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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	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 27th March 2023, delegations will find attached the contributions received from the AT, EE, EL, FI, FR and HR delegations and joint contribution received from the BE, ES, LU, MT, NL, PT, RO and SI delegations.

Comments from the AT delegation

General remarks

- AT welcomes that the presented compromise is generally based on the compromise proposal presented at the EPSCO meeting on 8.12.2022.
- However, some of the **rewordings are unclear** and cause concern.
- AT has supported the objectives of the proposal since the beginning of the negotiations. AT has always emphasized that 3 factors are particularly important:
 1. protection of employees against exploitation
 2. fight against bogus self-employment
 3. equal conditions for platform companies throughout the EU.
- For AT, it is of particular importance to ensure that the national provisions regarding the AT specificity of **persons with intermediate employment status (freelance workers)** are in no way affected by this proposal.
- AT voted in favor of a General Approach at the December EPSCO Council and was prepared to make major concessions. AT is **opposed to making any significant changes to the text presented at the EPSCO Council**.
- Especially with regard to the EP position, a clear and strong Council stance is of great importance.

Article 4

Paragraph 1

Regarding the phrase: "*either by virtue of its applicable terms and conditions or in practice*":

- Don't the "*applicable terms*" also encompass the applicable law on which these "*terms*" can be based?

Artikel 4a – Application of the presumption and rebuttal

Paragraph 2

- The proposals made by the SE presidency **cannot be supported**.
- The **previous wording was clearer**. The fact that national authorities have discretionary powers in the application of the presumption rule should be clearly expressed in the text. Therefore, "*shall*" should continue to be used.

- It is unclear why only authorities that are acting on their own initiative should be able to exercise these discretionary powers. The discretionary power should be available to all authorities and not only to those acting ex officio.
- Under current national law, a case-by-case assessment is to be made in each case on the basis of the factual circumstances. For AT, the discretion left to national bodies is therefore of particular importance.

Artikel 18 - Protection from dismissal

The addition of "*termination*" and "*termination of contract*" **cannot be supported**.

- AT does not see a sufficient legal basis for the application of this article to self-employed persons. If this addition only functions as a clarification of terminology, this has to be made clear.
- Whether Art. 16 (2) TFEU can also be used for such a provision is highly questionable.

Comments from the EE delegation

Article 3 (1)

1) Word “appropriate”

We are on the opinion that referring to “appropriate” procedures in art 3 (1) is unnecessary. It is unlikely that Member States have inappropriate procedures in place. It is up to a Member State to decide what kind of procedures should be put in place. Such wording leaves room for different interpretations and we propose to delete the word “appropriate” from the article.

2) Reference to comparable situation

We appreciate the Presidency’s attempt to clarify the text, however we believe that referring to “comparable situation” in art 3 (1) raises legal ambiguity and makes the text more difficult to understand. The same comment goes for referring to “any other” worker. We do not see the need for such specifications. The text is clearer without such additions.

We propose to amend art 3 (1) as follows:

1. Member States shall have in place procedures to verify and ensure the correct determination of the employment status of persons performing platform work, with a view to ascertaining the existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice, and ensuring that platform workers enjoy the same rights [...] as workers in that Member State. "

Article 4

1) Threshold of the legal presumption

We can support the amendments made in art 4 (1) *chapeau*, however we prefer to raise the threshold triggering the legal presumption from three criteria to four criteria out of seven criteria. Since criteria (a), (b) and (c) are broad and easily fulfilled for other types of service contracts as well, then raising the threshold would prevent establishing an unconditional legal presumption of employment contract.

2) Deletion of article 4 (2a)

We see the need to keep the deleted art 4 (2a) in the operative part of the text for the purposes of legal clarity. The principle of art 4 (2a) is important to reduce the risk to cover genuine self-

employed with legal presumption. However, we are open to clarifications of the text in order to avoid circumvention of the legal protection.

Article 4 (a) par 2 a)

We are on the opinion that the phrase “on their own initiative” needs to be deleted from the text because it causes different legal consequences and is thereby legally unclear.

