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MEETING DOCUMENT

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

Following the Social Questions Working Party meeting of 17th July 2023, delegations will find attached the contributions received from the AT, BE, HR, HU, IT, PL, RO, and SI delegations.

Comments from the AT delegation

General remarks:

- AT supported the General Approach (GA) and was willing to make concessions.
- From AT's point of view, it is therefore essential to largely **stick to the balanced text of the GA** in the trilogue negotiations.
- In AT, trade unions can only act for employees, not for genuine self-employed. This proposed directive should grant rights to representatives of self-employed only insofar as this representation is already provided for in the national legal system.
- In contrast to the EP mandate, the GA represents in principle a more balanced approach.

Automated monitoring and decision-making - Rows 81b & 81c / 110, 111, 111a, 28c.

Row 81b and 81c:

- The definition of automated monitoring systems and automated decision-making systems by the EP is less detailed than the definition of the GA in Art. 6a and 6b.
- AT prefers the GA.

Row 110:

- AT rejects the extension of the scope of application of Art. 6 para. 1 as proposed by the EP.

Row 111:

- The EP also wants to include the use of automated systems during the recruitment process. It is unclear whether only employees in existing employment relationships must be informed of their use, or also potential future employees.
- AT rejects the proposal by the EP.

Row 111a:

- The extension of the scope of application proposed by the EP in Art. 6 para. 1 (1a), which would also include service providers that sell their management services to the platform, is too extensive.
- AT rejects the proposal by the EP and supports the text agreed upon in the GA.

Row 28c:

- The recital concerning automated monitoring systems and automated decision-making systems is too detailed and may be outdated in the near future.
- AT supports the GA.

Information and consultation: Recipients of information: Rows 109, 122, Conditions for provision of information: Rows 121, 121a; Confidential information (Article 6a) (Rows 127i - 127n, 43).

Row 109:

- AT rejects the inclusion of further persons to be informed by the platform.

Row 122:

- The wording of the GA is clearer, as it includes all competent national authorities. The EP Mandate excludes the sharing of information with platform worker's representatives. Also, AT rejects the addition of "always" and prefers the text of the GA.

Row 127i – 127n:

- The EP proposes a new article on confidential information (Art. 6a). The proposal is too extensive, in particular as regards the indicators for the verification of the confidentiality of information MS have to develop. This not only interferes with entrepreneurial freedom but also overlooks the fact that different industries and sectors consider different information confidential.
- The paragraph on urgent administrative or judicial decisions to review the classification done by platforms interferes with the procedural autonomy of MS.
- Generally, Art. 6a is too extensive and goes beyond the GA.
- AT rejects the detailed EP mandate.

Row 43:

- Digital labour platforms should not be required to disclose the detailed functioning of their systems, which is why AT supports the GA.

Intermediaries / subcontracting (Rows: 80a, 83a, 83b, 159d to 159h, 197, 28d, 36, 52a, 78).

Row 159d – 159h:

- What is the relationship between subcontractors (EP mandate) and intermediaries (Council mandate)? According to Art. 2 (4a) (definition of intermediaries), the term also includes subcontractors, which is why the GA should be retained with regard to "intermediaries".
- To avoid ambiguity, the terms "persons performing platform work" and "platform worker" were clearly defined in Art. 2. Here, this distinction is watered down, as it refers to the worker's rights, although para. 1 refers to all "persons performing platform work". The mixing of these two forms of employment is rejected by AT.
- Art. 12b para. 4 interferes with the procedural autonomy of the MS and is therefore rejected.
- AT supports the adherence to the GA.

Row 36:

- The wording of the EP mandate is too narrow and leaves no wiggle room for national circumstances in contrast to recital 25a of the GA.
- AT rejects the EP proposal on the legal presumption. AT supports the GA.
- In principle, the complete shift of liability from platforms to subcontractors, as proposed by the EP, is too far-reaching. The concept of shared responsibility, as provided for in the GA, is more suitable.
- AT supports the GA.

Row 52a:

- The EP proposal is too far-reaching on the issue of undeclared work.
- The obligation for platforms to ensure reliable verification processes of platform workers' identity is too extensive.
- AT supports the GA.

Row 78:

- The EP proposal removes the linkage to a contractual relationship between the individual and the digital platform, which broadens the scope of application.
- AT rejects the EP proposal and supports the GA, which also includes a reference to intermediaries.

Row 80a:

- The GA includes a definition of intermediaries which is supported by AT. The GA provides a balanced solution on this issue and should therefore be maintained.

Cross-border cooperation (Rows: 159a to 159c; 51-52).

Row 159a – 159c:

Para 1:

- AT supports the exemption for tax, criminal and social security procedures as proposed in the GA.
- This exception should also apply in the context of cross-border cooperation.
- AT rejects the EP Mandate.

Para 2:

- The extensive description of the competences of ELA is too far-reaching. The detailed description of ELA's competences is too far-reaching.
- In any case, it should be made clear in the text that ELA is not granted any additional competencies here.
- AT rejects the EP Mandate.

Row 51-52:

- At supports the exemption for tax, criminal and social security procedures as proposed in the GA.
- Other obligations for platforms under other EU legislation should be taken into account.
- AT supports the GA.

Representation of persons performing platforms work and platform workers. (Rows 81, 81a, 87a, 89, 89a, 107d, 109, 122, 126, 126a, 127f, 127g, 127j to 127n, 129, 134a, 135b, 139, 144, 145a, 146 154, 158, 164, 165-165c, 167, 167a, 173, 173a; 18, 25, 28a, 34, 42, 42b, 43, 44a, 45, 48, 49, 52, 71a).

Row 81:

- Who qualifies as a workers' representative shall remain within the competences of the MS. AT supports the GA on this matter.

Row 81a:

- The EP proposes a definition of representatives of persons performing platform work. However, this term includes platform workers and self-employed person and contradicts AT national law.
- Additionally, the EP Mandate's interpretation of the guidelines by the EC on solo self-employed is too extensive. The EP's proposal is contradicting the guidelines and EU antitrust law.

- AT rejects the definition and supports the GA.

Row 87a:

- The additional text proposed by the EP is redundant and has no legal implications.

Row 89:

- The wording of the EP mandate makes it clear that there should be no third category of employees.
- This is not compatible with the well-established system of freelance workers in AT. As mentioned several times during the Council negotiations, this third category offers substantial advantages for employers and employees. It must therefore be possible to maintain this category at national level.
- Furthermore, the deletion of "or an intermediate employment status" in recital 19 must be rejected.
- AT supports the GA and rejects the EP Mandate.

Row 89a:

- AT rejects the alternative concept of the legal presumption proposed by the EP.
- In contrast, the AA represents a more balanced approach that should be maintained.

Row 126:

- The changes proposed by the EP are too extensive.
- AT prefers the GA.

Row 126a:

- The added text of the EP is too far-reaching. The regulatory framework of the GDPR is sufficient.
- AT refers to Art. 5a in the GA which should be maintained.

Row 127f:

- The EP Mandate is too detailed and creates a disproportionate bureaucratic burden.

Row 127g:

- The regulations of the EP mandate are too detailed, the general provisions of the GDPR are sufficient to ensure data protection.
- AT supports the GA.

Row 129:

- The participation rights of workers' representatives provided for by the EP are too far-reaching, and the extension of the scope of application and the introduction of an annual review are also rejected.
- The extension of the assessment to fundamental rights goes beyond the scope of the directive and places a disproportionate responsibility on platforms, especially compared to other companies.
- AT supports the GA.

Row 134a:

- AT rejects the EP Mandate and refers to Art. 7 (3a) of the GA.
- AT proposes to delete the term "labour authorities".

Row 144:

- The wording on the cooperation of representatives and platforms is too extensive.
- With regard to the autonomy of the social partners, it is questionable how this provision should be implemented at national level.
- AT supports the GA.

Row 146:

- AT prefers the balanced threshold of 500 workers provided for in the GA.
- The discretion of MS in the last sentence of the GA is necessary to address national circumstances and is in line with the character of a directive.

Row 154:

- The wording of the GA is clearer while the obligations laid down in the EP Mandate are too extensive. The obligation of platforms to provide information is already covered by general rules on the obligations of companies in national and EU law.

Row 158:

- The wording of the GA is to be preferred as it is more precise and clear.
- As already mentioned, references to the representatives of persons performing platform work are too broad.
- AT supports the GA.

Row 164:

- The reference to national law and practices must be maintained.
- AT supports the GA.

Row 167a:

- The provision proposed by the EP is very far-reaching. Prevention of violence and harassment in the workplace are already regulated elsewhere.

Row 18:

- The expansion of the circle of addressees must be rejected. As stated previously, the concept of representatives of persons performing platform work is problematic.
- The term "competent supervisory authorities" is unclear.
- The explanations of the EP mandate are too extensive. The GA is more understandable and therefore preferable.

Row 28a:

- The EP Mandate is too textensive and partly judgemental.
- AT rejects the EP Mandate.

Row 34:

- In AT, trade unions can only act for workers, not for the genuinely self-employed. This proposal should grant rights to representatives of self-employed only to the extent that such representation is already provided for in the national legal system.
- AT cannot accept the legal presumption as proposed by the EP.
- AT supports the GA.

Row 42:

- The EP Mandate is too extensive and it burdens the platforms disproportionately.
- AT supports the GA.

Row 42b:

- The mainly descriptive reproduction of provisions of the GDPR is redundant and should therefore be deleted. The provisions of the GDPR continue to apply and do not need to be explicitly mentioned here.
- The newly introduced regulation of the EP mandate is too extensive, the general regulations of the GDPR are sufficient.
- The impact assessments prior to every deployment of new automated systems is a disproportionate bureaucratic burden for platforms.

Row 43:

- The provisions on the confidentiality of information proposed by the EP are too extensive.
- In particular, the obligation for MS to create indicators is disproportionate and therefore rejected.
- AT supports the GA.

Row 45:

- The right of workers' representatives to participate in the monitoring of every decision made by automated systems is too far-reaching and should be rejected.

