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WORKING DOCUMENT

From: To:	General Secretariat of the Council Delegations
N° Cion doc.:	ST 14450 2021 INIT
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 14th September 2023, delegations will find attached the contributions received from the CZ, EE, EL, FR, HU, NL, PL, RO and SE delegations.

Comments from the CZ delegation

CZ COMMENTS on Steering note (12843/23)

1. Supporting measures

CZ assumes that there is a mistake in the Steering note - 38e and 38f are not recitals but rows 38e and 38f and recitals 28e and 28f.

CZ rejects the proposal as it has reservation on row 38f.

Row 38f contains overly detailed regulation, which interferes with MS' national competences on inspections and controls (e. g. number of inspectors). CZ proposes a modification of recital 28f by removing the last sentence.

2. Definitions and Chapter III

a) Definitions on automated monitoring systems and automated decision-making systems, rows 110 and 111, 81b and 81c

CZ rejects this proposal.

In general, CZ is not opposed to moving the provisions defining automatic monitoring and decision-making systems from Article 2 to Article 6.

It should be noted that the draft compromise text only mentions platform workers at this point in time, as the EP mandate still retains Article 10, which in the original EP mandate listed provisions that also apply to persons performing platform work. Within the general approach text, each provision indicates whether it applies to platform workers or to persons performing platform work (i.e. including self-employed persons). In this respect, the compromise proposal (EP text) is therefore complicated because it uses terms such as 'working conditions' or 'occupational safety and health' etc. which are not always used in the context of self-employed persons.

For the sake of clarity of the regulation, CZ prefers to define the personal scope of each provision, i.e. whether it applies to employees or to all persons performing platform work.

b) Limitations on processing of personal data, Council Article 5a and EP 6(5)

The restriction on the processing of personal data is being extended to other categories. **CZ is neutral to the row 107e.** However, given the definition of 'automated monitoring or decision-making systems' (see above), we consider it appropriate to specify, e.g., in the recital, that this does not affect automated systems for receiving and assigning customer complaints, etc. (so that the system does not reject a complaint or negative evaluation from a customer just because the employee's "working" hours are over).

Row 107f is considered by CZ to be better than EP mandate in row 126a, but **'migration status'** is not a sensitive category of personal data under the GDPR, so **CZ does not agree with its inclusion in this provision**. Furthermore, we hope that if a platform processes, for example, **health data** directly collected from a person under Article 9(2)(b) and (h) of the GDPR, it will not be prohibited by this provision. (In line 107e there is 'process data to infer', which means that it is not allowed to import the health status, but it can ask for straightforwardness, as this is hopefully not prohibited.) For these reasons, **CZ is negative regarding the proposal.**

CZ is against to change in the row 107g and does not support this proposal. CZ believes that it is risky for the future to prohibit the processing of biometric data for the purpose of uniquely identifying a person (e.g., opening mobile phone with face). The security of the platform can be based on a comparison of the display of the face, fingerprint, retina, etc. with the preset one, which is what a smartphone can do today (identification in the form of authentication, i.e., proving that the person being scanned is the authorised person and that another person will not open the platform application). For this reason, we would not prohibit the above. Rather, care should be taken to ensure the security of the processing. It does not collect customer biometric data but is more like a key holding for employees. In the case of genetic data processing, the practical use for the platform is much more limited - **CZ is flexible in this part.**

At the same time, it should be noted that the prohibition on processing personal data concerning emotional or psychological state or in connection with private conversations applies to all persons performing platform work, according to the text of the GA. However, the draft compromise text of Article 5a(1)(a) and (b) (rows **107c and 107d**) limited this prohibition to platform workers only, although the compromise text of Article 5(1)(c) (line **107e**) mentions a person performing platform work. We consider it unreasonable that (a) and (b) should apply only to platform workers when (c) applies to all.

c) Transparency on data processing: 115a-115b, 120

CZ is neutral on the proposal.

CZ believes that this is a positive step towards establishing an acceptable compromise for the MS, but it is not sure about row 115a. The CZ is willing to support stating 'the aim of the monitoring' but it is unsure of the benefit of providing information on 'how the system is to achieve it'. For a final assessment of the proposal, **we ask the PRES for more information on this compromise.**

Regarding the proposal to extend the obligation to inform persons performing platform work about the use of automated monitoring systems under Article 6(1)(a)(ii) (row 115) beyond the activity category to categories of data, we ask the PRES to clarify which specific categories of data are intended. The data was not mentioned in the EC proposal either.

d) Responsibility of service providers

CZ agrees with the point that even without these provisions proposed by the EP (in particular rows 111a and 146a), all these obligations already apply to platforms, regardless of whether the services are provided by a service provider. **CZ is flexible on the new recital 40a (row 50a).**

CZ is positive on the proposal and supports it.

In addition, CZ states that **in the case of row 169 we are flexible to leave the end of the sentence**. The wording of the GA 'which lies in their control' gives more flexibility to the MS, the EP mandate is more specific. If the ES PRES (hence the negotiating team) considers, after review, that the text of the general approach is sufficient in this respect, we agree with this wording.

e) Limitations to automated decisions: row 120a, 42a

The regulation should ensure that algorithmic management in the context of platform working **ensures fairness, transparency and accountability** and that significant decisions made by an automated decision-making system can be reviewed by a human. **However, the development of platforms and their technologies should not be unreasonably hampered.**

CZ rejects this proposal.

CZ is not flexible on this issue, nor on the scope of this ban (all or some of the decisions referred to by the EP).

f) Data portability

The EDPB interprets Article 20 of the GDPR to apply not only to data that the subject has actively provided, but also to data that a device senses on the data subject (e.g., heart rate recorded by a smartwatch). Here, the EP arguably goes even further and wants portability even of data that is only generated at the platform (e.g., work performance statistics, imported sleep time, reliability, etc.). The whole Article 20 is included in the GDPR in a non-structural way, but at least it concerns data that an individual has. In this case, it is no longer about data protection, but rather an area of industrial or economic policy.

The right not to have data transferred is part of data protection and it is formulated too broadly here. We are of the opinion, that a platform cannot be prohibited from transferring personal data to, for example, a training provider or a court in the event of a dispute. Portability under Article 20 GDPR only functions as a right of the data subject, not a right of the platform, so the prohibition makes no sense. We consider that a platform may have a legitimate interest in sharing data, and this includes all personal data of the worker, not just data from monitoring and decision-making systems (cf. e.g. row 123). We consider necessary for the EP to explain more precisely what is intended by this proposal.

CZ rejects the proposal. CZ asks the PRES for more information from the EP.

Comments from the EE delegation

Comments from the Estonian delegation in SQWP on September 14th and on July 17th

Please see Estonian written comments based on Presidency's steering notes 1) 12608/23 as discussed on 14th September in SQWP and also 2) 11517/23 discussed on 17th July in SQWP. Estonia has a scrutiny reservation concerning the Presidency's steering note 12843/23.

Estonia asks to maintain the General Approach (GA) as much as possible.

1) Comments based on Presidency's steering note 12608/23 in SQWP on 14th September

1. **Supporting measures**: rows: **101a – 101c, 102l, 102n, 102o, 102q,** 35a, 36 – 36b, 38e

Estonia does not support EP proposals on rows 101, 101a, 101b and 101c.

101a and 101b. The additions in rows 101a and 101b unjustifiably intervene in procedural autonomy of Member States, similarly to row 101 additions. Member States should have the right to determine when, how often and in what circumstances labour inspectorates provide inspections, and how the work of labour inspectorates is supported. In addition, the one-month deadline is too short considering the size and number of people performing platform work on many platforms.

101c. The addition also unjustifiably intervenes in procedural autonomy of Member States. Member States should be able to determine freely how to ensure sufficient assistance to labour inspectorates in their work if necessary. Furthermore, in general, governmental authorities and inspectorates cooperate regularly and assist each other. Therefore, we see that the addition is redundant. We should refrain from over-regulatory paragraphs.

2. **Definitions: Automated monitoring and decision-making**: row: 28

Estonia supports the GA concerning the definitions on automated monitoring and decision-making systems.

3. **Transparency on data processing**: rows: **111a, 112, 115, 115a & 115b, 119, 120, 127g**

127g. We are hesitant about the necessity of such a specific addition. It is unclear what additional value this clause would provide compared to the GDPR. A person must know when their data is being processed and forwarded in all cases and we should refrain from over-regulatory paragraphs.

4. **Limitations to automated decisions**: rows: **120a**, 42a

120a and 42a. Estonia supports the GA.