If the right of an administrative authority to exercise a discretion not to apply a legal presumption is made dependent on who initiates the procedure (i.e. whether it is done by the administrative authority on its own initiative or by the person performing platform work), this will lead to a situation where the administrative authority reaches different legal outcomes in the same/similar situations (i.e. situations corresponding to the same/similar factual circumstances). The administrative authority will arrive at a result where in one case there is no employment contract and in the other case there is, even though in both cases it is clear to the authority that in the end it would be a civil contract, which cannot be rebutted.

Article 18

We do not support the added reference of “termination of contract”. We find it important to re-emphasize that the protection from dismissal and the burden of proof in art 18 should be established to platform workers and not to self-employed. For us this is an issue of substance, not merely clarification. Such protection of dismissal and reversed burden of proof is and should be characteristic to labour law and employment relationships only.

Comments from the EL delegation

ARTICLE 3

We could support the proposed amendments in para 1. However, we would appreciate some clarification from the Presidency on the notions of “*appropriate procedures*” and “*comparable situation*”.

ARTICLE 4

- We are still scrutinising the new text in the chapeau to para 1. Some elaboration on the notion of “*direction and control*” is needed. How does this notion differ from the notion of “*direction*” found in the CJEU case-law?
- We are not in favour of the deletion of para 2a of article 4. The hypothesis of narrowing down the scope only to the “*measures or rules required by law or collective agreements in order to safeguard the health and safety of the person performing through platforms or the customer*”, as appears in recital 24, could only be examined on the condition that an appropriate rephrasing appears in the operative part.
- The new wording of recital 25 does not seem to be in full conformity with the text in para 1 of article 4, especially points b and c.

ARTICLE 4a

- We appreciate the Presidency’s choice to maintain the second subparagraph of para 1 of article 4a in its current form, so that tax, criminal and social security proceedings are excluded from the scope of the application of the legal presumption. This provision is important to us. We are of the opinion that the Presidency’s choice is legally sound while ensuring a more effective and less burdensome implementation.
- On the contrary, we prefer the previous version of article 4a para 2 (along with its corresponding recital 28a) as we believe the previous wording was legally safer.

Comments from the FI delegation

Finland was ready to support the Room Document of the Czech Presidency distributed at the December EPSCO Council Meeting 8.12.2022. We still hope that this document could offer elements for reaching a compromise on the Platform Work Directive as soon as possible. Therefore, we have a positive view on Presidency's latest compromise proposal in general, as it seems to follow the idea of the December room document. Our only remaining comment is below:

Doc 7491/23 - Recital 24 - last sentence:

(24) -- Measures or rules which are required by law, **other than labour legislation**, or collective agreements **of (genuine) solo self-employed** which are necessary, in particular, to safeguard the health and safety of ~~either~~ the recipients of the service ~~or~~ **the person performing platform work** are not **(as such)** to be understood as fulfilling one or more criteria for triggering the legal presumption under this Directive.

JUSTIFICATION:

In our opinion, the current PCY text includes a legal contradiction and we would prefer the recital 24 to be formulated more precisely.

The reference to collective agreements should cover only collective agreements **of (genuine) solo self-employed** as in the December room document. Furthermore, it should be specified that the reference to legislation in this clause applies to legislation **other than labour legislation**.

Labour legislation or collective agreements applicable only to employees (in an employment relationship) do not set requirements in other contractual relationships than employment relationships. Therefore it is our opinion that labour legislation (including occupational health and safety legislation) or collective agreements applicable to employees cannot be referred in this connection, since **the application of labour law or collective agreements applicable to employees would to our understanding automatically indicate the existence of an employment relationship.**

Furthermore, our understanding is that we intend to refer here in particular to the legislation protecting the safety and health **of the customers of the platforms**.

In the spirit of compromise, we are open to other text formulations with the same idea. We are also flexible in the way in which this clause is placed in the text (article or recital).

