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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on improving working conditions in platform work

In preparation of the meeting of the Social Questions Working Party on 24 May 2022, delegations will find attached a draft compromise text of the Directive referred to in subject.

Changes compared with the Commission proposal are set out in **bold underlined**. Deletions are marked with [...].

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on improving working conditions in platform work

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Pursuant to Article 3 of the Treaty on European Union, the objectives of the Union are, amongst others, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming at full employment and social progress.

¹ OJ C , , p.

² OJ C , , p. .

- (2) [...] Article 31 of the Charter **of Fundamental Rights of the European Union ('the Charter')** provides for the right of every worker to working conditions which respect his or her health, safety and dignity. Article 27 of the Charter protects the workers' right to information and consultation within the undertaking. Article 8 of the Charter provides that everyone has the right to the protection of personal data concerning him or her. Article 16 of the Charter recognises the freedom to conduct a business.
- (3) Principle No 5 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017³, 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; and that innovative forms of work that ensure quality working conditions are to be fostered, that entrepreneurship and self-employment are to be encouraged and that occupational mobility is to be facilitated. The Porto Social Summit of May 2021 welcomed the Action Plan accompanying the Social Pillar⁴[...].
- (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 and decision-making systems, have enabled the emergence and growth of digital labour platforms.

³ Interinstitutional Proclamation on the European Pillar of Social Rights (OJ C 428, 13.12.2017, p. 10).

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'The European Pillar of Social Rights Action Plan', COM(2021) 102 final, 4.3.2021.

- (5) Platform work is performed by individuals through the digital infrastructure of digital labour platforms that provide a service to their customers. By means of the algorithms, the digital labour platforms may control, to a lesser or greater extent – depending on their business model – the performance of the work, its remuneration and the relationship between their customers and the persons performing the work. Platform work can be performed exclusively online through electronic tools (‘online platform work’) or in a hybrid way combining an online communication process with a subsequent activity in the physical world (‘on-location platform work’). Many of the existing digital labour platforms are international business actors deploying their activities and business models in several Member States or across borders.
- (6) Platform work can provide opportunities for accessing the labour market more easily, gaining additional income through a secondary activity or enjoying some flexibility in the organisation of working time. At the same time, platform work brings challenges, as it can blur the boundaries between employment relationship and self-employed activity, and the responsibilities of employers and workers. Misclassification of the employment status has consequences for the persons affected, as it is likely to restrict access to existing labour [...] rights. It also leads to an uneven playing field with respect to businesses that classify their workers correctly, and it has implications for Member States’ industrial relations systems, their tax base and the coverage and sustainability of their social protection systems. While such challenges are broader than platform work, they are particularly acute and pressing in the platform economy.

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

- (10) A body of legal instruments provides for minimum standards in working conditions and labour rights across the Union. This includes in particular Directive (EU) 2019/1152 of the European Parliament and of the Council⁵ on transparent and predictable working conditions, Directive 2003/88/EC of the European Parliament and of the Council⁶ on working time, Directive 2008/104/EC of the European Parliament and of the Council⁷ 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, information and consultation of workers, among others. [...]
- (11) Council Recommendation 2019/C 387/01⁸ on access to social protection for workers and the self-employed recommends Member States to take measures ensuring formal and effective coverage, adequacy and transparency of social protection schemes for all workers and self-employed. Member States currently have varying degrees of providing social protection to the self-employed.

⁵ 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).

⁶ 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).

⁷ 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).

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

- (12) Regulation (EU) 2016/679 of the European Parliament and of the Council⁹ (‘General Data Protection Regulation’) ensures the protection of natural persons with regard to the processing of personal data, and in particular provides certain rights and obligations as well as safeguards concerning lawful, fair and transparent processing of personal data, including with regard to automated individual decision-making. Regulation (EU) 2019/1150 of the European Parliament and of the Council¹⁰ promotes fairness and transparency for ‘business users’ using online intermediation services provided by operators of online platforms. [The European Commission has proposed further legislation laying down harmonised rules for providers and users of artificial intelligence systems]¹¹.
- (13) While existing [...] Union legal acts provide for certain general safeguards, challenges in platform work require some further specific measures. In order to adequately frame the development of platform work in a sustainable manner, it is necessary for the Union to set new minimum standards in working conditions to address the challenges arising from platform work. **Measures supporting the correct determination of the employment status of persons performing platform work in the Union should be [...] introduced, and transparency on platform work should be improved, including in cross-border situations. In addition, persons performing platform work should be provided a number of rights aiming** at promoting transparency, fairness and accountability in algorithmic management [...]. This should be done with a view to improving legal certainty **and aiming at the** level playing field between digital labour platforms and offline providers of services and supporting the sustainable growth of digital labour platforms in the Union.

