effective coverage, adequacy and transparency of social protection schemes for all workers, both employed and self-employed;
19. draws attention to the gender dimension of these rules. In particular, women with care responsibilities welcome the flexibility that platform-based work offers in terms of working hours and, in some cases, workplace. Algorithmic management of working hours which, among other things, penalises workers for periods of "low productivity" can hit women hardest;
20. stresses the importance of the draft guidelines on the application of EU competition law to collective agreements for self-employed workers without employees, put forward by the European Commission to clarify the organisational arrangements that self-employed workers without employees can adopt in their relationship with platforms, including their ability to set up professional organisations;
21. points out that platform workers are often prevented from exercising their fundamental rights to freedom of association and collective bargaining, not least due to the lack of shared means of communication and opportunities to meet online or in person. Appropriate communication channels and access rights for trade unions must therefore be ensured through labour platforms' digital infrastructure;
22. reiterates that these guidelines should only concern individuals correctly classified as self-employed workers without employees and not workers who may be reclassified under the legal presumption provided for in the directive;

Local and regional dimension

23. is disappointed that the proposal for a directive makes no reference to local and regional authorities, even though in many Member States, it is sub-national authorities that are responsible for implementing labour legislation and determining the status of workers;
24. calls on the Member States and local and regional authorities to support local initiatives to ensure fairer platform work, such as the creation of digital labour platforms with the status of

³ 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](#)).

workers' cooperatives and to reduce the existing digital divide in different geographical and demographic contexts (less developed regions);

25. further recalls also that the opinion of the European Committee of the Regions on "Platform work – local and regional regulatory challenges"⁴ highlighted the capacity of local and regional authorities to take action to improve the working conditions of platform workers, whether by introducing social support measures for atypical forms of employment, by including in the parameters for awarding public contracts open to platforms social criteria relating to working conditions on platforms, or by using labour inspectorates or an equivalent body or institution to root out, within the scope of their competences, the fraudulent classification of workers;
26. notes that it is important not only to ensure that local and regional authorities are involved in improving working conditions in the context of platform work, but also to ensure that they are given support and training in order to strengthen their skills in this area, especially as they may be entrusted with legislative monitoring and enforcement tasks;

Proportionality and subsidiarity

27. considers that the draft directive complies with the requirements of the proportionality and subsidiarity principles. The added value of EU action in this field and the appropriateness of the legal bases chosen by the Commission are clear and consistent. The European Committee of the Regions also welcomes the fact that the Commission has included a subsidiarity assessment grid to accompany its legislative proposal.

Brussels, 29 June 2022

The President
of the European Committee of the Regions

Vasco Alves Cordeiro

The Secretary-General
of the European Committee of the Regions

Petr Bližkovský

⁴ COR-2019-02655

III. PROCEDURE

Title	Improving working conditions in platform work
Reference(s)	COM(2021) 761 final COM(2021) 762 final
Legal basis	Article 153(2)(b) TFEU, Article 153(1)(b) TFEU, Article 16(2) TFEU
Procedural basis	Rule 41(a) RP
Date of Council/EP referral/Date of Commission letter	17 January 2022
Date of Bureau/President's decision	16 December 2021
Commission responsible	SEDEC
Rapporteur	Yonnec POLET (BE/PES)
Analysis	24 January 2022
Discussed in commission	1 April 2022
Date adopted by commission	1 April 2022
Result of the vote in commission (majority, unanimity)	majority
Date adopted in plenary	29 June 2022
Previous Committee opinions	Opinion of the European Committee of the Regions (2020/C 79/07) on work on digital platforms, 5 December 2019, rapporteur: Dimitrios Birmpas (EL/PES)
Date of subsidiarity monitoring consultation	N/A