Comments from the FR delegation

Recital 24		
Direction and control, or legal subordination, is an essential element of the definition of an employment relationship in the Member States and in the case-law of the Court of Justice. When digital labour platforms control the execution of work, they act like employers in an employment relationship. Therefore, contractual relationships of this kind should be deemed, by virtue of a legal presumption, to be an employment relationship between the platform and the person performing platform work through it, where a digital labour platform exercises, either by virtue of its terms and conditions applicable to the contractual relationship in question or its acting in practice, a certain level of direction and control, expressed by fulfilling at least three of the criteria for triggering the presumption. Measures or rules which are required by law or collective agreements which are necessary, in particular, to safeguard the health and safety of either the recipients of the service or the person performing platform work are not to be understood as fulfilling one or more criteria for triggering the legal presumption under this Directive.	Direction and control, or legal subordination, is an essential element of the definition of an employment relationship in the Member States and in the case-law of the Court of Justice. When digital labour platforms control the execution of work, they act like employers in an employment relationship. Therefore, contractual relationships of this kind should be deemed, by virtue of a legal presumption, to be an employment relationship between the platform and the person performing platform work through it, where a digital labour platform exercises, either by virtue of its terms and conditions applicable to the contractual relationship in question or its acting in practice, a certain level of direction and control, expressed by fulfilling at least three of the criteria for triggering the presumption. Measures or rules which are required by law or collective agreements which are necessary, in particular, to safeguard the health and safety of either the recipients of the service or the person performing	The French authorities propose to use the wording of the former recital 25b of the EPSCO Council room document of 8 December. Indeed, this wording seems both more reassuring and more likely to ensure the protection of persons performing platform work. In particular, it restricts the scope of collective agreements to “collective agreements of genuine solo self-employed” and makes the link with the Guidelines on the application of Union competition law to collective agreements regarding the working conditions of genuine solo self-employed persons. Only one change has been made to the wording of the room document: the addition of the term "on working conditions" to the wording "collective agreements of genuine solo self-employed <u>on working conditions</u>", with the aim of further restricting the collective agreements concerned and taking account of the concerns expressed by certain Member States.

	platform work are not to be understood as fulfilling one or more criteria for triggering the legal presumption under this Directive. When a digital labour platform fulfils any of the criteria referred solely as a result of its compliance with a legal obligation under Union law, national law or collective agreements of genuine solo self-employed on working conditions, that criterion may not as such be understood as indicating that the criteria of the legal presumption are fulfilled within the meaning of this Directive. It is important that Member States take into account the opportunities given by the Guidelines on the application of Union competition law to collective agreements regarding the working conditions of genuine solo self-employed persons, C(2022) 6846 final. According to those guidelines, collective agreements between solo self-employed persons and digital labour platforms relating to working conditions fall outside the scope of Article 101 TFEU, offering the opportunity to improve working conditions of such solo self-employed persons, in particular those performing platform work. These collective agreements should not undermine the objectives pursued by this	
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	directive, in particular correct classification of persons performing platform work with regard to their employment status.	
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Recital 25		
Criteria indicating that a digital labour platform controls the execution of work and that a person performing platform work is likely to be in an employment relationship should be included in the Directive in order to make the legal presumption operational and facilitate the enforcement of workers' rights. Those criteria should be inspired by Union and national case law. The criteria should include concrete elements showing that the digital labour platform determines the upper limits of the level of remuneration or its range, requires the respect of rules and gives instructions on how the work is to be performed with regard to appearance or conduct, restricts the discretion to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or prevents the person performing platform work from developing business contacts with potential clients, including by using a number of conditions or through a system of sanctions. The criteria should also comprise concrete elements showing that the digital labour platform closely supervises the performance of work, also by thoroughly verifying the quality of the results of the work of persons performing platform work. This includes assessing or regularly taking stock of the work performance or work progress which can also be performed by electronic means, such as camera surveillance, location tracking, counting keystrokes or taking screenshots or using other functions in	Criteria indicating that a digital labour platform controls the execution of work and that a person performing platform work is likely to be in an employment relationship should be included in the Directive in order to make the legal presumption operational and facilitate the enforcement of workers' rights. Those criteria should be inspired by Union and national case law. The criteria should include concrete elements showing that the digital labour platform determines the upper limits of the level of remuneration or its range, requires the respect of rules and gives instructions on how the work is to be performed with regard to appearance or conduct, restricts the discretion to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or prevents the person performing platform work from developing business contacts with potential clients, including by using a number of conditions or through a system of sanctions. The criteria should also comprise concrete elements showing that the digital labour platform closely supervises the performance of work, also by thoroughly verifying the quality of the results of the work of persons performing platform work, beyond the traditional commercial relationship . This includes assessing or regularly taking stock of the work performance or work progress which can also be performed by electronic means, such as camera surveillance, location tracking, counting keystrokes	With regard to the explanation of criterion c) in the recital, the French authorities propose adding "beyond the traditional commercial relationship" in order to indicate that criterion c) is fulfilled when the platform goes beyond a traditional commercial relationship between a client and a service provider.