⁹ 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).

¹⁰ 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).

¹¹ [COM(2021) 206 final, 21.4.2021.]

- (14) The Commission has undertaken a two-stage consultation of the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the improvement of working conditions in platform work. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level in this area by adapting the current legal framework to the emergence of platform work.
- (15) In addition, the Commission held extensive exchanges with relevant stakeholders, including digital labour platforms, associations of persons performing platform work, experts from academia, Member States and international organisations and representatives of civil society.
- (15b) This Directive aims to improve the working conditions of platform workers and to regulate algorithmic management. Both objectives are being pursued simultaneously and, whilst inseparably linked, one is not secondary to the other. They are mutually reinforcing and both contribute to improving platform work. As regards Article 153(1)(b) TFEU, this Directive sets out rules aimed at supporting the correct determination of the employment status of persons performing platform work and improving transparency on platform work. As regards Article 16 TFEU, this Directive establishes a framework to improve the protection of natural persons performing platform work regarding the processing of their personal data by increasing transparency, fairness and accountability of relevant algorithmic management procedures in platform work.**
- (16) This Directive should apply to **every** person[...] performing platform work in the Union [...]. This [...] includes situations where the employment status of the person performing platform work is not clear, so as to allow correct determination of that status. [...]
- (17) This Directive should **establish mandatory rules that** apply to all digital labour platforms, irrespective of their place of establishment and irrespective of the law otherwise applicable, provided that the platform work organised through that digital labour platform is performed in the Union. [...]

- (18) Digital labour platforms differ from other online platforms in that they organise work performed by individuals at the request, one-off or repeated, of the recipient of a service provided by the platform. Organising work performed by individuals should imply at a minimum a significant role in matching the demand for the service with the supply of labour by an individual who has a contractual relationship with the digital labour platform and who is available to perform a specific task, and can include other activities such as processing payments. Online platforms which do not organise the work performed by individuals but merely provide the means by which service providers can reach the end-user, for instance by advertising offers or requests for services or aggregating and displaying available service providers in a specific area, without any further involvement, should not be considered a digital labour platform. The definition of digital labour platforms should not include providers of a service whose primary purpose is to exploit or share assets, such as short-term rental of accommodation, **or to resell goods or services, or that is of a non-profit making nature**. 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.
- (19) To combat false self-employment in platform work and to facilitate the correct determination of the employment status, Member States should have appropriate procedures in place to prevent and address misclassification of the employment status of persons performing platform work. The aim of those procedures should be to ascertain the existence of an employment relationship as defined by national law, collective agreements or practice with consideration to the case-law of the Court of Justice, and, where such employment relationship exists, to ensure full compliance with Union law applicable to workers as well as national labour law, collective agreements and social protection rules. Where self-employment or an intermediate employment status – as defined at national level – is the correct employment status, rights and obligations pursuant to that status should apply.

- (20) In its case law, the Court of Justice has established criteria for determining the status of a worker¹². The interpretation by the Court of Justice of those criteria should be taken into account in the implementation of this Directive. The abuse of the status of self-employed persons, as defined in national law, 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, in order to avoid certain legal or fiscal obligations.
- (21) The principle of primacy of facts, meaning that the determination of the existence of an employment relationship should be guided primarily by the facts relating to the actual performance of work, including its remuneration, and not by the parties' description of the relationship, in accordance with the 2006 Employment Relationship Recommendation (No 198) of the International Labour Organisation, is particularly relevant in the case of platform work, where contractual conditions are often unilaterally determined by one party.
- (22) Where the existence of an employment relationship is established based on facts, the party acting as employer should be clearly identified and that party should fulfil all the obligations resulting from its role as employer.

¹² 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.

- (23) Ensuring correct determination of the employment status should not prevent the improvement of working conditions of genuine self-employed persons performing platform work. Where a digital labour platform decides – on a purely voluntary basis or in agreement with the persons concerned – to pay for social protection, accident insurance or other forms of insurance, training measures or similar benefits to self-employed persons working through that platform, those benefits as such should not be regarded as determining elements indicating the existence of an employment relationship.
- (24) **Direction and control, or legal subordination, is an essential element of the definition of an employment relationship in the Member States and in the case-law of the Court of Justice.** When digital labour platforms **restrict a person’s freedom to organise his or her work and control the execution** of work, they act like employers in an employment relationship. Therefore, contractual relationships [...] **of this kind** should be deemed, by virtue of a legal presumption, to be an employment relationship between the platform and the person performing platform work through it. As a result, the person **performing platform work** should be classified as a worker having all the rights and obligations **stemming from Union law** in accordance with that status [...]. **In addition, it is important that** relevant national law, collective agreements and practice **apply to platform workers.** The legal presumption should apply in all relevant administrative **or** legal proceedings **where the employment status of the person performing platform work is at issue,** and should benefit the person performing platform work. **In addition,** authorities in charge of verifying the compliance with or enforcing relevant legislation, such as labour inspectorates [...], **may** also [...] rely on that presumption, **unless it is evident that the presumption would be rebutted, taking into account all relevant elements, such as facts and circumstances of the platform work in question, previous assessments of competent national authorities and relevant court decisions.** [...] **A** national framework to reduce litigation and increase legal certainty **is important.**

