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SUMMARY RECORD

PERMANENT REPRESENTATIVES COMMITTEE

14, 16 and 20 February 2024

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19. Directive on improving working conditions in platform work
Analysis of the final compromise text with a view to agreement



6289/24 + ADD 1

Statement by Spain

”La delegación española ha apoyado con su voto la aprobación por el COREPER del acuerdo provisional alcanzado en el trílogo del pasado 8 de febrero entre la Presidencia belga del Consejo y el Parlamento Europeo sobre la propuesta de Directiva para la mejora de las condiciones de trabajo en las plataformas digitales.

El voto de la delegación española responde a un ejercicio de responsabilidad dado que una gran mayoría de Estados miembros, los grupos políticos del Parlamento Europeo y los sindicatos europeos apoyan el acuerdo provisional.

No obstante, la delegación española quiere manifestar que existen disposiciones en el texto acordado que no responde plenamente a lo que entendemos debería haber sido el contenido de esta Directiva.

España comparte el contenido del Capítulo III, referido a la gestión algorítmica, que se ha mantenido en los términos acordados por la Presidencia española y el Parlamento el pasado mes de diciembre y que supone un importante avance para los derechos de las personas trabajadoras y sus representantes y un refuerzo de la transparencia en las plataformas digitales.

Sin embargo, según nuestra valoración, el texto establece una presunción de laboralidad, que es el elemento central de la Directiva, débil y poco ambiciosa, lo que es contrario a lo que la delegación española ha defendido siempre desde el inicio de las negociaciones sobre esta propuesta de Directiva hace ya más de dos años.

El acuerdo provisional alcanzado en diciembre durante los trílogos en Presidencia española configuraba una presunción más fuerte con unos criterios de laboralidad y un umbral de aplicación común en toda la UE, acordes con la jurisprudencia del TJUE. Era, en definitiva, más respetuosa de los derechos de las personas trabajadoras y más útil para garantizar su correcta clasificación laboral.

Por el contrario, el nuevo acuerdo provisional, al no existir unos criterios de laboralidad ni un umbral para constatar la apreciación de la existencia de dirección y control del trabajo por la plataforma digital, y al remitir esta apreciación a la legislación nacional, abre la puerta a una presunción a la carta y desigual en los Estados miembros, que podría no ser útil para clasificar correctamente a los millones de falsos autónomos en la UE.

Lejos de conseguir una convergencia social al alza y de establecer unas disposiciones mínimas compartidas, podría mantenerse la negativa situación y la precariedad que la Directiva debería corregir.

La delegación española confía en que las legislaciones nacionales de transposición de la Directiva y las funciones de supervisión de la Comisión impidan que se materialicen ese riesgo de manera que se proceda a la correcta clasificación laboral de las personas que trabajan en las plataformas digitales, reconociendo sus derechos laborales y de protección social.”

Courtesy translation

“The Spanish delegation supported with its vote the approval by COREPER of the provisional agreement reached in the trilogue of February 8 between the Belgian Presidency of the Council and the European Parliament on the proposal for a Directive to improve working conditions on digital platforms.

The vote of the Spanish delegation comes as an exercise of responsibility given that a large majority of Member States, the political groups of the European Parliament and the European trade unions support the provisional agreement.

However, the Spanish delegation wishes to state that there are provisions in the agreed text that do not fully respond to what we understand should have been the content of this Directive.

Spain supports the content of Chapter III, referring to algorithmic management, which has been maintained in the terms agreed by the Spanish Presidency and the Parliament last December and which represents an important step forward for the rights of workers and their representatives and a reinforcement of transparency in digital platforms.

However, according to our assessment, the text establishes a presumption of labour, which is the central element of the Directive, weak and unambitious, which is contrary to what the Spanish delegation has always defended since the beginning of the negotiations on this proposal for a Directive more than two years ago.

The provisional agreement reached in December during the trilogues under the Spanish Presidency established a stronger presumption with employment criteria and a common threshold of application throughout the EU, in line with the case law of the CJEU. It was, in short, more respectful of workers' rights and more useful in guaranteeing their correct job classification.

On the contrary, the new agreement, in the absence of employment criteria and a threshold for assessing the existence of direction and control of work by the digital platform, and by referring this assessment to national legislation, opens the door to an on-demand and unequal presumption in the Member States, which may not be useful for correctly classifying the millions of bogus self-employed in the EU.

