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General Secretariat

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**Brussels, 06 June 2024**

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**LIMITE**

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## **WORKING DOCUMENT**

From:	General Secretariat of the Council
To:	Delegations
N° Cion doc.:	ST 14450 2021 INIT
Subject:	Directive on improving working conditions in platform work

Delegations find in annex the comments received by Member States in reply to the call for comments which has been sent out by the GSC on 28 May 2024 by email in relation to the English text of the Directive on improving working conditions in platform work in preparation of the lawyer-linguist expert meeting on this file scheduled for 17 June 2024.

Please add your contributions in the table below.

Guidelines to be followed

**Drafting suggestions:** for 'Drafting suggestions' please use the **'track changes'** feature as follows: (1) make sure that **track changes are off**; (2) from the column furthest to the left, copy-paste the text you want to amend into the 'Drafting suggestions' column; (3) **turn track changes on** by choosing the options **'Review' + 'Track Changes' + 'Just Mine'**; (4) type your changes in the 'Drafting suggestions' column.

**Then please turn track changes off** and repeat the process above for each subsequent drafting suggestion that you may have.

**Name of document:** please rename the MS Word document by adding the **two initials** of your delegation's Country followed by a space.

Only then you may add any text to the file name, for example, for Austria: **AT comments on ... .docx** .

Thank you for your cooperation!

MEF	Drafting suggestions and Comments
DIRECTIVE (EU) 2024/...	
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	
of ...	
on improving working conditions in platform work	
(Text with EEA relevance)	

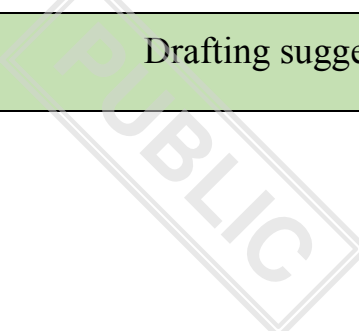
MEF	Drafting suggestions and Comments
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2), point (b), in conjunction with Article 153(1), point (b), and Article 16(2), thereof,	
Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national parliaments,	
Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,	
Having regard to the opinion of the Committee of the Regions <sup>2</sup> ,	
Acting in accordance with the ordinary legislative procedure <sup>3</sup> ,	
Whereas:	
(1) Pursuant to Article 3 of the Treaty on European Union (TEU), the	

<sup>1</sup> OJ C 290, 29.7.2022, p. 95.

<sup>2</sup> OJ C 375, 30.9.2022, p. 45.

<sup>3</sup> Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ... .

MEF	Drafting suggestions and Comments
<p>aims of the Union are, amongst others, to promote the well-being of its peoples and to work for the sustainable development of Europe based, inter alia, on <b><i>balanced economic growth, and</i></b> a highly competitive social market economy, aiming at full employment and social progress.</p>	
<p>(2) <b><i>Article 31 of the Charter of Fundamental Rights of the European Union (the ‘Charter’) provides for the right of every worker to fair and just working conditions which respect his or her health, safety and dignity. Article 27 of the Charter protects the workers’ right to information and consultation within the undertaking. Article 8 of the Charter provides that everyone has the right to the protection of personal data concerning him or her. Article 12 of the Charter provides that everyone has the right to freedom of assembly and of association at all levels. Article 16 of the Charter recognises the freedom to conduct a business. Article 21 of the Charter prohibits discrimination.</i></b></p>	
<p>(3) Principle No 5 of the European Pillar of Social Rights (the ‘Pillar’), proclaimed at Gothenburg on 17 November 2017, provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training; that, in accordance</p>	

MEF	Drafting suggestions and Comments
<p>with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context is to be ensured; ■ that innovative forms of work that ensure quality working conditions are to be fostered; that entrepreneurship and self-employment are to be encouraged; that occupational mobility is to be facilitated; <i>and that employment relationships that lead to precarious working conditions are to be prevented, including by prohibiting the abuse of atypical contracts. Principle No 7 of the Pillar provides that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship and that, prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice and the right to access to effective and impartial dispute resolution and, in the case of unjustified dismissal, a right to redress, including adequate compensation. Principle No 10 of the Pillar provides that workers have, inter alia, the right to a high level of protection of their health and safety at work and the right to have their personal data protected in the employment context.</i> The Porto Social Summit of 7 May 2021 welcomed the Action Plan accompanying the ■ Pillar ■ .</p>	

MEF	Drafting suggestions and Comments
<p>(4) Digitalisation is changing the world of work, improving productivity and enhancing flexibility, while also carrying some risks for employment and working conditions. Algorithm-based technologies, including automated monitoring systems and automated decision-making systems, have enabled the emergence and growth of digital labour platforms. <i>New forms of digital interaction and new technologies in the world of work, if regulated and implemented properly, can create opportunities for access to decent and quality jobs for people who traditionally lacked such access. However, if unregulated, they can also result in technology-enabled surveillance, increase power imbalances and opacity about decision-making, and entail risks for decent working conditions, for the health and safety at work, for equal treatment and for the right to privacy.</i></p>	
<p>(5) Platform work is performed by individuals through the digital infrastructure of digital labour platforms that provide a service to their customers. <i>Platform work is performed in a wide variety of fields and is characterised by a high level of heterogeneity in the types of digital labour platform, the sectors covered and the activities carried out, as well as in the profiles of persons performing platform work.</i> By means</p>	<p>AT (Comments): AT: for a coherent text the term ‘individual’ should be replaced with ‘persons’ in the first sentence as well</p> <p>DE (Drafting suggestions):</p>

MEF	Drafting suggestions and Comments
<p>of the algorithms, the digital labour platforms <b>organise</b>, to a lesser or greater extent – depending on their business model – the performance of the work, the remuneration for the work and the relationship between their customers and the persons performing the work. Platform work can be performed exclusively online by means of electronic tools (online platform work) or in a hybrid way combining an online communication process with a subsequent activity in the physical world (on-location platform work). Many of the existing digital labour platforms are international business actors that carry out activities and deploy business models in several Member States or across borders.</p>	<p>(5) Platform work is performed by <del>individuals</del> <b>persons</b> through the digital infrastructure of digital labour platforms that provide a service to their customers</p> <p>DE (Comments): We suggest persons instead of individuals to create alignment with the following sentences.</p>
<p>(6) Platform work can provide opportunities for accessing the labour market more easily, gaining additional income through a secondary activity or enjoying some flexibility in the organisation of working time. At the same time, <b><i>most persons performing platform work have another job or another source of income and tend to be low paid. Moreover, platform work is rapidly evolving, resulting in new business models and forms of employment that are sometimes not covered by the existing systems of protection. Therefore, it is important to accompany that process with adequate safeguards for persons performing platform work, irrespective of the nature of the contractual relationship. In</i></b></p>	<p>AT (Drafting suggestions):</p> <p>(6) Platform work can provide opportunities for accessing the labour market more easily, gaining additional income through a secondary activity or enjoying some flexibility in the organisation of working time. At the same time, <i>most persons performing platform work have another job or another source of income and tend to be low paid. Moreover, platform work is rapidly evolving, resulting in new business models and forms of employment that are sometimes not covered by the existing systems of protection. Therefore, it is important to accompany that</i></p>

MEF	Drafting suggestions and Comments
<p><i>particular, platform work can result in the unpredictability of working hours and can</i> blur the boundaries between an employment relationship and a self-employed activity and the responsibilities between employers and workers. The misclassification of the employment status has consequences for the persons affected, as it is likely to restrict access to existing labour and social rights. It also leads to an uneven playing field with respect to businesses that classify their workers correctly, and it has implications for Member States' industrial relations systems, their tax base and the coverage and sustainability of their social protection systems. While such challenges are broader than platform work, they are particularly acute and pressing in the platform economy.</p>	<p><i>process with adequate safeguards for persons performing platform work, irrespective of the nature of the contractual relationship.</i></p> <p><i>In particular, platform work can result in the unpredictability of working hours and can</i> blur the boundaries between an employment relationship and a self-employed activity and the responsibilities <del>between</del> <b>of</b> employers and workers.</p> <p>The misclassification of the employment status has consequences for the persons affected, as it is likely to restrict access to existing labour and social rights. It also leads to an uneven playing field with respect to businesses that classify their workers correctly, and it has implications for Member States' industrial relations systems, their tax base and the coverage and sustainability of their social protection systems. While such challenges are broader than platform work, they are particularly acute and pressing in the platform economy.</p> <p>AT (Comments): The meaning of “responsibilities between employers and workers” is different from “responsibilities of employers and workers.”</p> <p>DE</p>



MEF	Drafting suggestions and Comments
	<p>(Drafting suggestions):</p> <p><i>. In particular, platform work can result in the unpredictability of working hours and can</i> blur the boundaries between an employment relationship and a self-employed activity and the responsibilities <del>between</del> <b>of</b> employers and workers.</p> <p>DE (Comments):</p> <p>We suggest returning to the initial wording since responsibilities “of” employers and workers might be different from the responsibilities between them.</p> <p>SE (Comments):</p> <p>Reply to the comment made: We prefer the agreed terms throughout the text and cannot accept the word “designation”.]</p>
<p>(7) Court cases in several Member States have shown the persistence of the misclassification of the employment status in certain types of platform work, in particular in sectors where digital labour platforms exert a certain degree of <i>direction and</i> control ■ . While digital labour platforms frequently classify persons working through them as self-employed or ‘independent contractors’, many courts have found that the</p>	

MEF	Drafting suggestions and Comments
platforms exercise de facto direction and control over those persons, often integrating them into their main business activities ■ . Those courts have therefore reclassified purportedly self-employed persons as workers employed by the platforms. ■	
<p>(8) Automated monitoring systems and automated decision-making systems powered by algorithms increasingly replace functions that managers usually perform in businesses, such as allocating tasks, <i>pricing individual assignments, determining working schedules</i>, giving instructions, evaluating the work performed, providing incentives or applying adverse treatment. Digital labour platforms, <i>in particular</i>, use such algorithmic systems as a standard way of organising and managing platform work through their infrastructure.</p>	<p>SE (Comments): We wonder why the change regarding sanctions has been made. Could you please explain the change?</p> <p>NL (Comments): Why has ‘imposing sanctions’ been changed to ‘applying adverse treatment’?</p> <p>HU (Comments): “imposing sanctions” and “applying adverse treatment” are not synonyms. However, article 22 uses the term “adverse treatment” In other parts of this text, “sanctions” was replaced by “punitive measures”. The original proposal used “adverse treatment” in its article 17 (now 22) but “sanctions” in the recitals (8 and 25). “Adverse treatment” only appears</p>

MEF	Drafting suggestions and Comments
	<p>in recital 35 of the original text. I think consistency is needed here. If “sanctions” is not the ideal word here, it may be replaced by “punitive measures”. However, “adverse treatment” is not necessarily a good choice here, as it was the original intention to have two separate terms.</p>
<p>Persons performing platform work subject to such algorithmic management often <b><i>do not have access to</i></b> information on how the algorithms work, which personal data are used or how the behaviour of those persons affects decisions taken by automated systems. Furthermore, workers’ representatives, <b><i>other representatives of persons performing platform work</i></b>, labour inspectorates <b><i>and other competent authorities</i></b> do not have access to such information. Moreover, persons performing platform work often do not know the reasons for decisions taken or supported by automated systems and are not able to <b><i>obtain an explanation for those decisions, to</i></b> discuss those decisions with a human contact person, to contest those decisions <b><i>or to seek rectification or, where relevant, redress.</i></b></p>	<p>SE (Comments): We suggest that we delete “human” and align the recital with the article.</p>
<p>(9) When platforms operate in several Member States or across borders, it is often unclear where the platform work is performed and by whom, <b><i>especially as regards online platform work</i></b>. Furthermore, national competent authorities do not have easy access to data on digital labour</p>	

MEF	Drafting suggestions and Comments
platforms, including the number of persons performing platform work, their employment status, and their working conditions. This complicates the enforcement of applicable rules ■ .	
<p>(10) A body of legal instruments provides for minimum standards in working conditions and labour rights across the Union. This includes, in particular, Directives 2003/88/EC<sup>6</sup>, 2008/104/EC<sup>7</sup> and (EU) 2019/1152<sup>8</sup>, ■ of the European Parliament and of the Council, and other specific instruments on aspects such as health and safety at work, pregnant workers, work-life balance, fixed-term work, part-time work, and the posting of workers. <i>In addition, the Court of Justice of the European Union (the ‘Court of Justice’) has consistently ruled<sup>11</sup> that ‘stand-by’</i></p>	<p>DE (Drafting suggestions): <i>In addition, the Court of Justice of the European Union (the ‘Court of Justice’) has consistently ruled<sup>14</sup> that ‘stand-by’ time, during which the worker's opportunities to carry out other activities are significantly restricted, is to be regarded as working time. Directive 2002/14/EC of the European Parliament and of the Council establishes a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or</i></p>

<sup>6</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

<sup>7</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

<sup>8</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

<sup>11</sup> *Judgment of the Court of Justice of 21 February 2018, Ville de Nivelles v Rudy Matzak, C-518/15, ECLI: EU:C:2018:82; judgment of the Court of Justice (Grand Chamber) of 9 March 2021, RJ v Stadt Offenbach am Main, C-580/19, ECLI:EU:C:2021:183; judgment of the Court of Justice (Grand Chamber) of 9 March 2021, D.J. v Radiotelevizija Slovenija, C-344/19, ECLI:EU:C:2021:182.*

MEF	Drafting suggestions and Comments
<p><i>time, during which the worker's opportunities to carry out other activities are significantly restricted, is to be regarded as working time.</i></p> <p><i>Directive 2002/14/EC of the European Parliament and of the Council<sup>13</sup> establishes a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Union.</i></p>	<p><i>establishments within the Union.</i></p> <p>DE (Comments): We ask for deletion of the new insertion “consistently” as this involves a non agreed assessment.</p> <p>SE (Comments): We suggest deleting the word “consistently” and use the original wording. It is a change of substance.</p>
<p>(11) The Council Recommendation <i>of 8 November 2019 on access to social protection for workers and the self-employed</i><sup>16</sup> recommends Member States to take measures ensuring the formal and effective coverage, and the adequacy and transparency, of social protection schemes for all workers and self-employed <i>persons</i>. ■</p>	

<sup>14</sup> *Judgment of the Court of Justice of 21 February 2018, Ville de Nivelles v Rudy Matzak, C-518/15, ECLI: EU:C:2018:82); judgment of the Court of Justice (Grand Chamber) of 9 March 2021, RJ v Stadt Offenbach am Main, C-580/19, ECLI:EU:C:2021:183; judgment of the Court of Justice (Grand Chamber) of 9 March 2021, D.J. v Radiotelevizija Slovenija, C-344/19, ECLI:EU:C:2021:182.*

<sup>13</sup> *Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).*

<sup>16</sup> OJ C 387, 15.11.2019, p. 1.