(25) Criteria indicating that a digital labour platform **restricts a person's freedom to organise his or her work and** controls the **execution** of work should be included in the Directive in order to make the legal presumption operational and facilitate the enforcement of workers' rights. Those criteria should be inspired by Union and national case law [...]. The criteria should include concrete elements showing that the digital labour platform **de facto** [...] determines [...] the remuneration [...], **requires the respect of rules with regard to appearance or conduct**, gives instructions on how the work is to be performed or **thoroughly verifies the quality of the results of that work, including through electronic means, which does not merely consist in using reviews or ratings by the recipients of the service, restricts the discretion to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes** or prevents the person performing platform work from developing business contacts with potential clients, **including by using a number of conditions or through a system of sanctions.** [...] At the same time, the criteria should not cover situations where the persons performing platform work are genuine self-employed. Genuine self-employed persons are themselves responsible *vis-à-vis* their customers for how they perform their work and the quality of their outputs. The freedom to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or to work for any third party is **one of the** characteristics of genuine self-employment. [...]

(25b) In order for **the presumption** to be effective in practice, two **of the** criteria **indicating that a digital labour platform restricts the freedom of persons performing platform work to organise their work and controls its execution** should be always fulfilled to trigger **its** application.

(25c) Measures or rules which are required by law or which are necessary to safeguard the health and safety of the recipients of the service should not be understood as **restricting the freedom of a person performing platform work to organise his or her work and control its execution.**

- (26) Effective implementation of the legal presumption through appropriate measures, such as disseminating information to the public, developing guidance and strengthening controls and field inspections is essential to ensure legal certainty and transparency for all parties involved. These measures should take into account the specific situation of start-ups to support the entrepreneurial potential and the conditions for the sustainable growth of digital labour platforms in the Union.
- (27) In the interest of legal certainty, the legal presumption should not have any retroactive legal effects before the transposition date of this Directive and should therefore only apply to the period starting from that date, including for contractual relationships entered into before and still ongoing on that date. Claims relating to the possible existence of an employment relationship before that date and resulting rights and obligations until that date should therefore be assessed only on the basis of national law and Union law predating this Directive.

(28) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down in the law, collective agreements or practice in force of the respective Member State with consideration to the case-law of the Court of Justice, even though the digital labour platform **restricts a person's freedom to organise his or her work and controls the execution** of work on a given aspect. Member States should ensure the possibility to rebut the legal presumption in legal or administrative proceedings [...] by proving, on the basis of the aforementioned definition, that the relationship in question is not an employment relationship. [...] **Digital labour platforms have a complete overview of all factual elements determining the legal nature of the relationship, in particular the algorithms through which they manage their operations. Therefore, they should have the burden of proof where they argue that the contractual relationship in question is not an employment relationship. In addition, when the person performing platform work who is the subject of the presumption seeks to rebut the legal presumption, the digital labour platform should be required to assist that person, notably by providing all relevant information held by the platform in respect of that person. Member States should provide the necessary guidance for procedures to rebut the legal presumption. A successful rebuttal of the presumption in administrative proceedings should not preclude the application of the presumption in subsequent judicial proceedings.** Legal proceedings **or** administrative proceedings initiated by the digital labour platforms in order to **challenge the decision of a judicial or administrative authority taken on the basis of the legal presumption should not have a suspensive effect on the relevant decision, as far as the requalification is concerned.** [...]

- (29) 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 rules addressing the concerns that are specific in the processing of personal data in the context of platform work. This Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679. In this context, terms relating to the protection of personal data in this Directive should be understood in light of the definitions set out in Regulation (EU) 2016/679.
- (30) In addition to rights and obligations provided in this Directive, rights and obligations provided in Regulation (EU) 2016/679 continue to apply when personal data are processed. Articles 13, 14 and 15 of Regulation (EU) 2016/679 require data controllers to ensure transparency towards data subjects on the collection and processing of personal data. Moreover, Article 22(1) of Regulation (EU) 2016/679 provides for the data subjects' right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her, subject to the exceptions provided for in paragraph 2 of that article. Those obligations apply also to digital labour platforms.
- (31) This Directive is without prejudice to Articles 13, 14, 15 and 22 of Regulation (EU) 2016/679, except for Articles 13(2)(f), 14(2)(g) and 15(1)(h) thereof, in relation to which Article 6 of this Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.