computers or smartphones. Supervision does not include, on the contrary, the use of electronic tools for matching the person performing platform work and the recipient of the service [...]. At the same time, the criteria should not cover situations where the persons performing platform work are genuine self-employed. Genuine self-employed persons are themselves responsible vis-à-vis their customers for how they perform their work and the quality of their outputs. The freedom to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or not to be limited in working for any third party is to be considered one of the characteristics of genuine self-employment.	or taking screenshots or using other functions in computers or smartphones. Supervision does not include, on the contrary, the use of electronic tools for matching the person performing platform work and the recipient of the service, asking recipients of the service or person performing platform work to confirm the successful achievement of a task in order to release payment or allowing customers to review or rate the service, merely suggesting a route for a journey or a delivery, or give the possibility to the customer or the person performing platform work to report any difficulty encountered, in particular related to safety . At the same time, the criteria should not cover situations where the persons performing platform work are genuine self-employed. Genuine self-employed persons are themselves responsible vis-à-vis their customers for how they perform their work and the quality of their outputs. The freedom to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or not to be limited in working for any third party is to be considered one of the characteristics of genuine self-employment.	
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Recital 46		
In administrative or judicial proceedings regarding the correct determination of the employment status of persons performing platform work, the elements regarding the organisation of work allowing to establish the employment status and in particular whether the digital labour platform controls certain elements of the performance of work may be in the possession of the digital labour platform and not easily accessible to persons performing platform work and competent authorities. National courts or competent authorities should therefore be able to	In administrative or judicial proceedings regarding the correct determination of the employment status of persons performing platform work, the elements regarding the organisation of work allowing to establish the employment status and in particular whether the digital labour platform controls certain elements of the performance of work may be in the possession of the digital labour platform and not easily accessible to persons performing platform work and competent authorities. National courts or competent authorities should therefore be able to	The notion of “confidential information” is unknown in existing EU-law. The only example of such information that has been put forward by the Commission is that of relevant data on algorithms, which in our view could be considered a “trade secret” in the meaning of Directive 2016/943. Creating new notions similar to existing ones does not seem appropriate to FR if the distinction is not justified by a difference of scope. Therefore, we prefer using the already existing notion of trade

order the digital labour platform to disclose any relevant evidence which lies in their control, including confidential information, subject to effective measures to protect such information.	order the digital labour platform to disclose any relevant evidence which lies in their control, including trade secrets confidential information , subject to effective measures to protect such information.	secret, unless some of the information for which a specific protection is required in the application of this Directive were not to constitute a trade secret.
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Article 3 Correct determination of the employment status		
1. Member States shall have in place appropriate procedures to verify and ensure the correct determination of the employment status of persons performing platform work, with a view to ascertaining the existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice, and ensuring that platform workers enjoy the same rights [...] as any other worker in a comparable situation in that Member State.	1. Member States shall have in place appropriate procedures to verify and ensure the correct determination of the employment status of persons performing platform work, with a view to ascertaining the existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice, and ensuring that platform workers enjoy the same rights [...] as any other worker in a comparable situation in that Member State.	The addition of the term "appropriate" to describe the procedures for verifying employment status that Member States must put in place is likely to cause difficulties, in that it gives the CJEU the power to assess the adequacy of the reclassification remedy available under national law. The "adequacy" of a remedy is likely to cover the notion of effective right, and therefore that of the time limit for judgment, which clearly poses a problem in some jurisdictions. France support other delegations (PL, EE, LT, EL and HU) which proposed to delete the addition of the word "appropriate".

