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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Proposal for the DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work *- Analysis of the final compromise text with a view to agreement*

Delegations will find attached a provisional agreement on the above proposal, subject to the agreement by the Committee of Permanent Representatives, with a view to reaching a first-reading agreement with the European Parliament.

The lawyer-linguists are expected to carry out the legal-linguist revision of the document in due course.

ANNEX

PUBLIC

DIRECTIVE (EU) .../...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure[3],

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1 OJ C 290, 29.7.2022, p. 95.
2 OJ C 375, 30.9.2022, p. 45.
3 Position of the European Parliament of … (not yet published in the Official Journal) and decision of the Council of … .

Whereas:

(1) Pursuant to Article 3 of the Treaty on European Union (TEU), 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 balanced economic growth and 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 fair and just 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 12 of the Charter provides that everyone has the right to freedom of assembly and of association at all levels. Article 16 of the Charter recognises the freedom to conduct a business. Article 21 of the Charter provides for the right to non-discrimination.

PUBLIC

(3) Principle No 5 of the European Pillar of Social Rights (the 'Pillar'), proclaimed at Gothenburg on 17 November 2017[4], 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**;** that occupational mobility is to be facilitated; and that employment relationships that lead to precarious working conditions are to be prevented, including by prohibiting the abuse of atypical contracts. Principle No 7 of the Pillar provides that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship and that, prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice and the right to access to effective and impartial dispute resolution and, in the case of unjustified dismissal, a right to redress, including adequate compensation. Principle No 10 of the Pillar provides that workers have the right to a high level of protection of their health and safety at work and the right to have their personal data protected in the employment context. The Porto Social Summit of May 2021 welcomed the Action Plan accompanying the Pillar[5] .

PUBLIC

[4] Interinstitutional Proclamation on the European Pillar of Social Rights (OJ C 428, 13.12.2017, p. 10).

[5] 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)0102.

(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. New forms of digital interaction and new technologies in the world of work, if well-regulated and implemented, can create opportunities for access to decent and quality jobs for people who traditionally lacked such access. However, if unregulated, they can also result in technology enabled surveillance, increase power imbalances and opacity about decision-making, as well as entail risks for decent working conditions, health and safety at work, equal treatment and for the right to privacy.

(5) Platform work is performed by individuals through the digital infrastructure of digital labour platforms that provide a service to their customers. It occurs in a wide variety of fields and is characterised by a high level of heterogeneity in the types of digital labour platform, the sectors covered and activities carried out as well as in the profiles of individuals performing platform work. By means of the algorithms, the digital labour platforms organise, 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.

PUBLIC

(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, most persons performing platform work have another job or another source of income and tend to be low paid, and platform work is rapidly evolving, resulting in new business models and forms of employment that sometimes escape the existing systems of protection. Therefore, it is important to accompany this process with adequate safeguards for persons performing platform work, irrespective of the nature of the contractual relationship. Notably, platform work can result in the unpredictability of working hours and 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 and social 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 direction or control. 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. Those courts have therefore reclassified purportedly self-employed persons as workers employed by the platforms.

PUBLIC

(8) Automated monitoring and decision-making systems powered by algorithms increasingly replace functions that managers usually perform in businesses, such as allocating tasks, the pricing of individual assignments, determining working schedules, giving instructions, evaluating the work performed, providing incentives or imposing sanctions. Digital labour platforms in particular 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 do not have access to information on how the algorithms work, which personal data are being used and how their behaviour affects decisions taken by automated systems. Workers' representatives, other representatives of persons performing platform work, and labour inspectorates and other competent authorities 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 obtain an explanation for those decisions, to discuss those decisions with a contact person or to contest them and to seek rectification and, where relevant, redress.

(9) When platforms operate in several Member States or across borders, it is often unclear where the platform work is performed and by whom, especially as regards online platform work. 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.

PUBLIC

(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[6] on transparent and predictable working conditions, Directive 2003/88/EC of the European Parliament and of the Council[7] on working time, Directive 2008/104/EC of the European Parliament and of the Council[8] 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. In addition, the Court of Justice of the European Union (the 'Court of Justice') has ruled that 'stand-by' time, during which the worker's opportunities to carry out other activities are significantly restricted, is to be regarded as working time[9]. Directive 2002/14/EC of the European Parliament and of the Council[10] establishes a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Union.

(11) The Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed[11] recommends Member States to take measures ensuring formal and effective coverage, adequacy and transparency of social protection schemes for all workers and self-employed persons.

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6 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).

7 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).

8 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).

9 Judgement of the Court of 21 February 2018 in Ville de Nivelles v Rudy Matzak, C-518/15, ECLI: EU:C:2018:82).

10 Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

11 OJ C 387, 15.11.2019, p. 1.

(12) Regulation (EU) 2016/679 of the European Parliament and of the Council[12] 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.

(13) Regulation (EU) 2019/1150 of the European Parliament and of the Council[13] promotes fairness and transparency for business users using online intermediation services provided by operators of online platforms.

(14) 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 rights for platform workers and rules to improve the protection of personal data of persons performing platform work 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 rights aiming at promoting transparency, fairness and accountability. Those rights should also be aimed at protecting workers and improving working conditions in algorithmic management, including the exercise of collective bargaining. 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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12 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).

13 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).

(15) 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 (TFUE), 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 including the use of automated monitoring and decision-making systems.

(16) 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.

(17) This Directive aims to improve the working conditions of platform workers and to protect the personal data of persons performing 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), point (b), TFEU, this Directive sets out rules aimed at supporting the correct determination of the employment status of persons performing platform work and improving working conditions and transparency on platform work, including in cross-border situations, as well as the protection of workers in the context of algorithmic management. As regards Article 16 TFEU, this Directive establishes rules 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.