Row 48:

- The wording on general obligations of platforms as employers is too extensive.
- AT supports the GA.

Row 49:

- The extensive involvement of workers' representatives is too far-reaching. The wording of the GA is clearer and more understandable.
- AT supports the GA.

Row 52:

- The proposed text by the EP on the registration of platforms in public business registers is redundant. If a platform is registered as a company, it must be entered in the public business register as well.
- Furthermore, the EP Mandate mixes up the obligation to provide information to authorities and the data collection by Eurofound and ELA.
- AT rejects the EP Mandate and supports the GA.

Row 71a:

- In AT, trade unions can only act for workers, not for the genuinely self-employed. This proposal should grant rights to representatives of self-employed only to the extent that such representation is already provided for in the national legal system.
- AT supports the GA.

Promotion of collective bargaining 149a to 149f; 28b, 33, 55 and dissemination of information 189a.

General comment:

- The EP's proposals on this topic area conflict with antitrust law and are therefore rejected.
- The EC's "Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed people" were formulated very carefully with antitrust law in mind.
- However, these EP proposals are too far-reaching.

Row 33:

- The interpretation of the EC guidelines on solo self-employed is too extensive.
- AT supports the GA.

Row 189a:

- The proposed text by the EP constitutes a disproportionate interference with the competency of MS to decide on the national promulgation process.
- AT rejects the EP proposal and supports the GA.

Enforcement and penalties (Rows: 182 to 184e; Rows 57).

Row 183:

- The GA is more in line with AT national law, as labour inspectorates are not exclusively competent for all aspects arising from this para. The term "other competent national authorities" is therefore very important for AT.

Row 184 – 184e:

- The detailed article on financial penalties is too extensive. This should be left to the discretion of the national legislator.
- AT supports the GA and rejects the EP Mandate.

Comments from the BE delegation

(Doc. 11517/23)

Recitals

Recital 1 – row 11 : Flexible with EP's provision

Recital 2 – row 12 : Flexible with EP's provision aimed at recapitulating in more details the rights provided by the Charter.

Recital 3 – row 13 : stick to GA

– **row 13a** : Stick to GA. No need to duplicate the Pillar's provisions.

Recital 4 – row 14 : Flexible with EP's provision as it gives more information on the context applicable to digital labour platforms and risks towards safety and health.

Recital 5 – row 15 : Flexible with EP's provision. It gives more context.

Recital 6 – row 16 & 16a : Flexible with EP's provision.

Recital 7 – row 17 : Flexible with EP's provision: employment status includes degree of direction or control.

Recital 8 – row 18 : Stick to GA.

Recital 9 – row 19 : Flexible with EP's provision.

– **row 19a** : Flexible with EP's provision (it gives more information on the current context).

Recital 10 – row 20 : Flexible with EP's provision.

This gives more context and information about key EU directives and other instruments which apply to workers. And specify that they are not applicable to genuine self-employed.

Recital 11 – row 21 : Flexible with EP's provision.

Recital 12 – row 22 : GA preferred.

Recital 13 – row 23 : Flexible with EP's provision. It goes a bit further into the rights and applies to persons performing platform work.

Recitals 14, 15a, 16 – rows 24, 25a, 26 : Stick to GA

Recitals 17a, 17b, 17c – rows 27a, 27b, 27c : Flexible with EP's provision – it gives more context and information about the scope of the directive.

Recital 18 – row 28 : Flexible with EP's provision.

Recital 18a – row 28a : Flexible with EP's provision regarding the statement in the first part (*"The frequent misclassification of persons performing platform work, together with..... rather than those the workers¹, particularly serious in platform work"*).

However, the second part of the position (*"Such company trade unions or workers' representatives...."*) should also apply to persons performing platform work and their representatives.

Recital 18a - row 28b : Flexible with EP's provision (promotion of social dialogue and collective bargaining) but it must also cover persons performing platform work and their representatives.

(see row 149 a – 149 f)

Recital 18a – row 28c : Flexible with EP's provision which gives context about what is included in "an automated decision-making and monitoring systems" in the context of digital labour platform.

Recital 18b – row 28d : Flexible with EP's provision because BE supports a greater accountability for intermediaries and a joint responsibility with the Platform. On this purpose BE would prefer to stick to the definition of intermediaries contained in the GA which is broader than sub-contractor (*"Member states should therefore lay down adequate measures, including.... a direct contractual relationship with the digital labour platform."*)

➔ **EP's amendment (lines 159d-159h)** - This implies that there is an extra clause on laid down in this directive and not only left to discretionary competences of the member states as states in line 28d.

BE wishes that in case of use of intermediaries, the protection laid down in this directive will be the same, so the responsibility of intermediaries can be specified in a uniform way in this directive.

Recital 19 – row 29 : Flexible with EP's provision.

Recital 20 – row 30 : Flexible with EP's provision except for the mention *"as defined in national law"* that should be deleted.

Recital 22 – row 32 : Flexible with EP's provision.

Recital 23 – row 33 : Flexible with EP's provision – the attention given to minorities can be supported.

Recital 24 – row 34 :

Supportive with EP's position

- The presumption must apply in all relevant administrative and judicial proceedings.
- The authorities must apply it in all cases where the employment relationship is erroneous (no derogation).

Flexible with EP's provision

- Platforms are employers if they supervise or exercise a degree of control.
- Subordination implies a employee (salaried) relationship.
- The presumption must also be applied when a union defends a person whose classification is incorrect.

Stick to GA regarding the application of the presumption (not automatic but based on common EU criteria).

Recital 24a – row 34a : Supportive with EP's position. Any derogation to the legal presumption should be avoided in the largest possible extent.

Recital 24b – row 34b : Supportive with EP's position. See row 34.

Recital 25 – row 35 : Stick to GA (line 89). EP position should be clarified.

Recital 25a – row 35a : Stick to GA.

Recital 25b – row 35b : Supportive with EP's position. The presumption should also apply in tax, criminal and social security proceedings, where relevant.

Recital 26 – row 36 :

See row 28 (d)

Flexible with EP's provision because BE supports a greater accountability for intermediaries and a joint responsibility with the platform. However, BE would prefer to stick to the definition of intermediaries which is broader than sub-contractor.

EP's amendment (lines 159d-159h) - This implies that there is an extra provision laid down in this directive and not only left to discretionary competences of the member states as states in line 28d.

BE wishes that in case of use of intermediaries, the protection laid down in this directive will be the same, so role intermediaries can be specified in this directive.

Recital 26 – row 36a : Flexible with EP's provision aimed at strengthening the power of inspections, in order to ensure the effectiveness of the directive This should be done in an appropriate way while respecting national competences.

See rows 101- 101b

Recital 26 – row 36b : See rows 101-101b.

Flexible with EP's provision.

We agree with the principle of involving the inspection services when a decision affecting workers has been taken, but this must not be too coercive.

Recital 27 – row 37 : See row 38d. Stick to GA

Recital 28 – row 38 : stick to GA. Member states should decide whether or not to apply a suspensive effect.

Recital 28 – row 38a : Stick to GA.

The employment status does not involve automatically an open-ended relationship and a full-time work.

Recital 28a – row 38b : Supportive with EP's provision (row 102d).

BE is willing to support an application of the presumption in all proceedings and circumstances.

Recital 28b – row 38c : Stick to GA (See comments on rows 38 and 102j).

Member states should decide whether or not to apply a suspensive effect.

Recitals 28c, 28d, 29 – rows 38d, 38e, 39 : stick to GA

Recital 30 – row 40 : Flexible with EP's provision as far as it complies with GDPR and is not redundant.

Recital 30 – row 40a : Flexible with EP's provision. It gives more context about platform work and the impact of the use of algorithms.

Recital 31 – row 41 : Flexible with EP's provision. It gives more context about platform work and the impact of the use of algorithms.

Recital 32 – row 42 : Flexible with EP's provision as far as it complies with GDPR and is not redundant.

- **Row 42a :** Flexible with EP's provision
- **Row 42b :** Flexible with EP's provision. This provision should also apply to persons performing platform work not only platform's workers.

Recital 33 – row 43 :

See comments rows 127i-127 n.

Supportive with EP's provision.

Need for secure use of confidential data in accordance with the GDPR.

Support , especially in the light of experience in the Member States where the presumption applies (as well as, in connection with the collaborative economy regime and income threshold), where fraud has been observed - prête-nom, sub renting of the accounts (or even an adaptation of the contract between the platform and the courier in the case of Deliveroo so that the courier can benefit from the favourable tax regime) or the use of intermediaries in order to circumvent the rules.

Recital 34 – row 44 : Flexible with EP's provision.

Recital 34 – row 44a : Flexible with EP's provision but it should cover all persons performing platform work and their representatives.

Recitals 35, 36, 37 – rows 45, 46, 46a, 47 : Flexible with EP's provision.

Recital 38 – row 48 : stick to GA.

- **Row 48a :** See row 127f.

Flexible with EP's provision because it seems more favourable to persons performing platform work and it offers more protection.

- **Row 48b :** Flexible with EP's provision

Recital 39 – row 49, 49a : Flexible with EP's provision.

Recital 40 – row 50 : stick to GA.

Recital 41 – row 51 :

Supportive with EP's provision because of the need to comply with national legislation in all areas (labour, social security, tax). It is the conditions to have an effective access to social protection of workers.

The recognition of ELA's role as facilitator in the text should in practice increase the number of cases where the Authority is consulted.

Recital 42 – row 52:

Flexible with EP's provision.

Regarding the first sentence, it should however specify what is "relevant information" for example it seems not realistic to include copies of the contract in such a register... + take account of platforms that have various activities (variety of types of service, which will make the register more complex).

For the register, it could be relevant to be inspired by what is made for platforms in the context of Directive DAC 7.

Average working hours and average income are relevant as overall data to situate the platform, but are not sufficient as information in the context of the control of a worker's performance by an inspection service => care must be taken not to use this directive to reduce the useful information for the inspection services.