Article 4 Legal Presumption		
1. The relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be an employment relationship when the digital labour platform exerts control and direction over the performance of work by that person. For the purpose of the previous subparagraph, exerting control and direction shall be understood as fulfilling, either by virtue of its applicable terms and conditions or in practice, at least three of the criteria below:		It is proposed to keep in the text the § 2a of article

2a. [...]		4. Indeed, a platform is required to apply national law and thus passes on the resulting obligations to the self-employed workers who use its services. This may result, with regard to these workers, by the inclusion of these obligations among its general conditions of use or by actions in practice. Referring only to general conditions and actions in practice (article 4.1) does not, in our view, exclude obligations resulting from national law or collective agreements.
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Article 18 Protection from dismissal		
Protection from dismissal or termination	Protection from dismissal or termination of contract	It is proposed to use the same term as in the article.

Comments from the HR delegation

Article 2

We are of the opinion that the joint accountability of the digital work platform and the intermediary should be ensured for the obligations that the intermediary as an employer has towards the worker. It is also a fact that intermediaries use digital applications as a basic tool for work and generate profit not only for themselves but also for the platforms, and this is one of the reasons why digital platforms should bear part of the responsibility towards workers.

Article 3 (1)

The term "comparable situations" was introduced, which is quite vague and vague, we believe that this concept should be clarified

Article 3

We believe that in paragraph 1, the phrase "appropriate procedures" can remain general, as proposed.

However, in paragraph 2, it would be necessary to determine that the determination of the existence of an employment relationship can also be carried out on the basis of financial criteria, i.e. established facts about the amount of receipts realized during a certain period (e.g. 3 months) for tasks performed through work via a digital work platform (e.g. achieving a certain percentage of the minimum wage prescribed according to the national regulation).

For example, if in a procedure carried out in accordance with the national regulation of the member state governing the tax-legal system, it is determined that the receipt for the work performed by a certain natural person who performed tasks via a digital work platform or intermediary, in one quarter of the calendar year, is less than 60% of the gross amount three monthly minimum wages established by a special regulation, it would be considered that no employment contract was concluded between that natural person and the digital work platform or aggregator.

Article 4

We are of the opinion that in Article 4, related to the regulation of the legal presumption of the existence of an employment relationship, the list of conditions (criteria) for defining the employment relationship should be partly "open", so that it could also be regulated by national law.

Article 4. Legal presumption.

1. The relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be an employment relationship when the digital labour platform exerts control and direction, through its terms and conditions or in practice, over the performance of work by that person.

2. Exerting control and direction over the performance of work within the meaning of paragraph 1 shall be assessed, notably, according to the following criteria:

(a) The digital labour platform determines upper limits for the level of remuneration;

(b) The digital labour platform requires the person performing platform work to respect specific rules with regard to appearance, conduct towards the recipient of the service or performance of the work;

(c) The digital labour platform supervises the performance of work including by electronic means;

(d) The digital labour platform restricts or conditions the freedom, including through sanctions, to organise one's work by limiting the discretion to choose one's working hours or periods of absence;

(da) The digital labour platform restricts the freedom, including through sanctions, to organise one's work by limiting the discretion to accept or to refuse tasks;

(db) The digital labour platform restricts the freedom, including through sanctions, to organise one's work by limiting the discretion to use subcontractors or substitutes;

(e) The digital labour platform restricts the possibility to build a client base or to perform work for any third party.

Notwithstanding, exerting control and direction over the performance of work within the meaning of paragraph 1 shall, in any case, be established if three or more of these criteria are fulfilled.