PUBLIC

(18) This Directive should apply to persons performing platform work in the Union who have or who**,** based on an assessment of facts, are deemed to have, an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the case-law of the Court of Justice. The provisions on algorithmic management which are related to the processing of personal data should also apply to persons performing platform work who do not have an employment contract or employment relationship.

(19) 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.

(20) 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 process personal data of persons performing platform work and take or support decisions that affect, inter alia, working conditions. Those features make digital labour platforms a distinct form of organising the service provision by independent professionals compared to more traditional forms of organising service provision, such as traditional forms of ride hailing or transport services dispatch. Furthermore, the increased complexity in the structural organisation of digital labour platforms goes hand in hand with their fast-paced evolution, often creating systems with a "variable geometry" in the organisation of work. For instance, there could be cases where digital labour platforms provide a service whose recipient is the digital labour platform itself or a distinct business entity within the same group of undertakings, or organise work in such a way that it blurs the traditional patterns which are typically recognisable in the systems of provision of services.

PUBLIC

This might also be the case of microwork or crowdwork platforms, which are a type of online digital labour platform that provide businesses and other clients with access to a large and flexible workforce for the completion of small tasks that can be performed remotely using a computer and internet connection, such as tagging. Tasks are split up and distributed to a large number of individuals (the "crowd") who can complete them asynchronously.

(21) 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, regardless of its designation and nature, 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, without any further involvement of the platform, for instance by advertising offers or requests for services or aggregating and displaying available service providers in a specific area 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 allow individuals who are not professionals to resell goods, 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.

(22) Arrangements and processes of workers' representation vary between Member States, reflecting their respective histories, institutions, and economic and political situations. Among the enabling conditions for a well-functioning social dialogue are the existence of strong, independent trade unions and employers' organisations with access to relevant information necessary to participate in social dialogue and respect for the fundamental rights of freedom of association and of collective bargaining.

PUBLIC

(23) According to the International Labour Organization (ILO) Workers' Representatives Convention 135 (1971) , currently ratified by 24 Member States, worker representatives can be persons who are recognised as such under national law or practice, whether they are trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. That Convention states that where both trade union representatives and elected representatives exist in the same undertaking, such representation is not be used to undermine the positions of the trade unions concerned or of their representatives, and that cooperation between the elected representatives and the trade unions concerned or their representatives is to be encouraged.

(24) Member States have ratified the ILO Right to Organise and Collective Bargaining Convention No 98 (1949), according to which acts which are designated to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, are deemed to constitute acts of interference, against which ILO Member States need to protect workers' organisations. It is important that such acts are addressed in order to ensure that when defining or implementing practical arrangements for information and consultation under this directive, employers and the workers' representatives work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the workers.

PUBLIC

(25) 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. This way of organising platform work often results in a vast array of different and complex multi-party relationships, including subcontracting chains, as well as in blurred responsibilities between the digital labour platform and the intermediaries. Persons performing platform work through intermediaries are exposed to the same risks related to the misclassification of their employment status and the use of automated monitoring or decision-making systems as persons performing platform work directly for the digital labour platform. Member States should therefore lay down appropriate measures 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. Member States should lay down appropriate mechanisms, including, where appropriate, through joint and several liability systems.

(26) 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 thereby to ensure that platform workers fully enjoy the same employment rights as other workers in accordance with relevant Union law, national law and collective agreements. When the existence of an employment relationship is established based on facts, the party or parties acting as employer should be clearly identified and should comply with the corresponding employers' obligations under Union law, national law and collective agreements applicable in the sector of activity.

PUBLIC

(27) Where a party is found to be an employer and fulfils the conditions of being a temporary work agency in accordance with Directive 2008/104/EC, the obligations under that Directive are to apply.

(28) 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 ILO Employment Relationship Recommendation 198 (2006), is particularly relevant in the case of platform work, where contractual conditions are often unilaterally determined by one party.

(29) 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. Such false declaration is often made to avoid certain legal or fiscal obligations and to create a competitive advantage compared to law-abiding companies. The Court of Justice has ruled[14] 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[15] if their independence is merely notional, thereby disguising an employment relationship.

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14 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.

15 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.

(30) Ensuring correct determination of the employment status should not prevent the improvement of conditions of genuine self-employed persons performing platform work. The Commission communication of 30 September 2022, which contains Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-persons and indicates that, according to the Commission, collective agreements between solo self-employed persons and digital labour platforms relating to working conditions fall outside the scope of Article 101 TFEU can, to that end, serve as useful guidance. It is crucial, however, that the introduction of those collective agreements does not undermine the objectives pursued by this Directive, in particular the correct classification of persons performing platform work with regard to their employment status.

(31) Control and direction can take different forms in concreto, considering that the platform economy model is constantly evolving; for instance, the digital labour platform might exert direction and control not only by direct means, but also by applying sanctions or other forms of adverse treatment or pressure. In the context of platform work, it is often difficult for the persons performing platform work to have appropriate access to the tools and the information required to assert before a competent authority the actual nature of their contractual relationship and the rights derived therefrom. In addition, the management of persons performing platform work through automated monitoring and decision-making systems is characterised by an opaque flow of information from the digital labour platform. These features of platform work perpetuate the phenomenon of misclassification as false self-employment, thus hindering the correct determination of the employment status and the access to decent living and working conditions for platform workers. Member States should therefore lay down measures providing for an effective procedural facilitation for persons performing platform work when ascertaining the correct determination of their employment status. In this light, the presumption of an employment relationship in favour of the persons performing platform work is an effective instrument which greatly contributes to the improvement of living and working conditions of platform workers. Therefore, such relationship should be legally presumed to be 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, when facts indicating control and direction are found.