Firstly, the EP proposal in its current wording is inadequate. As we understand, the main aim of this clause is to ensure human control over decisions that have significant impact on persons performing platform work. However, banning decisions by automated systems fails to effectively achieve such aim. For example, the clause can be easily circumvented through a human formally confirming the final decision, even where the actual assessment was made by the algorithm.

Furthermore, banning the use of AI solutions for essentially all negative decisions made against platform workers is not proportionate considering the obligation of platforms to monitor and evaluate the impact of decisions taken by automated systems, as well the right given to persons to obtain an explanation and to challenge them.

The suitable way to tackle the problem is through creating an effective human review throughout the different stages of decision-making as well as establishing risk assessment procedures. Such obligations and procedures are already enacted through the other clauses in this Directive as well as through the AI Act and GDPR.

Secondly, the rows 111 and 120a contradict each other. Row 111 says that an automated decision-making system is a system that takes decisions significantly affecting working conditions (e.g. working hours, the possibility of using an account). At the same time, row 120a says that the automated system cannot take decisions e.g. with an impact on working hours, the possibility of using the account etc.

5. **Confidential information: (EP Article 6a):** rows: **127i – 127n,** 43

127i – 127n, 43. Estonia does not support regulating the duty to maintain confidentiality in the directive. The addition is complex and unnecessarily specific (e.g., according to row 127n Member States shall determine by law a list of objective criteria used to decide on the confidential nature of the information). Member States should be able to determine freely how to regulate the duty to maintain confidentiality in the context of information and consultation taking into account that Article 6 of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community already provides for rules on confidential information transposed in national laws.

6. **Information and consultation – Article 9:** rows: **144, 145, 145a, 146, 146a,** 42

144. Estonia supports the approach where the first channel of informing and consulting collectively employees is workers' representatives and where there are no such representatives, the workers themselves should be the next channel. This is a principle already applicable in the EU labour law and it does not allow to circumvent the objective of informing and consulting employees, as well it balances the administrative burden for employers.

The added value and necessity of the addition at the end of the paragraph is questionable. The principle that parties must act in good faith and cooperate is a general principle in labour law.

145a. The consultation referred to in the second sentence of the EP proposal could not be realistically carried out for each change that affects the organization of work or monitoring of work performance, because in practice minor optimizations of the system are done constantly to ensure better accuracy of the system. If this clause remains in the text, the second sentence should refer to "substantial changes" as opposed to "any changes" (as is also the case in Article 9 (1)).

146a. The added value and necessity of the addition is questionable, since this principle is already evident from previous articles. Platforms must inform persons performing platform work about certain aspects of automated monitoring and decision-making systems irrespective of whether there is a separate service provider selling its management services to the platform or not.

7. **Data protection impact assessment, OSH and working conditions:** rows: **127f, 129, 134c, 135 – 135b**

127f. The obligation to carry out a data protection impact assessment is already provided in Article 35 of the GDPR. The proposal is therefore redundant. It is important to avoid duplication of legislation and conflicts of different legal acts. Where appropriate, reference should be made to the GDPR or respective explanations should be included in the recitals. We ask the Parliament to clarify the added value of this addition compared to the data protection impact assessment in the GDPR?

129. We would like to reiterate our comment presented also in written comments of July 7. In the light of the proposal for a data protection impact assessment in Art 6 (row 127f), it remains unclear what is the added value here and whether and in what way the two impact assessments overlap or do not overlap?

In addition, Estonia does not support the reference to annual assessment. It is sufficient to refer to a regular evaluation, which allows for pragmatic flexibility.

135a. The addition is over-regulatory and the added value and necessity of the proposal is questionable. When inspectorates and competent authorities detect violations they take follow-up measures as necessary.

8. **Human oversight/monitoring – Article 7(1):** rows: **128, 128a – 129**

128a. It is unreasonable to provide human oversight over "all decisions" affecting working conditions. Human oversight over every decision that impacts working conditions even in the slightest way is excessive. Furthermore, it is unclear what are the decisions "affecting working conditions". Essentially all decisions in one way or another affect the state of work or order of work, which could be seen as part of "working conditions".

Finally, it remains unclear why are the human oversight mechanism in the AI Act and the further monitoring mechanisms in Article 7 of this Directive insufficient to achieve the general quality and correctness of decisions.

All in all, we believe the EP's proposal would have a negative impact, without actually adding real value to ensuring the quality and mitigation of risks of the automated decision-making systems.

129. Please see our comments under the point 7 above.

9. **Human review – Article 8:** rows: **136 – 142a**

Estonia prefers the GA concerning the EP amendments in rows 136 – 142a with a following comment on row 141.

141. We prefer the GA, which clearly refers to the compensation for damages sustained. EP's proposal refers to adequate compensation, which shall be proportionate to the gravity of the infringement. This brings uncertainty about whether the compensation consists of damages sustained or something additional.

10. **OSH – Council Article 8a and EP Article 7(2):** rows: **120a, 130 – 134, 142b – 142g**

Estonia prefers the GA concerning the EP amendments in rows 120a, 130 – 134, 142b – 142g with following comments on rows 120a, 131 and 131a.

120a. Please see our comments under the point 4 above.

131. We don't see added value in the additions and prefer the GA. We find it sufficient when platforms evaluate the risks. It is unnecessary to specifically point out the need to avoid or combat the risks as well.

131a. We understand the good aim of the added paragraph, however we are sceptical about possibilities to efficiently evaluate these risks.

11. **Persons performing platform work**: rows: **142a** (links with row 68)**, 147, 148, 149**

148. We prefer the GA. The text of the Directive is clearer and easier to understand when the scope of the article is specified in the article itself and not at the end of the directive in a separate article.

2) Comments based on Presidency's steering note 11517/23 in SQWP on 17th July

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

81b and 81c. Row 81b and 81c definitions in the EP's proposal are broader than the definitions in the GA. For example, according to the EP's proposal, any automated system making decisions is considered to be an automated decision-making system. According to the GA, only systems making decisions that significantly affect persons performing platform work are considered to be automated decision-making systems. We find it important to keep the GA and not broaden the definitions unreasonably. EP's proposals may lead to an unreasonable expansion of the scope of the Directive.

2. **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

109 and 122. Mandatory transmission of information to labour inspectorate and other competent authorities is excessive and unnecessary. The information should only be provided to them upon request.

127i – 127n, 43. Please see our comments under the point 5 above concerning the steering note 12608/23.

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

We support GA concerning intermediaries and subcontracting liability.

The GA concerning intermediaries is clear and regulates a complex topic in an uncomplicated way, leaving Member States discretion on how to achieve the aim of the Directive in case intermediaries are involved. Such flexibility for Member States is important considering differences regarding platform work in Member States. We support the GA, which brings legal clarity and takes into account the different laws and practices among Member States in this topic.

4. **Cross-border cooperation:** Rows **159a to 159c**, 51-52

159a and 159b. The necessity of such exchange of information is questionable. Why and what information is exchanged concerning the persons performing platform work? It remains unclear what is the practical problem the EP is trying to solve here.

159c. We are sceptical about the need and added value of ELA coordination. It remains unclear what would be ELA's role and function in the information exchange. Furthermore, since the tasks of ELA are established in regulation (EU) 2019/1149, then we can't understand the reasoning behind regulating the tasks of ELA in a field-specific directive. In case needed, the tasks of ELA should be changed by the regulation (EU) 2019/1149.

5. **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

81 and 81a. We support GA on the matter of definitions of representatives. Furthermore, as Article 1 (4) of GA basically states, the Directive should grant rights to the representatives of self-employed only if national law and practices of a Member State provide for a representation of self-employed.

6. **Promotion of collective bargaining:** Rows **149a to 149f**, 28b, 33, 55 and **dissemination of information:** Row **189a**

149a – 149f. The EP's proposals are too far-reaching. We are on the opinion that regulating collective bargaining in a way the EP has proposed is not in compliance with the legal basis and does not corresponds to the objective of the Directive. We are not in favor of bringing new issues into the scope of the Directive.

189a. We do not support the EP's proposal and see no added value in it. Member States communicate amendments in legislation at all events in order for important information to reach social partners, employers, employees and everyone affected by any amendments. Therefore, we should refrain from over-regulatory paragraphs.

7. **Enforcement and penalties:** Rows **182 to 184e**, 57

Estonia prefers the GA. The EP's proposals are too detailed and add legal uncertainty to the text. For example, it remains unclear what is the aim of referring to the GDPR Articles 83 (4), (5) and (6) in Article 19 (1) of the Directive, because all the paragraphs in the GDPR have different upper limits for fines. Furthermore, Article 19 (2) of the Directive shouldn't name specific competent national authorities, but leave flexibility to Member States.