Recital 42 – row 52a :

Supportive with EP's provision regarding :

1. Joint and several liability in the event of subcontracting (confer our comment on intermediaries on row 28 d and 36)
2. problems linked to fraudulent use of identities (illegally staying workers)
3. legal recourse available for illegal residents

Support of BE especially in the light of experience in Member States where the presumption applies (or in BE, in connection with the collaborative economy regime and income threshold), where fraud has been observed – "prête-nom", sub-renting/sale of personal accounts (or even an adaptation of the contract between the platform and the courier in the case of Deliveroo so that the courier can benefit from the favourable tax regime) or the use of intermediaries.

Recitals 43, 44 – rows 53, 54 : Flexible with EP's provision.

Recital 45 – row 55 : Flexible with EP's provision in promoting a better access to collective bargaining

- ➔ Link with COM guidelines on collective bargaining for solo self-employed - Article 101 TEU does not prevent collective bargaining for platform workers, whatever their status.

Recitals 46, 47, 48 – rows 56, 57, 58, 58a, 58b : Flexible with EP's provision.

Recital 49 – row 59 : Flexible with EP's provision "minimum harmonization...that respect social standards".

Recital 50 – row 60 : Stick to GA because it includes persons performing platform work.

Recital 50a – row 60a : Flexible with EP's provision.

Recital 51 – row 61: Stick to GA.

Article 1

Rows 71, 71a : stick to GA

Article 2

Row 74 : stick to GA

Rows 76, 77, 77a : Flexible with EP's provision

Rows 78, 79, 80, 80a, 80b : stick to GA

Rows 81, 81a : Stick to GA (national definitions should apply)

Rows 81b, 81c : Flexible with EP's provision as long as inconsistencies and overlap with the current European legislation in place, for example the GDPR are avoided.

Rows 81d, 81e, 82 : Flexible with EP's provision

Row 83 : Flexible with EP's provision but "or services" must be added after "to recell goods"

Row 83b : Supportive with EP's provision regarding joint liability but the use of the definitions of intermediaries of GA should be retained.

Intermediaries is broader than sub-contractors.

Article 3

Row 86 : stick to GA.

Rows 87, 87a, 87b : Flexible with EP's provision

Article 4

Row 89 :

BE supports EP's provision on the following two points:

1. Avoid if possible and where relevant the creation of other/intermediate status.
2. Member states must provide that supervisory authorities and employees' representatives may also invoke the legal presumption

-> no derogation/possibility for authorities not to apply it - linked to row 90).

However, BE cannot support an automatic legal presumption, as this is not currently provided for in Belgian law.

We can support a rebuttable presumption based on common EU criteria in order to ensure a level playing field.

Row 89a :

Supportive with EP's position which provides an obligation for the authorities to apply the presumption.

Obligation also to apply the presumption in the event of a challenge to status - administrative or judicial proceedings (no derogation to not apply the presumption)

Major discretionary powers for national competent authorities might lead to divergences within the member states. Some MS might be more strict than others, meaning no level playing field within the EU, since the classification is not on the basis of criteria. -> major discretionary power might in this case not result into a higher protection for platform workers since divergences between different member states can occur.

Row 90 :

Supportive with EP's position:

- The presumption is rebuttable
- The presumption applies in all relevant administrative procedures and legal proceedings

Row 91 :

Stick to GA :

- The "chapeau" introduces a presumption accompanied by criteria
- The criteria must be met either de facto or in application of the general conditions.

BE is open to define a small amount of criteria to be fulfilled.

Rows 92, 93, 94, 95, 95a, 95b, 96, 96a : Stick to GA

Article 4 (3) – row 97: Flexible with EP's provision. It offers more information and protection for workers and enables appropriate information to be provided and therefore reduces the risk of the contract being reclassified.

Rows 98, 99 : Flexible with EP's provision (see row 97)

Row 100, 101, 101a, 101b : Flexible with some parts of EP's provision as long as national competences are respected.

Rows 100a, 101c : Flexible with EP's provision.

Rows 102, 102b : Stick to GA.

Row 102c : Supportive with EP's position. It should apply to all procedures (see rows 89 – 89a). It is a matter of public policy in the Member states.

Row 102d : Support EP's position. Discretionary power risks to lead to divergence between member states and thus not reach a level playing field.

Row 102e : Supportive with EP's provision (see row 104) (doesn't provide "where the presumption applies").

Row 102g : Stick to GA regarding burden of proof on the PT

Rows 102h, 102i : Stick to GA

Row 102j : Stick to GA. (See also row 38 and 38c)

Rows 102k, 102l, 102m, 102n, 102o, 102p : stick to GA

Article 5

Row 103 : stick to GA

Row 104 : Supportive with EP's provision (see also row 102e) (doesn't provide "where the presumption applies")

Row 105 : Flexible with EP's provision on the the burden of proof on the platform (see also 102g).

Row 106 : Flexible with EP's provision (see row 102h)

Rows 106a, 106b, 106c : Stick to GA. See also Row 89.

Row 106d : stick to GA

Row 107a : Flexible on EP's provisions (rows 126a ;127a - 127h). but should also cover persons performing platform work and not only "platform worker".

Row 107b : Flexible on EP's provision (same as EP - row 123).

Row 107c : Flexible on EP's provision. Similar with row 124 which offers more protection but should cover all persons performing platform work.

Row 107d : Flexible on EP's provision. (see also row 126).

Row 107e : Flexible on EP's provision (same provision - row 127) but should cover all persons performing platform work.

Article 6

Row 109 : Flexible on EP's provision but should cover all persons performing platform work and their representatives.

Row 110 : Flexible on EP's provision but should cover all persons performing platform work.

Row 111 : Flexible with EP's provision but should cover all persons performing platform work and the word "significantly" should be deleted.

Rows 111a, 112, 115 : Flexible on EP's provision.

Rows 115a, 115b : Flexible with EP's provision because it offers more protection.

Rows 119, 120 : Flexible with EP's provision but should cover all persons performing platform work.

Row 120a : "not be taken by automated monitoring systems" what does EP aim for ?

Row 121 : Flexible with EP's provision

Row 121a : Flexible with EP's provision but should cover all persons performing platform work.

Row 122 : Stick to GA because the information is made available to representatives and competent national authorities.

Competent authorities is more relevant than "labour authorities and other competent authorities".

Row 123 : Flexible with EP's provisions because they offer more protection and information. But these provisions must also apply to persons performing platform work.

Row 124 : Flexible with EP's provision which offers more protection. But must apply to persons performing platform work

Row 125 : Flexible with EP's provision

Row 126 : Flexible with EP's provision. But must aim to persons performing platform work.

Row 126a : Flexible with EP's provision because this offers more protection for persons performing platform work.

However, it may be redundant with the provisions mentioned in 6(5) b about personal data relating to health.

Row 127 : Stick to GA (see also row 107e)

Row 127a : Flexible with EP's provision but it is sometimes needed to take into account the problem of the accounts that are exchanged/sold between persons performing platform work. Biometric identification could be used to help combat the problem of this fraudulent practice.

Use of biometric identification should remain limited only in case of identification of workers.

Rows 127b, 127c : Flexible with EP's provision. It offers more protection.

Row 127d : Flexible with EP's provision (see row 127a)

Row 127e : Flexible with EP's provision. It offers more protection. But must apply to all persons performing platform work.

Row 127f : Flexible with EP's provision because the impact assessment offers more information.

Row 127g : Flexible with EP's provision but should aim persons performing platform work.

Row 127h : Flexible with EP's provision because it offers more information but should aim persons performing platform work.

Row 127i : Flexible with EP's provision. It might be important in the interests of information security.

Row 127j : Flexible with EP's provision. It might be important in the interests of information security. Could EP give examples of confidential information that is also information concerning elements that may affect the rights ?

Rows 127j to 127n : Flexible with EP's provision.

Row 127k : Flexible with EP's provision because it is important to limit where confidential information can be given and to whom/ limits of the obligation to keep information confidential. See row 127j.

Row 127n : Flexible with EP's provision because it seems to offer more information. But should cover persons performing platform work's representatives.

Article 7

Row 128a : Flexible with EP's provision. We agree that at least certain decisions should be taken by human beings.

However “decisions affecting working conditions” should be further specified and feasible.

Row 129 : Flexible with EP’s provision and should imply to all persons performing platform work’s representatives.

Row 130 : Flexible with EP’s provision (similar with Council’s mandate - see row 142c)

Rows 131, 131a : Flexible with EP’s provision seems to offer more protection.

Row 132 : (Same as council’s mandate row 142e)

Rows 133, 134, 134c, 135, 135b : Flexible with EP’s provision.

Row 134a : Flexible with EP’s provision. It goes further than the Council's proposal. It provides for information to be given to workers' representatives and the competent authorities. Also flexible to mention “competent authorities” instead of “competent labour and data protection authorities”.

Row 134b : Flexible with EP’s provision. It should be further clarified. What is a risk to health and safety that cannot be avoided nor mitigated ? Can EP give an example? or explain what is the purpose?

Row 135a : Stick to GA because this article is not clear enough.

Article 8

Row 137 : Flexible with EP’s provision

It must aim to all persons performing platform work.

Rows 138, 139 : Stick to GA because it addresses all “persons performing platform work”

Rows 140, 142 : Flexible with EP’s provision

Rows 141, 142a : Stick to GA

Rows 142c, 142d, 142e, 142f, 142g : Flexible with EP’s provision (similar with Council’s mandate - see rows 130, 131, 132, 133, 134c)

Article 9

Rows 144, 145a : Flexible with EP’s provision because it ensures effective consultation better.

Row 146 : Flexible with EP’s provision on the number of workers.

Row 146a : Flexible with EP’s provision

Article 10

Row 147 : Stick to GA

Row 149a : Flexible with EP’s provision. BE is open to discuss this new chapter. The material and personal scope should be clarified.

Rows 149b, 149c, 149d, 149e, 149f : Flexible with EP’s provision.

Article 11

Row 152 : Flexible with EP's provision but we prefer to say "declare work... to the competent authorities" which is broader.