MEF	Drafting suggestions and Comments
(12) Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>17</sup> ensures the protection of natural persons with regard to the processing of personal data, and in particular provides certain rights and obligations as well as safeguards concerning the lawful, fair and transparent processing of personal data, including with regard to automated individual decision-making.	
<i>(13) Regulation (EU) 2019/1150 of the European Parliament and of the Council<sup>18</sup> promotes fairness and transparency for business users using online intermediation services provided by operators of online platforms.</i>	
(14) While existing Union legal acts provide for certain general safeguards, challenges in platform work require some further specific measures. In order to adequately frame the development of platform work in a sustainable manner, it is necessary for the Union to set minimum	AT (Drafting suggestions): (14) While existing Union legal acts provide for certain general safeguards, challenges in platform work require some further specific

<sup>17</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>18</sup> *Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).*

MEF	Drafting suggestions and Comments
<p><i>rights for platform workers and rules to improve the protection of the personal data of persons performing platform work</i> to address <i>those</i> challenges. <i>Measures facilitating the correct determination of the employment status of</i> persons performing platform work in the Union should be <i>introduced, and the transparency with regard to platform work should be improved, including in cross-border situations. In addition, persons performing platform work should be provided with rights, with a view to</i> promoting transparency, fairness, human oversight, safety and accountability. <i>Those rights should also be provided with a view to protecting workers and improving working conditions in algorithmic management, including the exercise of collective bargaining.</i> This should be done with a view to improving legal certainty <i>and ensuring</i> a level playing field between digital labour platforms and offline providers of services and supporting the sustainable growth of digital labour platforms in the Union.</p>	<p>measures. In order to adequately frame the development of platform work in a sustainable manner, it is necessary for the Union to set ■ minimum <i>rights for platform workers and rules to improve the protection of the personal data of persons performing platform work</i> to address <i>those</i> challenges. <i>Measures facilitating the correct determination of the employment status of</i> persons performing platform work in the Union should be <i>introduced, and the transparency with regard to platform work should be improved, including in cross-border situations. In addition, persons performing platform work should be provided with rights, with a view to</i> promoting transparency, fairness, human oversight, safety and accountability. <i>Those rights should also be provided with a view to protecting workers and improving working conditions in algorithmic management, including the exercise of collective bargaining.</i> This should be done with a view to improving legal certainty <i>and ensuring</i> a level playing field between digital labour platforms and offline providers of services and supporting the sustainable growth of digital labour platforms in the Union.</p> <p>AT (Comments): The use of ‘ensure’ instead of ‘aiming at’ would change the meaning of</p>

MEF	Drafting suggestions and Comments
	<p>the phrase. The phrase would also be acceptable without ‘ensure’, in this case the second part of the sentence is also linked to with a view to’. It is not acceptable to use ‘ensure’.</p> <p>SE (Comments): We suggest using the original wording “to improve legal certainty and <u>aiming</u> a level playing field”. We believe that it is a change of substance to use ensure.</p> <p>HU (Comments): “human oversight, safety” are additional elements that were not present before.</p>
<p>(15) The Commission has undertaken a two-stage consultation of the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union (<i>TFEU</i>), on the improvement of working conditions in platform work. This did not result in an agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action in this area at Union level by adapting the current legal framework to the emergence of platform</p>	



MEF	Drafting suggestions and Comments
<p>work, <i>including as regards the use of automated monitoring systems and automated decision-making systems</i>. In addition, the Commission has held extensive exchanges with relevant stakeholders, including digital labour platforms, associations of persons performing platform work, experts from academia, Member States and international organisations and representatives of civil society.</p>	
<p><i>(16) This Directive aims to improve the working conditions of platform workers and to protect the personal data of persons performing platform work. Both objectives are pursued simultaneously and, while mutually reinforcing and inseparably linked, one is not secondary to the other. As regards Article 153(1), point (b), TFEU, this Directive sets out rules aiming to support the correct determination of the employment status of persons performing platform work and to improve working conditions and transparency with regard to platform work, including in cross-border situations, as well as to protect workers in the context of algorithmic management. As regards Article 16 TFEU, this Directive establishes rules to improve the protection of persons performing platform work with regard to the processing of their personal data by increasing the transparency, fairness, human oversight, safety and accountability of relevant algorithmic</i></p>	

MEF	Drafting suggestions and Comments
<i>management procedures in platform work.</i>	
<p>(17) This Directive should apply to persons performing platform work in the Union who have or who, on the basis of an assessment of the facts, <i>are</i> deemed to have, an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member <i>States</i>, with consideration to the case-law of the Court of Justice ■ . The provisions on algorithmic management which are related to the processing of personal data should also apply to ■ persons performing platform work ■ who do not have an <i>employment contract or</i> employment relationship.</p>	<p>FR (Drafting suggestions):</p> <p>(17) This Directive should apply to persons performing platform work in the Union who have <u><b>an employment contract</b></u> or who, on the basis of an assessment of the facts, <i>are</i> deemed to have, <del>an employment contract</del> <del>or</del> an employment relationship as defined by the law, collective agreements or practice in force in the Member <i>States</i>, with consideration to the case-law of the Court of Justice ■ . The provisions on algorithmic management which are related to the processing of personal data should also apply to ■ persons performing platform work ■ who do not have an <i>employment contract or</i> employment relationship.</p> <p>FR (Comments):</p> <p>The aim is to clarify the definition of “persons performing platform work” by aligning the wording of recital 17 and articles 1.2 and 2.1.d. The wording of article 2.1 of the initial document is the most precise and consistent with the definition of a worker and should therefore be favoured.</p>

MEF	Drafting suggestions and Comments
<p>(18) This Directive should <i>establish mandatory rules that</i> apply to all digital labour platforms, irrespective of their place of establishment or of the law otherwise applicable, provided that the platform work organised through that digital labour platform is performed in the Union. █</p>	
<p>(19) Digital labour platforms differ from other online platforms in that they <i>use automated monitoring systems or automated decision-making systems to</i> organise work performed by individuals at the request, one-off or repeated, of the recipient of a service provided by the platform.</p> <p><i>Automated monitoring systems and automated decision-making systems process personal data of persons performing platform work and take or support decisions that affect, inter alia, working conditions. Those features make digital labour platforms a distinct form of organising the service provision by professionals compared to more traditional forms of organising service provision, such as traditional forms of ride hailing or transport service dispatch. Furthermore, the increased complexity in the structural organisation of digital labour platforms goes hand in hand with their fast-paced evolution, often creating systems with a variable geometry in the organisation of work.</i> For instance, <i>there could be cases where digital labour platforms provide a service whose recipient is the digital labour platform itself or a distinct business entity</i></p>	<p>SE (Comments):</p> <p>Why is the word “independent” deleted? Could you please explain the change?</p>

MEF	Drafting suggestions and Comments
<p><i>within the same group of undertakings, or organise work in such a way that it blurs the traditional patterns which are typically recognisable in the systems of provision of services.</i></p>	
<p><i>This might also be the case for microwork or crowdwork platforms, which are a type of online digital labour platform that provide businesses and other clients with access to a large and flexible workforce for the completion of small tasks that can be performed remotely using a computer and internet connection, such as tagging. Tasks are split up and distributed to a large number of individuals (the crowd) who can complete them asynchronously.</i></p>	
<p><i>(20) Organising work performed by individuals should involve at a minimum a significant role in matching the demand for the service with the supply of work by an individual who has a contractual relationship with the digital labour platform or an intermediary, regardless of its formal designation by the parties or of its nature, and who is available to perform a specific task. Organising such work can include other activities, such as processing payments. Online platforms which do not organise the work performed by individuals, but merely provide the means by which service providers can reach the end-user, without any</i></p>	

MEF	Drafting suggestions and Comments
<p><i>further involvement of the platform, for instance by advertising offers or requests for services or aggregating and displaying available service providers in a specific area, should not be considered to be digital labour platforms.</i></p>	
	<p>SE (Comments): We prefer the original word “allow” rather than “enables”</p>
<p><i>The definition of digital labour platforms should not include providers of a service whose primary purpose is to exploit or share assets, such as short-term rental of accommodation or which enables individuals who are not professionals to resell goods, nor those who organise the activities of volunteers. The definition 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 component, and not merely a minor and purely ancillary component.</i></p>	

MEF	Drafting suggestions and Comments
<p>(21) <i>Arrangements and processes of workers' representation vary between Member States, reflecting their respective histories, institutions, and economic and political situations. Among the enabling conditions for a well-functioning social dialogue are the existence of strong, independent trade unions and employers' organisations, with access to relevant information necessary to participate in social dialogue, and respect for the fundamental rights of the freedom of association and of collective bargaining.</i></p>	
<p>(22) <i>According to the International Labour Organization (ILO) Workers' Representatives Convention No 135 (1971), currently ratified by 24 Member States, worker representatives can be persons who are recognised as such under national law and practice, whether they are trade union representatives, namely representatives designated or elected by trade unions or by members of such unions, or elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. That Convention states that,</i></p>	<p>DE (Drafting suggestions):</p> <p>(22) <i>According to the International Labour Organization (ILO) Workers' Representatives Convention No 135 (1971), currently ratified by 24 Member States, worker representatives can be persons who are recognised as such under national law <del>and</del> or practice, whether they are trade union representatives, namely representatives designated or elected by trade unions or by members of such unions, or elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do</i></p>

MEF	Drafting suggestions and Comments
<p><i>where both trade union representatives and elected representatives exist in the same undertaking, such representation is not to be used to undermine the positions of the trade unions concerned or of their representatives, and that cooperation between the elected representatives and the trade unions concerned or their representatives is to be encouraged.</i></p>	<p><i>not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.</i></p> <p>DE (Comments): We suggest to returning to the initial wording (“or”) to create alignment with Art. 3 (ILO) Convention No. 135 (1971), which also states “under national law or practice”.</p> <p>HU (Comments): The quoted ILO convention reads “under national law or practice”</p>
<p><i>(23) The Member States have ratified the ILO Right to Organise and Collective Bargaining Convention No 98 (1949), which provides that acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, are to be deemed to constitute acts of interference, against which signatory States need to protect workers' organisations. It is important for such acts to be addressed in order to ensure that, when defining or implementing</i></p>	

MEF	Drafting suggestions and Comments
<p><i>practical arrangements for information and consultation pursuant to this Directive, employers and the workers' representatives work in a spirit of cooperation with due regard to their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the workers.</i></p>	
<p>(24) <i>In some cases, persons performing platform work do not have a direct contractual relationship with the digital labour platform, but are in a relationship with an intermediary through which they perform platform work. This way of organising platform work often results in a vast array of different and complex multi-party relationships, including subcontracting chains, as well as in blurred responsibilities between the digital labour platform and the intermediaries. Persons performing platform work through intermediaries are exposed to the same risks related to the misclassification of their employment status and the use of automated monitoring systems or automated decision-making systems as persons performing platform work directly for the digital labour platform. Member States should therefore establish appropriate measures in order to ensure that under this Directive persons performing platform work working through intermediaries enjoy the</i></p>	<p>FR (Drafting suggestions):</p> <p>(24) <i>In some cases, persons performing platform work do not have a direct contractual relationship with the digital labour platform, but are in a relationship with an intermediary through which they perform platform work. This way of organising platform work often results in a vast array of different and complex multi-party relationships, including subcontracting chains, as well as in blurred responsibilities between the digital labour platform and the intermediaries. Persons performing platform work through intermediaries are exposed to the same risks related to the misclassification of their employment status and the use of automated monitoring systems or automated decision-making systems as persons performing platform work directly for the digital labour platform. Member States should therefore establish appropriate</i></p>



MEF	Drafting suggestions and Comments
<p><i>same level of protection as persons performing platform work who have a direct contractual relationship with the digital labour platform.</i></p> <p><i>Member States should establish appropriate mechanisms, including where appropriate through joint and several liability systems.</i></p>	<p><i>measures in order to ensure that, under this Directive, persons performing platform work working through intermediaries enjoy the same level of protection as persons performing platform work who have a direct contractual relationship with the digital labour platform.</i></p> <p><i>Member States should establish appropriate mechanisms, including, where appropriate, through joint and several liability systems.</i></p> <p>FR (Comments):</p> <p>In order to ensure the readability of the text and to avoid any misinterpretation, it is important to reintroduce the four deleted commas.</p>
<p>(25) To combat false self-employment in platform work and to facilitate the correct determination of the employment status of persons performing platform work, Member States should have appropriate procedures in place to prevent and address the misclassification of the employment status of persons performing platform work. The aim of those procedures should be to ascertain the existence of an employment relationship as defined by national law, collective agreements or practice, with consideration to the case-law of the Court of Justice, and <i>thereby to ensure that platform workers fully enjoy the same employment rights as other workers in accordance with relevant Union law, national law and</i></p>	

MEF	Drafting suggestions and Comments
<p><i>collective agreements. When the existence of an employment relationship is established on the basis of the facts, the party or parties responsible for the execution of the obligations of the employer should be clearly identified and should comply with the corresponding employers' obligations under Union law, national law and collective agreements applicable in the sector of activity.</i></p>	
<p><i>(26) Where a party is found to be an employer and fulfils the conditions of being a temporary-work agency in accordance with Directive 2008/104/EC, the obligations under that Directive apply.</i></p>	
<p>(27) The principle of primacy of facts, meaning that the determination of the existence of an employment relationship should be guided primarily by the facts relating to the actual performance of work, including the remuneration for the work, and not by the parties' description of the relationship, in accordance with the <i>ILO</i> Employment Relationship Recommendation ■ No 198 (2006), is particularly relevant in the case of platform work where contractual conditions are often unilaterally determined by one party.</p>	
<p><i>(28) The abuse of the status of self-employed persons, either at national level or in cross-border situations, is a form of falsely declared</i></p>	<p>SE (Comments):</p>

MEF	Drafting suggestions and Comments
<p><i>work that is frequently associated with undeclared work. False self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship. A false declaration of self-employment is often made to avoid certain legal or fiscal obligations or to create a competitive advantage compared to law-abiding undertakings. In a number of judgments<sup>19</sup>, the Court of Justice has ruled that the classification of a self-employed person under national law does not prevent that person from being classified as a worker within the meaning of Union law if that person's independence is merely notional, thereby disguising an employment relationship.</i></p>	<p>We cannot accept adding “in a number of judgement” and prefer using the original text.</p>

<sup>19</sup>

***Judgments of the Court of Justice of***

- 3 July 1986, *Deborah Lawrie-Blum v Land Baden-Württemberg*, C-66/85, ECLI:EU:C:1986:284;
  - 13 January 2004, *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment*, C-256/01, ECLI:EU:C:2004:18;
  - 14 October 2010, *Union Syndicale Solidaires Isère v Premier ministre and Others*, C-428/09, ECLI:EU:C:2010:612;
  - 11 November 2010, *Dita Danosa v LKB Līzings SIA*, C-232/09, ECLI:EU:C:2010:674;
  - 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, C-413/13, ECLI:EU:C:2014:2411;
  - 9 July 2015, *Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH*, C-229/14, ECLI:EU:C:2015:455;
  - 17 November 2016, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, C-216/15, ECLI:EU:C:2016:883;
  - 16 July 2020, *UX v Governo della Repubblica italiana*, C-658/18, ECLI:EU:C:2020:572;
- and order of the Court of Justice of 22 April 2020, B v Yodel Delivery Network Ltd, C- 692/19, ECLI:EU:C:2020:288.*

MEF	Drafting suggestions and Comments
<p>(29) Ensuring the correct determination of the employment status of persons performing platform work should not prevent the improvement of conditions of genuine self-employed persons performing platform work. <i>The Commission communication of 30 September 2022, which contains "Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons" and indicates that, according to the Commission, collective agreements between solo self-employed persons and digital labour platforms relating to working conditions fall outside the scope of Article 101 TFEU and can, to that end, serve as useful guidance. It is crucial, however, that the introduction of those collective agreements does not undermine the objectives pursued by this Directive, in particular the correct classification of persons performing platform work with regard to their employment status.</i></p>	<p>FR (Drafting suggestions):</p> <p>(29) Ensuring the correct determination of the employment status of persons performing platform work should not prevent the improvement of conditions of genuine self-employed persons performing platform work. <i>The Commission communication of 30 September 2022, which contains "Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons" and indicates that, according to the Commission, collective agreements between solo self-employed persons and digital labour platforms relating to working conditions fall outside the scope of Article 101 TFEU <del>and</del> can, to that end, serve as useful guidance. It is crucial, however, that the introduction of those collective agreements does not undermine the objectives pursued by this Directive, in particular the correct classification of persons performing platform work with regard to their employment status.</i></p> <p>FR</p>