Comments from the EL delegation

EL COMMENTS ON PRESIDENCY DOC 12608/23

SQWP OF 14 SEPTEMBER 2023

SUPPORTING MEASURES

Rows 101a-101c, 102l, 102n, 102o, 102p, 102q, 35a, 36-36b, 38e

Greece prefers the GA. 101a to c: Some flexibility can be shown on point b, depending on the final text.

36-36b, 38e: Subsidiarity issues, too burdensome.

DEFINITIONS, TRANSPARENCY ON DATA PROCESSING AND LIMITATIONS TO AUTOMATED DECISIONS

(Article 6 of the Initial Proposal)

Greece has advocated a number of times that overlaps btw a directly applicable Regulation and a Directive to be, can lead to unpredictable results.

This is why on article 6 (of the Initial Proposal) we generally prefer the balanced text of the GA to the EP amendments.

However, there are some points in the EP mandate on which we would like to draw special attention.

Please let it be noted that our following comments concern document 12608/23 and the 3column table, as it appears in doc 10758/23, and not the new document 11305/2023, on which we have placed a general scrutiny reservation.

- **Definitions (rows 110 and 111)**

Rows 110 and 111 are too detailed; a lot of supporting apps may fall into their scope, thus raising issues of proportionality. Prefer GA.

- **Transparency and data processing [rows 111a, 112,115,115a and b,119, 120, 127g]**

  Greece can show some flexibility in rows 111a and 112, 119 and 120, depending on the final text.

Rows 115a and 115b are too prescriptive.

- **Rows 123-127h [article 6(5) of the Initial Proposal]**

In row 123 of the EP mandate, we read: "*platforms will not process data which are not intrinsically connected to and strictly necessary for the contract btw the worker and the platform"*. The same provision existed in the initial Proposal of the Commission and was deleted in the Council General Approach. We assume this was because, as we understand it, this wording excludes 5 lawful bases for processing, as they are mentioned in art 6 of the GDPR.

Article 6 reads:

1. Processing shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

The wording of **row 123** does not allow for processing on points **a** (in this case, obviously, that would be under the limitations of the EDPB Guidelines on "Consent") **c, d, e and f** while only partially permits processing on the lawful basis of point **b**, i.e. only for contracts btw the platform and the worker, but not for contracts, for example, with cybersecurity partners, other providers, even intermediaries.

We seriously doubt that any business, let alone one based on tech and innovation, can function when it is unable to process data on 5,5 out of 6 lawful bases mentioned in the GDPR and we understand that no thorough assessment of the impacts of such a provision has been made. This is why propose the deletion of this **row 123**. If it is not deleted, it should be redrafted, taking art 6 GDPR into consideration.

Along with row 123, we also propose the deletion of rows 124, 126a, 127b, 127c and 127d.

As far as **row 127a** is concerned, we are flexible, because such a prohibition of biometric data exists also in the GDPR, but we would suggest that row 127a is redrafted in a way to accommodate the concerns expressed by some MS regarding the fraud in identity which may occur in certain cases.

More specifically, on the rationale:

In row 124 we find this new notion of "inference". While Greece has not opposed the prohibition of processing data on the emotional and psychological state, this notion of inference puzzles us because:

Art 4 para 2 of the GDPR reads: *"processing means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction".*

Row 124 seems to be adding another type of operation in the definition of "processing" in art 4(2) GDPR which, in our opinion, exceeds the aim of this Directive and goes beyond "particularising" specific provisions of the GDPR, as mentioned in the EDPS's formal comments on the Proposal for a Directive on Platform work of the 2nd of February 2022.

If row 124 is maintained in the agreed text, we need to have a better understanding and we would appreciate the CLS's opinion on the notion of *"inference" by making use of personal data*.

In row 126a, furthermore, we see some categories of data which the EP mandate suggests that they are prohibited from processing namely: *"any personal data revealing racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability or state of health, including chronic disease or HIV status, or trade union membership and the processing of genetic data, biometric data for the purpose of uniquely identifying a person, or data concerning a person's sex life or sexual orientation".*

Almost all these categories are prohibited from processing in art 9 of the GDPR (special categories of personal data) which reads: "*Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited."*

We can assume that "chronic disease and HIV" are covered by the "health" data reference, but "migration status" is a new addition to the data mentioned in art 9 para 1.

Moreover, art 9 para 2 provides for a set of exceptions to the prohibitions in its para 1, reading:

"2. Paragraph 1 shall not apply if one of the following applies:
the data subject has given explicit consent to the processing of those personal data for one or more specified purposes […];
processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law […[;
processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body […];
processing relates to personal data which are manifestly made public by the data subject;
processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
processing is necessary for reasons of substantial public interest […];
processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis […];
processing is necessary for reasons of public interest in the area of public health, such as […];
processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes […].

Although article 9 para 1 GDPR is quasi duplicated in the EP amendment in row 126a, the exceptions mentioned in paragraph 2 of art 9 GDPR (with the exception of row 125 which only concerns health data) are not.

Should we understand that these exceptions are not foreseen in the EP mandate? Or should we assume that the above exceptions do also cover the provision in row 126a because they emanate from a similar provision in the GDPR? What happens with the newly added "migration status" in this case, which does not? If row 126a is kept in the agreed text, we would very much appreciate the CLS's opinion on the above issue.

In row 127c we find a new prohibition for processing (much like the "special categories" of art 9 para 1 GDPR) this time according to the intention of the processing: *"process personal data to predict, prevent or restrict the exercise of fundamental rights, in particular social rights, such as the right of association, the right of collective bargaining and action or the right to information and consultation*";

a. From a substantial point of view, we understand that *the intentions* of processing are a vague concept, very far from legal clarity.
b. From a legal point of view, we must again observe that these concepts go beyond "particularising" certain provisions of the GDPR.
c. In the case of misinterpretation of such a vague concept as to *"predict*" the exercise of social rights, have the impacts of this absolute interdiction of processing of personal data [as extensively as defined in art 4(1) GDPR] been assessed?
d. Also, the exercise of social rights is rightfully protected in all EU legislations with the provision of the relevant sanctions for their violation. What additional protection is secured here?
e. When someone processes [as extensively as that is defined in art 4(2) GDPR] someone's name to predict, prevent or restrict the exercise of social (or any) rights, will this entail GDPR fines?

If row 127c is maintained in the text agreed in the Trilogues, the CLS's opinion on the above points is needed and welcome.

Row 127b is in our opinion redundant, as its content is included in other pieces of legislation, national and European.

- **Limitations to automated decisions**

Finally, **in row 120a**, we find a broad prohibition of decisions based on automated systems. This provision is, in our opinion, not aligned with article 22 GDPR which does not entirely ban such decisions but also provides exceptions under conditions.

We are skeptical about this wording because it is too prescriptive while we are in doubt about its practical feasibility. Also, we wonder why there is reference only to "national law and collective agreements" while there is relevant Union law.

In any case, we prefer the balanced text of the GA on art 6(2) of the Initial Proposal. If amendment 120a is kept in the final text, we would prefer a more realistic and flexible redrafting.

SUMMING UP:

On article 6 of the Initial Proposal:

Greece suggests the deletion of rows 123, 124, 126a, 127b, 127c and 127d.

As for **row 120a,** we also prefer its deletion but could be flexible on a less restrictive text, which is more aligned to art 22 GDPR.

On the rest of the EP amendments on Article 6 of the Commission Proposal, we maintain our general scrutiny reservation.

Closing observation: On February 2nd 2022 the EDPS issued his formal comments on the Platform work Proposal for a Directive. These formal comments refer mainly to Chapter III and mainly to article 6. The text on which the EDPS provided his formal comments is that of the Commission. Since the EP mandate contains many amendments and additions to the Commission text, we doubt that the EDPS formal comments cover this text too and if a number of these amendments were to be kept, we suggest that a new EDPS opinion (or formal comments) is requested.

CONFIDENTIAL INFORMATION (Rows 127i-127n, 43)

Greece is still reflecting on these amendments. We are concerned about their interaction with other pieces of legislation, such as the Directive on Information Consultation and the one on Trade secrets. We maintain our scrutiny reservation.

DATA PROTECTION IMPACT ASSESSMENT, OSH AND WORKING CONDITIONS

Greece prefers the GA. We are not flexible in row 127f, since we find it redundant, as article 35 GDPR is sufficient. Neither are we flexible in row 129 since it is too burdensome. We can show flexibility in 134c, 135 and 135b, depending on the final text, but not 135a.