- (32) Digital labour platforms should be subject to transparency obligations in relation to automated monitoring and decision-making systems that are used to monitor, supervise or evaluate the work performance through electronic means; and automated decision-making systems which are used to take or support decisions that significantly affect working conditions, including access of persons performing platform work to work assignments, their earnings, their occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account. In addition to what is provided in Regulation (EU) 2016/679, information concerning such systems should also be provided where decisions are not solely based on automated processing, provided that they are supported by automated systems. It should also be specified which kind of information should be provided to persons performing platform work regarding such automated systems, as well as in which form and when it should be provided. The obligation of the controller under Articles 13, 14 and 15 of Regulation (EU) 2016/679 to provide the data subject with certain information in relation to the processing of personal data concerning the data subject as well as with access to such data should continue to apply in the context of platform work. Information on automated monitoring and decision-making systems should also be provided to representatives of persons performing platform work and to national labour authorities at their request, in order to enable them to exercise their functions.
- (33) Digital labour platforms should not be required to disclose the detailed functioning of their automated monitoring and decision-making systems, including algorithms, or other detailed data that contains commercial secrets or is protected by intellectual property rights. However, the result of those considerations should not be a refusal to provide all the information required by this Directive.

- (34) Articles 5 and 6 of Regulation (EU) 2016/679 require that personal data are processed in a lawful, fair and transparent manner. Digital labour platforms should therefore not be allowed to process any personal data concerning persons performing platform work that are not intrinsically connected to and strictly necessary for the performance of the contract between those persons and the digital labour platform. Article 6(5) of this Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.
- (35) Digital labour platforms make extensive use of automated monitoring and decision-making systems in managing their human resources. Monitoring by electronic means can be intrusive and decisions taken or supported by such systems 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 regularly monitor and evaluate the impact of individual decisions taken or supported by automated monitoring and decision-making systems on working conditions. Digital labour platforms should ensure sufficient human resources for this purpose. The persons charged by the digital labour platform with the function of monitoring should have the necessary competence, training and authority to exercise that function and should be protected from dismissal, disciplinary measures or other adverse treatment for overriding automated decisions or suggestions for decisions. In addition to obligations under Article 22 of Regulation (EU) 2016/679, Article 7(1) and (3) of this Directive provides for distinct obligations of digital labour platforms in relation to human monitoring of the impact of individual decisions taken or supported by automated systems, which apply as specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.

- (36) Article 22(3) of Regulation (EU) 2016/679 requires data controllers to implement suitable measures to safeguard data subjects' rights and freedoms and legitimate interests in cases where the latter are subject to decisions based solely on automated processing. That provision requires, as a minimum, the data subject's right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision. Those requirements apply also to digital labour platforms. Article 8 of this Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.
- (37) In that context, persons performing platform work should have the right to obtain an explanation from the digital labour platform for a decision, the lack of decision or a set of decisions taken or supported by automated systems that significantly affect their working conditions. 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, digital labour platforms should provide the person performing platform work with a written statement of reasons for any decision to restrict, suspend or terminate that person's account, to refuse the remuneration for work performed by that person, or affecting his or her contractual status, as such decisions are likely to have significant negative effects on persons performing platform work, in particular their potential earnings. Where the explanation or reasons obtained are not satisfactory or where persons performing platform work consider their rights infringed, they should also have the right to request the digital labour platform to review the decision and to obtain a substantiated reply within a reasonable period of time. Where such decisions infringe those persons' rights, such as labour rights or the right to non-discrimination, the digital labour platform should rectify such decisions without delay or, where that is not possible, provide adequate compensation.

- (38) Council Directive 89/391/EEC¹³ 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. As automated monitoring and decision-making systems potentially have significant impact on the physical and mental health of persons performing platform work, 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.
- (39) Directive 2002/14/EC of the European Parliament and of the Council¹⁴ establishes a general framework for informing and consulting employees in the Union. The introduction of or substantial changes in the use of automated monitoring and 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 consult platform workers or their representatives before such decisions are taken, at the appropriate level and, given the technical complexity of algorithmic management systems, with the assistance of an expert chosen by the platform workers or their representatives in a concerted manner where needed.