PUBLIC

(32) An effective legal presumption requires that national law makes it effectively easy for the person performing platform to benefit from the presumption. The requirements under the legal presumption should not be burdensome and should ease a person performing platform work's difficulties in providing evidence indicating the existence of an employment relationship in a situation of unbalance of power vis a vis the digital labour platform. The purpose of the presumption is to effectively address and correct the unbalance of power between the persons performing platform work and the digital labour platform. The modalities of the legal presumption, should be set out by the Member States, in so far as those ensure the establishment of an effective rebuttable legal presumption of employment that constitutes a procedural facilitation to the benefit of persons performing platform work, and do not have the effect of increasing the burden of requirements on persons performing platform work, or their representatives, in proceedings ascertaining their employment status. The application of the legal presumption should not automatically lead to the reclassification of persons performing platform work. Where the digital labour platform seeks to rebut the legal presumption, it should be for the digital labour platform to prove 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 States, with consideration to the case-law of the Court of Justice.

PUBLIC

(33) In line with the objective of this Directive to improve working conditions for platform workers, by correctly determining their employment relationship and thereby ensuring that they enjoy the relevant rights deriving from Union law, national law and collective agreements, 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, it is crucial that the presumption is effectively applied in all Member States, pursuant to this Directive. In particular, 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.

(34) In the interests of legal certainty, the legal presumption should not have any retroactive legal effects and should therefore only apply to the period starting from ... [*the transposition date of this Directive],* 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, including Directive (EU) 2019/1152, predating this Directive.

PUBLIC

(35) 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. 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. 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.

(36) Effective implementation of the legal presumption through a framework of supporting measures is essential to ensure legal certainty and transparency for all parties involved. Such measures should include disseminating comprehensive information to the public, developing guidance in the form of concrete and practical recommendations for digital labour platforms, persons performing platform work, social partners and for competent national authorities and providing effective controls and inspections, in line with national law and practice, including, as appropriate, by establishing targets for such controls and inspections.

(37) Member States' competent national authorities should avail themselves of the collaboration among themselves, including inter alia through exchange of information, as provided for under national law and practice, for the purpose of ensuring the correct determination of the employment status of persons performing platform work.

PUBLIC

(38) Those measures should support the correct determination of the existence of 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, including, if appropriate, the confirmation of a classification as genuine self-employed. To enable those authorities to carry out their tasks in enforcing the provisions of this Directive, while underlining the competence of Member States to decide on the staffing of national authorities, they need to be adequately staffed. This requires adequate human resources for competent national authorities, having the required skills and access to appropriate training and to provide for the availability of technical expertise in the field of algorithmic management. ILO Labour Inspection Convention 81 (1947) provides for indications on how to determine a sufficient number of labour inspectors for the effective discharge of their duties. A decision of a competent national authority resulting in a change of the employment status of a person performing platform work should be taken into account by competent national authorities, when deciding on inspections and controls they intend to carry out.

PUBLIC

(39) 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 related to the processing of personal data by use of automated monitoring or decision-making systems in the context of platform work. Article 88 of Regulation (EU) 2016/679 already provides that Member States may, by law or by means of collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context. This Directive provides for more specific safeguards concerning the processing of personal data by means of automated systems in the context of platform work, thereby providing for a higher level of protection of persons performing platform work's personal data. In particular, this Directive establishes more specific rules in relation to Regulation (EU) 2016/679 with regard to the use and transparency of automated decision-making. This Directive also establishes additional measures to Regulation (EU) 2016/679 in the context of platform work to safeguard the protection of their personal data, in particular where decisions are taken or supported by the automated processing of personal data. In that 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.

PUBLIC

(40) Articles 5, 6 and 9 of Regulation (EU) 2016/679 require that personal data are processed in a lawful, fair and transparent manner. This implies certain restrictions on the manner in which digital labour platforms may process personal data by means of automated monitoring and decision-making systems. Nonetheless, in the particular case of platform work, the consent of persons performing platform work to the processing of their personal data cannot be assumed to be freely given. Persons performing platform work often do not have a genuine free choice or are not able to refuse or withdraw consent without detriment to their contractual relationship, given the imbalance of power between the person performing platform work and the digital labour platform. Therefore, digital labour platforms should not process the personal data of persons performing platform work on the basis that a person performing platform work has given consent to the processing of his or her personal data.

(41) Digital labour platforms should not, by means of automated monitoring systems and by means of any automated system used to support or take decisions affecting persons performing platform work, 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, collect any personal data while the person performing platform work is not offering or performing platform work, process any personal data to predict the exercise of fundamental rights, including the right of association, the right of collective bargaining and action or the right to information and consultation, as defined in the Charter, and they should not process personal data to infer racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, the emotional or psychological state, trade union membership, a person's sex life or sexual orientation.

PUBLIC

(42) Digital labour platforms should not process biometric data of persons performing platform work for the purpose of identification, namely establishing a person's identity by comparing his or her biometric data to stored biometric data of a number of individuals in a database (one-to-many identification). This does not affect the digital labour platforms' possibility to conduct biometric verification, namely verifying a person's identity by comparing his or her biometric data to data previously provided by that same person (one-to-one verification or authentication), where such processing of personal data is otherwise lawful under Regulation (EU) 2016/679 and other relevant Union and national law.

(43) Biometrics-based data are personal data which result from specific technical processing relating to the physical, physiological or behavioural features, signals or characteristics of a natural person, such as facial expressions, movements, pulse frequency, voice, keystrokes or gait, which may or may not allow or confirm the identification of a natural person.