Last sentence provided in the council's mandate (GA) should be kept.

Article 12

Row 154 : Flexible with EP's provision which is more precise.

Row 155 : Stick to GA which go further as it adds "on a regular basis".

Row 155a : Flexible with EP's provision but could lead to a huge administrative burden given the number of contracts.

Row 156, 156b : stick to GA

Row 156a : Flexible with EP's provision but can lead to a huge administrative burden given the number of contracts.

Row 157 : Flexible with EP's provision

Row 158 : Flexible with EP's provision as it is more protective and can ensure the effectivity of the right covered by the text.

BE can show some flexibility concerning the EP's amendment.

Rows 159b, 159c : Flexible with EP's provision

Row 159e : Supports with EP's provision on the fact that member states must establish joint or individual liability in accordance with their national legislation. But should cover all intermediaries including subcontractors.

See rows 28d, 36.

Row 159f : Supports with EP's provision (limitation of the platform's liability to the rights acquired by employees during the relationship with the platform)

Row 159g, 159h : Supports with EP's provision

Article 13

Rows 162, 162a: Flexible with EP's provision

Article 14

Rows 164, 165, 165a, 165c : Flexible with EP's provision

Row 165b : stick to GA

Article 15

Rows 167, 167a : Flexible with EP's provision

Article 16

Rows 169, 170, 171 : Flexible with EP's provision

Article 17

Rows 173, 173a : Flexible with EP's provision

Article 18

Row 175 : Flexible with EP's provision to add : 'including suspension of the account'.

Rows 176, 177 : stick to GA

Row 178 : Flexible with EP's provision

Article 19

Row 182 : Flexible with EP's provision but we prefer the use of 'competent authorities' instead of "national labour authorities".

Row 183 : Stick to GA because it involves all competent authorities

But, BE supports "including in cross-border situations" to be added.

Row 184 : Stick to GA but ok to add "including financial penalties"

Rows 184a, 184b, 184c, 184d, 184e : Stick to GA. Such competence belongs to member states.

Article 20

Row 187 : Stick to GA

Row 188 : Flexible with EP's provision

Row 189a : Flexible with EP's provision. It is interesting and allows the public in general to be informed correctly about platform work. It can ensure compliance with the provisions of the directive and prevent non-compliance through misunderstanding about its content and implications.

Row 189c : stick to GA

Article 21

Row 193 : Flexible with EP's provision

Article 22

Row 197 : Stick to GA. More focus on the role of intermediaries during review of implementation of directive.

Comments from the HR delegation

(Doc. 11517/23)

Definitions: Automated monitoring and decision-making - Rows 81b & 81c / 110, 111, 111a, 28c.

- We prefer the Council's General Approach, we believe that proposed definitions have no added value.

Information and consultation: Recipients of information: Rows 109, 122, Conditions for provision of information: Rows 121, 121a; Confidential information (Article 6a) (Rows 127i - 127n, 43).

- We can show flexibility in relation to lines 121 and 121a, given that the proposal largely coincides with our own national legislation.
- With regard to other amendments, we prefer the text of the Council's general approach, considering that the proposal has no added value and in certain parts coincides with the provisions of the GDPR.

Intermediaries / subcontracting (Rows: 80a, 83a, 83b, 159d to 159h, 197, 28d, 36, 52a, 78).

- We prefer the Council's General Approach, whereby it emphasizes the term intermediaries, not subcontractors.
- Although we support the joint responsibility, we do not, however, support the extension of such responsibility to several intermediaries.

Cross-border cooperation (Rows: 159a to 159c; 51-52)

- We believe that proposals do not have any added value.

Representation of persons performing platforms work and platform workers. (Rows 81, 81a, 87a, 89, 89a, 107d, 109, 122, 126, 126a, 127f, 127g, 127j to 127n, 129, 134a, 135b, 139, 144, 145a, 146 154, 158, 164, 165-165c, 167, 167a, 173, 173a; 18, 25, 28a, 34, 42, 42b, 43, 44a, 45, 48, 49, 52, 71a).

- We can show flexibility in relation to line 126, given the importance of promotion of collective bargain and concluding the collective agreements in the domestic legal system.
- In relation to other amendments, we prefer the text of the Council's General Approach.

Promotion of collective bargaining 149a to 149f; 28b, 33, 55 and dissemination of information 189a

- Despite the above mentioned, we believe that the introduction of the proposal would however represent an additional burden, especially due to the fact that the stated obligations derive from other international legal sources, and as such apply to all workers, including workers on digital platforms.

Enforcement and penalties (Rows: 182 to 184e; Rows 57).

- In relation to other amendments, we prefer the text of the Council's General Approach.

Comments from the HU delegation

Written comments from the Hungarian delegation on the Steering notes doc. st11065/23, st11065/23 (COR 1) and st11517/23 with relation to doc. st10758/23

I. General remarks

- We consider a constructive cooperation to be extremely important during further negotiations. We would also like to express our commitment to the effective closure of the trialogues.
- Hungary generally would also support an EU level regulation that would allow Member States an adequately wide consideration of circumstances when examining the relationship between digital labour platforms and platform workers. We would like to avoid creating rules that would eventually define the notion of “worker” at Union level.
- It is also necessary to emphasize that the General Approach contains the most acceptable compromises, therefore we ask the Presidency to maintain the results and balanced compromises during the trialogue negotiations achieved in the doc. st10107/23.

For Hungary, the most important achievements in the General Approach to be safeguarded during the trialogues are following parts of the proposal:

- specifying and differentiating the criteria related to the **legal presumption** (rows 89-96);
- inclusion of regulations on **intermediaries** (rows 83a-83b, 78., 197);
- ensuring the **discretionary power for the national authorities** in administrative and/or judicial proceedings on the application of the criteria of legal presumption in ex officio procedures (row 102d);
- **suspensive effect of decisions** establishing an employment relationship based on the criteria of the legal presumption remains within the competence of the Member States (rows 102-102j);
- **exempting tax, penal and social security procedures** from the scope of the mandatory application of the legal presumption (row 102c);
- the limitation of occupational health and safety regulations to dependent platform workers (rows 142c-142f).

II. Detailed opinion on the subjects in documents st11065/23 (COR 1) and 11517/23

1. Legal presumption, including rebuttal

Regarding the legal presumption, we conceptually disagree with the amending proposals of the European Parliament. For Hungary, the concept of legal presumption proposed by the EP is not entirely clear and seems to be self-contradictory as well.

While stating in row 90 that “*The application of the legal presumption **shall not lead to an automatic reclassification** of all persons performing platform work as platform workers*“, there is a clear provision in the previous row 89, that “*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** and therefore digital labour platforms shall be presumed to be employers.*“

The two statements cancel each other, whereby definitely do not lead to a clear regulatory framework where the addressees have no doubts as to the rights and obligations resulting from them.

Therefore, all **EP proposals** with regard to the application of the legal presumption are to be **considered a red-line**, and we think that in this area we must consistently stick to the regulatory construction included in the General Approach.

On the other hand, the EP's proposal defines the definition of an EU platform worker without a contractual legal basis, and also raises proportionality concerns regarding the consequences for genuine self-employed persons.

Furthermore, in case of use of intermediaries, we do not see how the legal presumption proposed by the EP could be applied in practice, if she/he has already an employment relationship with the subcontractor (e.g., temporary work agency). *In this case, would there be created two employment relationships parallel for the same task (1- intermediary, 2- platform)?*

2. Interdiction of processing of certain types of data (Art. 5a, resp. 6.5) (Rows: 81d-81e, 107a to 107e and 123 to 127h; 22, 39-42, 44-44a)

We *can be flexible* towards the EP proposals, as long as the approach correspond to the regime also provided for in Article 22 of the General Data Protection Regulation (Regulation (EU) 2016/679).

3. Impact assessment on data protection, OSH and working conditions

- Rows: 129, 132, 48a - OSH and working conditions: In our opinion, the EP's proposals relating to occupational safety and health (*rows 42b, Article 7, point 1, lines 134a - 134b*) would create a too detailed and parallel regulation. The occupational health and safety *framework directive 89/391/EEC* already requires employers to carry out a risk assessment. The evaluation (survey) and management of workplace risks can be adequately ensured with the current EU occupational health and safety regulations, therefore we do neither consider an additional impact assessment justified nor necessary for the protection of platform workers.

- Rows: 127f, 42b - Data protection: *Article 35 of the GDPR* also requires that an impact assessment must be prepared prior to the start of data management. It has to be made clear during the technical dialogues how the proposed impact assessment by the EP would correlate to the impact assessment according to the GDPR (whether it is the same or a part of it).

It has to be taken into account that the requirement of a mandatory annual impact assessment can easily result in an excessive administrative burden and not an obligation representing a real guarantee for platform workers and persons performing platform work.

- Row 131a- Discrimination: *EP's proposal regarding the impact assessment on risk of discrimination [Article 7 (2) subsection (1) point aa)].*

The legal basis of the EP proposal is questionable, hence none of the legal basis of the current proposal (*Article 153 (1) b), (2) b) and Article 16 of the TFEU*) apply to anti-discrimination.

Article 153 paragraph (1) point i) TFEU refers to equal opportunities between women and men, however, the *EP proposal concerns racial and other types of discrimination* ("replicating gender, racial and other social biases"), which could only be regulated on the basis of Article 19 of the TFEU (which is not indicated as legal basis and would require unanimity).

4. Definitions: Automated monitoring and decision-making - Rows 81b & 81c / 110, 111, 111a, 28c.

We can be *flexible on row 81a* otherwise prefer to maintain the wording of the general approach. As regards *row 111*, we could accept the term “recruitment” moved into the definition of ‘*automated decision-making systems*’ in *Article 2 (1)* as follows:

« *Article 2(1), point (5b)*

*(6b) ‘automated decision-making systems’ means systems which are used to take or support decisions that significantly affect persons performing platform work, in particular **their recruitment**, the offer or assignment of tasks to them, their earnings, their safety and health, their working time, their access to training and their contractual status, including the restriction, suspension or termination of their account. »*

In *row 111a* we ask the Presidency to clarify whether Article 2a. provides a sufficient guarantee on the information obligation of intermediaries. If more detailed provisions are necessary for the transparency of automated monitoring and decision-making systems, then *we can show flexibility* towards the EP proposal.