MEF	Drafting suggestions and Comments
	<p>(Comments):</p> <p>The French authorities suggest deleting the word "and" so that the sentence makes sense.</p>
<p>(30) <i>Direction and control can take different forms in practice, considering that the platform economy model is constantly evolving. For instance, the digital labour platform might exert direction and control not only by direct means, but also by applying punitive measures or other forms of adverse treatment or pressure. In the context of platform work, it is often difficult for the persons performing platform work to have appropriate access to the tools and information required to assert before a competent authority the actual nature of their contractual relationship and the rights derived therefrom. In addition, the management of persons performing platform work through automated monitoring systems or automated decision-making systems is characterised by a lack of transparency on the part of the digital labour platform. Those features of platform work perpetuate the</i></p>	<p>AT</p> <p>(Drafting suggestions):</p> <p>(30) <del>Direction and control</del> <b>Control and direction</b> can take different forms in practice, considering that the platform economy model is constantly evolving. For instance, the digital labour platform might exert direction and control not only by direct means, but also by <b>applying punitive measures</b> or other forms of adverse treatment or pressure. In the context of platform work, it is often difficult for the persons performing platform work to have appropriate access to the tools and information required to assert before a competent authority the actual nature of their contractual relationship and the rights derived therefrom. In addition, the management of persons performing platform work through automated monitoring systems or automated decision-making systems is</p>

MEF	Drafting suggestions and Comments
<p><i>phenomenon of misclassification as false self-employment, thus hindering the correct determination of the employment status of persons performing platform work and the access to decent living and working conditions by platform workers. Member States should therefore lay down measures providing for effective procedural facilitation for persons performing platform work when ascertaining the correct determination of their employment status. In that context, a legal presumption of an employment relationship in favour of persons performing platform work is an effective instrument which greatly contributes to the improvement of living and working conditions of platform workers. Therefore, a contractual relationship should be legally presumed to be an employment relationship as defined by the law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, where facts indicating direction and control are found.</i></p>	<p><i>characterised by a lack of transparency on the part of the digital labour platform. Those features of platform work perpetuate the phenomenon of misclassification as false self-employment, thus hindering the correct determination of the employment status of persons performing platform work and the access to decent living and working conditions by platform workers. Member States should therefore lay down measures providing for effective procedural facilitation for persons performing platform work when ascertaining the correct determination of their employment status. In that context, a legal presumption of an employment relationship in favour of persons performing platform work is an effective instrument which greatly contributes to the improvement of living and working conditions of platform workers. Therefore, a contractual relationship should be legally presumed to be an employment relationship as defined by the law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, where facts indicating <b>control and direction</b> <del>direction and control</del> are found.</i></p> <p>AT (Comments):</p>

MEF	Drafting suggestions and Comments
	<p>It's unclear why it has to be 'direction and control'.</p> <p>Furthermore, in RE 8 'sanctions' was replaced with 'adverse treatments', here the term 'punitive measures' is used. This is inconsistent.</p> <p>DE (Drafting suggestions):</p> <p><i>Therefore, a contractual relationship should be legally presumed to be an employment relationship as defined by the law, collective agreements or practice in force in the Member States <del>and</del> with consideration to the case-law of the Court of Justice, where facts indicating direction and control are found.</i></p> <p>DE (Comments):</p> <p>We ask for returning to the initial wording and therefore the deletion of the word "and" before the passage "with consideration to the case law of the Court of Justice". This is in line with the wording in (31) and Art. 4.</p> <p>SE (Comments):</p> <p>We do not understand why the word sanctions is not used in the recital. Could you please explain the change?</p>

MEF	Drafting suggestions and Comments
	Further can you explain the reason for the change “lack of transparency”?
<p>(31) <i>An effective legal presumption requires that national law make it easy and effective in practice for the persons performing platform work to benefit from the presumption. The requirements under the legal presumption should not be burdensome and should ease the difficulties of persons performing platform work in providing evidence indicating the existence of an employment relationship in a situation in which there is a power imbalance vis-à-vis the digital labour platform. The purpose of the legal presumption is to effectively address and correct the power imbalance between the persons performing platform work and the digital labour platform.</i></p>	<p>FR (Drafting suggestions):</p> <p><i>An effective legal presumption requires that national law make it <b>effectively easy</b> <del>and effective in practice</del> for the persons performing platform work <del>to benefit from the presumption</del> <u>to have the presumption applied</u>. The requirements under the legal presumption should not be burdensome and should ease the difficulties of persons performing platform work in providing evidence indicating the existence of an employment relationship in a situation in which there is a power imbalance vis-à-vis the digital labour platform. The purpose of the legal presumption is to effectively address and correct the power imbalance between the persons performing platform work and the digital labour platform.</i></p> <p>FR (Comments):</p> <p><i>It seems that the amendment proposed here by the jurist-linguists goes further than the intention of the co-legislators. Whereas the initial text limits the understanding of an effective presumption to its effective ease</i></p>



MEF	Drafting suggestions and Comments
	<p><i>of access, the amendment adds a double obligation of “easy and effective in practice” which switches the understanding of an effective presumption.</i></p> <p><i>Moreover, the expression "to benefit from the presumption" is ambiguous and should be replaced by "to have the presumption applied" in order to clarify the scope of the obligation to make the presumption effective.</i></p>
<p><i>The modalities of the legal presumption should be laid down</i></p>	
<p><i>by the Member States, provided that they ensure the establishment of an effective rebuttable legal presumption of employment that constitutes a procedural facilitation for the benefit of persons performing platform work, and that they do not have the effect of increasing the burden of requirements on persons performing platform work or their representatives in proceedings to ascertain the employment status of such persons. The application of the legal presumption should not automatically lead to the reclassification of persons performing platform work. Where the digital labour platform seeks to rebut the legal presumption, it should be for the digital labour platform to prove</i></p>	

MEF	Drafting suggestions and Comments
<i>that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice.</i>	
<i>(32) In line with the objective of this Directive of improving the working conditions of platform workers by correctly determining their employment relationship and thereby ensuring that they enjoy the relevant rights deriving from Union law, national law and collective agreements, the legal presumption should apply in all relevant administrative or judicial proceedings in which the employment status of the person performing platform work is at issue. While this Directive does not impose any obligation on Member States to apply the legal presumption to tax, criminal or social security proceedings, it is crucial that the legal presumption is effectively applied in all Member States, pursuant to this Directive. In particular, nothing in this Directive should prevent Member States, as a matter of national law, from applying the legal presumption in those or other administrative or judicial proceedings or from recognising the results of proceedings in which the legal presumption has been applied for the purposes of</i>	

MEF	Drafting suggestions and Comments
<i>providing rights to reclassified workers under other areas of law.</i>	
I	
<p>(33) In the <i>interests</i> of legal certainty, the legal presumption should not have any retroactive legal effects ■ and should therefore apply only to the period starting from ... <i>[2 years from the date of entry into force of this Directive]</i>, including for contractual relationships entered into before and still ongoing on that date. Claims relating to the possible existence of an employment relationship before that date and resulting rights and obligations until that date should therefore be assessed only on the basis of Union and national law applicable on that date, <i>including Directive (EU) 2019/1152</i>.</p>	<p>AT  (Drafting suggestions):  (33) In the <i>interests</i> of legal certainty, the legal presumption should not have any retroactive legal effects ■ and should therefore apply only to the period starting from ... <i>[2 years from the date of entry into force of this Directive]</i>, including for contractual relationships entered into before and still ongoing on that date. Claims relating to the possible existence of an employment relationship before that date and resulting rights and obligations until that date should therefore be assessed only on the basis of Union law and national law <del>applicable on that date</del>, <i>including Directive (EU) 2019/1152</i>.</p>
<p>(34) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down by the law, collective agreements or practice in force of the relevant Member State, with consideration to the case-law of the Court of Justice ■ . Member States should ensure that it is possible to rebut the legal</p>	<p>FR  (Drafting suggestions):  (34) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down by the law, collective agreements or practice in force of the relevant Member</p>

MEF	Drafting suggestions and Comments
<p>presumption ■ by proving, on the basis of such a definition, that the relationship in question is not an employment relationship. ■ Digital labour platforms ■ have a complete overview of all factual elements determining the <i>legal nature of the</i> relationship, in particular the algorithms through which they manage their operations. <i>Digital labour platforms</i> should therefore <i>have the burden of proof where they argue that the contractual relationship in question is not an employment relationship. A successful rebuttal of the legal presumption in judicial or administrative proceedings should not preclude the application of the legal presumption in subsequent judicial proceedings or appeals, in accordance with national procedural law.</i></p>	<p>State, with consideration to the case-law of the Court of Justice ■ . Member States should ensure that it is possible to rebut the legal presumption ■ by proving, on the basis of <u>the aforementioned</u> <del>such a</del> definition, that the relationship in question is not an employment relationship. ■ Digital labour platforms ■ have a complete overview of all factual elements determining the <i>legal nature of the</i> relationship, in particular the algorithms through which they manage their operations. <i>Digital labour platforms</i> should therefore <i>have the burden of proof where they argue that the contractual relationship in question is not an employment relationship. A successful rebuttal of the legal presumption in judicial or administrative proceedings should not preclude the application of the legal presumption in subsequent judicial proceedings or appeals, in accordance with national procedural law.</i></p> <p>FR (Comments):</p> <p>The French authorities are opposed to replacing "the aforementioned" with "such a". The latter introduces ambiguity as to the definition of the employment relationship to be taken into consideration. It must be clear that it is the one in force in the Member State in question.</p>

MEF	Drafting suggestions and Comments
<p>(35) <i>The effective implementation of the legal presumption through a framework of supporting measures is essential to ensure legal certainty and transparency for all parties involved. Such measures should include disseminating comprehensive information to the public, developing guidance in the form of concrete and practical recommendations for digital labour platforms, persons performing platform work, the social partners and for national competent authorities and providing effective controls and inspections, in accordance with national law and practice, including, as appropriate, by establishing targets for such controls and inspections.</i></p>	<p>AT (Drafting suggestions):</p> <p>(35) <i>The effective implementation of the legal presumption through a framework of supporting measures is essential to ensure legal certainty and transparency for all parties involved. Such measures should include disseminating comprehensive information to the public, developing guidance in the form of concrete and practical recommendations for digital labour platforms, persons performing platform work, the social partners and for <b>competent</b> national <del>competent</del> authorities and providing effective controls and inspections, in accordance with national law and practice, including, as appropriate, by establishing targets for such controls and inspections</i></p> <p>AT (Comments):</p> <p>It is unclear why the phrase ‘national competent authority’ is suggested, as ‘competent national authority’ is a standard phrase, which can also be found in other legal texts of the EU.</p>
<p>(36) <i>Such measures should support the correct determination of the existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member State in</i></p>	<p>AT (Drafting suggestions):</p> <p>(36) <i>Such measures should support the correct determination of the</i></p>

MEF	Drafting suggestions and Comments
<p><i>question, with consideration to the case-law of the Court of Justice, including, if appropriate, the confirmation of a classification of a person performing platform work as genuinely self-employed. To enable those authorities to carry out their tasks in enforcing the provisions of this Directive, having regard the competence of Member States to decide on the staffing of national authorities, they need to be adequately staffed. This requires providing adequate human resources to national competent authorities with the required skills and access to appropriate training and the availability of technical expertise in the field of algorithmic management. ILO Labour Inspection Convention No 81 (1947) provides indications on how to determine a sufficient number of labour inspectors for the effective discharge of their duties. A decision of a national competent authority resulting in a change of the employment status of a person performing platform work should be taken into account by national competent authorities when deciding on controls and inspections that they intend to carry out.</i></p>	<p><i>existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member State in question, with consideration to the case-law of the Court of Justice, including, if appropriate, the confirmation of a classification of a person performing platform work as genuinely self-employed. To enable those authorities to carry out their tasks in enforcing the provisions of this Directive, having regard the competence of Member States to decide on the staffing of national authorities, they need to be adequately staffed. This requires providing adequate human resources to <b>competent</b> national authorities with the required skills and access to appropriate training and the availability of technical expertise in the field of algorithmic management. ILO Labour Inspection Convention No 81 (1947) provides indications on how to determine a sufficient number of labour inspectors for the effective discharge of their duties. A decision of a <b>competent</b> national authority resulting in a change of the employment status of a person performing platform work should be taken into account by <b>competent</b> national authorities when deciding on controls and inspections that they intend to carry out.</i></p> <p>AT</p>

MEF	Drafting suggestions and Comments
	<p>(Comments):</p> <p>See comments regarding ‘competent national authorities’ in para above.</p> <p>DE</p> <p>(Drafting suggestions):</p> <p><i>To enable those authorities to carry out their tasks in enforcing the provisions of this Directive, while underlining having regard the competence of Member States to decide on the staffing of national authorities, they need to be adequately staffed.</i></p> <p>DE</p> <p>(Comments):</p> <p>We ask for returning to the initial wording (“while underlining”).</p>
<p><i>(37) Member States' competent authorities should collaborate with each other, including through the exchange of information, as provided for under national law and practice, for the purpose of ensuring the correct determination of the employment status of persons performing platform work.</i></p>	<p>FR</p> <p>(Drafting suggestions):</p> <p><i>(37) Member States' competent authorities should <u>take care to</u> collaborate with each other, including through the exchange of information, as provided for under national law and practice, for the purpose of ensuring the correct determination of the employment status of persons performing platform work.</i></p> <p>FR</p> <p>(Comments):</p>

MEF	Drafting suggestions and Comments
	<p>The French authorities propose adding "take care to" to better reflect the intention of the legislator as regards the scope of the obligation for the competent authorities to collaborate with each other.</p> <p>AT (Drafting suggestions):</p> <p><i>(37) Member States' competent <b>national</b> authorities should collaborate with each other, including through the exchange of information, as provided for under national law and practice, for the purpose of ensuring the correct determination of the employment status of persons performing platform work.</i></p> <p>AT (Comments):</p> <p>‘Competent national authorities’ is an agreed phrasing which has been used in various documents and is also used other legal texts of the EU, therefore it should not be changed.</p> <p>HU (Comments):</p> <p>Everywhere else, “national competent authorities” is used consistently, here “national” is missing, probably deleted because here it is clear that</p>

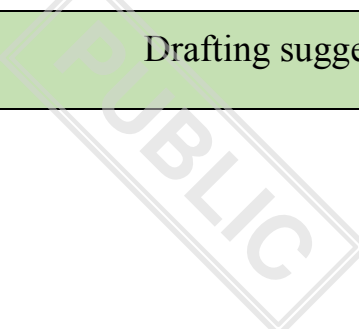


MEF	Drafting suggestions and Comments
	Member State authorities are meant. However, for the sake of consistency, it may be a good idea to reinsert “national”.
<p>(38) While Regulation (EU) 2016/679 establishes the general framework for the protection of natural persons with regard to the processing of personal data, it is necessary to lay down <i>specific</i> rules addressing the concerns that are <i>related to</i> the processing of personal data <i>by means of automated monitoring systems or automated decision-making systems</i> in the context of platform work. <i>Article 88 of Regulation (EU) 2016/679 already provides that Member States may, by law or by means of collective agreements, provide for more specific rules</i> to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data <i>in the employment context. This Directive provides for more specific safeguards concerning the processing of personal data by means of automated systems in the context of platform work, thereby providing for a higher level of protection of the personal data of persons performing platform work. In particular, this Directive establishes more specific rules in relation to Regulation (EU) 2016/679 concerning the use of and transparency with</i></p>	

MEF	Drafting suggestions and Comments
<p><i>regard to automated decision-making. This Directive also establishes additional measures in relation to Regulation (EU) 2016/679 in the context of platform work to safeguard the protection of the personal data of persons performing platform work, in particular where decisions are taken or supported by the automated processing of personal data.</i> Terms relating to the protection of personal data in this Directive should be understood in light of the definitions set out in Regulation (EU) 2016/679.</p>	
<p><i>(39) Articles 5, 6 and 9 of Regulation (EU) 2016/679 require that personal data be processed in a lawful, fair and transparent manner. This implies certain restrictions on the manner in which digital labour platforms are able to process personal data by means of automated monitoring systems or automated decision-making systems. Nonetheless, in the particular case of platform work, the consent of persons performing platform work to the processing of their personal data cannot be assumed to be freely given. Persons performing platform work often do not have a genuine free choice or are not able to refuse or withdraw consent without detriment to their contractual relationship, given the power imbalance between the person performing platform</i></p>	