¹³ 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).

¹⁴ 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).

- (40) Persons who do not have an employment relationship constitute a significant part of the persons performing platform work. The impact of automated monitoring and decision-making systems used by digital labour platforms on their working conditions and their earning opportunities is similar to that on platform workers. Therefore, the rights in Articles 6, 7 and 8 of this Directive pertaining to the protection of natural persons in relation to the processing of personal data in the context of algorithmic management, namely those regarding transparency on automated monitoring and decision-making systems, restrictions to process or collect personal data, human monitoring and review of significant decisions, should also apply to persons in the Union performing platform work who do not have an employment contract or 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. Where such safeguards conflict with elements of specific rights and obligations laid down in this Directive, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.
- (41) In order to ensure that digital labour platforms comply with labour legislation and regulations, social security contribution obligations, social security coordination and other relevant rules, 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 labour and social protection 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.

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

- (45) Platform work is characterised by the lack of a common workplace where workers can get to know each other and communicate with each other and with their representatives, also in view of defending their interests towards the employer. It is therefore necessary to create digital communication channels, in line with the digital labour platforms' work organisation, where persons performing platform work can exchange with each other and be contacted by 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.
- (46) In administrative or judicial proceedings regarding the correct determination of the employment status of persons performing platform work, the elements regarding the organisation of work allowing to establish the employment status and in particular whether the digital labour platform controls certain elements of the performance of work may be in the possession of the digital labour platform and not easily accessible to persons performing platform work and competent authorities. National courts or competent authorities should therefore be able to order the digital labour platform to disclose any relevant evidence which lies in their control, including confidential information, subject to effective measures to protect such information.
- (47) Given that Article 6, Article 7(1) and (3) and Article 8 of this Directive provide for specific rules in the context of platform work to ensure the protection of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679 and that Article 10 of this Directive applies those safeguards also in case of persons without employment contract or employment relationship, the national supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 should be competent to monitor the application of those safeguards. Chapters VI, VII and VIII of Regulation (EU) 2016/679 should apply in terms of procedural framework for the enforcement of those safeguards, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and penalties, including the competence to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.

- (48) Automated monitoring and decision-making systems used in the context of platform work involve the processing of personal data and affect the working conditions and rights of persons performing platform work. They therefore raise issues of data protection law as well as labour and social protection law. Data protection supervisory authorities and relevant labour and social protection authorities should therefore cooperate in the enforcement of this Directive, including by exchanging relevant information with each other, without prejudice to the independence of data protection supervisory authorities.
- (49) Since the objective of this Directive, namely to improve working conditions in platform work, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (50) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain provisions which are more favourable for platform workers. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the general level of protection in the field covered by this Directive.
- (51) In implementing this Directive Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small and medium-sized enterprises. Member States should assess the impact of their transposition measures on start-ups and on small and medium-sized enterprises in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden. Member States should also publish the results of such assessments.

- (52) The Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive. They should also, in accordance with national law and practice, take adequate measures to ensure that the social partners are effectively involved and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.
- (53) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,¹⁵ Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (54) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁶ and delivered an opinion on XX XXXX¹⁷,

HAVE ADOPTED THIS DIRECTIVE:

¹⁵ OJ C 369, 17.12.2011, p. 14.

¹⁶ 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).

¹⁷ ...

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. The purpose of this Directive is to improve the working conditions of [...] platform workers and the protection of natural persons performing platform work regarding the processing of their personal data.
2. [...] This purpose is pursued by:
 - introducing measures supporting the correct determination of the employment status of persons performing platform work;
 - promoting transparency, fairness and accountability in algorithmic management for every person performing platform work; and
 - improving transparency on platform work.
3. This Directive applies to every person performing platform work in the Union and to every digital labour platform[...] organising platform work performed in the Union, irrespective of the platform's 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, irrespective of whether that work is performed online or in a certain location;
- (2) ‘platform work’ means any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform **and the individual or another party**, irrespective of whether a contractual relationship exists between **that** individual **or that party** and the recipient of the service;
- (3) ‘person performing platform work’ means any individual performing platform work, irrespective of the **nature of the** contractual **relationship or its** designation [...] by the parties involved;
- (4) ‘platform worker’ means any **individual** performing platform work who has, **or who based on an assessment of facts is 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;
- (5) ‘representatives’ means the [...] organisations or representatives **of persons performing platform work** provided for by national law or practices, or both;
- (6) ‘micro, small or medium-sized enterprises’ means micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC¹⁸.
2. The definition of digital labour platforms laid down in paragraph 1, point (1), shall not include providers of a service whose primary purpose is to exploit or share assets **or to resell goods or services, or those who provide a service that is of a non-profit making nature.** [...]