As regards *row 28* it has to pay special attention to the coherence of definitions in this proposal and in the proposal for the regulation on Artificial Intelligence¹.

5. Information and consultation

In *row 109*, we support the General Approach, we do not support the cross-reference of exemplary list of EU labour law acquis.

In *row 122*, the EP's proposal *can be supported with the exception of direct reference to national labour authorities*. The design of system of public administration falls within the exclusive competence of the Member States, therefore we do support using the general term “the competent authority”.

In *rows 121, 121a* we *can support the EP's proposal in recital (32)*, but we consider it too descriptive in the operative part. It has to be noted that the EP's proposal is already included in recital (32) of the Council's general approach.

As for *rows 127i - 127n, 43* the confidentiality of communications is currently ensured by the GDPR, but of course, in this respect - within the legal basis for data management - the EU legislator can prescribe additional guarantee provisions. We *can be flexible on this matter*, however it must be clarified:

- *whether information related to platform work may affect fundamental rights in such a weight that it is necessary for such information to remain impenetrably secret (for example, during a criminal proceeding or other official procedure).*
- *what exactly is the EP's proposal aimed at, how much room would the proposal allow for possible restrictions in the Member States - introduced within a reasonable framework [especially comparing with Art 6a. (2) which would allow the protection of secrets to be breached through official or judicial means].*

6. Intermediaries / subcontracting (Rows: 80a, 83a, 83b, 159d to 159h, 197, 28d, 36, 52a, 78).

We ask the Presidency to protect the current provisions on intermediaries (80a-83b, 78., 197) during the triologue negotiations as it stands now in the General Approach. It is important to develop a future-proof directive by recognizing a practice that is already widespread in the platform industry and will develop dynamically in the future.

¹ COM/2021/206 final

The regulation on *subcontracting joint liability (lines 36, 36a, 52a, 159d-h)* is a red line for us, we cannot support it. According to our position, Article 2a must remain flexible for transposition and the **regulation of intermediaries' liability must be kept within the competence of the Member States.**

7. Cross-border cooperation (Rows: 159a to 159c; 51-52)

We *do not see the added value* of the EP proposal to the already existing institutionalized cooperation between MS's authorities (ELA). It seems to be an unnecessary duplication that endangers the clarity of the competencies of the ELA, and on the other hand, we do not see the role of EURES on this subject.

We ask the Presidency to clarify the reasons behind the EP's proposal for Article 12a.

8. Representation of persons performing platforms work and platform workers

In row 158, the EP's proposal (providing a longer response time for SMEs) *is acceptable to us*, easing the administrative burden for SMEs is necessary and justified.

We ask the Presidency to **preserve the compromise reached in the General Approach** in the further rounds of the trialogue negotiations, especially in the following rows: 109., 122. (information), 126a. row (confidential data), 135b. (representatives of platform workers), 146 (the threshold for expert cost bearing).

In row 89, dividing platform workers into two categories (89), whereby ignoring current practices in Member States, disregards the Member States' exclusive competence to establishing the national definition for workers.

In row 173a. (protection of trade union representatives) *we do not support the EP's proposal* on the current legal basis of the directive. Regulating the labour law protection of trade union representatives against discrimination, is could be potentially legally sound on the basis of Article 153 (1) point f) of the TFEU (with unanimous decision-making process).

9. Promotion of collective bargaining 149a to 149f; 28b, 33, 55 and dissemination of information 189a.

The proposal for the directive is based on Article 153 (1) (b) of the TFEU on working conditions and Article 16 (2) on data protection. Any *provision relating to the representation and collective defence of the interests of workers and employers can be based on the legal basis of Article 153(1)(f) of the TFEU and requires unanimous decision-making.*

We ask the Presidency to reject the EP proposal on the above grounds.

As regards raw 189a on dissemination of information we held it unnecessary and too detailed for including it in the operative part, however *it could be acceptable* as incorporated in a connecting recital.

10. Enforcement and penalties (Rows: 182 to 184e; Rows 57)

The General Approach adequately regulates the powers of individual authorities and the basic principles of sanctioning to which we can give our support.

Comments from the IT delegation

Comments on doc. n. 10758 - 4-column table PWD – EP proposals

General remarks:

Regarding the objective of the directive, Italy is in favour of considering the extension of the protection and improvement of working conditions, as general principles, to all person performing platform works, irrespective of the nature of his or her contractual relationship.

In this regard, for more clarity, we prefer the GA's solution of including both platform workers and self-employed workers in the same provisions, using the wording 'person performing platform work', as in chapter III, as well as their respective representatives.

Furthermore, the issue of health and safety is of great importance to us and deserves careful consideration for all person performing platform work.

We should avoid an excessive level of detail in some provisions, leaving an adequate margin of autonomy to the Member States, but at the same time considering a certain level of further harmonisation.

- **Legal Presumption, including rebuttal.** (Rows: 89 to 96a; 102-102j, 103 to 106m; 34 to 35b, 38-38c)

Italy wishes to preserve the structure designed in the initial proposal, with the use of criteria to apply the legal presumption.

According to the Italian view the assumption that the relationship between a platform and a person performing platform work is deemed to be an employment relationship without any limit (row 89), seems excessive and not suitable to the different employment relationships in practice.

Moreover, the text of the GA appears a good balance among the different positions of members States, and it gives the digital labour platform the opportunity to rebut.

Despite the different views, we are ready for a constructive discussion with the EP to achieve the goal of a proper classification of workers by other ways.

Row. 89 - The simplification of the categories does not seem to us very useful and we ask for more clarifications. It seems not fully consistent with the definition of 'person performing platform work' in row 79 and with recital 6a of the Council mandate, row 16, that seems to be more suitable to the changing reality. This approach does not mean lowering the level of protection, but, on the contrary, our wish is to strengthen it for all.

Row 102 – The reference to the Directive (EU) 2019/1152 has to be clarified.

As for the rebuttal, we prefer to stick to the GA.

As regards the non-suspensive effect of rebutting the presumption, in Italy it is already provided. However, in very limited cases of necessity and urgency, where specific conditions are met, the employer can ask the judge for a suspensive order in order to avoid the danger

of irreparable damage. This has to be considered within the broader principle of guaranteeing the right of defence. This provision could be useful, in particular, for SMEs. For this reason, we would like to be clarified whether the generic formula proposed by EP could still allow for such very limited and specific exceptions. Otherwise, we prefer to maintain the text of the Council mandate.

- **Interdiction of processing of certain types of data** (Art. 5a, resp. 6.5) (Rows: **81d-81e, 107a to 107e and 123 to 127h; 22, 39-42, 44-44a**)

On this issue, we can show flexibility by making some provisions of the GDPR more explicit, in order to improve protection from the management of automated systems, considering that personal and critical data could generate the possibility of discrimination and over control. However, in any case, we should avoid any overlaps and inconsistencies, as well as excessive administrative burdens.

As previously said, Italy suggests to explore the possibility of referring also to self-employed workers where compatible.

- **Impact assessment on data protection, OSH and working conditions:**

Data protection: 127f, 42b

OSH and working conditions: 129, 132, 48a, **144**

Discrimination: 131a

General: 134a-134b

We can show openness in order to improve protection from the management of automated systems. However, in any case, we should avoid any overlaps and inconsistencies, as well as excessive administrative burdens.

In particular, we are more positive in assessing the better way to extend protection for health and safety to all person performing platform work. This in line with the protection already guaranteed at national level, but especially in line with the orientation, e.g. in the ILO context, to consider the working environment, without making any difference for the classification of the worker.

Row 144 – we are positive with the specific reference to ‘working conditions and health and safety’ and we can share other integrations.

- **Definitions: Automated monitoring and decision-making** - Rows **81b & 81c / 110, 111, 111a, 28c., 120a**

The Council's definitions are appropriate and take into account the different aspects. However, we can show openness to some integrations with the EP mandate, like for instance row 120a referred to fundamental aspects of the employment relationship.

- **Information and consultation:** Recipients of information: Rows **109, 122**, Conditions for provision of information: Rows **121, 121a**; Confidential information (Article 6a) (Rows **127i - 127n, 43**).

For the seek of transparency, Italy is in favour of considering that the most significant changes concerning working conditions introduced through automated systems are disclosed before the start of work and in any case before their introduction, without a specific request by the workers, who may not be aware of it.

We deem it correct to put some limits to process and collect data that are not intrinsically connected to and strictly necessary to the performance of the contract between the persons performing platform work and the digital labour platform.

However, on these issues, there is a need to strike the right balance between the different aspects, avoiding overly detailed and burdensome prescriptions even for Member States.

Row 122 – we prefer to stick to the Council mandate.

- **Intermediaries / subcontracting** (Rows: **80a, 83a, 83b, 159d to 159h, 197, 28d, 36, 52a, 78**).

The GA address the need to ensure protection also in the case of the use of intermediaries; nevertheless we can show flexibility towards the EP proposals, also taking into account that the Italian system provides for clearer provisions on the liability of the subcontractor. In any case, it is useful, for the seek of clarity, to preserve the definition of intermediary in row 80a and the GA's provision of rows 78 and 83b.

- **Cross-border cooperation** (Rows: **159a to 159c; 51-52**).

We can be flexible.

The information referred to in row 52 is important to support labour inspectorates, social protection bodies and other relevant authorities.

- **Representation of persons performing platforms work and platform workers.**
(Rows **81, 81a, 87a, 89, 89a, 107d, 109, 122, 126, 126a, 127f, 127g, 127j to 127n, 129, 134a, 135b, 139, 144, 145a, 146 154, 158, 164, 165-165c, 167, 167a, 173, 173a; 18, 25, 28a, 34, 42, 42b, 43, 44a, 45, 48, 49, 52, 71a**).