(44) The processing of personal data by automated monitoring and decision-making systems used by digital labour platforms is likely to result in a high risk to the rights and freedoms of persons performing platform work. Therefore, digital labour platforms should always carry out a data protection impact assessment in accordance with the requirements laid down in Article 35 of Regulation (EU) 2016/679. Taking into account the effects that decisions taken by automated decision-making systems have on persons performing platform work and, notably, platform workers, this Directive establishes more specific rules regarding the consultation of persons performing platform work and their representatives in the context of data protection impact assessments.

PUBLIC

(45) In addition to what is provided in Regulation (EU) 2016/679, digital labour platforms should be subject to transparency and information obligations in relation to automated monitoring systems and automated systems which are used to take or support decisions that affect persons performing platform work, including platform workers' working conditions, such as their access to work assignments, their earnings, their safety and health, their working time, their promotion or its equivalent and their contractual status, including the restriction, suspension or termination of their account. 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. Individual platform workers should receive that information in a concise, simple and understandable form, in so far as the systems and their features directly affect them and, where applicable, their working conditions, so that they are effectively informed. They should also have the right to request comprehensive and detailed information about all relevant systems. Comprehensive and detailed information regarding such automated systems should also be provided to representatives of persons performing platform work, as well as to national competent authorities upon their request, in order to enable them to exercise their functions.

(46) In addition to the right to portability of personal data which the data subject has provided to a controller in accordance with Article 20 of Regulation (EU) 2016/679, persons performing platform work should have the right to receive, without hindrance and in a structured, commonly used and machine-readable format, any personal data generated through their performance of work in the context of a digital labour platform's automated monitoring and decision-making systems, including ratings and reviews, to transmit them or have them transmitted to a third party, including another digital labour platform. Digital labour platforms should provide persons performing platform work with tools to facilitate effective data portability that is free of charge in order to exercise their rights under this Directive and under Regulation (EU) 2016/679.

PUBLIC

(47) In some cases digital labour platforms do not terminate formally their relationship with a person performing platform work, but they restrict the account of the person performing platform work. This is to be understood as any limitation imposed on the possibility to perform platform work through the account, including restricting the access to the account or the access to work assignments.

(48) 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 ensure human oversight and regularly, and at least every two years, carry out an evaluation of the impact of individual decisions taken or supported by automated monitoring or decision-making systems on persons performing platform work including, where applicable, their working conditions and equal treatment at work. Workers' representatives should be involved in the evaluation process.

Digital labour platforms should ensure sufficient human resources for this purpose. The persons charged by the digital labour platform with the function of overview should have the necessary competence, training and authority to exercise that function and in particular the right to override automated decisions. They should be protected from dismissal, disciplinary measures or other adverse treatment for exercising their functions. In addition, it is important that digital labour platforms tackle systematic shortcomings on the use of automated monitoring and decision-making systems. Therefore, when the outcome of the oversight activities identifies high risks of discrimination at work, or the infringement of rights of persons performing platform work, digital labour platforms should take appropriate measures to address them, including the possibility to discontinuing such systems.

PUBLIC

(49) 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. In addition to Regulation (EU) 2016/679 in the context of algorithmic management and considering the serious impact on persons performing platform work of decisions of restricting, suspending or terminating the contractual relationship or the account of the person performing platform work, or any decision of equivalent detriment, these decisions should always be taken by a human being. In addition to Regulation (EU) 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 without undue delay for a decision, the lack of a decision or a set of decisions supported, or, if applicable, taken by automated decision-making systems.

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, as certain decisions are likely to have particularly significant negative effects on persons performing platform work, in particular their potential earnings, if a digital labour platform restricts, suspends or terminates the account of a person performing platform work, refuses the payment for work performed by that person, or affects the essential aspects of the contractual relationship, the digital labour platform should provide the person performing platform work, at the earliest opportunity and at the latest on the day on which such decisions take effect, with a written statement of reasons for that decision. Where the explanation or reasons obtained are not satisfactory or where persons performing platform work consider their rights infringed by a decision, 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, and in any event within two weeks of receipt of the request.

PUBLIC

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 adequate compensation for the damage sustained, and take the necessary steps to avoid similar decisions in the future, including a discontinuance of its use. With regard to human review of decisions, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.

(50) Council Directive 89/391/EEC[16] introduces measures to encourage improvements in the safety and health of workers at work, including the obligation for employers to assess the occupational health and safety risks and lays down general principles of prevention that employers are to implement. Automated monitoring and decision-making systems potentially have significant impact on the safety and on the physical and mental health of platform workers.

Algorithmic direction, evaluation, and discipline intensify work effort by increasing monitoring, raising the pace required from workers, minimising gaps in workflow, and extending work activity beyond the conventional workplace and working hours. The limited learning at work and influence over tasks due to the use of non-transparent algorithms, work intensification and insecurity highlighted above is likely to increase workforce stress and anxiety. Therefore, 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.

[16] 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).

(51) Information and consultation of workers' representatives, regulated at Union level under Directive 2002/14/EC, is key to fostering effective social dialogue. 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, additional measures are necessary to ensure that digital labour platforms inform and effectively consult platform workers' representatives before such decisions are taken, at the appropriate level. Given the technical complexity of algorithmic management systems, information should be given in due time to enable platform workers' representatives to prepare for consultation, 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.

(52) In the absence of workers' representative, it should be possible for the workers to be directly informed by the digital labour platform of any such introduction or substantial change as regards automated monitoring and decision-making systems.

PUBLIC

(53) Self-employed persons constitute 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 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 regard to human review of significant decisions, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.

(54) The obligations of digital labour platforms including on information and consultation in respect of automated monitoring and decision-making systems apply irrespective of whether the automated monitoring and decision-making systems are being managed by the digital labour platform itself or by an external service provider which carries out data processing on behalf of the digital labour platform.

PUBLIC

(55) In order to enable competent national authorities 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. A systematic and transparent system of information, including at cross-border level, is also pivotal to prevent unfair competition among digital labour platforms. This obligation should not replace the obligations of declaration or notification established by other Union instruments.