Recitals

(24) Control and direction, or legal subordination, is an essential element of the definition of an employment relationship in the Member States and in the case-law of the Court of Justice. When digital labour platforms control the execution of work, they act like employers in an employment relationship. Therefore, contractual relationships of this kind should be deemed, by virtue of a legal presumption, to be an employment relationship between the platform and the person performing platform work through it, **where a digital labour platform exercises, either by virtue of its terms and conditions applicable to the contractual relationship in question or its acting in practice, a certain level of control and direction, expressed by fulfilling at least three of the criteria for triggering the presumption.** ~~Measures or rules which are required by law or collective agreements which are necessary, in particular, to safeguard the health and safety of either the recipients of the service or the person performing platform work are not to be understood as fulfilling one or more criteria for triggering the legal presumption under this Directive.~~

(24a) Control and direction can be exerted over platform workers by a wide variety of means, as both national courts and the Court of Justice have ascertained, and it should thus be possible to apply the presumption whenever any of those circumstances point to the existence of said control and direction, according to national law and on a case-by-case basis. This should hold true both in the present and in future situations, as well as in each Member State in consonance with their legal system. Therefore, the circumstances that may be taken into account to apply the presumption should not be limited for the courts or national legislators. This also ensures that the Directive disrupts neither the competences of Member States nor the powers of national courts and the Court of Justice.

(25) ~~Nonetheless, a set of clear and well-established criteria should be considered in any case when assessing the level of control and direction, in addition to other aspects that could be considered relevant and which can be completed according to Member State's field of law. Criteria indicating that a digital labour platform controls the execution of work~~

and that a person performing platform work is likely to be in an employment relationship. Those criteria should be included in the Directive in order to make the legal presumption operational and facilitate the enforcement of workers' rights. Those criteria, and they should be inspired by Union and national case law. The criteria should include concrete elements showing that the digital labour platform determines the upper limits of the level of remuneration or its range, requires the respect of rules **and** gives instructions on how the work is to be performed **or with regard to appearance or conduct**, restricts the discretion to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or prevents the person performing platform work from developing business contacts with potential clients, including by using a number of conditions or through a system of sanctions. The criteria should also comprise concrete elements showing that the digital labour platform closely supervises the performance of work, also by thoroughly verifying the quality of the results of the work of persons performing platform work. This includes assessing or regularly taking stock of the work performance or work progress which can also be performed by electronic means, such as camera surveillance, location tracking, counting keystrokes or taking screenshots or using other functions in computers or smartphones. Supervision does not include, on the contrary, the use of electronic tools for matching the person performing platform work and the recipient of the service [...]. At the same time, the criteria should not cover situations where the persons performing platform work are genuine self-employed. Genuine self-employed persons are themselves responsible vis-à-vis their customers for how they perform their work and the quality of their outputs. The freedom to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or not to be limited in working for any third party is to be considered one of the characteristics of genuine self-employment.

(25a) A presumption that respects national competences is also compatible with a minimum level of protection applicable in all Member States. Regardless of the aforementioned possibility of adapting the legal presumption, it should be applicable in any case by all Member States when a clear number of precise circumstances are met, in order to guarantee legal certainty. Thus, the presumption should be triggered at least in all cases where three or more of the seven criteria listed in the Directive are met.

(25b) The criteria of the legal presumption are intrinsically linked to the exercise of control and direction by the digital labour platform. When a digital labour platform fulfils a criterion strictly as a result of compliance with requirements under Union law or national law,

notably regarding the health and safety of the recipients of the service, such compliance should as such not be understood as fulfilling that criterion of the legal presumption within the meaning of this Directive.

~~(25a)~~ (25c) Member States should, in accordance with their national legal and judicial systems, establish a framework of supporting measures to ensure the effective implementation of the legal presumption. In order for the presumption to be effective in practice, three of the criteria indicating that the person performing platform work is likely to be considered in an employment relationship should be always fulfilled to trigger its application. The purpose of these criteria is to provide a set of easily understandable indications that point to the likely existence of an employment relationship and thus facilitate the access of the person performing platform work to the relevant rights derived from the existence of an employment relationship by means of the legal presumption.