MEF	Drafting suggestions and Comments
<p><i>work and the digital labour platform. Therefore, digital labour platforms should not process the personal data of persons performing platform work on the basis that a person performing platform work has given consent to the processing of his or her personal data.</i></p>	
<p><i>(40) Digital labour platforms should not, by means of automated monitoring systems or any automated system used to take or support decisions affecting persons performing platform work, process any personal data on the emotional or psychological state of persons performing platform work, process any personal data in relation to their private conversations, collect any personal data while persons performing platform work are not offering or performing platform work, process any personal data to predict the exercise of fundamental rights, including the freedom of association, the right of collective bargaining and action or the right to information and consultation, as defined in the Charter, or process personal data to infer the person's racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, emotional or psychological state, trade union membership, sex life or sexual orientation.</i></p>	

MEF	Drafting suggestions and Comments
<p><i>(41) Digital labour platforms should not process biometric data of persons performing platform work for the purpose of identification, namely establishing a person's identity by comparing his or her biometric data to stored biometric data of a number of individuals in a database (one-to-many identification). This does not affect the possibility for digital labour platforms to conduct biometric verification, namely verifying a person's identity by comparing his or her biometric data to data previously provided by that same person (one-to-one verification or authentication) where such processing of personal data is lawful under Regulation (EU) 2016/679 or other relevant Union and national law.</i></p>	
<p><i>(42) Biometrics-based data are personal data which result from specific technical processing relating to the physical, physiological or behavioural features, signals or characteristics of a natural person, such as facial expressions, movements, pulse frequency, voice, keystrokes or gait, which may or may not allow or confirm the identification of a natural person.</i></p>	
<p><i>(43) The processing of personal data by automated monitoring systems or automated decision-making systems used by digital labour</i></p>	

MEF	Drafting suggestions and Comments
<p><i>platforms is likely to result in a high risk to the rights and freedoms of persons performing platform work. Therefore, digital labour platforms should always carry out a data- protection impact assessment in accordance with the requirements laid down in Article 35 of Regulation (EU) 2016/679. Taking into account the effects that decisions taken by automated decision-making systems have on persons performing platform work, in particular platform workers, this Directive establishes more specific rules regarding the consultation of persons performing platform work and their representatives in the context of data- protection impact assessments.</i></p>	
<p>(44) <i>In addition to the requirements laid down in Regulation (EU) 2016/679, digital labour platforms should be subject to transparency <b>and information</b> obligations in relation to automated monitoring ■ systems ■ and automated ■ systems which are used to take or support decisions that ■ affect <b>persons performing platform work</b>, including <b>platform workers' working conditions, such as their access</b> to work assignments, their earnings, their ■ safety and health, their working time, their access to training, their promotion <b>or its equivalent</b> and their contractual status, including the restriction, suspension or termination of their account. ■</i></p> <p>The type and form of information that is to be provided to persons</p>	<p>AT (Comments):</p> <p>If this para is aligned with Art. 2 (9), all aspects mentioned in Art. 2 (9) should be mentioned here (hence also organisation of work assignments etc).</p>

MEF	Drafting suggestions and Comments
<p>performing platform work regarding such automated systems, as well as the timing of its provision should be specified. <i>Individual platform workers should receive that information in a concise, simple and understandable form, in so far as the systems and their features directly affect them and, where applicable, their working conditions, so that they are effectively informed. They should also have the right to request comprehensive and detailed information about all relevant systems. Comprehensive and detailed information regarding such automated systems should also be provided to representatives of persons performing platform work, as well as to national competent authorities upon their request, in order to enable them to exercise their functions.</i></p>	
<p>(45) <i>In addition to the right to the portability of personal data which the data subject has provided to a controller in accordance with Article 20 of Regulation (EU) 2016/679, persons performing platform work should have the right to receive, without hindrance and in a structured, commonly used and machine-readable format, any personal data generated through their performance of work in the context of a digital labour platform's automated monitoring systems or automated decision-making systems, including ratings and reviews, to transmit</i></p>	

MEF	Drafting suggestions and Comments
<p><i>them or have them transmitted to a third party, including another digital labour platform. Digital labour platforms should provide persons performing platform work with tools to facilitate effective data portability that is free of charge in order to exercise their rights under this Directive and under Regulation (EU) 2016/679.</i></p>	
<p><i>(46) In some cases, digital labour platforms do not formally terminate their relationship with a person performing platform work but restrict the account of the person performing platform work. Restricting the account is to be understood as any limitation imposed on that person's ability to perform platform work through the account, including restricting the access to the account or to work assignments.</i></p>	
<p>(47) Digital labour platforms make extensive use of automated monitoring systems and automated decision-making systems in managing <i>persons performing platform work</i>. Monitoring by electronic means can be intrusive and decisions taken or supported by such systems, <i>such as those related to the offer or assignment of tasks, the earnings, their safety and health, their working time, their access to training, their promotion or status within the organisation and contractual status</i>, directly affect the persons performing platform work, who might not have a direct contact with a human manager or supervisor. Digital labour</p>	

MEF	Drafting suggestions and Comments
<p>platforms should therefore <i>ensure human oversight and</i> regularly, <i>in any event every two years, carry out an evaluation of</i> the impact of individual decisions taken or supported by automated monitoring systems <i>or</i> automated decision-making systems on <i>persons performing platform work including, where applicable, their</i> working conditions <i>and equal treatment at work. Workers' representatives should be involved in the evaluation process.</i> Digital labour platforms should ensure sufficient human resources for the purpose of such oversight and evaluation. The persons charged by the digital labour platform with the function of <i>oversight</i> should have the competence, training and authority necessary to exercise that function and <i>in particular the right to override automated decisions. They</i> should be protected from dismissal, disciplinary measures or other adverse treatment for <i>exercising their functions</i>. In addition, <i>it is important that</i> digital labour platforms <i>tackle systematic shortcomings in the use of automated monitoring systems and automated decision-making systems. Therefore, where the oversight activities identify a high risk of discrimination at work, or the infringement of rights of persons performing platform work, digital labour platforms should take appropriate measures to address them,</i></p>	



MEF	Drafting suggestions and Comments
<i>including the possibility to discontinue such systems.</i>	
I	
<p>(48) <i>Regulation (EU) 2016/679 requires data controllers to implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests in cases where the latter is subject to decisions based solely on automated processing. That provision requires, as a minimum, the data subject's right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision. In addition to the requirements laid down in Regulation (EU) 2016/679, in the context of algorithmic management and considering the serious impact on persons performing platform work of decisions of restricting, suspending or terminating their contractual relationship or their account, or any decision of equivalent detriment, such decisions should always be taken by a human being.</i></p>	
<p>(49) <i>In addition to the requirements of Regulation (EU) 2016/679 in the context of algorithmic management in platform work, persons performing platform work should have the right to obtain, <b>without undue delay</b>, an explanation from the digital labour platform for a decision, the</i></p>	

MEF	Drafting suggestions and Comments
<p>lack of <i>a</i> decision or a set of decisions taken or <i>supported</i> by automated <i>decision-making systems</i>. For that purpose, the digital labour platform should provide persons performing platform work with the possibility to discuss and clarify the facts, circumstances and reasons for such decisions with a human contact person at the digital labour platform. In addition, <i>certain decisions are likely to have particularly significant negative effects on persons</i> performing platform work, <i>in particular on their potential earnings. For decisions to restrict, suspend or terminate the account of a person performing platform work, to refuse the payment for work performed by that person, or affecting the essential aspects of the contractual relationship, the digital labour platform should provide the person performing platform work, at the earliest opportunity and at the latest on the date on which such decisions take effect, with a written statement of reasons for such decisions.</i> Where the explanation or the reasons provided are not satisfactory or where persons performing platform work consider their rights to be infringed <i>by a decision</i>, they should also have the right to request the digital labour platform to review the decision and to obtain a substantiated reply <i>without undue delay, and in any event within two weeks of receipt of the request.</i> ■</p>	

MEF	Drafting suggestions and Comments
<p>Where such decisions infringe those persons’ rights, such as their labour rights, their right to non-discrimination <i>or the right to protection of their personal data</i>, the digital labour platform should rectify such decisions without <i>undue</i> delay or, where that is not possible, should provide adequate compensation <i>for the damage sustained and take the steps necessary to avoid similar decisions in the future, including, if appropriate, the modification or the discontinuation of the use of the relevant automated decision-making system. With regard to human review of decisions, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.</i></p>	<p>DE (Comments): We kindly ask for clarification regarding the insertion of “if appropriate, the modification or”.</p>
<p>(50) Council Directive 89/391/EEC<sup>22</sup> introduces measures to encourage improvements in the safety and health of workers at work, including the obligation for employers to assess the occupational health and safety risks <i>and lays down general principles of prevention that employers are to implement.</i> Automated monitoring systems and automated decision-making systems potentially have significant impact on the <i>safety and on the</i> physical and mental health of <i>platform workers</i>.</p>	

<sup>22</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

MEF	Drafting suggestions and Comments
<p><i>Algorithmic direction, evaluation, and discipline intensify work effort by increasing monitoring, raising the pace required from workers, minimising gaps in workflow, and extending work activity beyond the conventional workplace and working hours. The limited learning at work and the limited influence over tasks due to the use of non-transparent algorithms, work intensification and insecurity derived from the use of automated monitoring systems or automated decision-making systems are likely to increase workforce's stress and anxiety. Therefore, digital labour platforms should evaluate those risks, assess whether the safeguards of the systems are appropriate to address those risks and take appropriate preventive and protective measures. They should avoid that the use of such systems results in undue pressure on workers or puts their health at risk. In order to strengthen the effectiveness of those provisions, the digital labour platform should make their risk evaluation and the assessment of the mitigating measures available to platform workers, their representatives and the competent authorities.</i></p>	

MEF	Drafting suggestions and Comments
<p><i>(51) Persons performing platform work are exposed, in particular in on-location platform work, to a risk of violence and harassment, without having a physical workplace where they are able to address complaints. Harassment and sexual harassment are liable to have a negative impact on the health and safety of platform workers. Member States should therefore provide for preventive measures, including the setting up of effective reporting channels. Member States are also encouraged to support effective measures to combat violence and harassment in platform work and, in particular, include appropriate reporting channels for persons performing platform work who do not have an employment relationship.</i></p>	<p>AT (Drafting suggestions):</p> <p><i>(51) Persons performing platform work are exposed, in particular in on-location platform work, to a risk of violence and harassment, without having a physical workplace where they are able to address complaints. Harassment and sexual harassment are liable to have a negative impact on the health and safety of platform workers. Member States should therefore provide for preventive measures, including the setting up of effective reporting channels. Member States are also encouraged to support effective measures to combat violence and harassment in platform work and, in particular, include appropriate reporting channels for self-employed persons <del>persons performing platform work who do not have an employment relationship.</del></i></p> <p>AT (Comments):</p> <p>It is unclear why the term ‘self-employed persons’ should be replaced with this phrase as the term ‘self-employed persons’ is also used in other RE and Articles of this document. It is not necessary to define /elaborate</p>

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	on self-employed persons that perform platform work in this context.
<p>(51) <i>Information and consultation of workers' representatives, which are regulated at Union level pursuant to Directive 2002/14/EC, are key to fostering effective social dialogue.</i> As the introduction of or substantial changes in the use of automated monitoring systems and automated decision-making systems by digital labour platforms have direct impacts on the work organisation and individual working conditions of platform workers, additional measures are necessary to ensure that digital labour platforms inform and <i>effectively</i> consult platform workers' representatives before such decisions are taken, at the appropriate level. Given the technical complexity of algorithmic management systems, <i>information should be given in due time to enable platform workers' representatives to prepare for consultation</i>, with the assistance of an expert chosen by the platform workers or their representatives in a concerted manner where needed. <i>The information and consultation measures provided for in Directive 2002/14/EC remain unaffected by this Directive.</i></p>	
<p>(52) <i>In the absence of workers' representatives, it should be possible for the workers to be directly informed by the digital labour platform of</i></p>	

MEF	Drafting suggestions and Comments
<p><i>the introduction of or substantial changes in the use of automated monitoring systems and automated decision-making systems.</i></p>	
<p>(53) A number of persons performing platform work are self-employed persons. The impact of automated monitoring systems and automated decision-making systems used by digital labour platforms on <i>the protection of the personal data</i> of self-employed persons and their earning opportunities is similar to that of platform workers. Therefore, the rights laid down in ■ this Directive that pertain to the protection of natural persons in relation to the processing of personal data in the context of algorithmic management, namely those regarding transparency with regard to automated monitoring systems and automated decision-making systems, restrictions to process or collect personal data, human monitoring and review of significant decisions, should also apply to persons ■ performing platform work who do not have an employment ■ relationship. The rights pertaining to health and safety at work, information and consultation of platform workers or their representatives, which are specific to workers pursuant to Union law, should not apply to persons performing platform work who do not have an employment relationship. Regulation (EU) 2019/1150 provides safeguards regarding fairness and transparency for self-employed persons performing platform</p>	<p>AT (Drafting suggestions):</p> <p>(53) A number of persons performing platform work are self-employed persons. The impact of automated monitoring systems and automated decision-making systems used by digital labour platforms on <i>the protection of the personal data</i> of self-employed persons and their earning opportunities is similar to that of platform workers. Therefore, the rights laid down in ■ this Directive that pertain to the protection of natural persons in relation to the processing of personal data in the context of algorithmic management, namely those regarding transparency with regard to automated monitoring systems and automated decision-making systems, restrictions to process or collect personal data, human monitoring and review of significant decisions, should also apply to persons ■ performing platform work who do not have an employment ■ relationship. The rights pertaining to health and safety at work, information and consultation of platform workers or their representatives, which are specific to workers pursuant to Union law, should not apply to <b>self-employed persons</b> <del>persons performing platform work who do not</del></p>

MEF	Drafting suggestions and Comments
<p>work, provided that they are considered to be business users within the meaning of that Regulation. <i>With regard to the human review of significant decisions</i>, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.</p>	<p><del>have an employment relationship</del>. Regulation (EU) 2019/1150 provides safeguards regarding fairness and transparency for self-employed persons performing platform work, provided that they are considered to be business users within the meaning of that Regulation. <i>With regard to the human review of significant decisions</i>, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.</p> <p>AT (Comments):</p> <p>It's unclear why the text should at one point use self-employed persons and at another point persons performing platform work who do not have an employment relationship. The original phrasing is better.</p>
<p>(54) <i>The obligations of digital labour platforms, including with regard to information and consultation in respect of automated monitoring systems and automated decision-making systems, apply irrespective of whether such systems are managed by the digital labour platform itself or by an external service provider which carries out data processing on behalf of the digital labour platform.</i></p>	
<p>(55) In order to <i>enable national competent authorities to</i> ensure that digital labour platforms comply with labour legislation and regulations, █</p>	<p>AT (Drafting suggestions):</p>