¹⁸ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (C(2003) 1422) (OJ L 124, 20.5.2003, p. 36).

CHAPTER II

EMPLOYMENT STATUS

Article 3

(1) Correct determination of the employment status

1. Member States shall have appropriate 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, and ensuring that they enjoy the rights deriving from Union law applicable to workers.
2. The determination of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, taking into account the use of algorithms in the organisation of platform work, irrespective of how the relationship is classified in any contractual arrangement that may have been agreed between the parties involved. Where the existence of an employment relationship is established based on facts, the party assuming the obligations of the employer shall be clearly identified in accordance with national legal systems.

Article 4

Legal presumption

1. The 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 the digital labour platform restricts that person's freedom, including through sanctions, to organise his or her work and** controls its **execution, within the meaning of paragraph 2.** [...]

[...]

2. **Restricting the freedom to organise one's work and controlling its execution** within the meaning of paragraph 1 shall be understood as **de facto** fulfilling at least two of the following:
- (a) [...] determining, or setting upper limits for the level of remuneration;
 - (b) requiring the person performing platform work to respect specific [...] rules with regard to appearance, conduct towards the recipient of the service or performance of the work;
 - (c) supervising the performance of work or verifying the quality of the results of the work including by electronic means;
 - (d) [...] restricting [...] the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;
 - (e) [...] restricting the possibility to build a client base or to perform work for any third party.

3. The legal presumption shall apply in all relevant administrative **or** legal proceedings **where the employment status of the person performing platform work is at issue.**

In addition, competent authorities verifying compliance with or enforcing relevant legislation **may also** rely on that presumption **in assessing whether a contractual relationship should be considered an employment relationship, unless it is manifest that the presumption would be rebutted on the basis of 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.**

To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems.

4. Member States shall take supporting measures to ensure the effective implementation of the legal presumption referred to in paragraph 1 while taking into account the impact on start-ups, avoiding capturing the genuine self-employed and supporting the sustainable growth of digital labour platforms. In particular they shall:
- (a) ensure that information on the application of the legal presumption is made publicly available in a clear, comprehensive and easily accessible way;

- (b) develop guidance for digital labour platforms, persons performing platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5;
- (c) **in line with national law or practice**, develop guidance for **competent national** authorities to proactively target and pursue non-compliant digital labour platforms;
- (d) **in line with national law or practice**, strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of labour law, while ensuring that such controls and inspections are proportionate and non-discriminatory.

5. With regard to contractual relationships entered into before and still ongoing on the date set out in Article 21(1), the legal presumption referred to in paragraph 1 shall only apply to the period starting from that date.

Article 5

[...] Rebuttal of the legal presumption

1. Member States shall ensure the possibility for any of the parties to rebut the legal presumption [...].

To this effect:

- a)** **where, in the context of the administrative or legal proceedings referred to in Article 4**, the digital labour platform argues that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member State in question, with consideration to the case-law of the Court of Justice, the burden of proof shall be on the digital labour platform [...];

b) where, in the context of the administrative or legal proceedings referred to in Article 4, the person performing the platform work argues that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member State in question, with consideration to the case-law of the Court of Justice, the digital labour platform shall be required to assist the proper resolution of the proceedings, notably by providing all relevant information held by it.

2. Where a digital labour platform challenges an administrative or judicial decision applying the presumption, such a proceeding shall not have a suspensive effect on any relevant decision, as far as the requalification is concerned.

CHAPTER III

ALGORITHMIC MANAGEMENT

Article 6

Transparency on and use of automated monitoring and decision-making systems

1. Without prejudice to the obligations and rights of digital labour platforms and platform workers under Directive (EU) 2019/1152, Member States shall require digital labour platforms to inform platform workers of:
 - (a) automated monitoring systems which are used to monitor, supervise or evaluate the work performance of platform workers through electronic means;
 - (b) automated decision-making systems which are used to take or support decisions that significantly affect those platform workers' working conditions, in particular their access to work assignments, their earnings, their occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account.

2. The information referred to in paragraph 1 shall concern:
- (a) as regards automated monitoring systems:
 - (i) the fact that such systems are in use or are in the process of being introduced;
 - (ii) the categories of actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;
 - (b) as regards automated decision-making systems:
 - (i) the fact that such systems are in use or are in the process of being introduced;
 - (ii) the categories of decisions that are taken or supported by such systems;
 - (iii) the main parameters that such systems take into account and the relative importance of those main parameters in the automated decision-making, including the way in which the platform worker's personal data or behaviour influence the decisions;
 - (iv) the grounds for decisions to restrict, suspend or terminate the platform worker's account, to refuse the remuneration for work performed by the platform worker, on the platform worker's contractual status or any decision with similar effects.
3. Digital labour platforms shall provide the information referred to in paragraph 2 in the form of a document which may be in electronic format. They shall provide that information at the latest on the first working day, as well as in the event of substantial changes and at any time upon the platform workers' request. The information shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language.
4. Digital labour platforms shall make the information referred to in paragraph 2 available to platform workers' representatives and national labour authorities upon their request.