(56) The European Labour Authority contributes to ensuring fair labour mobility across the Union, in particular it facilitates the cooperation and the exchange of information between Member States with a view to the consistent, efficient and effective application and enforcement of relevant Union law, coordinates and supports concerted and joint inspections, carries out analyses and risk assessment on issues of cross-border labour mobility and supports Member States in tackling undeclared work. It has therefore an important role to play in addressing the challenges linked to the cross-border activities of many digital labour platforms as well as those linked to undeclared work in platform work.

(57) Information on platform work performed by persons performing platform work through digital labour platforms, their number, 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. Those authorities and representatives should also have the right to ask digital labour platforms for additional clarifications and details regarding the information provided.

PUBLIC

(58) The use of undeclared work in delivery platforms has been evidenced in several Member States. That practice is carried out through rented identities, where persons performing platform work with the right to work who register in the platform rent their accounts to undocumented migrants and to minors. This entails a lack of protection for those persons, including illegally staying third-country nationals, whose situation often results in a limitation to access to justice for fear of retaliation or risk of deportation. Directive 2009/52/EC of the European Parliament and of the Council[17] provides for minimum standards on sanctions and measures against employers of illegally staying third country nationals. The transparency obligations and the rules on intermediaries laid down in this Directive strongly contribute, together with Directive 2009/52/EC, to address the issue of undeclared work in platform work. Furthermore, it is key that, digital labour platforms ensure reliable verification of platform workers' identities.

(59) 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 timely, effective and impartial dispute resolution and a right to redress, including adequate 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.

(60) 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.

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[17] Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

(61) Platform work is characterised by the lack of a common workplace where persons performing platform work 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 privately and securely with each other and be contacted by their representatives. 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.

(62) Persons performing platform work are exposed, in particular in on-location work, to a risk of violence and harassment, without having physical workplace where they are able to address complaints. Harassment and sexual harassment are liable to have a negative impact on the health and safety of platform workers. With regard to platform work, Member States should provide for preventive measures, including the setting up of effective reporting channels. Member States are also encouraged to support effective measures to combat violence and harassment in platform work and, in particular, to include appropriate channels for reporting for self-employed persons.

(63) In administrative or judicial proceedings regarding the rights and obligations laid down in this Directive, 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, or directs, the performance of work, as well as other elements regarding the use of automated monitoring or decision-making systems, 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.

PUBLIC

(64) Given that this Directive provides for more specific rules and additional rules in relation to Regulation (EU) 2016/679 in the context of platform work to ensure the protection of personal data of persons performing platform work, the national supervisory authorities referred to in Regulation (EU) 2016/679 should be competent to monitor the application of those safeguards. The procedural framework of Regulation (EU) 2016/679, in particular its Chapters VI, VII and VIII thereof, should apply for the enforcement of the more specific and 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.

(65) 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 other fields of law, like labour law. Data protection supervisory authorities and other competent authorities should therefore cooperate, including at cross-border level, in the enforcement of this Directive, including by exchanging relevant information with each other, without affecting the independence of data protection supervisory authorities.

(66) 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, as far as platform workers are concerned, or termination of contract, as far as self-employed persons are concerned, and from equivalent measures including the suspension of the account.

(67) Since the twofold objective of this Directive, namely to improve working conditions in platform work and the protection of personal data, 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 TEU. 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.

(68) 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, including as regards mechanisms to ascertain the existence of an employment relationship, 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 as well as existing prerogatives conferred on representatives.

(69) The autonomy of the social partners is to be respected. Member States should be able to allow the social partners, under specific conditions, to maintain, negotiate, conclude and enforce collective agreements which differ from certain provisions, while respecting the overall protection of platform workers.

(70) In implementing this Directive Member States should avoid imposing unnecessary administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized enterprises (SMEs). Member States are therefore invited to assess the impact of their transposition measures on SMEs in order to ensure that they are not disproportionately affected, paying particular attention to microenterprises and to the administrative burden.

PUBLIC

(71) 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.

(72) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[18], 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.

(73) 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[19] and delivered an opinion on 2 February 2022[20],

HAVE ADOPTED THIS DIRECTIVE:

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18 OJ C 369, 17.12.2011, p. 14.

19 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).

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CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. The purpose of this Directive is to improve working conditions and the protection of personal data in platform work by:

   (a) introducing measures to facilitate the correct determination of the employment status of persons performing platform work;

   (b) promoting transparency, fairness, human oversight, safety and accountability in algorithmic management in platform work; and

   (c) improving transparency in platform work, including in cross-border situations.

2. 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.

   This Directive also lays down rules to improve the protection of natural persons in relation to the processing of their personal data by providing measures on algorithmic management applicable to persons performing platform work in the Union, including those who do not have an employment contract or employment relationship.

3. This Directive applies to digital labour platforms organising platform work performed in the Union, irrespective of their place of establishment and irrespective of the law otherwise applicable.

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 or an intermediary and the individual, 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 person 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;

PUBLIC

(5) 'intermediary' means a natural or legal person that, for the purpose of making platform work available to or through a digital labour platform:

(a) establishes a contractual relationship with that digital labour platform and with the person performing platform work; or

(b) is in a subcontracting chain between that digital labour platform and the person performing platform work;

(6) ‘workers’ representatives’ means representatives of platform workers, such as trade unions and representatives who are freely elected by the platform workers, in accordance with national law and practice*;*

(7) ‘representatives of persons performing platform work’ means workers’ representatives and, insofar as they are provided for under national law and practice, representatives of persons performing platform work other than platform workers;

(8) 'automated monitoring systems' means systems which are used for, or support monitoring, supervising or evaluating the work performance of persons performing platform work or the activities carried out within the work environment, including by collecting personal data, through electronic means;

(9) ‘automated decision-making systems’ means systems which are used to take or support, through electronic means, decisions that significantly affect persons performing platform work, including the working conditions of platform workers, in particular decisions affecting their recruitment, access to and organisation of work assignments, their earnings including the pricing of individual assignments, their safety and health, their working time, their access to training, promotion or its equivalent, their contractual status, including the restriction, suspension or termination of their account.