MEF	Drafting suggestions and Comments
<p>in particular if they are established in a Member State other than the Member State in which the platform worker is performing work or in a third country, digital labour platforms should declare work performed by platform workers to the competent ■ authorities of the Member State in which the work is performed. <i>A systematic and transparent system for the provision of information, including at cross-border level, is also pivotal to preventing unfair competition among digital labour platforms. The obligation to declare platform work performed pursuant to this Directive should not replace obligations relating to declarations or notifications established by other Union legal acts.</i></p>	<p>(55) In order to <i>enable</i> <b>competent</b> national <del>competent</del> authorities to ensure that digital labour platforms comply with labour legislation and regulations, ■ in particular if they are established in a Member State other than the Member State in which the platform worker is performing work <del>or in a third country</del>, digital labour platforms should declare work performed by platform workers to the competent ■ authorities of the Member State in which the work is performed. <i>A systematic and transparent system for the provision of information, including at cross-border level, is also pivotal to preventing unfair competition among digital labour platforms. The obligation to declare platform work performed pursuant to this Directive should not replace obligations relating to declarations or notifications established by other Union legal acts.</i></p> <p>AT (Comments):</p> <p>Competent national authorities’ is an agreed phrasing which has been used in various documents and is also used other legal texts of the EU, therefore it should not be changed.</p> <p>The phrase “to declare platform work performed pursuant to this</p>

MEF	Drafting suggestions and Comments
	Directive” is not in line with the previous sentence, as at first digital labour platforms are only obliged to declare work performed by platform workers. However ‘platform work performed’ does not necessarily mean that this is by a platform worker, as there is a difference between them and a person performing platform work. Therefore the addition of this phrase cannot be supported.
<p><i>(56) The European Labour Authority established by Regulation (EU) 2019/1149 of the European Parliament and of the Council<sup>23</sup> contributes to ensuring fair labour mobility across the Union, in particular by facilitating the cooperation and the exchange of information between Member States with a view to the consistent, efficient and effective application and enforcement of relevant Union law, by coordinating and supporting concerted and joint inspections, by carrying out analyses and risk assessment on issues of cross-border labour mobility and by supporting Member States in tackling undeclared work. It</i></p>	

<sup>23</sup> *Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).*

MEF	Drafting suggestions and Comments
<p><i>therefore has an important role to play in addressing the challenges linked to the cross-border activities of many digital labour platforms as well as those linked to undeclared work in platform work.</i></p>	
<p>(57) Information on <b>platform work performed by</b> persons performing platform work through digital labour platforms, <b>in particular the number of those persons, information on</b> their contractual or employment status and the general terms and conditions applicable to those contractual relationships, is essential to support ■ relevant authorities in correctly determining the employment status of persons performing platform work and in ensuring compliance with legal obligations as well as representatives of ■ persons performing platform <b>work</b> in the exercise of their representative functions ■ . Those authorities and representatives should also have the right to ask digital labour platforms for additional clarifications and details ■ regarding <b>the information provided</b>.</p>	<p>AT (Drafting suggestions):</p> <p>(57) Information on <b>platform work performed by</b> persons performing platform work through digital labour platforms, <b>in particular the number of those persons, information on</b> their contractual or employment status and the general terms and conditions applicable to those contractual relationships, is essential to support ■ relevant authorities in correctly determining the employment status of persons performing platform work and in ensuring compliance with legal obligations as well as representatives of ■ <del>persons performing</del> <b>platform workers</b> in the exercise of their representative functions ■ . Those authorities and representatives should also have the right to ask digital labour platforms for additional clarifications and details ■ regarding <b>the information provided</b>.</p> <p>AT (Comments):</p> <p>The change from ‘representatives of platform workers’ to ‘representatives of persons performing platform work’ is unacceptable as it significantly</p>

MEF	Drafting suggestions and Comments
	<p>changes the substance of this recital. As persons performing platform work also (but not only) include self-employed persons these group of persons is different from platform workers, which are in an employment relationship. Only platform workers may have representatives in some member states. Representatives of self-employed persons do not exist in AT. Therefore the change proposed is not acceptable and the agreed text shall not be changed.</p> <p>HU (Drafting suggestions):</p> <p>(57) Information on <i>platform work performed by</i> persons performing platform work through digital labour platforms, <i>in particular the number of those persons, information on</i> their contractual or employment status and the general terms and conditions applicable to those contractual relationships, is essential to support ■ relevant authorities in correctly determining the employment status of persons performing platform work and in ensuring compliance with legal obligations as well as representatives of platform <i>workers</i> in the exercise of their representative functions ■ . Those authorities and representatives should also have the right to ask digital labour platforms for additional clarifications and</p>

MEF	Drafting suggestions and Comments
	<p>details ■ regarding <i>the information provided</i>.</p> <p>HU (Comments):</p> <p>Worker's representatives are not equal to representatives of any persons performing platform work. The latter is a broader term including self-employed persons without the entitlement for formal representation like workers within an employment relationship. The proposed change is not merely a linguistic change but effecting its content.</p>
<p><i>(58) There is evidence of the use of undeclared work in delivery platforms in several Member States. That practice is carried out through rented identities, where persons performing platform work with the right to work register with the digital labour platform and rent their accounts to undocumented migrants or to minors. This entails a lack of protection of those persons, including illegally staying third-country nationals, whose situation often results in a limitation to access to justice for fear of retaliation or risk of deportation. Directive 2009/52/EC of the European Parliament and of the Council<sup>24</sup> provides</i></p>	

<sup>24</sup> *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).*

MEF	Drafting suggestions and Comments
<p><i>for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The transparency obligations and the rules on intermediaries laid down in this Directive strongly contribute, together with Directive 2009/52/EC, to address the issue of undeclared work in platform work. Furthermore, it is key that digital labour platforms ensure reliable verification of the identity of persons performing platform work.</i></p>	
<p>(59) An extensive system of enforcement provisions for the social <i>acquis</i> in the Union has been developed, elements of which should be applied to this Directive in order to ensure that persons performing platform work have access to <b>timely</b>, effective and impartial dispute resolution and a right to redress, including adequate compensation <b>for the damage sustained</b>. Specifically, having regard to the fundamental nature of the right to effective legal protection, persons performing platform work should continue to enjoy such protection even after the end of the employment or other contractual relationship giving rise to an alleged breach of rights under this Directive.</p>	
<p>(60) Representatives of persons performing platform work should be able, <b>in accordance with national law and practice</b>, to represent one or</p>	<p>SE (Comments):</p>

MEF	Drafting suggestions and Comments
<p>several persons performing platform work in any judicial or administrative <i>proceedings</i> to enforce any of the rights or obligations arising from this Directive. Bringing claims on behalf of or supporting several persons performing platform work is a way to facilitate proceedings that would not have been brought otherwise because of procedural and financial barriers or a fear of reprisals.</p>	<p>We suggest writing in “accordance with national <b>OR</b> <del>and</del> practice”. This change should be made throughout the text.</p>
<p>(61) Platform work is characterised by the lack of a common workplace where <i>persons performing platform work</i> can get to know and communicate with each other and with their representatives, also with a view of defending their interests with regard to the <i>digital labour platform</i>. It is therefore necessary to create digital communication channels, in line with the digital labour platforms’ work organisation, where persons performing platform work can exchange <i>privately and securely</i> with each other and can be contacted by their representatives. Digital labour platforms should create such communication channels within their digital infrastructure or through similarly effective means, while respecting the protection of personal data and refraining from accessing or monitoring those communications.</p>	
<p>(62) In administrative or judicial proceedings regarding the <i>rights and obligations laid down in this Directive</i>, the elements regarding the</p>	<p>NL (Comments):</p>

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<p>organisation of work that make it possible to determine the employment status, and in particular whether the digital labour platform directs or controls certain elements of the performance of work, <i>as well as other elements regarding the use of automated monitoring systems and automated decision-making systems</i>, could be in the possession of the digital labour platform and not easily accessible to persons performing platform work and competent authorities. National courts or competent authorities should therefore be able to order the digital labour platform to disclose any relevant evidence which lies in their control, including confidential information, subject to effective measures to protect such information.</p>	<p>Automated monitoring systems <b>or</b> automated decision-making systems” has been changed in: “Automated monitoring systems <b>and</b> automated decision-making systems”. Why is this change made and does this imply a change in the meaning/content of this paragraph?</p>
<p>(63) Given that <i>this Directive provides for more specific rules and additional rules in relation to Regulation (EU) 2016/679</i> in the context of platform work to ensure the protection of <b>■</b> personal data <b>■</b> of persons <i>performing platform work</i>, the supervisory authorities provided for pursuant to Article 51 of <b>■</b> Regulation (EU) 2016/679 should be competent to monitor the application of those safeguards. <i>The procedural framework</i> of Regulation (EU) 2016/679, <i>in particular Chapters VI, VII and VIII thereof</i>, should apply <i>for the enforcement of the more specific</i></p>	<p>NL <b>(Comments):</b> the word “national” has been deleted? What does this mean, since article 51 of Regulation 2016/679 refers (only) to appoint one of more supervisory authorities?</p>



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<p><i>and additional rules of this Directive</i>, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and penalties, including the competence to impose administrative fines up to the amounts referred to in Article 83(5) of that Regulation.</p>	
<p>(64) Automated monitoring systems and automated decision-making systems used in the context of platform work involve the processing of personal data <i>of persons performing platform work</i> and affect the working conditions and rights of platform <i>workers, which raises</i> issues of data- protection law as well as <i>of other fields of law, such as labour</i> law. Data- protection supervisory authorities and <i>other competent</i> authorities should therefore cooperate, <i>including at cross-border level</i>, in the enforcement of this Directive, including by exchanging relevant information with each other, without <i>affecting</i> the independence of data- protection supervisory authorities.</p>	<p>NL (Comments): Automated monitoring systems <i>or</i> automated decision-making systems” has been changed to: “Automated monitoring systems <i>and</i> automated decision-making systems”. Why is this change made and does this imply a change in the meaning/content of this paragraph?</p>
<p>(65) <i>In order to ensure the effectiveness of the protection provided for in this Directive, it is essential to protect persons performing platform work who exercise their respective rights provided for by this Directive from dismissal or from the termination of their contract , and from any action with equivalent effect, including the suspension of their account.</i></p>	

MEF	Drafting suggestions and Comments
<p>(66) Since the <i>twofold</i> objective of this Directive, namely the improvement of working conditions in platform work <i>and the protection of personal data</i>, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.</p>	
<p>(67) This Directive lays down minimum requirements, thus leaving untouched the Member States' prerogative to introduce and maintain provisions which are more favourable to platform <i>workers</i>. Rights acquired under the existing legal framework should continue to apply, <i>including as regards mechanisms to ascertain the existence of an employment relationship</i>, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the general level of protection in the field covered by this Directive <i>or existing</i></p>	<p>FR (Drafting suggestions):</p> <p>(67) This Directive lays down minimum requirements, thus leaving untouched the Member States' prerogative to introduce and maintain provisions which are more favourable to platform <del>workers</del> <b><u>for persons performing platform work</u></b>. Rights acquired under the existing legal framework should continue to apply, <i>including as regards mechanisms to ascertain the existence of an employment relationship</i>, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights</p>

MEF	Drafting suggestions and Comments
<p><i>prerogatives conferred on workers' representatives.</i></p>	<p>set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the general level of protection in the field covered by this Directive <i>or existing prerogatives conferred on workers' representatives.</i></p> <p>FR (Comments):</p> <p>The French authorities are opposed to the change from "for persons performing platform work" to "to platform workers" insofar as the directive's minimum harmonisation applies to persons performing work via a platform, irrespective of the classification of their employment relationship with the platform.</p>
<p><i>(68) The autonomy of the social partners is to be respected. Member States should be able to allow the social partners, under specific conditions, to maintain, negotiate, conclude and enforce collective agreements which differ from certain provisions of this Directive, while respecting the overall protection of platform workers.</i></p>	
<p>(69) In implementing this Directive Member States should avoid imposing <i>unnecessary</i> administrative, financial and legal constraints in a way which would hold back the creation and development of <i>small and medium-sized enterprises (SMEs)</i>. <i>Member States are therefore invited</i></p>	

MEF	Drafting suggestions and Comments
<p><i>to</i> assess the impact of their transposition measures on <i>SMEs</i> in order to ensure that they are not disproportionately affected, <i>paying particular</i> attention to <i>microenterprises</i> and the administrative burden. ■</p>	
<p>(70) The Member States should be able to entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that the Member States take all the steps necessary to ensure that they can at all times guarantee the results sought under this Directive. They should also, in accordance with national law and practice, take adequate measures to ensure that the social partners are effectively involved and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.</p>	<p>AT (Drafting suggestions):</p> <p>(70) The Member States <del>may should be able to</del> entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that the Member States take all the steps necessary to ensure that they can at all times guarantee the results sought under this Directive. They should also, in accordance with national law and practice, take adequate measures to ensure that the social partners are effectively involved and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.</p> <p>AT (Comments):</p> <p>It is unclear why ‘may’ should be replaced with ‘should be able to’ as ‘may’ is standard language in legal documents. The comment (corresponding to Art. 29(4)) is also unclear in this context, as Art. 29 uses ‘may’.</p>

MEF	Drafting suggestions and Comments
	<p>HU (Comments):</p> <p>We suggest to leave the “may clause” in the first line. In our view the term “should” is more than a possibility closer to an obligation which is not indicated by the Directive.</p>
<p>(71) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>25</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.</p>	
<p>(72) The European Data Protection Supervisor was consulted in</p>	

<sup>25</sup> OJ C 369, 17.12.2011, p. 14.

MEF	Drafting suggestions and Comments
accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>26</sup> and published formal comments on <b>2 February 2022</b> <sup>27</sup> ,	
HAVE ADOPTED THIS DIRECTIVE:	
CHAPTER I	
GENERAL PROVISIONS	
Article 1	
Subject matter and scope	
1. The purpose of this Directive is to improve <b>█</b> working conditions <b>and the protection of personal data</b> in platform work <b>by:</b>	
<b>(a) introducing measures to facilitate the correct determination of the employment status of persons performing platform work;</b>	

<sup>26</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>27</sup> **OJC ...**

MEF	Drafting suggestions and Comments
(b) <i>promoting transparency, fairness, human oversight, safety and accountability in algorithmic management in platform work; and</i>	
(c) <i>improving transparency with regard to platform work, including in cross-border situations.</i>	
<p>2. This Directive lays down minimum rights that apply to every person performing platform work in the Union who has or who, on the basis of an assessment of the facts, is deemed to have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice.</p>	<p>FR (Drafting suggestions):</p> <p>2. This Directive lays down minimum rights that apply to every person performing platform work in the Union who has <b><u>an employment contract</u></b> or who, on the basis of an assessment of the facts, is deemed to have <del>an employment contract or</del> 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.</p> <p>FR (Comments):</p> <p>The aim is to clarify the definition of “persons performing platform work” by aligning the wording of recital 17 and articles 1.2 and 2.1.d. The wording of article 2.1 of the initial document is the most precise and consistent with the definition of a worker and should therefore be favoured.</p> <p>HU</p>

MEF	Drafting suggestions and Comments
	<p><b>(Drafting suggestions):</b></p> <p>This Directive lays down minimum rights that apply to every person performing platform work in the Union who has or who, on the basis of an assessment of the facts, <b>may</b> deemed to have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice.</p> <p>HU <b>(Comments):</b></p> <p>We are not supporting the deletion of the “may” term thereby significantly changing the content of the sentence. The classification of a relationship is based on a case-by-case assessment.</p>
<p><i><b>This Directive also lays down rules to improve</b></i> the protection of natural persons in relation to the processing of <i><b>their</b></i> personal data <i><b>by providing measures on</b></i> algorithmic management <i><b>applicable to persons</b></i> performing platform work in the Union, <i><b>including those who do</b></i> not have an employment contract or employment relationship.</p>	
<p>3. This Directive applies to digital labour platforms organising platform work performed in the Union, irrespective of their place of</p>	



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establishment or of the law otherwise applicable.	
Article 2	
Definitions	
1. For the purposes of this Directive, the following definitions apply:	
(a) ‘digital labour platform’ means a natural or legal person providing a service which meets all of the following requirements:	
(i) it is provided, at least in part, at a distance by electronic means, such as by means of a website or a mobile application;	
(ii) it is provided at the request of a recipient of the service;	
(iii) it involves, as a necessary and essential component, the organisation of work performed by individuals <i>in return for payment</i> , irrespective of whether that work is performed online or in a certain location;	
(iv) <i>it involves the use of automated monitoring systems or automated decision-making systems;</i>	
(b) ‘platform work’ means work organised through a digital labour platform and performed in the Union by an individual on the basis of a	