Far from achieving upward social convergence and establishing shared minimum provisions, the negative situation and the precariousness that the Directive should correct could be maintained.

The Spanish delegation trusts that the national legislation transposing the Directive and the Commission's supervisory functions will prevent this risk, so that the correct labour classification of people working on digital platforms is carried out, recognizing their labour and social protection rights.“

Statement by Austria

"Austria supports the objective of the Directive on improving working conditions in platform work in the European Union. However, the heterogeneous characteristics of national labour markets and, in this case, the platform economy, must be taken into account in corresponding EU actions.

As stated in Recital 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 law, collective agreements or practice in force in each Member State, with consideration to the case-law of the Court of Justice.

In Austria exists a third category of employment at national level called Freie Dienstnehmer. Therefore, this intermediate employment status is the correct employment status according to Austrian law, rights and obligations pursuant to that status should apply.

In this context, Austria emphasizes that the Austrian law, collective agreements or practice with regard to the intermediate status of Freie Dienstnehmer is in no way affected by this Directive."

Statement by the Commission (on the notion of "effective" rebuttable legal presumption)

"At the trilogue of 8 February 2024, the Council and the European Parliament reached a provisional agreement on the proposal for a Directive on improving working conditions in platform work.

The provisional agreement requires Member States to establish an 'effective' rebuttable legal presumption of employment. The concept of an 'effective' legal presumption is specified in Articles 5.1 and 5.2 and further detailed in recitals 31 and 32 of the provisional agreement with a number of elements of clarification:

1. The presumption should be based on facts that indicate direction and control. This notion is to be based on national law, collective agreements or practice, with consideration to the case-law of the Court of Justice. (recital 31 and article 5(1));
2. The presumption should be a procedural facilitation. (recital 32 and article 5(2));
3. National law should make it easy for the person performing platform to benefit from the presumption. (recital 32);
4. The requirements under the legal presumption should not be burdensome. (recital 32 and article 5(2));
5. The presumption should ease difficulties in providing evidence indicating the existence of an employment relationship in a situation of imbalance of power vis-à-vis the digital labour platform. (recital 32).

These elements imply that the presumption should facilitate judicial or administrative procedures, referred to in article 5(3), for persons performing platform to claim reclassification of their employment status, including through the shift in the burden of proof. National law should not put any unnecessary obstacles in the way of persons performing platform work aiming to make use of the legal presumption. The presumption should ease the current difficulties to prove misclassification. The standard of proof required to trigger the presumption must logically be lower than providing full proof of the constitutive elements of an employment relationship.

Recital 32 of the provisional agreement also states that the modalities of the legal presumption should be set out by the Member States. This leaves discretion to Member States to define the mechanism of the presumption. The limit of that discretion are the requirements regarding effectiveness mentioned above.

For Member States which do not yet have a presumption in place, an important question to consider is how difficult it is currently for a person performing platform work who aims to obtain reclassification of his/her employment status to bring a case with full proof of the constitutive elements of an employment relationship before a court or administrative authority. The introduction of a legal presumption should then take into account the five above-mentioned elements.

For Member States which already have a presumption in place, the main question to consider is whether the existing presumption respects the five above-mentioned elements, including whether the presumption facilitates the procedure for a person performing platform work compared to a situation where no presumption would exist in that Member State.

In accordance with Article 288 of the Treaty on the Functioning of the European Union (TFEU), a Directive is binding as to the results to be achieved, but leaves to Member States the choice of form and methods. A Directive based on Article 153 TFEU aims at establishing minimum requirements and not at full harmonisation, thus allowing Member States to be more protective if they so wish.”

Additional clarifications by the Commission (on how the traditional taxi sector relates to the Platform Work Directive)

”The traditional taxi sector differs from ride-hailing platforms in that it is heavily regulated, mainly at local level, including as regards the level of fares and other rules.

Taxi drivers can be self-employed or employed by (mostly small) companies, but we are not aware of any misclassification cases in this sector so far.

The role of the taxi dispatch centres is usually limited to matching clients and taxi drivers. They do not set the price levels and they do not direct or control the performance of work.

Therefore the presumption would logically not apply to taxi dispatch centres. In any event, the modalities of the presumption will be set by Member States.