The GA's seems to be quite balanced on the subject, but we are flexible towards a broader involvement of representatives of persons performing platform work. Regarding definitions, in general terms, we find it useful to use those adopted in other recent instruments. For instance, the definition of workers representatives was recently introduced in the 'pay transparency' directive. However, the EP proposal in rows 81 and 81a seems correct and offers more guarantees, also in terms of representativeness.

On the contrary, the EP text could be confusing in some cases, as it sometimes mentions trade unions, others workers representatives.

We believe that, in any case, the burdens for platforms in pursuing these objectives should be simplified and straightforward.

Row 71a – we prefer to maintain the provision of the GA.

Row 139 – the wording ‘sufficiently precise and adequately...’ does not seem appropriate for the transposition.

As already said, Italy is in favour of extending the right to information to all persons performing platform work and to their representatives.

Row 145a – we see positively that digital labour platforms provide the information with sufficient time, prior to their use and before any changes affecting working conditions, the organisation of work or the monitoring of work performance.

Row 146 - we can support the lowering of the minimum threshold of workers employed to obtain assistance.

Row 158 row – we can support the need to provide a substantiated reply without undue delay and with a specific time reference, in particular to pay attention to SMEs.

Promotion of collective bargaining 149a to 149f; 28b, 33, 55 and dissemination of information 189a.

In the framework of the legal base, we can agree to mention the issue of promoting collective bargaining, but in a less prescriptive and detailed manner to avoid the risk of overlapping with other legislative instruments. We are open to assessing these aspects, for both categories of workers. We are positive with row 189a.

- **Enforcement and penalties** (Rows: **182 to 184e**; Rows 57).

We should avoid overlaps with other legal instruments and take in duly consideration the competence of member States.

Comments from the PL delegation

Written comments (27.07.23) from the Polish delegation on document ST 10758/23

General remarks:

Poland is committed to protecting the rights of workers and minimizing abuses. At the same time, we are committed to minimizing impediments to the functioning of small and medium-sized enterprises. Application of the legal presumption and its rebuttal should not create the unjustified administrative burden. We insist on applying the mechanism of legal presumption as agreed by the Council, also as regards rebuttal that should be based on the national definition of employee.

Those are the most important provisions for us in the Directive.

The solutions proposed by the EP, especially the one regarding the legal presumption, is unclear and requires clarifications.

The transparency on automated monitoring and decision – making systems is an important element of this Directive. The scope of the data to be shared and the information to be provided by platforms must strike the right balance between transparency towards persons performing platform work and their representatives, and the protection of business confidentiality in order not to jeopardise critical elements of the functioning of platforms.

We would like to keep the Council's General Approach which is balanced.

Some of the solutions proposed by the EP require clarifications.

1. Legal presumption, including rebuttal (Rows: 89 to 96a; 102-102j, 103 to 106m; 34 to 35b, 38-38c)

Row 90.

- The first sentence of Art. 4(1) subparagraph 2 seems incoherent with subparagraph 1 (row 89). «*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 and therefore digital labour platforms shall be presumed to be employers.*» Does it mean that the reclassification is automatic? Could you please explain?
- «*Digital labour platforms shall have the possibility to rebut the presumption of employment before a decision for reclassification is taken in administrative or legal proceedings*» - Possibility that the platform will rebut the presumption prior to the issuance of a reclassification decision in administrative or judicial proceedings, raises a number of practical questions - we would like to have more information on how it will be applied in practice.
- What does it mean «shall apply» in practice? What is the expected result? Is the purpose here to determine the admissibility of the procedure or we are talking here about automatic reclassification?

- What does it mean to « effectively » apply? How to read it in the context of a possibility to rebut the presumption?
- Furthermore, it seems inconsistent with row 89a where is « shall apply », not «shall effectively apply».
- Does the presumption apply also in appeal procedures?

Row 91.

Waiving the criteria for the triggering the presumption seems wrong (we definitely prefer the Council approach). These criteria complete paragraph 1 and are helpful for both platforms and their employees, as well as for courts and labour authorities.

Row 102.

It is unclear. What is exactly the EP intention on the effect of adding the reference to Directive 2019/1152 here? Does the EP want to introduce retroactive effect in some (what?) regard?

Row 103.

The mechanism proposed by the EP to rebut the presumption is incomprehensible and difficult to apply in practice.

We can only support the mechanism in which the rebuttal of the presumption is based on a national definition of worker, like in the Council's position.

Row 105.

- Art. 4.1 does not define an employment relationship, therefore the reference "*in accordance with Article 4(1)*» here is inappropriate.
- As regards the suspensive effect we support the position approved by the Council.

Row 106.

- Art. 4.1 does not define an employment relationship, therefore the reference "*in accordance with Article 4(1)*» is inappropriate.
- In rows 105 and 106b words « with consideration to » were not replaced by word « and ». We should stick to the wording used in the abovementioned rows as well as we should be in line with other Directives in this regard for example Directive 2019/1152 which states « with consideration to ».

What is the reason for change here and what are the effects of such a change?

Row 106a.

We cannot accept the EP's changes.

We can only support the rebuttal of the legal presumption based on national definition of worker as agreed by the Council.

Row 106b.

We cannot accept the EP's changes.

We can only support the rebuttal of the legal presumption based on national definition of worker as agreed by the Council.

Row 106c.

We cannot accept the EP's changes.

Please provide the examples how to implement this provision in practice.

In our opinion the criterium is unclear, irrelevant, misleading and unjustified.

Platform work may be the first job for a given person, then it is impossible to assess «usual» engagement of that person.

The previous job(s) and status (employment relationship or self-employed) cannot determine the status of a present work. Changing employment status during vocational life is not a rare situation, as well as having parallelly two (or more) sources of income, of which only one is based on an employment relationship.

EC, EP and the Council generally agree that « the determination of the existence of an employment relationship should be guided primarily by the facts relating to the **actual performance** of work » (Art. 3.1).

Row 106d.

Paragraphs 1a and 1b appear to be internally inconsistent. What does the obligation to take into account elements indicating control and direction in relation to the performance of work within the meaning of paragraph 1a(a) of this provision mean ? Is the fulfilment of only one element sufficient or all elements are required?

Row 106e.

- What does it mean « *effectively* » determining ? Please provide the examples and the opposites.
Same question refers to all rows below when « effectively » is mentioned.
- « *Issuing periodic payments* » is characteristic both for employment relationship and self-employment (e.g. in case of long-term cooperation). Therefore, here it is irrelevant and misleading.

Row 106f.

« enforcing the performance of work » is unclear.

How to distinguish in practice whether « **using rating systems** » is a « **a tool of control...** » or not?

Row 106h.

It seems that sometimes tracking the person performing platform work (for example drivers) can be important tool to grant security to the passengers / clients. Some MS may have such requirements in national law for the abovementioned reasons. In such situations this criterium should not be applied.

Row 106m.

- As regards the suspensive effect, we support the position approved by the Council.
- What is the EP intention, in case were platform successfully challenged a decision that applied legal presumption (which earlier was not successfully rebutted by the platform). What will happen with all taxes, contributions, payments, benefits provided by employer after decision of reclassification.

Shall the employee-again-found-self-employed cover/return all received benefits, even if it was not his/her intention to claim presumption?

- Is a MS allowed only to add new elements or has also possibility to eliminate one, as a result of the review?

2. Interdiction of processing of certain types of data (Art. 5a, resp. 6.5) (Rows: 81d-81e, 107a to 107e and 123 to 127h; 22, 39-42, 44-44a)

Row 81d.

What is the added value of introducing the definition that is already covered by the Regulation ?

Row 126a.

Please elaborate on the scope of data revealing « migration status ». Assuming it does not include whether the person legally stays and works in a given MS (has a visa, a residence permit, a work permit or a refugee status) as those are « intrinsically connected to and strictly necessary for the performance of the contract », what kind of data the ban could relate to?

We understand that the EP intention is to exclude « **biometric data for the purpose of uniquely identifying a person** » ? What if the data are necessary for the sake of safety of clients ? How to distinguish such situation in practice. Is MS not allowed to impose such an obligation in the national law?

Row 127g.

Why the EP covered only platform workers ?

3. Impact assessment on data protection, OSH and working conditions. (Rows: 134a to 134b; 42b)

Row 134a.

Mandatory transmission of the impact assessment to national authorities seems to be an excessive burden. The labour inspector and other competent authorities (including data protection authorities) may always request such documents during the inspection.

4. Definitions: Automated monitoring and decision-making - Rows 81b & 81c / 110, 111, 111a, 28c.

Row 28c. The recital concerning automated monitoring systems and automated decision-making systems seems broad. Is using only a simple system of electronic confirmation of start of work covered by this definition?

Row 81b. Bearing in mind the wording of recital 18c (row 28c) it seems that the EP proposal is quite broad. Since only emails are explicitly excluded, does a simple system of electronic confirmation of start of work fall within this definition? We definitely prefer the Council position.

Row 81c. Same question as above.

Row 111a. **We can support this proposal.**

- 5. Information and consultation:** Recipients of information: Rows **109, 122**, Conditions for provision of information: Rows **121, 121a**; Confidential information (Article 6a) (**Rows 127i - 127n**, 43).

Row 43. **We would like to keep the Council's approach in this respect which is balanced.**

Row 121a.

Why such information are excluded from the confidentiality rule?

Row 122.

PL would like to keep the Council's approach in this respect. In our opinion providing such information at the request of a given institution is sufficient.

Do we understand correctly that the EP's intention is to make sure that the platforms will make available information both upon request and always? If yes, how would it work in practice? How to do it without making the information public to other entities, including competitors?

Row 127i.

We would like to keep the Council's approach in this respect which is balanced.

- 6. Intermediaries / subcontracting** (Rows: **80a, 83a, 83b, 159d to 159h, 197, 28d, 36, 52a, 78**).

Row 83b.

We would like to keep the Council's approach in this respect.