MEF	Drafting suggestions and Comments
contractual relationship between the digital labour platform <i>or an intermediary</i> , and the individual, irrespective of whether there is a contractual relationship between the individual <i>or an intermediary</i> and the recipient of the service;	
(c) 'person performing platform work' means an individual performing platform work, irrespective of the <i>nature</i> of the <i>contractual relationship or the designation</i> of that relationship by the parties involved;	
(d) 'platform worker' means any person performing platform work who has or is deemed to have an employment contract or <i>an</i> 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;	<p>FR (Drafting suggestions):</p> <p>d) 'platform worker' means any person performing platform work who has <del>or is deemed to have</del> an employment contract or <b><u>is deemed to have an</u></b> 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;</p> <p>FR (Comments):</p> <p>The amendments are not relevant. The French authorities prefer the wording before the amendments by the legal-linguistic experts and</p>

MEF	Drafting suggestions and Comments
	<p>propose aligning the wording of recital 17 and Article 1.2 accordingly.</p> <p>The wording of article 2.1 of the initial document is the most precise and consistent with the definition of a worker and should therefore be favoured.</p>
(e) <i>'intermediary' means a natural or legal person that, for the purpose of making platform work available to or through a digital labour platform:</i>	
(i) <i>establishes a contractual relationship with that digital labour platform and a contractual relationship with the person performing platform work; or</i>	
(ii) <i>is in a subcontracting chain between that digital labour platform and the person performing platform work;</i>	
(f) <i>'workers' representatives' means representatives of platform workers, such as trade unions and representatives who are freely elected by the platform workers in accordance with national law and practice;</i>	
(g) <i>'representatives of persons performing platform work' means workers' representatives and, insofar as provided for in national law and practice, representatives of persons performing platform work other than platform workers;</i>	

MEF	Drafting suggestions and Comments
<p>(h) <i>'automated monitoring systems' means systems which are used for or which support monitoring, supervising or evaluating, by electronic means, the work performance of persons performing platform work or the activities carried out within the work environment, including by collecting personal data;</i></p>	
<p>(i) <i>'automated decision-making systems' means systems which are used to take or support, by electronic means, decisions that significantly affect persons performing platform work, including the working conditions of platform workers, in particular decisions affecting their recruitment, their access to and the organisation of work assignments, their earnings, including the pricing of individual assignments, their safety and health, their working time, their access to training, promotion or its equivalent, and their contractual status including the restriction, suspension or termination of their account.</i></p>	
<p>1</p>	
<p>2. The definition of 'digital labour platform' laid down in point (a) of paragraph 1 does not include providers of a service whose primary purpose is to exploit or share assets <i>or</i> which <i>enables individuals who</i></p>	<p>SE (Comments): Please see the same comment regarding the recital. We prefer allow.</p>

MEF	Drafting suggestions and Comments
<i>are not professionals to resell goods.</i>	
<i>Article 3</i>	
<i>Intermediaries</i>	
<i>Member States shall take appropriate measures to ensure that, where a digital labour platform makes use of intermediaries, persons performing platform work who have a contractual relationship with an intermediary enjoy the same level of protection pursuant to this Directive as those who have a direct contractual relationship with a digital labour platform. To that end, Member States shall take measures, in accordance with national law and practice, to establish appropriate mechanisms, which shall include, where appropriate, joint and several liability systems.</i>	
CHAPTER II	
EMPLOYMENT STATUS	
Article 4	
Determination of employment status	SE (Comments):

MEF	Drafting suggestions and Comments
	<p>We suggest keeping the original wording and keep correct and adding “of persons performing platform work” since the article is related to platform work and not correct determination of other types of work related relationship.</p> <p>PL (Comments):</p> <p>PL - The word <i>correct</i> should remain in the text of the directive, as it better reflects the intention of the adopted provisional agreement.</p>
<p>1. Member States shall have appropriate <i>and effective</i> procedures in place to verify and ensure the correct determination of the employment status of persons performing platform work, with a view to ascertaining the existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice, <i>including through the application of the legal presumption of an employment relationship pursuant to Article 5.</i></p>	
<p>2. The determination of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance</p>	<p>SE (Comments):</p> <p>Please see comments regarding the recital. We suggest keeping the</p>

MEF	Drafting suggestions and Comments
of work, <i>including</i> the use of <i>automated monitoring systems or automated decision-making systems</i> in the organisation of platform work, irrespective of how the relationship is designated in any contractual arrangement that may have been agreed between the parties involved. █	original text and use the word “classify” rather than “designated”.
3. <i>Where the existence of an employment relationship is established, the party or parties responsible for the obligations of the employer shall be clearly identified in accordance with national legal systems.</i>	
Article 5	
Legal presumption	
1. The contractual relationship between a digital labour platform █ and a person <i>performing</i> platform work through that platform shall be legally presumed to be an employment relationship <i>where facts indicating direction and control, in accordance with the law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found. Where the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove that the contractual</i>	AT (Drafting suggestions): The contractual relationship between a digital labour platform █ and a person <i>performing</i> platform work through that platform shall be legally presumed to be an employment relationship <i>where facts indicating direction and control, in accordance with the with national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found. Where</i>

MEF	Drafting suggestions and Comments
<p><i>relationship in question is not 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.</i></p>	<p><i>the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice.</i></p> <p>AT (Comments):</p> <p>It remains unclear why ‘control and direction’ was replaced with ‘direction and control’. The change is not necessary.</p> <p>The phrase ‘in accordance with the law’ is not acceptable, as the original phrasing ‘according to national law’ agreed and standardised language for legal documents is. Despite the reference to ‘Member States’ the word ‘national’ shall remain within the text.</p> <p>DE (Drafting suggestions):</p> <p>1. The contractual relationship between a digital labour platform and a person <i>performing</i> platform work through that platform shall be legally presumed to be an employment relationship <i>where facts indicating direction and control, in accordance with the national law,</i></p>



MEF	Drafting suggestions and Comments
	<p><i>collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found. Where the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice.</i></p> <p>DE (Comments):</p> <p>We kindly ask for clarification why the order of “direction and control” has been changed.</p> <p>Despite the reference to Member States, we ask for returning to the initial wording concerning “in accordance with the national law” which has been used in the entire text.</p> <p>SE (Comments):</p> <p>It is crucial that the word <b>national law, collective agreements or practice</b> is kept since this is a well-used and well-know term.</p> <p>We suggest using national law <b>or</b> practice throughout the text.</p>

MEF	Drafting suggestions and Comments
<p>2. <i>For the purposes of paragraph 1, Member States shall establish an effective rebuttable legal presumption of an employment relationship that constitutes a procedural facilitation for the benefit of persons performing platform work. Moreover, Member States shall ensure that the legal presumption does not have the effect of increasing the burden of requirements on persons performing platform work or their representatives in proceedings to ascertain their employment status.</i></p>	<p>RO (Comments):</p> <p>The word "ascertain" requires a clarification in a unitary manner (text recitals, para 2-5 art. 5, art. 25) or taken into account the diversity of national practices in "define/determine/"establish/fixing" the employment status</p>
<p>3. <i>The legal presumption provided for in this Article shall apply in all relevant administrative or judicial proceedings where the correct determination of the employment status of person performing platform work is at issue.</i></p>	
<p><i>The legal presumption shall not apply to proceedings which concern tax, criminal or social security matters. However, Member States may apply the legal presumption in such proceedings as a matter of national law.</i></p>	
<p>4. <i>Persons performing platform work and, in accordance with national law and practice, their representatives shall have the right to initiate the proceedings referred to in the first subparagraph of paragraph 3 to determine the correct employment status of the person</i></p>	<p>AT (Drafting suggestions):</p> <p>4. <i>Persons performing platform work and, in accordance with national law and practice, their representatives shall have the right to</i></p>

MEF	Drafting suggestions and Comments
<p><i>performing platform work.</i></p>	<p><i>initiate the proceedings referred to in the first subparagraph of paragraph 3 to <del>determine</del> <b>ascertain</b> the correct employment status of the person performing platform work.</i></p> <p>AT (Comments): As in subpara 5 the term ascertain is also used, its not clear why this word is exchanged with determine. In order to achieve a coherent text, the word ‘ascertain’ shall remain as it is.</p> <p>IT (Comments): Why do we need to change the verb - ascertain - that is always used elsewhere? See recital 25-30-31-67; art. 4.1; art. 5.2, art. 5.5</p>
<p><b>5. Where a national competent authority considers that a person performing platform work might be wrongly classified, it shall initiate appropriate actions or proceedings, in accordance with national law and practice, in order to ascertain the employment status of that person.</b></p>	<p>AT (Drafting suggestions):</p> <p>5. Where a <del>national</del> competent <b>national</b> authority considers that a person performing platform work might be wrongly classified, it shall initiate appropriate actions or proceedings, in accordance with national</p>

MEF	Drafting suggestions and Comments
	<p><i>law and practice, in order to ascertain the employment status of that person.</i></p> <p>AT (Comments): ‘Competent national authority’ is not only the agreed language for legal texts but also grammatically correct.</p> <p>RO (Comments): ”ascertain”</p>
<p><b>6.</b> <i>With regard to contractual relationships entered into before and ongoing on ... [2 years from the date of entry into force of this Directive], the legal presumption provided for in this Article shall apply only to the period starting from that date.</i></p>	
<p><i>Article 6</i></p>	
<p><i>Framework of supporting measures</i></p>	
<p><i>Member States shall establish a framework of supporting measures in order to ensure the effective implementation of and compliance with the legal presumption. In particular, they shall:</i></p>	

MEF	Drafting suggestions and Comments
<p><i>(a) develop appropriate guidance, including in the form of concrete and practical recommendations, in order for digital labour platforms, persons performing platform work and the social partners to understand and implement the legal presumption, including the procedures regarding its rebuttal;</i></p>	
<p><i>(b) develop guidance and establish appropriate procedures for national competent authorities in accordance with national law and practice, including on collaboration between national competent authorities, in order to proactively identify, target and pursue digital labour platforms which do not comply with rules applicable to the correct determination of the employment status of persons performing platform work;</i></p>	<p>AT (Drafting suggestions):</p> <p><i>(b) develop guidance and establish appropriate procedures for <del>national</del> competent <b>national</b> authorities in accordance with national law and practice, including on collaboration between <del>national</del> competent <b>national</b> authorities, in order to proactively identify, target and pursue digital labour platforms which do not comply with rules applicable to the correct determination of the employment status of persons performing platform work;</i></p> <p>AT (Comments):</p> <p>Again, competent national authorities is the correct terminology.</p>
<p><i>(c) provide for effective controls and inspections conducted by national competent authorities, in accordance with national law and practice and, in particular, provide, where appropriate, for controls and</i></p>	<p>AT (Drafting suggestions):</p> <p><i>(c) provide for effective controls and inspections conducted by</i></p>

MEF	Drafting suggestions and Comments
<p><i>inspections on specific digital labour platforms where the existence of an employment relationship between such a platform and a person performing platform work has been determined by a national competent authority, while ensuring that such controls and inspections are proportionate and non-discriminatory;</i></p>	<p><i>competent <b>national</b> authorities, in accordance with national law and practice and, in particular, provide, where appropriate, for controls and inspections on specific digital labour platforms where the existence of an employment relationship between such a platform and a person performing platform work has been determined by a <b>competent</b> national <del>competent</del> authority, while ensuring that such controls and inspections are proportionate and non-discriminatory;</i></p> <p>AT (Comments): See comment above. Furthermore, it is unclear why ascertained is replaced with determined in some para but not all.</p> <p>PL (Comments): PL – will the provision cover also the intermediaries ?</p> <p>IT (Comments): Why do we need to change the verb - ascertain - that is always used elsewhere? See recital 25-30-31-67; art. 4.1; art. 5.2, art. 5.5</p>

MEF	Drafting suggestions and Comments
<i>(d) provide for appropriate training for national competent authorities and provide for the availability of technical expertise in the field of algorithmic management, to enable such authorities to carry out the tasks referred to under point (b) of this Article.</i>	AT (Drafting suggestions): <i>(d) provide for appropriate training for <b>competent</b> national <del>competent</del> authorities and provide for the availability of technical expertise in the field of algorithmic management, to enable such authorities to carry out the tasks referred to under point (b) of this Article.</i>
CHAPTER III	
ALGORITHMIC MANAGEMENT	
Article 7	
<i>Limitations on the processing of personal data by means of automated monitoring systems or automated decision-making systems</i>	
<i>1. Digital labour platforms shall not, by means of automated monitoring systems or automated decision-making systems:</i>	
<i>(a) process any personal data on the emotional or psychological state of the person performing platform work;</i>	
<i>(b) process any personal data in relation to private conversations, including exchanges with other persons performing platform work and</i>	AT (Drafting suggestions):

MEF	Drafting suggestions and Comments
<i>the representatives of persons performing platform work;</i>	<p><i>(b) process any personal data in relation to private conversations, including exchanges with other persons performing platform work and the representatives of persons performing platform work;</i></p> <p>AT (Comments):</p> <p>There is no added value in adding ‘persons performing platform work’ again, in particular as ‘their’ already referenced to the persons performing platform work. As not all MS have representatives for persons without an employment relationship, this addition may lead to more confusion and uncertainty when implementing the directive. The phrase ‘representatives of persons performing platform work’ implies the same representation as workers’ representatives / trade unions. However, this is not the case.</p>
<i>(c) collect any personal data while the person performing platform work is not offering or performing platform work;</i>	
<i>(d) process personal data to predict the exercise of fundamental rights, including the freedom of association, the right of collective bargaining and action or the right to information and consultation as laid down in the Charter;</i>	
<i>(e) process any personal data to infer a person’s racial or ethnic</i>	FI



MEF	Drafting suggestions and Comments
<p><i>origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, emotional or psychological state, trade union membership, sex life or sexual orientation;</i></p>	<p>(Comments):</p> <p>Should "a persons" be replaced by "natural persons" or "data subjects" as in the GDPR?</p>
<p><i>(f) process any biometric data, as defined in Article 4, point (14), of Regulation (EU) 2016/679, of a person performing platform work to establish that person's identity by comparing that data to stored biometric data of natural persons in a database.</i></p>	
<p><i>2. This Article shall apply to all persons performing platform work from the start of the recruitment or selection procedure.</i></p>	
<p><i>3. In addition to automated monitoring systems and automated decision-making systems, this Article shall also apply to digital labour platforms where they use automated systems taking or supporting decisions that affect persons performing platform work in any manner.</i></p>	
<p><i>Article 8</i></p>	
<p><i>Data -protection impact assessment</i></p>	
<p><i>1. The processing of personal data by a digital labour platform by means of automated monitoring systems or automated decision-making</i></p>	<p>SE</p> <p>(Comments):</p>

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<p><i>systems is a type of processing which is likely to result in a high risk to the rights and freedoms of natural persons within the meaning of Article 35(1) of Regulation (EU) 2016/679. When carrying out, pursuant to that provision, the assessment of the impact of the processing of personal data by automated monitoring systems or automated decision-making systems on the protection of personal data of persons performing platform work, including on the limitations of processing pursuant to Article 7 of this Directive, digital labour platforms, acting as controllers as defined in Article 4, point (7), of Regulation (EU) 2016/679, shall seek the views of persons performing platform work and their representatives.</i></p>	<p>The sentence starting with “when carrying out” is very long and difficult to understand/read. Is it possible to make it clearer by using two sentences?</p>
<p><b>2.</b> <i>Digital labour platforms shall provide the assessment as referred to in paragraph 1 to workers' representatives.</i></p>	
<p>Article 9</p>	
<p>Transparency with regard to ■ automated monitoring systems and automated decision-making systems</p>	
<p><b>1.</b> <i>Member States shall require digital labour platforms to inform persons performing platform work, platform workers' representatives</i></p>	<p>AT (Drafting suggestions):</p>