INFORMATION AND CONSULTATION – article 9 (Rows 144, 145, 145a, 146, 146a, 42)

Greece prefers the GA. Could be flexible, depending on the final text. Rows 145 and 145a may be too prescriptive.

HUMAN OVERSIGHT/MONITORING – Article 7(1) AND HUMAN REVIEW – Article 8 (Rows 128, 128a, 129 and 136-142a)

We prefer the GA text. We could show some flexibility in 128 and 128a. Also, depending on the final text, there could be some flexibility in rows 136-142a.

OSH – Council Article 8a and EP Article 7(2) (Rows 120a, 130-134, 142b-142g)

Rows 130-134 are too vague and too burdensome. Still scrutinizing 142b-142g.

PERSONS PERFORMING PLATFORM WORK (Rows 142a, 147, 148, 149)

We prefer the GA.

Comments from the FR delegation

FR contribution following SQWP on September 14 on the Platform Work Directive

Comments regarding note 12608/23 (September, 4th)

1. **Supporting measures:** rows: **101a – 101c, 102l, 102n, 102o, 102q**, 35a, 36 – 36b, 38e

35a : This recital will have to be adapted in line with the comments of the French authorities on articles 4 and 5 relating to the legal presumption. At this stage, France wishes for the general approach found by the Counseil to be maintained.

36 : French authorities are unfavorable to the European Parliament's mandate on intermediaries. Indeed, it remains vague when it comes to targeted situations. In a broader way, French is in favor of the explicit introduction of intermediaries in the scope of application of the Directive to avoid that platforms bypass the text by emplying to intermediaries companies that would put workers at their disposal. Retaining that rights and obligations provided for by the Directive apply only to the platform, to the intermaduary, or to both, might lead to a transfer of liability on intermediaries and cause difficulties. France wishes therefore for provisions on intermediairies to be kept as they were planned by the Council's general orientation.

36a : French authorities are opposed to this recital.

The obligation for the competent administrative authorities to inspect a platform following the requalification of a worker as an employee in order to verify the status of other persons performing work via the same platform would constitute an administrative burden, both for the judicial authorities, who would have to systematically inform the administrative authorities of the requalification decisions taken, and for the administrative control authorities, which could jeopardize the smooth running of services.

36b : France is opposed to this recital.

Although the recital has no normative scope as such, the Parliament's wording calls on the Member States to take positive measures to increase the effectiveness of labor inspectorate checks for the purposes of applying the directive. France identifies three problematic aspects:

1) The recital obliges States to "grant the competent authorities sufficient powers to carry out inspections". The notion of sufficient power is imprecise, and the directive is not intended to interfere with the prerogatives of inspectors. What's more, the imprecise nature of this notion introduces ambiguity about a possible requalification power of the labor inspectorate. In any case, the labor inspectorate is already empowered by law to carry out inspections, and enjoys an independence that France wishes to preserve.

2) The recital compels member states to organize the collection and processing of data relating to information on illegal employment and the results of previous checks. There seems to be no legal basis for this provision, which is not reflected in the operative part.

3) The recital requires member states to allocate sufficient staff with the necessary skills and qualifications to carry out inspections: here again, there is no legal basis, the concept is imprecise and interferes in the management of inspection bodies.

38e : France would like to see the position reached in the general approach on this point to be kept. The stipulation that genuine self-employed platform workers should not have their status requalified is essential for France. It is also important for France to take in account the specific models of start-ups.

101a : France is opposed to this article.

The obligation for the competent administrative authorities to inspect a platform following the requalification of a worker as an employee, in order to check the status of other persons carrying out work via the same platform, would constitute an administrative burden, both for the judicial authorities, who would have to systematically inform the administrative authorities of the requalification decisions taken, and for the administrative control authorities, which could create difficulties for the smooth running of services.

101b : France is opposed to the Parliament's proposal.

The obligation for the competent administrative authorities to establish sufficient resources for the training of national inspectorates in technological fields is difficult to control, as drafted. Moreover, the notion of "sufficient resources" seems imprecise and could make it difficult for inspection services to function properly.

101c : France is opposed to the Parliament's proposal. For the same reasons as in the previous paragraph, this provision can create management difficulties for inspection authorities. ‘ Ensure ‘ is not adapted and too prescriptive, the assistance of the experts should remain a possibility according to national practices

2. <u>Definitions: Automated monitoring and decision-making:</u> <u>row: 28</u>

France is opposed to the Ep’s will of broadening the Directive’s scope of application to platforms providing a service in which work organization is a minor component. However, France is in favor of addition as made by the EP of the reference to non-distinction of contractual designations.

3. <u>Transparency on data processing:</u> rows: **<u>111a, 112, 115, 115a & 115b, 119, 120, 127g</u>**

111a : France has a neutral stance on this provision.

112 : France holds a neutral stance.

115 : France would like for the general approach to be kept on this point.

115a : The French authorities are open to bringing the wording of this point closer to the EP version.

115b : France would like to receive more information about the EP's intentions on this point. In particular, what does the EP mean by "functioning and mode of operation features"? Can the EP provide examples?

119 : France holds a neutral stance on this point.

120 : France questions the consistency of taking behaviour into account in relation to other provisions of the EP. The question of temporality, introduced by the phrase "how behaviour has been evaluated", is unclear.

127g : France would like for the EP to specify which companies are covered by these provisions.

4. <u>Limitations to automated decisions:</u> rows: **<u>120a,</u>** <u>42a</u>

120a : French authorities are reserving their position (in line with its position on line 42a).

42a : French authorities are reserving their position ((in line with its position on line 120a)

5. <u>Confidential information: (EP Article 6a)</u> rows: **<u>127i – 127n,</u>** <u>43</u>

127j : France is in favor of this provision.

127 l : Scrutiny reserve for French authorities.

127m : France is not opposed to this point, but would like such information to be communicated only in compliance with procedures relating to whistle-blowers.

127n : France is opposed to this provision. The obligation for Member States to guarantee that representatives of platform workers have the possibility to contest the classification of an information as confidential through an administrative decision or an emergency court order poses difficulties. The writing of this provision goes further than article 6 of the 2002/14/EC Directive of the 11th of March 2002 establishing a general framework related to information and consultation of workers in the European Community, from which it seems to draw its inspiration.

The deletion of last sentence's part related to redress against the classification is necessary.

In any event, there is an incoherence between the fields of application of line 127j (representatives of persons performing platform work) and line 127n (representatives of platform workers.

43 : France would like to receive more informations on the EP's intentions with this recital, as these provisions forcing platforms to reveal the detailled functioning of their algorithms might interfere with the platforms' rights to business secrecy.

In particular, France would like to receive informations on the targeted recipients of the platforms' algorithms detailled functionning. Until then, France reserves its position.

6. <u>Information and consultation – Article 9:</u> rows: **144, 145, 145a, 146, 146a,** 42

144 : Article 9 of the Directive, as drafted by the EP, requires Member States to set up a procedure for informing and consulting employees and their representatives working for platforms. Under FR law, this obligation (information and consultation) can only be envisaged with regard to the CSE (workers representatives instances that need to be informed and consulted for 50 or more).

This wording, if adopted, would therefore generate major difficulties for transposition into national law and, beyond that, for practical implementation by companies. This is why we are opposed to the wording of Article 9 as amended by Parliament.

We propose to stick to the Council's wording, which establishes the principle of information-consultation for representatives of employees employed by platforms.

145a : neutral position.

146 : France would like to maintain the Council's stance, so that this provision does not have a too important impact on the finances of the smallesr platforms. Member States must be able to regulate expenses related to the use of an expert.

146a : neutral position.

42 : French authorities have a neutral stance on the Parliament's mandate on this recital.

Information sharing on automated monitoring and decision-making systems must be done before anything to representatives of workers and to the competent authorities. Extension to workers, in an individual way, can be considered under the condition of technical modalities and risks in terms of preservation of information confidentiality.

This Recital creates an obligation for platforms to communicate information on automated monitoring and decision-making systems to competent authorities. In out sense, this provision goes beyond what is provided for in the GDPR, which states that information should be communicated to the competent data protection authority upon request. Therefore, this provision creates unproportionate constrains for both platforms and data protection authorities.

7. <u>Data protection impact assessment, OSH and working conditions:</u> rows: **<u>127f, 129, 134c, 135- 135b)</u>**

127f : France is opposed to this point. The obligation would be ineffective and disproportionately restrictive. Data protection obligations are already largely defined by the GDPR, with which companies are already accustomed to complying.