Row 159e.

- What is the relationship between Article 12b ("*the employer is a subcontractor of a digital labour platform*") and Article 4(1) according to which "*digital labour platforms shall be presumed to be employers* » ? There seems to be a contradiction here.
- On the EU level, is the protection limited to workers only and the subcontracting liability limited only to subcontractors who are employers?

- 7. Cross-border cooperation** (Rows: **159a to 159c**; 51-52).

Row 159b.

How would it work in practice, bearing in mind that this Directive applies to digital labour platforms organising platform work performed in the Union, irrespective of their place of establishment, which means also platforms established outside of the EU ? The labour, social and tax authorities of third countries are not bound by this Directive as well as by the EU systems like IMI and EURES.

Row 159c.

What is the added value of introducing the provision that is already covered by the Regulation 2019/1149?

- 8. Representation of persons performing platforms work and platform workers.** (Rows 81, 81a, 87a, 89, 89a, 107d, 109, 122, 126, 126a, 127f, 127g, 127j to 127n, 129, 134a, 135b, 139, 144, 145a, 146 154, 158, 164, 165-165c, 167, 167a, 173, 173a; 18, 25, 28a, 34, 42, 42b, 43, 44a, 45, 48, 49, 52, 71a).

Row 34.

We cannot accept the EP's changes.

It is too broad and unclear.

In practice such wording « *supervise or exert some sort of control over certain elements of the performance of work* » means that all self-employed will be considered employees, as the exercise of some kind of control also takes place in the case of self-employed.

The EP when referring to the status of persons performing platform work uses different concepts like supervision, direction, control - the meaning of which and relations among them are not precise.

Row 81.

We would like to keep the Council's approach in this respect (row 71a).

Row 81a.

We would like to keep the Council's approach in this respect (row 71a).

Row 87a.

We would like to keep the Council's approach in this respect as proposed in Article 3(1).

It is unclear. What means "exercise the prerogatives of employers" ? Does this mean that a digital labour platforms exercising the prerogatives of an employer is *de facto* an employer, i.e. one of the two parties to the employment relationship?

Row 89.

We cannot accept the EP's approach as regards legal presumption. We would like to keep the Council's approach in this respect which is balanced and not rises doubts as regards practical application.

- « *A person performing platform work shall be either a platform worker or a genuinely self-employed person.* » - There might be another status, e.g. in Poland a person can perform work based on a civil law contract, while is neither an employee nor self-employed.
- It is unclear : « *in order to ensure that the legal presumption can be relied upon by competent authorities and bodies that verify compliance with or enforce relevant legislation as well as by persons performing platform work and their representatives.* » Is the EP intention that national institutions can (however are not obliged to) rely on the decision of another national authority in a given MS concerning the legal presumption ?

Row 89a.

- Please provide the examples of « *bodies responsible for registering administrative procedures* ».

In our opinion it is an excessive interference in the competences of MS to decide on the scope of competence of their national bodies.

- What does it mean «shall apply» in practice? What is the expected result? Is the purpose here to determine the admissibility of the procedure?
- Do we understand correctly that the intention is to indicate two possible paths : 1/ the authority acts on their own initiative 2/ the procedure is initiated by the person performing platform work or a trade union on behalf of persons performing platform work ?
- Please clarify whether the intention of the EP was to grant a person performing platform work the possibility to act also on behalf of several persons.
- Please clarify whether the intention of the EP is to create a possibility of decisions on a collective of individuals (a class action on employment status).

Row 109.

We would like to keep the Council's approach in this respect which is balanced.

- Mandatory transmission of the information mentioned in Art. 6 to labour inspectorate and other competent authorities seems to be an excessive burden. The labour inspector and other competent authorities may always request such information during the inspection.
- In the EP opinion, what competent authorities other than the supervisory authorities which are already covered by the Regulation (EU) 2016/679 and labour inspectorates shall receive the informations referred to Article 6 ?

Row 126a.

Please elaborate on the scope of data revealing « migration status ». Assuming it does not include whether the person legally stays and work in a given MS (has a visa, a residence permit, a work permit or a refugee status) as those are « intrinsically connected to and strictly necessary for the performance of the contract », what kind of data the ban could relate to?

Under Article 4(1)(a) and (b) of Directive 2009/52/EC, employers are obliged to require a third-country national to present a valid residence permit and to keep these documents.

We understand that the EP intention is to exclude « *biometric data for the purpose of uniquely identifying a person* » ? What if the data are necessary for the sake of safety of clients ? How to distinguish such situation in practice. Is MS not allowed to impose such a obligation in the national law?

Row 129.

We would like to keep the Council's approach in this respect

Row 134.

Mandatory transmission of the impact assessment to national authorities seems to be an excessive burden. The labour inspector and other competent authorities (including data protection authorities) may always request such documents during the inspection.

Row 139.

We would like to keep the Council's approach in this respect

It is too general and difficult to implement in practice wording « a sufficiently precise and adequately substantiated reply ». Wording proposed by EC and the Council is more precise in that respect.

Row 144.

It is unclear. What does it mean timely information and effective consultation?

Row 154.

We would like to keep the Council's approach in this respect.

Row 158.

We would like to keep the Council's approach in this respect.

The deadline depends on the scope of required information, in some situations 1 month seems too long.

Row 173.

We would like to keep the Council's approach in this respect.

9. Promotion of collective bargaining 149a to 149f; 28b, 33, 55 and dissemination of information 189a.

Row 28b.

We suggest to delete the first sentence of recital 18b, as conducting collective bargaining is not the exclusive prerogative of trade unions (see ILO Conventions 87 and 154)

Row 149b.

We are not opposed to the promotion of social dialogue, but there is no legal basis for regulating it in this Directive. The content of Chapter IIIa concerns the representation and collective defence of the interests of employees and employers provided for in Art. 153 (1f) TFEU, for which unanimity is required in the Council.

Row 149e.

The proposed solutions go beyond the scope of the EU competence (Article 153(5) of the Treaty).

Row 152.

We would like to keep the Council's approach in this respect

10. Enforcement and penalties (Rows: 182 to 184e; Rows 57).

Row 182.

We would like to keep the Council's approach in this respect.

Row 183.

We would like to keep the Council's approach in this respect

Row 184.

We would like to keep the Council's approach in this respect.



Comments from the RO delegation

General remarks on collective representation and the promotion of collective bargaining

We consider preferable the text of the general approach of the Council (GA) which addresses in a more balanced and clearly structured way the regulation of representation and the role of the social partners in relation to the purpose of the directive and the autonomy of the MS in determining the status of workers and employers. In the context of clarifications of the EP's approach and intentions, while respecting proportionality and subsidiarity, we can show some flexibility on certain aspects relating to strengthening the role of collective representation in relation to informing and defending rights, which are prerequisites for dialogue and voluntary negotiations, as well as emphasising in the text the role of collective bargaining by reference to national practice for improving working conditions, without the directive recognising it as a minimum right to platform work.

At this stage, we consider that the EP text is unclear in terms of terminology and intent by not matching definitions and phrases with specific provisions of the text, leading to ambiguities in relation to the role conferred to collective representation and representation, the minimum rights sought and the approach to collective bargaining.

Concrete positions

Definitions: Automated monitoring and decision-making systems:

We can be flexible on the EP proposals in rows 28c, 110 and 111a.

Lines 81b and 81c - We support the definitions agreed at Council level as we believe they define the two notions more clearly.

Line 111 - We support the text agreed at Council level.

Information and consultation:

Information recipients

Line 109 - We prefer the text agreed at Council level with its adjustment by adding the phrase "labour inspectorate" to it, i.e. : Member States shall require digital labour platforms to inform persons performing platform work *and the labour inspectorate* of the use of automated monitoring or decision-making systems.

Line 122 - We support the text agreed at Council level.

Conditions for providing information

Line 121 - We support the text agreed at Council level.

Line 121a - We can show flexibility to the EP proposal.

Confidential information

Line 127j to 127n - the intention is not in line with the object of "information" pursued in Art. 6 and induces reinforced state interventions that may affect trade secrecy and relations between social partners.

Intermediaries / subcontracting

- We support the text agreed at Council level for rows: 80a, 83a, 83b.
- Lines 159d to 159h - We can show flexibility to the EP proposals with the following changes to Art. 12b proposed by the EP: ~~Member States shall, after consulting the relevant social partners in accordance with national law and practice, provide, for measures to ensure that in subcontracting chains persons performing platform work have an effective remedy whereby the digital labour platform of which the employer is a subcontractor, can be held liable, in addition to or in the place of the employer, for any the infringement of the platform workers' rights provided for in this Directive, including with respect to any outstanding remuneration and contributions due to the common funds or institutions of the social partners.~~
- Line 197 - We appreciate the useful addition at Council level, but we can show flexibility for this EP proposal.
- Line 28d - We support the text agreed at Council level.
- We can be flexible on the EP proposals in rows 36 and 52.
- Line 78 - We support the text agreed at Council level, we believe it is more complete.

Representation of persons performing platform work and platform workers

We consider it preferable to approach regulation through the role of collective representation (GA) and do not consider it justified to establish/define "representatives" at European level (EP).

Line 18 - in terms of social dialogue, we can flexibly accept the EP additions as they reflect the need to strengthen information, information and consultation and/or negotiation in determining the elements of the algorithmic decision-making system impacting on working conditions, work organisation/evaluation.

Rationale: the need to correlate with European and national labour rights and rules incident to traditional employers, although as a reverse effect, it could induce the multiplication of their practices of adopting the platform management model by adapting to the evolution of new technologies and artificial intelligence.

Line 23 - we can flexibly support the addition of EP related to the recognition of the role of collective bargaining (not as a minimum right), with explicit references to the possibility of differentiation of practices, where appropriate, according to classification and nature of status, with explicit reference to national law and practice.

Justification: respect for autonomy in regulating labour relations and collective bargaining systems. Other forms of bargaining may be considered in relation to nationally recognised status. In national practice, the right to collective bargaining is a constitutional right recognised by the Labour Code for persons in a legal employment relationship (relationship with an employer).