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<i>and, upon request, national competent authorities, of the use of automated monitoring systems or automated decision-making systems.</i>	1. <i>Member States shall require digital labour platforms to inform persons performing platform work, platform workers' representatives and, upon request, <b>competent</b> national <del>competent</del> authorities, of the use of automated monitoring systems or automated decision-making systems.</i>
<b>That</b> information ■ shall concern:	
(a) as regards automated monitoring systems:	
(i) the fact that such systems are in use or are in the process of being introduced;	
(ii) the categories of <b>data and</b> action monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;	
(iii) <i>the aim of the monitoring and how the system is to carry out that monitoring;</i>	
(iv) <i>the recipients or categories of recipient of the personal data processed by such systems and any transmission or transfer of such personal data, including within a group of undertakings;</i>	
(b) as regards automated decision-making systems:	

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(i) the fact that such systems are in use or are in the process of being introduced;	
(ii) the categories of decision that are taken or supported by such systems;	
(iii) the <i>categories of data and</i> the main parameters that such systems take into account and the relative importance of those main parameters in the automated decision-making, including the way in which the <b>■</b> personal data or behaviour <i>of the person performing platform work</i> influence the decisions;	
(iv) the grounds for decisions to restrict, suspend or terminate the <i>account of the person performing platform work</i> , to refuse the <i>payment</i> for work performed by <i>them, as well as for decisions on their</i> contractual status or any decision <i>of equivalent or detrimental effect</i> ;	
(c) <i>all categories of decision taken or supported by automated systems that affect persons performing platform work in any manner.</i>	<p>AT</p> <p>(Drafting suggestions):</p> <p><i>(c) all categories of decision taken or supported by automated <b>decision-making</b> systems that affect persons performing platform work in any manner.</i></p> <p>AT</p>

MEF	Drafting suggestions and Comments
	<p>(Comments):</p> <p>The insertion of ‘decision making’ ensures that the term ‘automated systems’ may not be interpreted in a broader way than intended.</p> <p>DE</p> <p>(Drafting suggestions):</p> <p><i>(c)all categories of decision taken or supported by automated decision-making systems that affect persons performing platform work in any manner.</i></p> <p>DE</p> <p>(Comments):</p> <p>We suggest returning to the initial wording (“automated decision-making systems”) to ensure alignment with Art. 2 (1) i.</p>
1	
<p>2. Digital labour platforms shall provide the information referred to in paragraph 1 in the form of a <b>written</b> document, which may be in electronic form. ■ The information shall be presented in a ■ transparent, intelligible and easily accessible form, using clear and plain language.</p>	
<p>3. Digital labour platforms shall provide <b>persons performing platform work, in a concise form, with the information referred to in</b></p>	

MEF	Drafting suggestions and Comments
<i>paragraph 1 with regard to the systems and their features that directly affect them, including, where applicable, their working conditions:</i>	
<i>(a) at the latest on the first working day;</i>	
<i>(b) prior to the introduction of changes affecting working conditions, the organisation of work or monitoring work performance; and</i>	
<i>(c) at any time upon their request.</i>	
<i>Upon the request of the persons performing platform work, digital labour platforms shall also provide them, in a comprehensive and detailed form, with the information referred to in paragraph 1 with regard to all relevant systems and their features.</i>	
<i>4. Digital labour platforms shall provide workers' representatives, in a comprehensive and detailed form, with the information referred to in paragraph 1 with regard to all relevant systems and their features. They shall provide such information</i>	
<i>(a) prior to the use of those systems,</i>	

MEF	Drafting suggestions and Comments
(b) <i>prior to the introduction of changes affecting working conditions, the organisation of work or monitoring work performance; and</i>	
(c) <i>at any time upon their request.</i>	
<i>Digital labour platforms shall provide national competent authorities, in a comprehensive and detailed form, with the information referred to in paragraph 1 at any time upon their request.</i>	<p>AT (Drafting suggestions):</p> <p>Digital labour platforms shall provide <b>competent</b> national <del>competent</del> authorities, in a comprehensive and detailed form, with the information referred to in paragraph 1 at any time upon their request.</p>
5. <i>Digital labour platforms shall provide the information referred to in paragraph 1 to persons undergoing a recruitment or selection procedure. The information shall be provided in accordance with paragraph 2, shall be concise, shall concern only the automated monitoring systems or automated decision-making systems used in that procedure, and shall be provided before the start of the recruitment or selection procedure.</i>	<p>SE (Comments):</p> <p>We suggest keeping <b>in line</b> and use the original wording.</p>
6. <i>Persons performing platform work shall have the right to the portability of personal data generated through their performance of work in the context of a digital labour platform's automated monitoring</i>	

MEF	Drafting suggestions and Comments
<i>systems or automated decision-making systems, including ratings and reviews, without adversely affecting the rights of the recipient of the service under Regulation (EU) 2016/679.</i>	
<i>The digital labour platform shall provide persons performing platform work, free of charge, with tools to facilitate the effective exercise of their portability rights referred to in Article 20 of Regulation (EU) 2016/679 and in the first subparagraph. Where the person performing platform work so requests, the digital labour platform shall transmit such personal data directly to a third party.</i>	
Article 10	
Human <i>oversight</i> of automated monitoring systems and automated decision-making systems	
1. Member States shall ensure that digital labour platforms <i>oversee and, with the involvement of workers' representatives, regularly and in any event every two years, carry out an evaluation of</i> the impact of individual decisions taken or supported by automated monitoring systems and automated decision-making systems <i>on persons performing platform work, including, where applicable, on their</i> working conditions <i>and</i>	<p>PL (Comments):</p> <p>PL - <i>used by the digital labour platform</i> should remain in the text of the directive, so as not to change the intention of the adopted provisional agreement. The deletion of this passage may lead to an overly broad interpretation of the obligation of the digital labour platform (e.g. that evaluation refers to the impact of decisions taken or supported by any automated systems, not only those used by the given platform). The wording of the adopted provisional agreement is more precise.</p>



MEF	Drafting suggestions and Comments
<i>equal treatment at work.</i>	<p>HU (Comments):</p> <p>The indication for the deletion of “<i>used by the digital labour platform</i>” is not clear.</p>
<p>1</p>	
<p>2. Member States shall require digital labour platforms to ensure sufficient human resources for the <i>effective oversight and evaluation of</i> the impact of individual decisions taken or supported by automated monitoring systems <i>or</i> automated decision-making systems 1 . The persons charged by the digital labour platform with the function of <i>oversight and evaluation</i> shall have the competence, training and authority necessary to exercise that function, <i>including for overriding automated decisions</i>. Those persons shall enjoy protection from dismissal <i>or its equivalent</i>, disciplinary measures and other adverse treatment where they <i>exercise their functions</i>.</p>	
<p>3. <i>Where the oversight or the evaluation referred to in paragraph 1 identifies a high risk of discrimination at work in the use of automated monitoring systems or automated decision-making systems or finds that individual decisions taken or supported by automated monitoring</i></p>	<p>AT (Comments):</p> <p>If throughout the text the phrase is ‘automated monitoring systems <u>or</u> automated decision-making systems’ this should always remain the case.</p>

MEF	Drafting suggestions and Comments
<p><i>systems and automated decision-making systems have infringed the rights of a person performing platform work, the digital labour platform shall take the steps necessary, including, if appropriate, the modification of the automated monitoring system or the automated decision-making system or the discontinuation of its use, in order to avoid such decisions in the future.</i></p>	
<p>4. <i>Information on the evaluation pursuant to paragraph 1 shall be transmitted to platform workers' representatives. Digital labour platforms shall also make that information available to persons performing platform work and the national competent authorities upon their request.</i></p>	<p>AT (Drafting suggestions):</p> <p>4. <i>Information on the evaluation pursuant to paragraph 1 shall be transmitted to platform workers' representatives. Digital labour platforms shall also make that information available to persons performing platform work and the <b>competent</b> national <del>competent</del> authorities upon their request.</i></p>
<p>5. <i>Any decision to restrict, suspend or terminate the contractual relationship or the account of a person performing platform work or any other decision of equivalent detriment shall be taken by a human being.</i></p>	
Article 11	

MEF	Drafting suggestions and Comments
Human review	
<p>1. Member States shall ensure that <i>persons performing</i> platform <i>work</i> have the right to obtain an oral or written explanation from the digital labour platform for any decision taken or supported by an automated decision-making system <i>without undue delay. The explanation shall be provided in a transparent and intelligible manner, using clear and plain language.</i> Member States shall ensure that digital labour platforms provide <i>persons performing</i> platform <i>work</i> with access to a contact person designated by the digital labour platform to discuss and to clarify the facts, circumstances and reasons having led to the decision. Digital labour platforms shall ensure that such contact persons have the competence, training and authority necessary to exercise that function.</p>	
<p>Digital labour platforms shall provide the <i>person performing</i> platform <i>work</i> with a written statement of the reasons for any decision taken or <i>supported</i> by an automated decision-making system to restrict, suspend or terminate the <i>account of the person performing</i> platform <i>work</i>, any decision to refuse the <i>payment</i> for work performed by the <i>person performing</i> platform <i>work</i>, any decision on the <i>contractual status of the</i></p>	

MEF	Drafting suggestions and Comments
<p><i>person performing platform work</i>, any decision with similar effects <i>or any other decision affecting the essential aspects of the employment or other contractual relationships, without undue delay and at the latest on the date on which it takes effect.</i></p>	
<p>2. <i>Persons performing platform work and, in accordance with national law and practice, representatives of persons performing platform work acting on their behalf</i> shall have the right to request the digital labour platform to review <i>the decisions referred to in paragraph 1</i>. The digital labour platform shall respond to such request by providing the <i>person performing platform work</i> with a <i>sufficiently precise and adequately substantiated reply in the form of a written document, which may be in electronic form</i>, without undue delay and in any event within <i>two weeks</i> of receipt of the request.</p>	<p>AT (Drafting suggestions):</p> <p>2. <i>Persons performing platform work and, in accordance with national law and practice, representatives of persons performing platform work acting on their behalf</i> <b>persons performing platform work</b> shall have the right to request the digital labour platform to review <i>the decisions referred to in paragraph 1</i>. The digital labour platform shall respond to such request by providing the <i>person performing platform work</i> with a <i>sufficiently precise and adequately substantiated reply in the form of a written document, which may be in electronic form</i>, without undue delay and in any event within <i>two weeks</i> of receipt of the request.</p> <p>AT (Comments):</p> <p>The rephrasing ‘representatives of persons performing platform work acting on their behalf’ implies something different than the original</p>

MEF	Drafting suggestions and Comments
	<p>phrasing. The original phrasing ‘representatives acting on behalf of the persons performing platform work’ may be any person that is authorized to represent the persons performing platform work in this specific issue, whereas the new phrasing implies these are permanent representatives. As AT has no representatives of self-employed persons, this rephrasing is not acceptable.</p>
I	
<p>3. Where the decision referred to in paragraph 1 infringes the <i>rights of a person performing platform work</i>, the digital labour platform shall rectify that decision without delay <i>and in any case within two weeks of the adoption of the decision</i>. Where such rectification is not possible, <i>the digital labour platform shall</i> offer adequate compensation <i>for the damage sustained. In any event, the digital labour platform shall take the steps necessary, including, if appropriate, the modification of the automated decision-making system or the discontinuation of its use, in order to avoid such decisions in the future.</i></p>	
<p>4. This Article <i>does not affect disciplinary and</i> dismissal procedures laid down in national law, <i>collective agreements or practice</i>.</p>	<p>AT (Drafting suggestions):</p> <p>4. This Article <i>does not affect disciplinary and</i> dismissal procedures</p>

MEF	Drafting suggestions and Comments
	<p>laid down in national law, <del>collective agreements or</del> <i>and practices and collective agreements</i>.</p> <p>AT (Comments):</p> <p>The phrasing ‘national law and practices’ is standard language in EU legal texts. The rephrasing implies that something different is meant, which is not the case. Therefore it is necessary to keep the standardised phrasing ‘national law and practices, and collective agreements</p>
<p>5. <i>This Article shall not apply to persons performing platform work who are also business users as defined in Article 2, point (1), of Regulation (EU) 2019/1150.</i></p>	
<p><i>Article 12</i></p>	
<p><i>Safety and health</i></p>	
<p>1. <i>Without prejudice to Council Directive 89/391/EEC and related directives in the field of safety and health at work, with regard to platform workers, digital labour platforms shall:</i></p>	
<p>(a) <i>evaluate the risks of automated monitoring systems and automated decision-making systems to their safety and health, in</i></p>	

MEF	Drafting suggestions and Comments
<i>particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks;</i>	
<i>(b) assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment;</i>	
<i>(c) introduce appropriate preventive and protective measures.</i>	
<i>2. In relation to the requirements laid down in paragraph 1 of this Article, digital labour platforms shall ensure effective information and consultation and the participation of platform workers and/or their representatives in accordance with Articles 10 and 11 of Council Directive 89/391/EEC.</i>	
<i>3. Digital labour platforms shall not use automated monitoring systems or automated decision-making systems in a manner that puts undue pressure on platform workers or otherwise puts at risk the safety and physical and mental health of platform workers.</i>	
<i>4. In addition to automated decision-making systems, this Article shall also apply where they use automated systems taking or supporting decisions that affect platform workers in any manner.</i>	

MEF	Drafting suggestions and Comments
5. <i>In order to ensure the safety and health of platform workers, including from violence and harassment, Member States shall ensure that digital labour platforms take preventive measures, including providing for effective reporting channels.</i>	
Article 13	
Information and consultation	
1. <i>This Directive is without prejudice to Directive 89/391/EEC as regards information and consultation and to Directives 2002/14/EC or 2009/38/EC.</i>	
2. <i>Member States shall ensure that information and consultation, as defined in Article 2, points (f) and (g), of Directive 2002/14/EC, of workers' representatives by digital labour platforms also covers decisions likely to lead to the introduction of or to substantial changes in the use of automated monitoring systems or automated decision-making systems.</i>	
<i>For the purposes of this paragraph, information and consultation of workers' representatives shall be carried out under the same</i>	




MEF	Drafting suggestions and Comments
<i>arrangements concerning the exercise of information and consultation rights as those laid down in Directive 2002/14/EC.</i>	
<p>3. The platform workers' representatives ■ may be assisted by an expert of their choice, in so far as this is necessary for them to examine the matter that is the subject of information and consultation and formulate an opinion. Where a digital labour platform has more than <b>250</b> workers in <i>the</i> Member State <i>concerned</i>, the expenses of the expert shall ■ be borne by the digital labour platform, provided that they are proportionate. <i>Member States may determine the frequency of requests for an expert, while ensuring the effectiveness of the assistance.</i></p>	
<i>Article 14</i>	
<i>Provision of information to workers</i>	
<p><i>Where there are no representatives of platform workers, Member States shall ensure that digital labour platforms directly inform the platform workers concerned of decisions likely to lead to the introduction of or to substantial changes in the use of automated monitoring systems or automated decision-making systems. The information shall be provided in the form of a written document which may be in electronic form. It</i></p>	

MEF	Drafting suggestions and Comments
<i>shall be provided in a transparent, intelligible and easily accessible form, using clear and plain language.</i>	
Article 15	
<i>Specific arrangements for representatives of persons performing platform work other than platform workers' representatives</i>	
<i>Representatives of persons performing platform work other than workers' representatives shall be able to exercise the rights provided to workers' representatives under Article 8(2), Article 9(1) and (4), Article 10(4) and Article 11(2) only insofar as they are acting on behalf of persons performing platform work who are not platform workers, with regard to the protection of their personal data.</i>	
CHAPTER IV	
TRANSPARENCY WITH REGARD TO PLATFORM WORK	
Article 16	
Declaration of platform work	