129 : Compared to the Council's compromise text, the European Parliament's mandate introduces 1) the involvement of workers' representatives (both employees and self-employed, cf. article 10) in the assessment of the impact of decisions taken by means of or supported by automated systems, 2) at least annual intervals for this assessment (only regular intervals in the Council's version), 3) a broadening or at least clarification of the scope of this assessment (impact of decisions on working conditions, health and safety, and fundamental rights).

The general aim of this article is to specify the principles of risk assessment in the specific context of human supervision of automated systems, and to complement european law (directive 89/391/CEE). Human monitoring is not specified in national law.

France preferred the wording of the council with a ‘regular evaluation’.EP wording is too prescriptive specially on the frequency of the evaluation

134c : France is not opposed to this point, but considers the wording to be imprecise with regard to the objective pursued. France would like to see the terms "undue pressure" and "physical and mental health" defined more precisely and restrictively. Given that health and resistance to pressure vary from one individual to another, France would like to see the addition of a reminder that the platform is obliged to adapt the impact of its algorithms only to what is commonly accepted.

135 : neutral position.

135a : Scrutiny reserve for French authorities.

135b : France would like for the general approach to be kept on this point.

8. <u>Human oversight/monitoring – Article 7(1):</u> rows: **<u>128, 128a – 129</u>**

128a : France would like for the PE to specify which degree of supervision is meant by "oversight".

129 : Compared to the Council's compromise text, the European Parliament's mandate introduces 1) the involvement of workers' representatives (both employees and self-employed, cf. article 10) in the assessment of the impact of decisions taken by means of or supported by automated systems, 2) at least annual intervals for this assessment (only regular intervals in the Council's version), 3) a broadening or at least clarification of the scope of this assessment (impact of decisions on working conditions, health and safety, and fundamental rights).

The general aim of this article is to specify the principles of risk assessment in the specific context of human supervision of automated systems, and to complement European law (directive 89/391/CEE). Human monitoring is not specified in national law.

France preferred the wording of the council with a 'regular evaluation'. EP wording is too prescriptive specially on the frequency of the evaluation

9. <u>Human review – Article 8:</u> rows: **<u>136 – 142a</u>**

137 : France questions the addition made by the European Parliament, which introduces "at the latest on the first day of application" a temporal inconsistency between the moment the decision is taken and the application made by the worker.

Scrutiny reserve for French authorities.

138 : France questions the temporality considered by the EP with the mention of "at the latest of the first day of application".

Scrutiny reserve for French authorities.

139 : France wishes for the general approach to be kept.

140 : France wishes for the general approach to be kept.

141 : The Parliament's addition by which the compensation offered by the platform in case of a decision that breaches worker's rights must be "proportionate to the gravity of the infringement" constitutes a red line for the French authorities. It consists in the reconsideration of fundamental principles of civil liability susceptible of generating important negative side-effecrs. Indee, French liability law rests upon the principle of integral reparation, according to which the measure of compensation is the damage suffered, without possibility of receiving punitive compensation.

Therefore, either the suppression of the addition "which shall be proportionate to the gravity of the infringement" or the substitution of the terms « to the dammage sustained » to the terms « to the gravity of the infringement » will be asked.

142 : France has a neutral stance on this provision as both refers practice or applicable collective agreements

10. OSH- Council Article 8a and EP Article 7(2): rows: **120a, 130 – 134, 142b – 142g**

120a : French authorities are reserving their position (in line with its position on line 42a).

131 : France wishes to confine itself to risks relating to work-related accidents.

131a and 132: French authorities would like to ask the EP about the form the evaluation would take and its relation with the analysis mentioned above. France agrees with the European Parliament on the need to avoid any risk of discrimination caused by such decisions, but considers that a rewrite is necessary.

133 : France holds a neutral position.

134 : Scrutiny reserve for French authorities.

142b-g : France is in favour of retaining this article in the Council version, which is more precise

11. Persons performing platform work: rows: **142a (links with** row 68**), 147, 148, 149.**

68 : France would like for the general approach to be kept on this point.

147 : Neutral position.

148 : Neutral position.

149 : Neutral position.

Comments regarding note 12843/23 (September, 11th)

1. **Supporting measures**

Overall, the provisional compromises seem unsuitable for the French labour inspection services. In this respect, the French delegation would point out that, in France, the labour inspectorate does not have the power to reclassify contractual relationships (this is the prerogative of .courts).

The Labour Inspectorate would not be in a position (legally, organisationally or financially) to take on all the tasks imposed by the drafting of provisional agreements.

In detail, the French authorities wish to draw the Presidency's attention to the following proposals:

- Row 38e: the obligation for Member States to provide for quantified targets in terms of the number of verifications and inspections is contrary to current French regulations based on the independence of the labour inspectorate.

In addition, the broad wording, which aims to provide support in the form of concrete and practical recommendations to the "competent national authorities", could be interpreted as including the courts (which are the only authority competent to reclassify work). Issuing recommendations to the courts could undermine their independence, which is constitutionally guaranteed in France. It would be preferable to replace "competent authorities" with "competent national authorities in charge of verifying compliance with or enforcing relevant legislation, such as labour inspectorates" in row 38b of the Council mandate.

- Row 38f: here again, the requirements go beyond what is provided for in the national, European and international legal framework and seem to encroach on the autonomy of the Member States as regards the organisation and tasks of the inspectorate at national level. Furthermore, the broad wording referring to the staff of the "competent authorities" leads to the same ambiguity as in line 38e with regard to the courts. It is important to ensure that any staffing requirements do not apply to courts or labour inspectorate. The terms "national authorities" and "competent national authorities" can therefore only be retained if the wording is clarified in line 38e and reference is made to "those authorities".

- Rows 102k to 102q: in terms of method, it is not possible to reach compromises on the measures to accompany the system of presumption of salaried status, whereas the mechanism of presumption, its scope and its actual operation are not known.

In any event, the obligation for the competent administrative authorities to inspect a platform following the reclassification of a person performing platform work as a worker in order to check the status of other persons performing work via the same platform would constitute an administrative burden that could jeopardise the smooth running of services.

Taken as a whole, these prescriptive provisions could encroach on the autonomy of the Member States as regards the organisation and tasks of the inspectorate at national level.

Furthermore, in row 102o, the addition of "establish appropriate procedures" is problematic because it could imply a systematic transmission by the court to the labour inspectorate of reclassification decisions handed down, which represents an administrative burden to which we are opposed. On row 102p, the reference to "specific digital labour platforms where misclassification of employment status has previously been confirmed or suspected" raises the same issue. French authorities are therefore opposed to this compromise.

French authorities are therefore opposed to the provisional compromises proposed on this issue.

2. **Definitions on automated monitoring systems and automated decision-making systems (rows 110-111, 81b and 81c)**

French authorities are opposed to deleting the definitions in rows 81b and 81c. These definitions clarify the scope of the directive and will make it easier for economic players to understand and apply. In addition, undesirable side-effects could arise if computer systems not linked to algorithmic management of work were to be included in the scope of the directive. With the aim of retaining these definitions in the text, the French authorities can nevertheless support a definition close to that proposed by the European Parliament.

With regard to rows 110 and 111, the French authorities reserve their position.

3. **Limitations on processing of personal data, Council Article 5a and EP 6(5)**

In row 107c, the addition of a restriction on the extrapolation that a platform would make from data collected regarding the psychological and emotional state of workers can be supported by the French authorities.

In row 107d, the French authorities would like to know whether the reference only to "platform workers' representatives" could also cover representatives of self-employed workers.

In row 107f, the introduction of a prohibition on processing sensitive data relating to racial or ethnic origin, health status, sexual orientation, trade union membership or beliefs, etc. seems to go further than what is provided for in the GDPR. So why should platforms (and not other economic stakeholders) be subject to a stricter rule than the GDPR? Pending an answer, the French authorities are opposed to such an amendment.

In row 107g, French authorities are opposed to the introduction of a ban on the processing of genetic or biometric data. As a reminder, to meet security challenges and combat fraud, platforms must be able to verify the identity of workers, including by means of biometric data such as facial recognition via a photo provided by the worker. With regard to biometric data, French authorities want to stick to the guarantees provided by the GDPR, which allow biometric data to be processed for identification purposes.

In row 107h, the prohibition on processing data for anti-union purposes seems to go further than what is provided for in the GDPR. The French delegation would like to ask about the meaning of this proposal: would this not amount to creating specific data protection rules for self-employed workers who are not covered by the GDPR?

4. **Transparency on data processing (115a-b, 120)**

In row 115a, the addition resulting from Parliament's mandate seems appropriate to provide for general information on the automated system. The French authorities are therefore in favor.