The Directive as such does not affect the regulation of the taxi sector under national and local legislation.

On the contrary, the Directive should address some of the grievances of taxi drivers regarding the practices of ride-hailing platforms.”

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Statements to the “I” items set out in doc. 6513/1/24 REV 1

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Justice and Home Affairs

78. Directive on combating violence against women and domestic violence  6339/24
Confirmation of the final compromise text with a view to agreement 6341/24
COPEN

Joint statement by Austria, Croatia, Cyprus, Finland, Greece, Italy, Latvia, Luxembourg, Poland, Slovenia, Romania, Spain and Sweden

“We welcome the agreement on the Directive on combating violence against women and domestic violence and wishes to declare the following.

According to the Fundamental Rights Agency (FRA), 1 in 20 women in the EU over the age of 15 have been raped. Non-consensual sex is an extremely serious violation of individuals’ sexual integrity and must be prevented and combated with full force at all levels, including at EU level. Austria, Croatia, Cyprus, Finland, Greece, Italy, Latvia, Luxembourg, Poland, Romania, Slovenia, Spain, and Sweden therefore regret that the Directive does not include the criminal offence of rape based on the lack of consent. The fact that the Directive contains requirements for education in terms of consent is, however, a step in the right direction.

Nevertheless, even without a consent-based provision on rape, it has been of utmost importance for us to ensure that the Directive is adopted as soon as possible, as it contains other crucial elements. No specific legal instrument has up until now addressed violence against women and domestic violence at EU level. This Directive is therefore a milestone for international standards in this field. The Directive provides much-needed comprehensive responses, incorporating prevention, protection, support for victims and prosecution for a range of criminal offences which constitute violence against women and domestic violence.

We are convinced that this Directive will provide a forceful contribution to the safety and security of women all across the EU.”

Statement by Bulgaria

“The Republic of Bulgaria attaches great importance to the promotion and protection of fundamental rights, an important part of which is the equality between women and men. We are and will remain dedicated to the principles and values of the European Union as enshrined in the Treaties.

The Republic of Bulgaria is strongly committed to combatting domestic violence and violence against women. The Bulgarian government and civil society are actively engaged in preventing such forms of violence and in providing protection and support to their victims. We consider the proposal for a directive of the European Parliament and of the Council on combating violence against women and domestic violence (hereinafter “the Directive”) as important milestone in combating violence against women and girls, protecting victims and punishing offenders that will support the EU Member State to advance their national legislation.

However, in 2018, the Constitutional Court of the Republic of Bulgaria adopted a decision stating that the Council of Europe's Convention on Preventing and Combatting Violence against Women and Domestic Violence ("Istanbul Convention") promotes legal concepts that intend to differentiate between "sex" as a biological (women and men) category and "gender" as a social construct. In 2021, the Constitutional Court adopted another decision clarifying that the notion "sex" used in the Constitution could only be regarded in the sense of its biological determination.

In light of the abovementioned decisions, the Republic of Bulgaria declares that the term "gender" used in the Directive and any of its derivative terms are understood as encompassing only the male and female sex in their biological meaning. The Republic of Bulgaria also declares that it does not accept the concept of "gender" and the "gender-based" approach, as defined in the Istanbul Convention.

Lastly, the Republic of Bulgaria will only accept the translation in Bulgarian of the term "gender" as "пол" in the text of the Directive."

Statement by Hungary

"Hungary recognises and promotes equality between men and women in accordance with the Fundamental Law of Hungary and the primary law, principles and values of the European Union, as well as commitments and principles stemming from international law. Equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets the concept of 'gender' as reference to 'sex' and the concept of 'gender equality' as 'providing equal chances and opportunities for women and men' in the *Directive combating violence against women and domestic violence*."

Statement by Slovakia

"Slovak Republic welcomes a compromise reached with the European Parliament on the Directive on combating violence against women and domestic violence. In our view, this is an important step forward in the common fight against violence against women. In this context, Slovak Republic wishes to recall its position that the term "gender" within this directive shall be translated as "sex", particularly within definitions of victims, in line with national legislation in the fields of criminal law, victims' rights and discrimination. In cases where context requires the use of the Slovak equivalent for "gender", the appropriate translation shall be used, such as in terms "gender roles", "gender stereotypes", "gender equality" or "gender-based violence."

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First reading



Item based on a Commission proposal