MEF	Drafting suggestions and Comments
<p>Member States shall require digital labour platforms to declare work performed by platform workers to the competent authorities of the Member State in which the work is performed , in accordance with the rules and procedures laid down in the law of the Member States concerned.</p>	
<p><i>This Article is without prejudice to specific obligations under Union law pursuant to which work is to be declared to relevant bodies of the Member State in cross-border situations.</i></p>	
Article 17	
Access to relevant information on platform work	
<p>1. <i>Member States shall ensure that digital labour platforms make the following information available to competent authorities and to representatives of persons performing platform work:</i></p>	
<p>(a) the number of persons performing platform work through the digital labour platform concerned, <i>disaggregated by level of activity</i>, and their contractual or employment status;</p>	
<p>(b) the general terms and conditions determined by the digital labour platform and <i>applicable to those</i> contractual relationships;</p>	

MEF	Drafting suggestions and Comments
(c) <i>the average duration of activity, the average weekly number of hours worked per person and the average income from activity of persons performing platform work on a regular basis through the digital labour platform concerned;</i>	
(d) <i>the intermediaries with which the digital labour platform has a contractual relationship.</i>	
2. <i>Member States shall ensure that digital labour platforms provide information on work performed by persons performing platform work and their employment status to competent authorities.</i>	<p>HU (Comments):</p> <p>The justification of the deletion of “national” is not clear and not indicated. In other parts of the text [e.g. (37), (55), Art. 5 Para (5), Article 10 (4)] we can see the term of “<i>national competent authorities</i>”</p>
3. The information <i>referred to in paragraph 1</i> shall be provided for each Member State in which persons are performing platform work through the digital labour platform concerned. <i>As regards point (c) of paragraph 1, the information shall be provided only upon request.</i>	
4. The information referred to in paragraph 1 shall be updated at least every six months, and, as regards point (b) of paragraph 1 each time the terms and conditions are modified <i>in substance</i> . With regard to digital labour platforms which are SMEs, including microenterprises, Member	

MEF	Drafting suggestions and Comments
States may provide that the information referred to in paragraph 1 shall be updated once every year.	
<p>5. <i>The competent authorities</i> and representatives of persons performing platform work shall have the right to ask digital labour platforms for additional clarifications and details regarding any of the <i>information</i> provided, <i>including details regarding the employment contract</i>. The digital labour platforms shall respond to such request  by providing a substantiated reply <i>without undue delay</i>.</p>	<p>HU (Comments): Although the text does not contain it, the word “national” should be reinserted before “competent authorities”. There are no supra-national authorities involved in labour inspection.</p>
CHAPTER V	
REMEDIES AND ENFORCEMENT	
Article 18	
Right to redress	
Without prejudice to Articles 79 and 82 of Regulation (EU) 2016/679, Member States shall ensure that persons performing platform work, including those whose employment or other contractual relationship has ended, have access to <i>timely</i> , effective and impartial dispute resolution and a right to redress, including adequate compensation <i>for the damage</i>	

MEF	Drafting suggestions and Comments
<i>sustained</i> , in the case of infringements of their rights arising from this Directive.	
Article 19	
Procedures on behalf or in support of persons performing platform work	
<p>Without prejudice to Article 80 of Regulation (EU) 2016/679, Member States shall ensure that representatives of persons performing platform work <b>and</b> legal entities which have, in accordance with national law and practice, a legitimate interest in defending the rights of persons performing platform work, are able to engage in any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive. Member States shall ensure that such representatives and legal entities are able to act on behalf or in support of <b>one or several persons</b> performing platform work in the case of the infringement of any right or obligation arising from this Directive, <b>in accordance with national law and practice</b>.</p>	<p>RO (Comments):</p> <p>The interpretation of the expression "<i>they may act</i>" in sentence 2 seems not to be in line with the recital 60 – the <i>representatives</i> "<i>should be able to</i>" <i>act</i></p>

MEF	Drafting suggestions and Comments
Article 20	
Communication channels for persons performing platform work	
<p>Member States shall take the measures necessary to ensure that digital labour platforms provide persons performing platform work, by means of the digital labour platforms' digital infrastructure or by similarly effective means, with the possibility to contact and communicate <i>privately and securely</i> with each other, and to <i>contact or</i> be contacted by representatives of persons performing platform work, while complying with Regulation (EU) 2016/679 ■ . Member States shall require digital labour platforms to refrain from accessing or monitoring those contacts and communications.</p>	
Article 21	
Access to evidence	
<p>1. Member States shall ensure that, in proceedings concerning <i>the provisions of this Directive</i>, national courts or competent authorities are able to order the digital labour platform to disclose any relevant evidence which lies in their control.</p>	<p>FR (Drafting suggestions):</p> <p>1. Member States shall ensure that, in proceedings concerning <i>the provisions of this Directive</i>, national courts or competent authorities are</p>

MEF	Drafting suggestions and Comments
	<p>able to order the digital labour platform to disclose any relevant evidence which lies in <del>their</del> <u>its</u> control.</p> <p>FR (Comments):</p> <p>The French authorities propose replacing the term "their" with "its", which seems more appropriate.</p>
<p>2. Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the <i>proceedings</i>. They shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.</p>	
<p>Article 22</p>	
<p>Protection against adverse treatment or consequences</p>	
<p>Member States shall introduce the measures necessary to protect persons performing platform work, including those who are their representatives, from any adverse treatment by the digital labour platform and from any adverse consequences resulting from a complaint lodged with the digital labour platform or resulting from any proceedings initiated with the aim</p>	



MEF	Drafting suggestions and Comments
of enforcing compliance with the rights provided for in this Directive.	
Article 23	
Protection from dismissal	
<p>1. Member States shall take the measures necessary to prohibit the dismissal <i>or termination of the contract of persons performing platform work, or any</i> equivalent action, and all preparations therefor, on the grounds that they have exercised the rights provided for in this Directive.</p>	<p>AT (Drafting suggestions):</p> <p>1. Member States shall take the necessary measures to prohibit the dismissal, termination of contract or their equivalent <b>of persons performing platform work</b> and all preparations <b>therefor</b> <del>for dismissal, termination of contract or their equivalent of persons performing platform work</del>, on the grounds that they have exercised the rights provided for in this Directive.</p> <p>AT (Comments):</p> <p>The original phrasing provided a list of various forms of dismissal / termination of contract. The different terms are linked to different forms of employment relationships / contracts. Therefore the original phrasing should remain.</p> <p>NL (Comments):</p>

MEF	Drafting suggestions and Comments
	<i>measures to prohibit the dismissal, termination of contract or <b>their equivalent</b></i> has been changed to " <b>or any equivalent action</b> ". Does this change also imply a change in the meaning / content of this paragraph?
<p>2. Persons performing platform work who consider that they have been dismissed, that <b><i>their contract has been terminated</i></b> or that they have been subject to any actions with equivalent effect, on the grounds that they have exercised the rights provided for in this Directive, may request the digital labour platform to provide duly substantiated grounds for the dismissal, <b><i>the termination of the contract or any</i></b> equivalent action. The digital labour platform shall provide those grounds in writing <b><i>without undue delay</i></b>.</p>	
<p>3. Member States shall take the measures necessary to ensure that, when the persons performing platform work referred to in paragraph 2 establish, before a court or other competent authority or body, facts from which it may be presumed that there has been such a dismissal, <b><i>termination of contract</i></b> or equivalent action, it shall be for the digital labour platform to prove that the dismissal, <b><i>termination of contract</i></b> or equivalent action was based on grounds other than those referred to in paragraph 1.</p>	

MEF	Drafting suggestions and Comments
<p>4. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or other competent authority or body to investigate the facts of the case.</p>	
<p>5. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member State.</p>	
<p>Article 24</p>	
<p>Supervision and penalties</p>	
<p>1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be responsible for monitoring <i>and enforcing</i> the application of <b>Articles 7 to 11 of this Directive as far as data- protection matters are concerned</b>, in accordance with the relevant provisions in Chapters VI, VII and VIII of Regulation (EU) 2016/679.</p>	<p>FI (Comments): The expression “as far as data protection matters are concerned” seems vague. Could it be rephrased? For example ”within their competence” or ”within the limits of their jurisdiction” (as in the Artificial Intelligence Act or Regulation of the European parliament and of the council on the transparency and targeting of political advertising)</p>
<p><i>The upper limit for administrative fines referred to in Article 83(5) of that Regulation shall be applicable to infringements of Articles 7 to 11 of this Directive.</i></p>	<p>FI (Comments): Also for your consideration, if the expression “The upper limit” could also be rephrased.</p>

MEF	Drafting suggestions and Comments
	<p>Please see Regulation of the European parliament and of the council on the transparency and targeting of political advertising: 6. <i>For infringements of the obligations laid down in Articles 18 and 19 of this Regulation, the supervisory authorities referred to in Article 51 of the Regulation (EU) 2016/679 may within their competence impose fines in line with Article 83 of Regulation (EU) 2016/679 and up to the amount referred to in Article 83(5) of that Regulation.</i></p>
<p>2. The authorities referred to in paragraph 1 and <b><i>other national competent</i></b> authorities shall, where relevant, cooperate in the enforcement of this Directive within the remit of their respective competences, in particular where questions on the impact of automated monitoring systems <b><i>or</i></b> automated decision-making systems on ■ persons performing platform work arise. For that purpose, those authorities shall exchange relevant information with each other, including information obtained in the context of inspections or investigations, either upon request or at their own initiative.</p>	<p>AT (Drafting suggestions):</p> <p>The authorities referred to in paragraph 1 and <b><i>other <del>national</del> competent national</i></b> authorities shall, where relevant, cooperate in the enforcement of this Directive within the remit of their respective competences, in particular where questions on the impact of automated monitoring systems <b><i>or</i></b> automated decision-making systems on ■ persons performing platform work arise. For that purpose, those authorities shall exchange relevant information with each other, including information obtained in the context of inspections or investigations, either upon request or at their own initiative.</p> <p>AT</p>

MEF	Drafting suggestions and Comments
	<p>(Comments):</p> <p>‘competent national authorities’ is the standard phrasing in legal texts.</p>
<p>3. <i>National competent authorities shall cooperate through exchange of relevant information and best practices on the implementation of the legal presumption, with the support of the Commission.</i></p>	<p>AT</p> <p>(Drafting suggestions):</p> <p><i>Competent <b>national</b> authorities shall cooperate through exchange of relevant information and best practices on the implementation of the legal presumption, with the support of the Commission.</i></p> <p>AT</p> <p>(Comments):</p> <p>See above.</p>
<p>4. <i>Where persons performing platform work perform platform work in a Member State other than that in which the digital labour platform is established, the competent authorities of those Member States shall exchange information for the purpose of enforcing this Directive.</i></p>	
<p>5. <i>Without prejudice to the application of Regulation (EU) 2016/679 as referred to in paragraph 1,</i> Member States shall lay down the rules on penalties, applicable to infringements of national provisions adopted pursuant to provisions of this Directive ■ or of the relevant provisions already in force concerning the rights which are within the</p>	

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scope of this Directive. The penalties <b>■</b> shall be effective, <i>dissuasive and proportionate to the nature, gravity and duration of the undertaking's infringement and to the number of workers affected.</i>	
6. <i>In the case of infringements related to digital labour platforms' refusal to comply with a legal ruling determining the employment status of persons performing platform work, Member States shall provide for penalties, which may include financial penalties.</i>	
<b>■</b>	
CHAPTER VI	
FINAL PROVISIONS	
<i>Article 25</i>	
<i>Promotion of collective bargaining in platform work</i>	
<i>Member States shall, without prejudice to the autonomy of the social partners and taking into account the diversity of national practices, take adequate measures to promote the role of the social partners and encourage the exercise of the right to collective bargaining in platform</i>	FI <b>(Comments):</b> The following was stated at the beginning of the document: “Note to all: “Classification” is intended to be a generic term, which covers both

MEF	Drafting suggestions and Comments
<p><i>work, including measures to determine the correct employment status of platform workers and to facilitate the exercise of their rights related to algorithmic management set out in Chapter III.</i></p>	<p>“designation” (by employees) and “Determination” by an authority or a Court. All 3 terms should be kept.”</p> <p>On this basis, we are wondering whether the term 'determine' in Article 25 should be replaced by 'designate'.</p> <p>IT (Comments):</p> <p>Why do we need to change the verb - ascertain - that is always used elsewhere? See recital 25-30-31-67; art. 4.1; art. 5.2, art. 5.5</p>
Article 26	
Non-regression and more favourable provisions	
<p>1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to <b>platform</b> workers within Member States, <i>including with regard to established procedures for the correct determination of the employment status of persons performing platform work as well as existing prerogatives of their representatives.</i></p>	
<p>2. This Directive shall not affect the Member States’ prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to platform workers, or to encourage or permit the</p>	

MEF	Drafting suggestions and Comments
application of collective agreements which are more favourable to platform workers, in line with the objectives of this Directive. █	
3. This Directive is without prejudice to any other rights conferred on persons performing platform work by other legal acts of the Union.	
<i>Article 27</i>	
<i>Dissemination of information</i>	
<i>Member States shall ensure that the national measures transposing this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1, including information on the application of the legal presumption, are brought to the attention of persons performing platform work and digital labour platforms, including SMEs, as well as to the public. Member States shall ensure that that information is provided in a clear, intelligible and easily accessible way, including to persons with disabilities.</i>	
<i>Article 28</i>	
<i>Collective agreements and specific rules on the processing of personal data</i>	



MEF	Drafting suggestions and Comments
<p><i>Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of the personal data of persons performing platform work under Articles 9, 10 and 11, pursuant to Article 26(1). Member States may allow the social partners to maintain, negotiate, conclude and enforce collective agreements, in accordance with national law and practice, which, while respecting the overall protection of platform workers, establish arrangements concerning platform work which differ from those referred to in Articles 12 and 13, and, where they entrust the social partners with its implementation pursuant to Article 29(4), from those referred to in Article 17.</i></p>	<p>SE (Comments): We do not accept the change national law <b>and</b> practice. We suggest keeping <b>or</b>. See for example directive 2019/1159</p>
Article 29	
Transposition and implementation	
<p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [OJ: 2 years <i>from the date of</i> entry into force <i>of this Directive</i>]. They shall immediately inform the Commission thereof.</p>	
When Member States adopt those <i>measures</i> , they shall contain a	

MEF	Drafting suggestions and Comments
reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.	
2. Member States shall communicate to the Commission the text of the main <i>measures</i> of national law which they adopt in the field covered by this Directive.	
3. Member States shall, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing this Directive.	
4. Member States may entrust the social partners with the implementation of this Directive where the social partners jointly request to do so and provided that Member States take all steps necessary to ensure that they can at all times guarantee the results sought under this Directive.	
Article 30	
Review by the Commission	

MEF	Drafting suggestions and Comments
<p>By ... [OJ: 5 years <i>from the date of</i> entry into force <i>of this Directive</i>], the Commission shall, after consulting the Member States, the social partners at Union level and key stakeholders, and taking into account the impact on SMEs, including microenterprises, review the implementation of this Directive and propose, where appropriate, legislative amendments. <i>In its review, the Commission shall pay particular attention to the impact of the use of intermediaries on the overall implementation of this Directive as well as to the effectiveness of the legal presumption.</i></p>	
Article 31	
Entry into force	
<p>This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>	
Article 32	
Addressees	
<p>This Directive is addressed to the Member States.</p>	

From: FR, FI, AT, DE, SE, RO, PL, NL, IT, HU

Updated: 06/06/2024 16:36

MEF		Drafting suggestions and Comments
Done at <div></div>		
<i>For the European Parliament</i>	<i>For the Council</i>	
<i>The President</i>	<i>The President</i>	