On row 115b, what does the word "OSH" mean in the last column? In addition, French authorities are still awaiting a reply to their questions on the Parliament's mandate on this point: what does the European Parliament mean by "functioning and mode of operation features"? Can it provide examples?

On row 120, the French authorities support the compromise reached on condition that the words "any decision with similar effect" are deleted for a more precise text.

5. **Responsibility of service providers (50a)**

In row 50a, the French authorities are in favor of this compromise, which will prevent platforms from shirking their obligations by using subcontractors/external service providers.

6. **Limitations to automated decisions (120a, 42a)**

France reserves its position on the compromises on rows 120a and 42a.

7. **Data portability (127h)**

On row 127h, French authorities cannot support this compromise because providing a dedicated interface would be a too onerous obligation for the smallest platforms. The obligations set out in Article 20 of the GDPR, which affirms the right to portability without obliging the platform to set up a dedicated interface, seem sufficient.

Comments from the HU delegation

Hungarian written comments to steering notes 12608/23 and 12843/23

as presented on the SQWP on 14 September, 2023

1. Supporting measures: rows: 101a – 101c, 102l, 102n, 102o, 102q, 35a, 36 – 36b, 38e

Hungary does not support the EP's position and welcomes the Presidency's intention to refuse the suggestions of the Parliament. The proposals concerning labour inspections in substance and in procedure were not only creating an undue and disproportionate administrative burden but are contrary to the Treaties and we believe that neither the Presidency, nor the EP has a real room of manoeuvre apart from not accepting those.

In the spirit of constructivism and on the conditions that the list would become an indicative list as opposed to a closed one, Hungary could support the Presidency's proposal on line 38e. We suggest an alternate wording such as „may include" or „should include measures such as" instead of „should include" in the connecting Recital.

With regard to the reference to the ILO Convention in line 38f: we suggest deleting this reference as the Union is not a Member of the ILO and its instruments should not be part of purely EU directive. We are creating a new legal instrument here and it is not necessary to refer back to the ILO.

And regarding the very detailed and prescriptive rule suggested by the Parliament (1 labour inspector per 10.000 worker) the Council must clearly refuse as there is no Union competence to prescribe anything like this in the EU labour law acquis.

2. Definitions: Automated monitoring and decision-making: row: 28

In our view the GDPR is sufficiently regulates the rules of automatic decision making while it does not provide for a specific definition of this term. From a purely drafting point of view it would be preferable to place any definition into Article 2. as opposed to among detailed provisions in the matter. As regards of its substance, we can show certain openness to the suggestions of the Parliament.

3. Transparency on data processing: rows: 111a, 112, 115, 115a & 115b, 119, 120, 127g

General position: Hungary can accept any solution that helps to protect personal data. This can include guarantees that ensure that the processing of data is legal, done in a transparent manner and for a defined purpose. However, we are not fully understanding the underlying logic of the Parliament and we would appreciate if the Presidency clarified it with the EP and shared its finding with the Council.

Particularly: line 119, what systems of evaluations is the Parliament referring to?

The EP amendment in line 120 could be acceptable in the spirit of compromise.

4. Limitations on processing of personal data, GA Art. 5a, EP 6 (5) (st. doc. 12843/23)

107 c): we consider it supportable;

107d): protection of private communications is already based on GDPR, it would not be possible to get to know correspondence for private purposes;

107f) we do support the Council's text, because Art. 9. para 1. of GDPR already provides sufficient restrictions and para 2. already provides for exemptions. We have no problem if the Presidency believes that those are necessary to repeat this.

107h) we struggle to find a legal base or purpose that would substantiate this provision, but we are willing to examine it.

5. Limitations to automated decisions: rows: 120a, 42a

Regarding **line 120a)** we are uncertain if we can limit the use of AI in this directive. The fact that – according to the EP – this rules would only apply to platform workers and would not apply to self employed persons, would not make a difference in this regard.

We are of the opinion that without this ban there is – and there must be – a possibility to human oversight and intervention. And to go a step further, if the directive installs a ban, it must be the national law to provide for the specificities of taking such measures.

6. Confidential information: (EP Article 6a) rows: 127i – 127n, 43

The confidentiality of communications is currently ensured by the General Data Protection Regulation, special provisions should remain within Member States' competency.

It would be necessary to clarify the goals of the EP proposal and to examine their necessity.

7. Information and consultation – Article 9: rows: 144, 145, 145a, 146, 146a, 42

146: We cannot support the lowering of the threshold for cost bearing obligation of platforms.

8. Data protection impact assessment, OSH and working conditions: rows: 127f, 129, 134c, 135-135b,

127f: The general data protection regulation already determines when an impact assessment must be prepared, in this regard the proposal imposes additional obligations (it will be mandatory to prepare, update and make it available during any changes). It is not clear whether the impact assessment based on this directive refers to GDPR or not (at least at the level of the preamble, it might be worth clarifying this), and we would like to reiterate that in certain cases, consultation with the data protection authority is also mandatory after the impact assessment.

9. Human oversight/monitoring – Article 7(1): rows: 128, 128a – 129

The EP's proposals for amendment are very restrictive, imposing an undue administrative burden on platform companies. Article 7 (3)-(3a) of the general approach provides adequate protection for platform workers without unnecessarily burdening the administration of platform companies. We would like to ask the Presidency to keep the council mandate included in the general approach.

10. Human review – Article 8: rows: 136 – 142a

We do not consider the deadline proposed by the EP in row 137 to be viable (obligation to provide information on the day of application of the automated decision), and it is extremely strict compared to the information deadline in the GDPR (one month).

We ask the Presidency to preserve the council mandate included in the general approach.

139-142. the proposals of the EP are generally acceptable.

11. OSH- Council Article 8a and EP Article 7(2): rows: 120a, 130 – 134, 142b – 142g

HU cannot accept the rules proposed in row 131a). Hungary clearly believes in strives for workplaces a society free from all kinds of discrimination, a private enterprise cannot be forced to conduct such far-going inspections about the spectrum of grounds of discrimination. Besides, a private employer is not entitled to handle these sensitive personal data.

12. Persons performing platform work: rows: 142a (links with row 68), 147, 148, 149.

HU supports the general approach regarding the distinction of the rules for platform workers and the genuine self-employed persons performing platform work.

13. Data portability (st. doc. 12843/23)

We are asking to differ to the interpretation of row **127h)** compared to the new steering note to the scope of the provision. More precisely, we find it difficult to read the text in any other way than prescribing each platform to have to operate a dedicated interface, where they, together with the employees, could dispose over the rights prescribed by GDPR.

Comments from the NL delegation

Comments of the Netherlands on a selection of the four column table

22 September 2023

General remark

The Netherlands maintains its constructive approach towards this file and supports a speedy and successful conclusion of the trilogues.

Specific rows

Row	NL position	Motivation
Introductory provisions		
18	Open to elements of EP position	We favour a combination of the EP position and the General Approach (GA).
20	Prefer GA	Position EP is unnecessarily extensive.
28a	Very problematic	In Dutch law there is no such term as 'most representative trade unions'. Furthermore, there are not always elections for workers representatives.
34	Very problematic	National authorities do not necessarily actively control or enforce a legal presumption. They can apply the legal presumption when exerting their regular supervision task.
35	Very problematic	EP position is specifically aimed at 'authorities and competent institutions', which undermines the independent position of supervisory bodies.
36	Very problematic	Negatively affects MS autonomy on enforcement and undermines independence of competent national authorities.
36a	Very problematic	Same as above.
36b	Very problematic	Same as above.
38e	Partially acceptable	Good direction towards compromise, but current formulation still problematic. Delete 'should include' and specific targets.
38f	Tentatively positive	Some interesting elements.
42	Problematic	Raises more questions than it answers. NL preference is to regulate this at national level. Support for reference to Directive 2016/679.
42a	Tentatively positive	We need to know what the EP intends with this provision.
42b	Positive	We are open to accepting this EP-proposal.
43	Very problematic	This is too prescriptive and clashes with national legislation and practices.
45	Positive	We are open to accepting this EP-proposal.
49	Problematic	No added value in EP position, which is unnecessarily complicated. Furthermore, the EP extends the rights arising from Directive 2002/14/EC to a right of collective bargaining. Therefore we prefer the GA.
51	Positive	We are open to accepting this EP-proposal.
Chapter I: General provisions		
78	Problematic	The addition of 'intermediary' is important to prevent possible abuse. Therefore we prefer to stick with the GA.
79	Problematic	GA position has a wider scope, which is preferable.
80	Problematic	GA position has a wider scope, which is preferable.
80a	Prefer GA	Adding the line concerning 'intermediary' is important for avoiding abuse.
80b	Prefer GA	We are open to deletion of "unilaterally" or clarification on this term.
81	Very problematic	The definition is too specific. A possible solution could be derived from the Pay Transparency Directive: *"workers' representatives' means representatives of persons performing platform work in accordance with national law and/or practice."*
81a	Very problematic	Preference for deleting this line, or change to: *"representatives of persons performing platform work' means representatives of persons performing platform work in accordance with national law and/or practice".*