Line 25 - we can support the addition made in view of the role of the social partners.

Line 28a - we do not support the text in this form given the speculative nature of the cause-and-effect claims and the indirect inference of the assumption that the platforms' current practices would violate Article 2 of C98 of the ILO. In the context that an obligation on platforms to provide the means of (private) communication is already established in Art. 15, it is also unclear what correlation is intended by the references to cooperation and whether this refers to the consultation procedures in the mentioned Directive 14/2002/EC or/and to the "election of workers' representatives" under

national law and ILO conventions (which do not require employer facilities for ensuring dialogue of representatives with workers and election of representatives).

Row 32 - we do not support additions that interfere with national law and practice. The application of collective agreements is part of the autonomous system of the MS, as the ILO conventions leave it to the exclusive discretion of the social partners to determine the areas of collective bargaining. In the RO the obligation to apply collective agreements is constitutionally guaranteed for employment relationships, with sectoral levels of bargaining being determined by the social partners and the incidence/application being that provided for by legislation.

Line 42, 42a, 42b, 43 - in the sense of the stated intention to ensure similar obligations for companies and employers, we consider that the intention to strengthen/adapt Directive 2002/14/EC to the specificity of platform work can be accepted, but with the maintenance of a balance towards other companies/employers who are not induced to consult individually and bear the costs for experts.

Line 45 - we believe that the intention to involve/assist representatives in the context of individual assessments can be supported.

Row 48 - the intention to involve representatives in improving occupational safety and health can be supported.

Line 49 - we do not support the last sentence as the purpose of Directive 14 on information and consultation is not related to collective bargaining.

Line 81 and Line 81a - it is not clear what is meant by "recognised" trade unions, whether the reference is to representativeness or to organisation or to what aspect of "national" recognition, given that the definitions make collective representation of different categories of workers, including the self-employed, conditional on association/membership of trade unions in violation of Article 153 TFEU, the freedom of association guaranteed by the C87 and with implicit interference in national autonomy and industrial relations systems. The definitions also do not reflect representation in the cross-border context covered by the EP and the correlation with the references to reporting to European, national and local works councils in line 127l is not clear.

Line 87a - it is not clear (and cannot be accepted) whether the intention is to establish an obligation on employer platforms to directly enforce sectoral collective agreements, with implications for national systems for negotiating and enforcing collective agreements. The status of worker and employer falls within national competence to establish/identify and regulate.

Line 89 - Romania supports the text agreed at Council level for Article 4 of the proposed directive and we do not support the EP amendments on Article 4.

Line 89a - It is unclear whether the intention is for direct recognition of the employment relationship only as a result of union/representative action, given the impact of the rights involved and the uncertain legal effects of redress and remedy in the context of the dispute.

Lines 126, 126a, 127f, 127g, 127j to 127n - no additional constraints are justified compared to the GA/GDPR text which covers in a balanced way the protection of access to personal data, confidential data and confidentiality of communication between workers and representatives.

It is not clear what the EP's intention is in referring to collective actions induced at row 126, nor the correlation between the need to protect representatives and the processing of personal data of trade union members. (e.g. as in FI, in RO a tax deduction of 1% of gross income is applied for trade union dues and dues can be paid directly by the employer to the trade union).

Line 129-134c - We do not support the EP amendments to Art. 7(1) and 7(2) (doc. 10.758). In the form negotiated by the MS and adopted by the Council, occupational safety and health issues have been clarified and are well covered in Art. 8a. The occupational safety and health aspects refer strictly to workers on platforms, to whom the provisions of the Framework Directive 89/391/EEC apply, whereas the amendments introduced by the EP refer to the application of the Framework Directive 89/391/EEC also to persons working on platforms, disregarding the clarifications in recital 40 and the aspects negotiated and adopted in the Council.

Line 139 - we believe that the intention to strengthen the role of representatives in supporting the defence of individuals in the context of platform decisions can be supported.

Line 144 - we consider it necessary to clarify the intention given that Directive 14 establishes information and consultation obligations on companies, not on states. The intention to privilege both individual consultation and employee representatives should also be considered in relation to the additional information obligations intended in Art. 6 and 7, so as not to place unbalanced obligations on platforms in relation to the rest of companies/employers. Individual information and consultation should be privileged in the case of the self-employed. The last sentence is not necessary in view of the (general) provisions of Directive 2002/14/EC.

Line 145a - requires clarification to adapt the purpose of Directive 2002/14/EC.

Line 146a - unclear on the establishment of obligation and liability.

Line 167 - the additions guaranteeing access of trade unions and representatives to "private" communication with workers/and between workers can be supported but without omitting that the legal rules do not establish such obligations for companies/employers and that the enforcement of the guarantee may be controversial. It is also important to distinguish this obligation from other procedures induced as an obligation of platforms in the context of informing/informing and consulting workers and representatives.

Line 173a - the proposed addition can be supported.

Promoting collective bargaining

It is not clear what exactly are the minimum rights sought by the EP, and the *interpretable* meaning of the amendments seems to imply *trade union rights* and a recognition of "*collective bargaining*" as a *right for all persons performing platform work* (e.g. line 23), which would violate state autonomy, Art. 153 TFEU and Art. 101 TFEU (incidence of competition laws).

It is up to the MS to *assess the* possibility of integrating certain categories of (solo) self-employed into the sphere of negotiating working conditions.

The GA text encourages states to take measures to support the integration of self-employed in the sphere of collective bargaining (Commission Guide), with recognition of *the role of the social partners and collective bargaining, but we can support an intention to promote* (row 149f), given the multiplication of actors interested in platform work and the role conferred on the social partners in transposition (row 194).

Rows 149a-149f: We do not support the EP amendments as the intentions are not clear from the non-unitary terminology.

With regard to the autonomy of the social partners and *the freedoms guaranteed by the Treaties* (association, negotiation and contractual freedom), we consider that *a multiplication of the States' obligations to intervene is constraining*, given that the Council Recommendation on strengthening the social dialogue, as well as the minimum wage directive, which also covers platform workers, *already guide States' actions to support collective bargaining*.

Line 28b - we support EP's proposal in view of the recognised rights and the purpose of the Directive.

Line 33 - to the extent that it is explicitly stated that the Commission Guide does not constitute a norm and does not establish obligations for MS to include self-employed in the scope of collective bargaining, the additions can be flexibly accepted in the light of the vision of differentiating self-employed with a strengthening of their right to collective representation and bargaining (not collective bargaining on labour law)

Line 55 - we are not opposed to the additions made in so far as they are not used as a justification for introducing additional obligations on states in this area.

Enforcement and sanctions

- Row 182 - We support the text agreed at Council level.
- We can be flexible on the EP proposals in lines 183-184.

Comments from the SI delegation

(Doc. 11517/23)

General comment:

SI supports those EP's proposals that are close to the Commission's proposal. SI could be flexible towards the EP's proposal that are legally clear, not too detailed and could improve working conditions on the ground.

- **Definitions: Automated monitoring and decision-making** - Rows **81b & 81c / 110, 111, 111a, 28c**

Rows 81b & 81c: SI prefers the GA, EP's amendments are too broad.

Row 110: SI supports the EP's amendment.

Row 111: SI supports the EP's amendment, SI supports NL proposal to delete "significantly".

Row 111a: SI can be flexible.

SI supports the FR proposal on biometric data.

- **Information and consultation: Recipients of information: Rows 109, 122, Conditions for provision of information: Rows 121, 121a; Confidential information (Article 6a) (Rows 127i - 127n, 43)**

Row 109: SI is flexible towards the EP's amendments, but would prefer "platform workers" to be replaced by "persons performing platform work" and "the labour inspectorate" to be deleted.

Row 122: SI could be flexible.

Rows 121, 121a: SI could be flexible; we would prefer replacing "platform workers" with "persons performing platform work".

Rows 127a – 127d: too detailed.

Rows 127i - 127n: unclear, difficult to implement.

- **Intermediaries / subcontracting** (Rows: **80a, 83a, 83b, 159d to 159h, 197, 28d, 36, 52a, 78**)

Rows 80a, 83a, 83b: SI would like intermediaries to remain in the text.

Rows 159d to 159h: SI supports the EP's amendments.

- **Cross-border cooperation** (Rows: **159a to 159c; 51-52**)

Rows 159a to 159c: SI supports the EP's amendments.

- **Representation of persons performing platforms work and platform workers.** (Rows **81, 81a, 87a, 89, 89a, 107d, 109, 122, 126, 126a, 127f, 127g, 127j to 127n, 129, 134a, 135b, 139, 144, 145a, 146 154, 158, 164, 165-165c, 167, 167a, 173, 173a**; 18, 25, 28a, 34, 42, 42b, 43, 44a, 45, 48, 49, 52, 71a)

Row 87a: SI could be flexible.

Rows 89, 89a, 90: **SI rejects the EP's amendments**, we find them contradictory and not in favour of platform workers.

Rows 126, 126a: SI is flexible towards 126, but 126a is too detailed.

Rows 127f, 127g, 127j-127n: not clear, difficult to implement.

Row 129: SI is flexible.

Rows 134a, 135b: duplication, SI is flexible on impact assessment, further clarifications needed.

Row 139: **SI rejects the EP's amendments.**

Row 145a: SI is flexible.

Row 146: SI supports the EP's amendment.

Row 156a: SI supports the EP's amendments.

Row 158: SI supports the EP's amendments.

Rows 165-165c: SI supports the EP's amendments.

Rows 167, 167a: **SI prefers the GA.**

Rows 173a: SI is hesitant towards the EP's proposal, difficult to implement.

- **Promotion of collective bargaining 149a to 149f; 28b, 33, 55 and dissemination of information 189a**

Rows 149a to 149f: SI is flexible.

Row 189a: SI is hesitant towards the measures.

- **Enforcement and penalties** (Rows: **182 to 184e**; Rows 57)

Rows 182 to 184e: **SI rejects the EP's amendments.**