~~(25b)~~ [... moved to recital 24]

~~(25e)~~ (25d) In order to ensure access to Union law applicable to workers, **and in line with the objective of this Directive to improve working conditions for platform workers**, the legal presumption should apply in all relevant administrative or judicial proceedings, where the employment status of the person performing platform work is at stake. While this Directive does not impose any obligation on Member States to apply the legal presumption in tax, criminal and social security proceedings, nothing in this Directive should prevent Member States, as a matter of national law, from applying that presumption in those or other administrative or judicial proceedings or from recognising the results of proceedings in which the presumption has been applied for the purposes of providing rights to reclassified workers under other areas of law.

1. Article 2a. Intermediaries.

We believe it is necessary to emphasize that the rights of persons performing platform work must be protected and prevent digital labour platforms from evading their responsibility.

2. Article 3(1) Correct determination of the employment status:

Article 3(1) reincorporates the mention of "appropriate" procedures to verify and ensure the correct determination of the employment status of persons performing work on platforms, present in the initial COM proposal and whose reintroduction was requested in the aforementioned joint proposals document, so the proposed term seems correct to us.

On the other hand, it replaces - also in recital 19 - the mention that platform workers shall enjoy the relevant rights applicable to workers with a mention that they shall enjoy the same rights as any other worker in a comparable situation in that Member State.

With regard to the term "comparable", we prefer its deletion from the text as we do not fully understand the value of introducing this word. It is considered that in the previous wording the recognition of rights according to national regulations was clear. As already indicated, this is an indeterminate concept that leaves room for different interpretations.

3. Article 4 a Application of the presumption and rebuttal:

(1) We do not agree that it is necessary to indicate that the legal presumption will not apply to tax, criminal and social security proceedings. Moreover, the provision as it stands now, represents an interference with national competences. In our opinion, it should be clear from the text that a decision, whether to apply the legal presumption in tax, criminal and social security proceedings or not, falls solely within the competence of a MS. Therefore, we suggest: 1) the deletion of the second sentence of paragraph 1 of Article 4a , or 2) rewording as follows: *"This Directive does not affect national competences on tax, criminal and social security proceedings"*.

Our proposal is considered sufficient since it is aimed at preserving national legislation and preventing the new wording from serving as a basis for creating differences between platform workers and other workers.

(2) This paragraph has no added-value in the text. It is a wide derogation with respect to §1, and may interfere with the autonomy of competent national administrative bodies, with possible adverse effects for the proper application of the presumption.

In addition, we see no justification for the distinction between ex officio and ex parte proceedings, as this could create loopholes in the protection of people working on platforms. Therefore, the entire paragraph should be deleted.

(3) We propose to reinstate the Commission's proposal regarding the prohibition of suspensive effect.

Allowing for suspensive effect in case the presumption is challenged may delay the effective implementation of the directive for years, if not decades - considering the possibility of multiple appeals. Several Member States are already facing serious difficulties in the management of their judicial systems and there is a serious risk of preventing workers from having their rights recognised. In addition, this matter shouldn't be decided at Member State's level given the risk for fragmentation in the internal market, which could result in platforms leaving some Member States' markets.

4. Article 5a. Limitations on processing of personal data by means of automated monitoring or decision-making systems.

We consider it necessary to safeguard in the text the rights of workers' representatives with respect to Article 5.

~~4.~~ Digital labour platforms shall not, by means of automated monitoring or decision-making systems:

(a) process any personal data on the emotional or psychological state of the person performing platform work;

(b) process any personal data in relation to private conversations; including exchanges with ~~representatives of persons performing platform work~~ ~~platform workers' representatives~~;

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

It is also necessary to forbid the processing of data in relation to private conversations with representatives of persons performing platform work other than those representing platform workers.

5. Article 20 a

It is not considered that the provisions of articles 8a, 9a, 11 and 12 admit a differentiation by sector of economic activity that would make it advisable to adapt them to collective bargaining. These provisions affect workers' rights, which must be considered minimum rights; they affect the obligations to inform the labor authorities, which could hinder their action; or they are even alien to the working conditions of platform workers. It must therefore be ensured that this article does not undermine the protection guaranteed by the directive.