Chapter II: Employment status		
89	Very problematic	EP position reaches too far. Chances are that actual self-employed will wrongly be considered to be employee. Also, it is unclear how many criteria must be met.
89a	Very problematic	This line reaches too far. By using "shall apply", the independent position of supervisory bodies is affected. Changing 'shall' to 'can' might be a solution.
90	Prefer COM proposal	Preference for 'shall be able to rely on' in COM proposal.
91-96a	Very problematic	Same as 89, keep GA or COM proposal
100	Very problematic	EP position affects the independent position of supervisory bodies.
100a	Very problematic	Same as 100.
101 a-101c	Very problematic	Negatively affects MS autonomy on enforcement and undermines independence of competent national authorities.
106-106c	Very problematic	EP seems to propose a new definition for 'self-employed' limited to workers performing platform work. This results in a new category of workers. This coincides with definitions of 'self-employed' in national law and creates loopholes in the enforcement of the rebuttable presumption. Prefer GA.
Chapter III: Algorithmic management		
107 c/d/e/h	Tentatively positive	Partial reflection of earlier NL amendments so we are positive in principle. Needs to stay consistent with GDPR.
109	Prefer GA	We are not in favour of the reference to "workers' representatives and the labour inspectorate and other competent authorities"
110-111	Tentatively positive	Positive in principle but the reference to "pricing of individual assignments" seems too burdensome and hard to enforce in practice.
111a	Tentatively positive	Clarification on the scope of this amendment is welcome: does the EP intent for the platform to be responsible? This could be dealt with by changing the wording: "shall be provided by the platform …"
112	Prefer GA	The EP proposal contains a limited list and is too detailed.
115	Prefer GA	EP-proposal seems superfluous.
115a	Prefer GA	EP proposal can result in disproportionate administrative burden for platform companies and disturb the balance between the protection of workers and sustainable development of the platform economy.
115b	Prefer GA	Same as 115a.
119	Prefer GA	EP-position is too broad.
120	Prefer GA	EP-position is too detailed and unbalanced (see motivation under 115a).
120a	Prefer GA	It is not appropriate to have such a detailed provision on the health and safety of workers in this directive.
123-127h	Prefer GA	Mostly already arranged in GDPR.
127f	Prefer GA	EP proposal can result in disproportionate administrative burden for platform companies and disturb the balance between the protection of workers and sustainable development of the platform economy.
127h	Not (yet) convinced	Positive attitude in principle, but need clarity for platforms and technical feasibility, see motivation under 127g.
127g	Prefer GA	NL has a positive attitude towards data portability but provisions about the transfer of data should be in line with the GDPR and take into account the burden that this will impose on companies. Moreover it should be clear what kind of data is involved. It is unclear what the EP means with "group of undertakings".
127 i	Problematic	Not convinced this should be dealt with in this Directive.
127j	Problematic	Not convinced this should be dealt with in this Directive.
127l	Very problematic	Clashes with national legislation.
127n	Very problematic	This goes too far and clashes with national legislation
128a	Preference for GA	Formulated too broadly; requires a definition of working conditions.
129	Tentatively positive	Delete 'at least annually' (too burdensome) but happy to accept reference to involvement of workers' representatives.
134c	Preference for GA	This addition weakens the other provisions.
135	Acceptable	EP proposal contains interesting elements such as "effective oversight".
135a	Very problematic	This does not fit with our national practice and would lead to an excessive extra burden on authorities. A way forward could be to replace "labour authority" by "relevant competent authorities" and add the words "in accordance with national law and practice".
137	Tentatively positive	A combination between GA and EP position on this provision could be interesting.

138	Prefer GA	Last sentence of the EP proposal has no added value. 'Without undue delay' (GA) is preferred over 'at the latest on the first day of application' (EP), since the latter might lead to last-minute notifications on the day of application (too burdensome and hard to comply with).
139	Very problematic	Not compatible with national law and practice.
140	Prefer GA	GA is better formulated.
141	Prefer GA	GA is better formulated.
142	Prefer GA	EP proposal is acceptable.
144	Very problematic	NL is very critical about these very detailed and prescriptive provisions. We see little added value yet a massive increase in complexity and burden.
145	Very problematic	Same as 144.
145a	Very problematic	Same as 144.
146	Prefer GA to be combined with COM proposal	We suggest *"Member states may regulate that this obligation only takes effect when the platform has more than 250 (or 500) platform workers in the Member State"* as this fits with national law where workers councils have this right regardless of the number of workers.
146a	Acceptable	
Chapter IV: Transparency on platform work		
154	Prefer GA	Scope EP position is too broad.
158	Prefer GA	Establishing a fixed time period instead of a 'reasonable period of time' is not desirable. Unclear if this fixed time period is reasonable or doable in any circumstance.
159a-159b	Very problematic	EP proposal goes too far when it comes to privacy regulations and data exchange.
159c	Preference to delete this line	If regulated, it seems better to regulate it in the ELA Regulation.
159d-159h	Prefer GA	Not a logical place to include these provisions; a better place would be Chapter V. Inclusion of subcontracting provisions might not be appropriate in this directive; provisions about intermediaries in the GA are preferred.
Chapter V: Remedies and enforcement		
162	Very problematic	In Dutch national law, dispute resolution is never completely free of charge. It is undesirable to make an exception only for platform workers, whereas others do not have this right.
162a	Prefer GA	Superfluous. Not necessary/appropriate to regulate in this directive as a matter of national law.
164	Prefer GA	Directive 2009/52/EC arranges minimum standards regarding sanctions and measures against employers of illegally staying third-country nationals. EP proposal to reference directive 2009/52/EC and possibly extending its scope is not appropriate.
165-165b	Prefer GA	GA is more in line with national law and practice.
165c	Problematic	GA is more in line with national law and practice.
166-167a	Prefer GA	EP-proposal goes too far.
173	Prefer GA	GA is better formulated.
173a	Prefer GA	EP proposal is an unnecessary addition to this directive.
182	Problematic	According to national law, it is not up to tax authorities to impose administrative fees. Therefore preference for GA.
183	Problematic	The exchange of information in cross border situations might be problematic without a legal basis.
184-184e	Problematic	Add "in accordance with national law and practice"; see 182.
Chapter VI: Final provisions		
189a	Prefer GA	EP proposal is formulated too broadly. We could accept a more general reference where MS are asked that the national measures transposing this directive will be communicated appropriately.
193	Prefer GA	GA gives more room to MS.

Comments from the PL delegation

Written comments from the Polish delegation on document ST 10758/23
only with regards to the Presidency Steering note ST 12608/23

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.

PL expects the Directive to respect national competences and practices.

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

Some of the provisions proposed by the EP are unclear and require clarifications.

- **Supporting measures:** rows: **101a – 101c, 102l, 102n, 102o, 102q**[1], 35a, 36 – 36b, 38e

In terms of measures to support the application of the presumption – PL strongly favours the solutions adopted in the Council's GA (**rows 102l, 102n, 102o, 102p**).

PL expects the Directive to respect national competences and practices with regard to the operation of labour inspections. In Poland, the State Labour Inspectorate has a special status and reports directly to the Sejm. In our opinion, the EP proposes introducing excessively detailed regulations in the directive in **rows 101-101c** (and respective recitals), in particular as regards compulsory inspections and controls, establishing every year national target for the number of inspections and training for labour inspectorates. It should be the subject of a decision by the Member States and the inspection authorities.

- **Definitions: Automated monitoring and decision-making:** row: 28

Recital 18 (row 28) actually concerns the definition of a digital working platform.

PL prefers the wording aproved by the Council in the GA.

Wording *"by the allocation of work through an open call*" seems too broad and and vague, especially as there is no direct link to the service recipient's request. We would like to ask the EP to provide concrete examples of the application of this added part of the provision. We prefer the wording proposed by the Council.

[1] 102p should be listed in the note instead of 102q.

„*irrespective of the contractual designation of the relationship between that individual and the natural or legal person providing the service"* – is unclear in the context of this recital. Please clarify with the EP.

We prefer to keep also the further parts of this recital as adopted by the Council. Deletions proposed by the EP broaden the definition of, do not contribute to a clear definition of a digital work platform and may therefore create difficulties in the application of the Directive in practice.