5. Digital labour platforms shall not process any personal data concerning platform workers that are not intrinsically connected to and strictly necessary for the performance of the contract between the platform worker and the digital labour platform. In particular they shall not:
- (a) process any personal data on the emotional or psychological state of the platform worker;
 - (b) process any personal data relating to the health of the platform worker, except in cases referred to in Article 9(2), points (b) to (j) of Regulation (EU) 2016/679;
 - (c) process any personal data in relation to private conversations, including exchanges with platform workers' representatives;
 - (d) collect any personal data while the platform worker is not offering or performing platform work.

Article 7

Human monitoring of automated systems

1. Member States shall ensure that digital labour platforms regularly monitor and evaluate the impact of individual decisions taken or supported by automated monitoring and decision-making systems, as referred to in Article 6(1), on working conditions.
2. Without prejudice to Council Directive 89/391/EEC and related directives in the field of safety and health at work, digital labour platforms shall:
 - (a) evaluate the risks of automated monitoring and decision-making systems to the safety and health of platform workers, in particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks;
 - (b) assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment;
 - (c) introduce appropriate preventive and protective measures.

They shall not use automated monitoring and decision-making systems in any manner that puts undue pressure on platform workers or otherwise puts at risk the physical and mental health of platform workers.

3. Member States shall require digital labour platforms to ensure sufficient human resources for monitoring the impact of individual decisions taken or supported by automated monitoring and decision-making systems in accordance with this Article. The persons charged by the digital labour platform with the function of monitoring shall have the necessary competence, training and authority to exercise that function. They shall enjoy protection from dismissal, disciplinary measures or other adverse treatment for overriding automated decisions or suggestions for decisions.

Article 8

Human review of significant decisions

1. Member States shall ensure that platform workers have the right to obtain an explanation from the digital labour platform for any decision taken or supported by an automated decision-making system that significantly affects the platform worker's working conditions, as referred to in Article 6(1), point (b). In particular, Member States shall ensure that digital labour platforms provide platform workers with access to a contact person designated by the digital labour platform to discuss and to clarify the facts, circumstances and reasons having led to the decision. Digital labour platforms shall ensure that such contact persons have the necessary competence, training and authority to exercise that function.

Digital labour platforms shall provide the platform worker with a written statement of the reasons for any decision taken or supported by an automated decision-making system to restrict, suspend or terminate the platform worker's account, any decision to refuse the remuneration for work performed by the platform worker, any decision on the platform worker's contractual status or any decision with similar effects.

2. Where platform workers are not satisfied with the explanation or the written statement of reasons obtained or consider that the decision referred to in paragraph 1 infringes their rights, they shall have the right to request the digital labour platform to review that decision. The digital labour platform shall respond to such request by providing the platform worker with a substantiated reply without undue delay and in any event within one week of receipt of the request.

With regard to digital labour platforms which are micro, small or medium-sized enterprises, Member States may provide that the deadline for reply referred to in the first subparagraph is extended to two weeks.

3. Where the decision referred to in paragraph 1 infringes the platform worker's rights, the digital labour platform shall rectify that decision without delay or, where such rectification is not possible, offer adequate compensation.
4. This Article shall be without prejudice to dismissal procedures laid down in national law.

Article 9

Information and consultation

1. Without prejudice to the rights and obligations under Directive 2002/14/EC, Member States shall ensure information and consultation of platform workers' representatives or, where there are no such representatives, of the platform workers concerned by digital labour platforms, on decisions likely to lead to the introduction of or substantial changes in the use of automated monitoring and decision-making systems referred to in Article 6(1), in accordance with this Article.
2. For the purposes of this Article, the definitions of 'information' and 'consultation' as laid down in Article 2, points (f) and (g), of Directive 2002/14/EC shall apply. The rules laid down in Article 4(1), (3) and (4), Article 6 and Article 7 of Directive 2002/14/EC shall apply accordingly.

3. The platform workers' representatives or the platform workers concerned may be assisted by an expert of their choice, in so far as this is necessary for them to examine the matter that is the subject of information and consultation and formulate an opinion. Where a digital labour platform has more than 500 platform workers in a Member State, the expenses for the expert shall be borne by the digital labour platform, provided that they are proportionate.