PUBLIC

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 which allow individuals who are not professionals to resell goods.

Article 3

Intermediaries

Member States shall take appropriate measures to ensure that, when a digital labour platform makes use of intermediaries, persons performing platform work who have a contractual relationship with an intermediary enjoy the same level of protection afforded under this Directive as those who have a direct contractual relationship with a digital labour platform. To that effect, Member States shall take measures, in accordance with national law and practice, to establish appropriate mechanisms, which shall include, where appropriate, joint and several liability systems.

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CHAPTER II

EMPLOYMENT STATUS

Article 4

Correct determination of the employment status

1. Member States shall have appropriate and effective procedures in place 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, including through the application of the presumption of an employment relationship in accordance with Article 5**.**

2. The determination of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, including 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.

3. Where the existence of an employment relationship is established, the party or parties assuming the obligations of the employer shall be clearly identified in accordance with national legal systems.

Article 5

Legal presumption

1. The contractual relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be an employment relationship when facts indicating control and direction, according to national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found. Where the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove 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 States, with consideration to the case-law of the Court of Justice.

2. To that effect, Member States shall establish an effective rebuttable legal presumption of employment that constitutes a procedural facilitation to the benefit of persons performing platform work, and Member States shall ensure that that legal presumption does not have the effect of increasing the burden of requirements on persons performing platform work, or their representatives, in proceedings ascertaining their employment status.

3. 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 proceedings which concern tax, criminal and social security matters. However, Member States may apply the legal presumption in those proceedings as a matter of national law.

PUBLIC

4. Persons performing platform work, and, in accordance with national law and practice, their representatives, shall have the right to initiate the proceedings referred to in paragraph 3 first subparagraph for ascertaining the correct employment status of the person performing platform work.

5. Where a competent national authority considers that a person performing platform work might be wrongly classified, it shall initiate appropriate actions or proceedings, in accordance with national law and practice, in order to ascertain the employment status of that person.

6. With regard to contractual relationships entered into before and still ongoing on the date set out in Article 29(1), the legal presumption referred to in this Article shall only apply to the period starting from that date.

Article 6

Framework of supporting measures

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

(a) develop appropriate guidance, including in the form of concrete and practical recommendations, for digital labour platforms, persons performing platform work and the social partners to understand and implement the legal presumption including on the procedures for rebutting it;

(b) develop guidance and establish appropriate procedures in line with national law and practice for competent national authorities, including on the collaboration between different competent national authorities, to proactively identify, target and pursue digital labour platforms which do not comply with rules on correct determination of the employment status;

PUBLIC

(c) provide for effective controls and inspections conducted by national authorities, in line with national law or practice**,** and in particular provide, where appropriate, for controls and inspections on specific digital labour platforms where the existence of an employment status of a person performing platform work has been ascertained by a competent national authority, while ensuring that such controls and inspections are proportionate and non-discriminatory.

(d) provide for appropriate training for competent national authorities and provide for the availability of technical expertise in the field of algorithmic management, to enable those authorities to carry out the tasks referred to under point (b).

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CHAPTER III

ALGORITHMIC MANAGEMENT

Article 7

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 other persons performing platform work and their representatives;

   (c) collect any personal data while the person performing platform work is not offering or performing platform work;

   (d) process personal data to predict the exercise of fundamental rights, including the right of association, the right of collective bargaining and action or the right to information and consultation, as defined in the Charter;

   (e) process any personal data to infer racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, the emotional or psychological state, trade union membership, a person's sex life or sexual orientation;

   (f) process any biometric data, as defined in Article 4, point (14), of Regulation (EU) 2016/679, of a person performing platform work to establish that person’s identity by comparing that data to stored biometric data of individuals in a database.

2. The provisions of this Article shall apply to all persons performing platform work from the start of the recruitment or selection procedure.

3. In addition to automated monitoring and decision-making systems, this Article shall also apply to digital labour platforms where they use automated systems supporting or taking decisions that affect persons performing platform work in any manner.

Article 8

Data protection impact assessment

1. Processing of personal data by a digital labour platform by means of automated monitoring and decision-making systems is a type of processing likely to result in a high risk to the rights and freedoms of natural persons within the meaning of Article 35(1) of Regulation (EU) 2016/679. When carrying out, pursuant to Article 35(1) of that Regulation, an assessment of the impact of the processing of personal data by automated monitoring and decision-making systems on the protection of personal data of persons performing platform work, including on the limitations on processing set out in Article 7 of this Directive, digital labour platforms, acting as controllers as defined in Article 4, point (7), of that Regulation, shall seek the views of persons performing platform work and their representatives.

2. Digital labour platforms shall provide the assessment to workers' representatives.

Article 9

Transparency on automated monitoring or decision-making systems

1. Member States shall require digital labour platforms to inform persons performing platform work, platform workers' representatives and, upon request, competent national authorities, of the use of automated monitoring or decision-making systems.

PUBLIC

That information shall concern:

(a) all types of decisions supported or taken by automated decision-making systems, including when such systems support or take decisions not affecting persons performing platform work in a significant manner;

(b) 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 data and actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;

(iii) the aim of the monitoring and how the system is to achieve it;

(iv) the recipients or categories of recipients of the personal data processed by such systems and any transmission or transfer of such personal data including within a group of undertakings;

(c) 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 categories of data and 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 of equivalent or detrimental effect.