„*It should be limited to providers of a service for which the organisation of work performed by the individual, such as transport of persons or goods or cleaning, constitutes a necessary and essential and not merely a minor and purely ancillary component*." – please clarify with the EP what the purpose of deleting this sentence was. If the EP's aim was to avoid the risk of a conflict with the provisions of the DAC7 Directive governing the reporting obligations of platform operators in the EU, we believe that the wording of the Platform Work Directive should be sought in such a way that it is clear that it does not exclude the reporting obligations of platforms covered by the DAC7 Directive. However, we believe it is important that this recital retains the emphasis - such as that adopted in the Council's general approach - that in order for a platform to be considered a digital labour platform, the organisation of work constitutes a necessary and essential and not merely a minor and purely ancillary component

- **Transparency on data processing:** rows: **111a, 112, 115, 115a & 115b, 119, 120, 127g**

PL can support the EP proposal of **row 111a.**

PL can be flexible as regards **rows 119-120** and **127g**.

- **Limitations to automated decisions:** rows: **120a,** 42a

PL prefers the approach taken by the Council.

PL share the approach that decisions that are crucial for working conditions and decisions allowing (or not) to work (by suspending or closing an account) should not be taken by algorithms alone, and we therefore support the solution proposed by the European Commission and adopted by the Council regarding human monitoring and control of important decisions (Articles 7 and 8). However, the wording of the EP's proposed Article 6(2a) (**row 120a**) is too broad; it seems to cover in practice most decisions.

- **Confidential information: (EP Article 6a)** rows: **127i – 127n,** 43

It is not clear what is the purpose of introducing a new Article 6a, when the solutions concerning confidential information in the course of informing and consulting employees are already contained in Article 6 of Directive 2002/14/EC. According to the EP proposal (**row 127m**), information on elements that may affect the rights protected by the Platform Work Directive is excluded from the confidentiality clause. Therefore, the general solutions already in place in the EU seem sufficient.

- **Information and consultation – Article 9:** rows: **144, 145, 145a, 146, 146a,** 42

PL prefers the Council's GA as regards the provisions on information and consultation (**rows 144 - 146**).

PL may support the obligation of information and consultation irrespective of the automated monitoring and decision-making systems being managed by the digital labour platform or an external service provider (**row 146a**).

- **Data protection impact assessment, OSH and working conditions:** rows: **127f, 129, 134c, 135- 135b,**

PL prefers the Council's GA.

The use of „oversight" in **row 135** is unlcear and confusing the EP refers to "*effective oversight of the impact of individual decisions*" and „*overseeing or reviewing decision-making".* The wording proposed in the Council's GA *(„monitoring and evaluating the impact...")* is clear.

- **Human oversight/monitoring – Article 7(1):** rows: **128, 128a – 129**

PL prefers the Council's GA.

- **Human review – Article 8:** rows: **136 – 142a**

PL prefers the Council's GA.

The Council's proposals lay the foundations for better protection of persons performing platform work, as they include the obligation to modify the system in such a way as to prevent future infringements (**row 141**). The EP's proposal contains a number of concepts that will cause a lot of doubt in practice, e.g. in row 139 „*a sufficiently precise and adequately justified answer*".

- **OSH- Council Article 8a and EP Article 7(2):** rows: **120a, 130 – 134, 142b – 142g**

PL prefers the Council's GA.

PL can be flexible as regards a longer timeframe for SMEs to provide justification for a decision made by automated systems (**row 140**)

- **Persons performing platform work:** rows: **142a (links with** row 68**), 147, 148, 149.**

PL prefers the Council's GA.

Comments from the RO delegation

RO position on the PE amendments regarding PWD

Doc.12608:

Supporting measures: we support GA for rows 101a – 101c, 102l, 102n, 102o, 102q, 35a, 36 – 36b, excepting rows 38e and 102l where we can accept the PE amendment

Definitions: Automated monitoring and decision-making: We support the text of the CONS GA, we believe that the wording in the CONS text is clearer.

Transparency on data processing: : We support the text of the CONS GA for all rows 111a, 112, 115, 115a & 115b, 119, 120, 127g

Limitations to automated decisions: Support for PE amendments

Confidential information: We do not support the EP amendments, we believe that the provisions make the legal framework on platform work more difficult.

Information and consultation

- **Row 144:** We support the text of the Council's general approach and the references to the framework directive on information and consultation (Directive 2002/14/EC) as the intention of the EP is unclear and the last sentence states a principle, which is difficult to transpose into law.
- **Row 145:** The text needs clarification in relation to the approach to information, confidentiality and information and consultation in the framework of the Platform Work Directive and in relation to row 144 and the references in the amendment to definitions and procedures in Directive 2002/14/EC which concern collective information and on matters collectively affecting workers, as also reflected in the CJEU decision in case C-404/2022.
- **Row 145a in conjunction with row 146a:** The EP's intention to adapt consultation and information to the specific nature of the organisation of platform work could be accepted in a flexible way, without affecting the guarantees of the Framework Directive 2002/14/EC.
- **Row 146:** We support the GA, but we can agree to change the number of workers for whom the costs for the expert are borne from 500 workers to 250 workers.
- **Row 146a:** We support the EP amendment.
- **Row 42:** We support the text of the GA, we consider that the wording in the Council text is clearer.

Data protection impact assessment, OSH and working conditions

- **Row 127f:** We support the EP amendment.
- **Row 129:** We do not support the EP amendments to Art. 7(1) and 7(2) - rows 129-134c.
- In the form negotiated with the Member States 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 performing platform work, disregarding the clarifications in recital 40 and the aspects negotiated and adopted in the Council. **We therefore support the form adopted by the Council in Article 8a, lines 142b-142g.**
- **Row 135 – 135b:** We support the text of the GA, we consider that the wording in the Council text is clearer.

Human oversight/monitoring – Article 7(1): We do not support the EP amendments. We consider that the text in the GA is clearer.

Human review – Article 8

- **Rows 136, 139 140, 142a:** Support for the text in GA.
- **Rows 137, 141, 142:** We could agree on the EP approach.

OSH- Council Article 8a and EP Article 7(2)

- **Rows 120a, 130 – 134** we cannot support the PE proposals
- **Rows 142b – 142g** – support for the GA

Persons performing platform work: support for the GA.

Comments from the SE delegation

General comments

Before commenting on some issues in Chapter III, SE would like to reiterate what was stressed during the SQWP meetings this summer, keeping the balance of the Council's GA in chapter II is necessary in a final text. More flexibility can be considered as regards the algorithmic management in chapter III, on the condition that the vital elements from the Council´s GA on chapter I and II are maintained. It is vital to maintain all the elements of the presumption and that the legal presumption shall not apply to tax, criminal and social security proceedings and that Member States should be able to decide on the suspensive effect to rebuttal proceedings. It's also important to maintain the definitions of digital labour platforms and platform work.

SE still analyzes the promotion of collective bargaining in platform work as suggested by the Parliament (row 149b-f), it is however too detailed in its current version and need to be drafted in accordance with national law and practice. SE would also like to highlight that the possibility stated in art 20a (row 189b) in the Council's GA for social partners to find other suitable solutions concerning some issues regulated in chapter III and IV is key to maintain.

Comments below referring only to steering note 12608/23 from 4/9.

Supporting measures: rows: **101a – 101c, 102l, 102n, 102o, 102q**

SE prefer the Council's GA for the supporting measures. EP mandate in this regard is detailed and create a disproportionate bureaucratic burden.

Data protection impact assessment, OSH and working conditions: rows: **127f, 129, 134c, 135- 135b**

Row 127f: The Parliament proposal is very detailed. In any case, this provision should be in accordance with national law and practice as it otherwise could interfere with existing rules on consultation.

Row 135a: "Competent national authorities" is considered more suitable instead of "the relevant health and safety, data protection, labour and other competent authorities".

OSH- Council Article 8a and EP Article 7(2): rows: **120a, 130 – 134, 142b – 142g**

Row: 142b-142g: SE prefer the Council's GA for the OSH provisions in art 8a.

Confidential information: (EP Article 6a) rows: **127i – 127n,** 43

SE don't support the Parliaments suggestion for confidential information as its to detailed and goes beyond the Counil's GA.

Information and consultation – Article 9: rows: **144, 145, 145a, 146, 146a,** 42

SE prefer the Council's GA for the provisions on information and consultation in article 9.

Persons performing platform work: rows: **142a (links with** row 68**), 147, 148, 149.**

SE prefer the Council's GA.