Article 10

Persons performing platform work who do not have an employment relationship

1. Article 6, Article 7(1) and (3) and Article 8 shall also apply to persons performing platform work who do not have an employment contract or employment relationship.
2. This Article shall be without prejudice to Regulation (EU) 2019/1150. If the provisions of this Directive conflict with a provision of Regulation (EU) 2019/1150 in respect of business users within the meaning of that Regulation, the provision of that Regulation shall prevail and shall apply to those business users. Article 8 of this Directive shall not apply to business users within the meaning of Regulation (EU) 2019/1150.

CHAPTER IV

TRANSPARENCY ON PLATFORM WORK

Article 11

Declaration of platform work

Without prejudice to Regulations (EC) No 883/2004¹⁹ and 987/2009²⁰ of the European Parliament and of the Council, Member States shall require digital labour platforms which are employers to declare work performed by platform workers to the competent labour and social protection authorities of the Member State in which the work is performed and to share relevant data with those authorities, in accordance with the rules and procedures laid down in the law of the Member States concerned.

Article 12

Access to relevant information on platform work

1. Where labour, social protection and other relevant authorities exercise their functions in ensuring compliance with legal obligations applicable to the employment status of persons performing platform work and where the representatives of persons performing platform work exercise their representative functions, Member States shall ensure that digital labour platforms make the following information available to them:
 - (a) the number of persons performing platform work through the digital labour platform concerned on a regular basis and their contractual or employment status;
 - (b) the general terms and conditions applicable to those contractual relationships, provided that those terms and conditions are unilaterally determined by the digital labour platform and apply to a large number of contractual relationships.

¹⁹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

²⁰ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

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

CHAPTER V

REMEDIES AND ENFORCEMENT

Article 13

Right to redress

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

Article 14

Procedures on behalf or in support of persons performing platform work

1. Without prejudice to Article 80 of Regulation (EU) 2016/679, Member States shall ensure that representatives of persons performing platform work or other legal entities which have, in accordance with the criteria laid down by 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 a person performing platform work in the case of an infringement of any right or obligation arising from this Directive, with that person's approval.
2. Representatives of persons performing platform work shall also have the right to act on behalf or in support of several persons performing platform work, with those persons' approval.

Article 15

Communication channels for persons performing platform work

Member States shall take the necessary measures to ensure that digital labour platforms create the possibility for persons performing platform work to contact and communicate with each other, and to 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 16

Access to evidence

1. Member States shall ensure that in proceedings concerning a claim regarding correct determination of the employment status of persons performing platform work, 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 claim. They shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.
3. This Article shall not prevent Member States from maintaining or introducing rules which are more favourable to persons performing platform work.

Article 17

Protection against adverse treatment or consequences

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

Article 18

Protection from dismissal

1. Member States shall take the necessary measures to prohibit the dismissal or its equivalent and all preparations for dismissal or its equivalent of persons performing platform work, on the grounds that they have exercised the rights provided for in this Directive.
2. Persons performing platform work who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in this Directive, may request the digital labour platform to provide duly substantiated grounds for the dismissal or the equivalent measures. The digital labour platform shall provide those grounds in writing.
3. Member States shall take the necessary measures to ensure that, when persons performing platform work referred to in paragraph 2 establish, before a court or other competent authority or body, facts from which it may be presumed that there has been such a dismissal or equivalent measures, it shall be for the digital labour platform to prove that the dismissal or equivalent measures were based on grounds other than those referred to in paragraph 1.
4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to persons performing platform work.

5. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or other competent authority or body to investigate the facts of the case.
6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member State.

Article 19

Supervision and penalties

1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be responsible for monitoring the application of Article 6, Article 7(1) and (3) and Articles 8 and 10 of this Directive, in accordance with the relevant provisions in Chapters VI, VII and VIII of Regulation (EU) 2016/679. They shall be competent to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.
2. The authorities referred to in paragraph 1 and national labour and social protection 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 and decision-making systems on working conditions or on rights of 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. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to provisions of this Directive other than those referred to in paragraph 1 or of the relevant provisions already in force concerning the rights which are within the scope of this Directive. The penalties provided for shall be effective, proportionate and dissuasive.

CHAPTER VI

FINAL PROVISIONS

Article 20

Non-regression and more favourable provisions

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

Article 21

Transposition and implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years after entry into force] at the latest. They shall immediately inform the Commission thereof.
 - When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 22

Review by the Commission

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

Article 23

Entry into force

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

Article 24

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President