PUBLIC

2. 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. The information shall be presented in a transparent, intelligible and easily accessible form, using clear and plain language.

3. Persons performing platform work shall receive concise information about the systems and their features that directly affect them, including their working conditions where applicable, at the latest on the first working day, prior to the introduction of changes affecting working conditions, the organisation of work or monitoring work performance, or at any time upon their request. Upon their request, they shall also receive also receive comprehensive and detailed information about all relevant systems and their features.

4. Workers' representatives shall receive comprehensive and detailed information about all relevant systems and their features. They shall receive that information prior to the use of those systems or to the introduction of changes affecting working conditions, the organisation of work or monitoring work performance or at any time upon their request. Competent national authorities shall receive comprehensive and detailed information at any time upon their request.

5. Digital labour platforms shall provide the information referred to in paragraph 1 to persons undergoing a recruitment or selection procedure. That information shall be provided in line with paragraph 2, shall be concise and only concern the automated monitoring or decision-making systems used in that procedure and shall be provided before the start of that procedure.

PUBLIC

6. Persons performing platform work shall have the right to the portability of personal data generated through their performance of work in the context of a digital labour platform's automated monitoring and decision-making systems, including ratings and reviews without adversely affecting the rights of the recipient of the service under Regulation (EU) 2016/679. The digital labour platform shall provide persons performing platform work, free of charge, with tools to facilitate the effective exercise of their portability rights, referred to in Article 20 of Regulation (EU) 2016/679 and in the first sentence of this paragraph. At the request of the person performing platform work, the digital labour platform shall transmit such personal data directly to a third party.

Article 10

Human oversight of automated systems

1. Member States shall ensure that digital labour platforms oversee and, with the involvement of workers' representatives, regularly, and in any event every two years, carry out an evaluation of, the impact of individual decisions taken or supported by automated monitoring and decision-making systems used by the digital labour platform, on persons performing platform work, including, where applicable, on their working conditions and equal treatment at work.

2. Member States shall require digital labour platforms to ensure sufficient human resources for effective oversight and evaluation of 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 oversight and evaluation 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.

PUBLIC

3. Where the oversight or the evaluation referred to in paragraph 1 identifies a high risk of discrimination at work in the use of automated monitoring and decision-making systems or finds that individual decisions taken or supported by automated monitoring and decision-making systems have infringed the rights of a person performing platform work , the digital labour platform shall take the necessary steps, including, if appropriate, a modification of the automated monitoring and decision-making system or a discontinuance of its use, in order to avoid such decisions in the future.

4. Information on the evaluation pursuant to paragraph 1 shall be transmitted to platform workers' representatives. Digital labour platforms shall also make this information available to persons performing platform work and the competent national authorities upon their request.

5. Any decision to restrict, suspend or terminate the contractual relationship or the account of a person performing platform work or any other decision of equivalent detriment shall be taken by a human being.

PUBLIC

Article 11

Human review

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 without undue delay. The explanation, in oral or written form, shall be presented in a transparent and intelligible manner, using clear and plain language. 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 supported or, where applicable, taken by an automated decision-making system to restrict, suspend or terminate the account of the person performing platform work, any decision to refuse the payment for work performed by the person performing platform work, any decision on the contractual status of the person performing platform work, any decision with similar effects or any other decision affecting the essential aspects of the employment or other contractual relationships, without undue delay and at the latest on the day which it takes effect.

2. Persons performing platform work and, in accordance with national law or practice, representatives acting on behalf of the persons performing platform work shall have the right to request the digital labour platform to review the decisions referred to in paragraph 1. The digital labour platform shall respond to such request by providing the person performing platform work with a sufficiently precise and adequately 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.

PUBLIC

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 case within two weeks of the adoption of the decision. Where such rectification is not possible, the digital labour platform shall offer adequate compensation for the damage sustained. In any event, the digital labour platform shall take the necessary steps, including, if appropriate, a modification of the automated decision-making system or a discontinuance of its use, 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 as defined in Article 2, point (1), of Regulation (EU) 2019/1150.

Article 12

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. In relation to the requirements under paragraph 1 of this Article, digital labour platforms shall ensure effective information, consultation and participation of platform workers and/or their representatives in accordance with Articles 10 and 11 of Council Directive 89/391/EEC.

PUBLIC

3. 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 safety and the physical and mental health of platform workers.

4. In addition to automated decision-making systems, this Article shall also apply where they use automated systems supporting or taking decisions that affect platform workers in any manner.

5. In order to ensure safety and health of platform workers, including from violence and harassment, Member States shall ensure that digital labour platforms take preventive measures, including effective reporting channels.

Article 13

Information and consultation

1. This Directive shall not affect Directive 89/391/EEC as regards information and consultation, or Directives 2002/14/EC and 2009/38/EC.

2. In addition to complying with the Directives referred to in paragraph 1 of this Article, Member States shall ensure that information and consultation, as defined in Article 2, points (f) and (g), of Directive 2002/14/EC, of workers' representatives by digital labour platforms also covers decisions likely to lead to the introduction of or to substantial changes in the use of automated monitoring or decision-making systems. For the purposes of this paragraph, information and consultation of workers' representatives shall be carried out under the same modalities concerning the exercise of information and consultation rights as those laid down in Directive 2002/14/EC.

PUBLIC

3. The platform workers' representatives 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 250 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, while ensuring the effectiveness of the assistance.

PUBLIC

Article 14

Information of workers

Where there are no representatives of platform workers, Member States shall ensure that digital labour platform directly inform the platform workers concerned on decisions likely to lead to the introduction of or substantial changes in the use of automated monitoring or decision-making systems. The information shall be provided in the form of a written document which may be in electronic format and shall be presented in a transparent intelligible and easily accessible form, using clear and plain language.

Article 15

Specific arrangements for representatives of persons performing platform work other than platform workers' representatives

Representatives of persons performing platform work other than workers' representatives shall be able to exercise the rights provided to workers' representatives under Article 8(2), Article 9(1) and (4), Article 10(4) and Article 11(2), only insofar as they are acting on behalf of persons performing platform work who are not platform workers with regard to the protection of their personal data.

PUBLIC

CHAPTER IV

TRANSPARENCY ON PLATFORM WORK

Article 16

Declaration of platform work

Member States shall require digital labour platforms 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 17

Access to relevant information on platform work

1. Member States shall ensure that digital labour platforms make the following information available to competent authorities, as well as to representatives of persons performing platform work:

   (a) the number of persons performing platform work through the digital labour platform concerned disaggregated by level of activity and their contractual or employment status;

   (b) the general terms and conditions, determined by the digital labour platform and applicable to those contractual relationships;

(c) the average duration of activity, the average weekly number of hours worked per person and the average income from activity of persons performing platform work on a regular basis through the digital labour platform concerned;

(d) the intermediaries the digital labour platform has a contractual relationship with.

2. Member States shall ensure that digital labour platforms provide information on work performed by persons performing platform work and their employment status to competent national authorities.

3. The information referred to in paragraph 1 shall be provided for each Member State in which persons are performing platform work through the digital labour platform concerned. As regards paragraph 1, point (c), this information shall only be provided upon request. The information shall be updated at least every six months, and, as regards paragraph 1, point (b), each time the terms and conditions are modified in substance.

4. The competent authorities set out in paragraph 1 and representatives of persons performing platform work shall have the right to ask digital labour platforms for additional clarifications and details regarding any of the information provided, including details regarding the employment contract. The digital labour platforms shall respond to such request by providing a substantiated reply without undue delay.

5. 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 3 is reduced to once every year.

PUBLIC

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CHAPTER V

REMEDIES AND ENFORCEMENT

Article 18

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 timely, effective and impartial dispute resolution and a right to redress, including adequate compensation for the damage sustained, in the case of infringements of their rights arising from this Directive.

Article 19

Procedures on behalf or in support of persons performing platform work

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.

Article 20

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 privately and securely with each other, and to contact or be contacted by representatives of persons performing platform work, through the digital labour platforms' digital infrastructure or similarly effective means, while complying with the obligations under Regulation (EU) 2016/679 Member States shall require digital labour platforms to refrain from accessing or monitoring those contacts and communications.

Article 21

Access to evidence

1. Member States shall ensure that in proceedings concerning the provisions of this Directive, 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.

PUBLIC

Article 22

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 23

Protection from dismissal

1. Member States shall take the necessary measures to prohibit the dismissal, termination of contract or their equivalent and all preparations for dismissal, termination of contract or their 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, their contract has been terminated 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, termination of contract or any 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, termination of contract or equivalent measures, it shall be for the digital labour platform to prove that the dismissal, termination of contract or equivalent measures were based on grounds other than those referred to in paragraph 1.

PUBLIC

4. 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.

5. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member State.

Article 24

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 7 to 11 of this Directive as far as data protection matters are concerned, 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 7 to 11 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. Competent national authorities shall cooperate through exchange of relevant information and best practices on the implementation of the legal presumption, with the support of the European Commission.

PUBLIC

4. Where persons performing platform work perform platform work in a Member State different from that in which the digital labour platform is established, the competent authorities of those Member States shall exchange information for the purpose of enforcing this Directive.

5. Without affecting 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 shall be effective, dissuasive and proportionate to the nature, gravity and duration of the undertaking's infringement and to the number of affected workers.

6. In the case of infringements related to digital labour platforms' refusal to comply with a legal ruling determining the employment status of persons performing platform work, Member States shall provide for penalties, which may include financial penalties.

PUBLIC

PUBLIC

CHAPTER VI

FINAL PROVISIONS

Article 25

Promotion of collective bargaining in platform work

Member States shall, without prejudice to the autonomy of the social partners and taking into account the diversity of national practices, take adequate measures to promote the role of the social partners and encourage the exercise of the right to collective bargaining in platform work, including measures to ascertain the correct employment status of platform workers and to facilitate the exercise of their rights related to algorithmic management set out in Chapter III of this Directive.

Article 26

Non-regression and more favourable provisions

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to platform workers within Member States, including with regard to established procedures for the correct determination of the employment status of persons performing platform work as well as existing prerogatives of their representatives.

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**.**

3. This Directive is without prejudice to any other rights conferred on persons performing platform work by other legal acts of the Union.

Article 27

Dissemination of information

Member States shall ensure that the national measures transposing this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1, including information on the application of the legal presumption, are brought to the attention of persons performing platform work and digital labour platforms, including small and medium-sized enterprises, as well as to the general public. That information shall be provided in a clear, comprehensive and easily accessible way, including to persons with disabilities.

Article 28

Collective agreements and specific rules on processing of personal data

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 9, 10 and 11, pursuant to Article 26(1). 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 12 and 13, and, when they entrust the social partners with its implementation pursuant to Article 29(4), from those referred to in Article 17.

PUBLIC

Article 29

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 from the date of entry into force of this Directive] at the latest. They shall immediately inform the Commission thereof.

   When Member States adopt those measures, 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.

PUBLIC

Article 30

Review by the Commission

By ... [5 years from the date of entry into force of this Directive], 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. In such review, the Commission shall pay particular attention to the impact of the use of intermediaries on the overall implementation of this Directive as well as to the effectiveness of the rebuttable presumption of employment introduced pursuant to Article 5.

Article 31

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 32

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament	For the Council
The President	The President

PUBLIC