



**2021/0414(COD)**

3.5.2022

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on improving working conditions in platform work  
(COM(2021)0762 – C9-0454/2021 – 2021/0414(COD))

Committee on Employment and Social Affairs

Rapporteur: Elisabetta Gualmini

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	103



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council  
improving working conditions in platform work  
(COM(2021)0762 – C9-0454/2021 – 2021/0414(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0762),
  - having regard to Article 294(2) and Article 153(2), point (b), in conjunction with Article 153(1), point (b), and Article 16(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-C9-0454/2021),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs (A9-0000/2022),
1. Adopts its position at first reading hereinafter set out;
  2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive Title 1**

*Text proposed by the Commission*

*Amendment*

Proposal for a  
DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
on improving working conditions in  
platform work  
  
(Text with EEA relevance)

Proposal for a  
DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
on improving working conditions in  
platform work ***and work subject to  
automated or semi-automated monitoring  
and decision-making systems***  
  
(Text with EEA relevance)

## Amendment 2

### Proposal for a directive

#### Recital 2

##### *Text proposed by the Commission*

(2) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union ('the Charter'). In particular, Article 31 of the Charter provides for the right of every worker to working conditions which respect his or her health, safety and dignity. Article 27 of the Charter protects the workers' right to information and consultation within the undertaking. Article 8 of the Charter provides that everyone has the right to the protection of personal data concerning him or her. ***Article 16 of the Charter recognises the freedom to conduct a business.***

##### *Amendment*

(2) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union ('the Charter'). In particular, Article 31 of 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.

Or. en

## Amendment 3

### Proposal for a directive

#### Recital 3

##### *Text proposed by the Commission*

(3) Principle No 5 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017<sup>53</sup>, provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training; that, in accordance with legislation and collective agreements, the necessary

##### *Amendment*

(3) Principle No 5 of the European Pillar of Social Rights (***Pillar***), proclaimed at Gothenburg on 17 November 2017<sup>53</sup>, provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training; that, in accordance with legislation and collective agreements, the necessary

flexibility for employers to adapt swiftly to changes in the economic context is to be ensured; and that innovative forms of work that ensure quality working conditions are to be fostered, that entrepreneurship and self-employment are to be encouraged **and** that occupational mobility is to be facilitated. The Porto Social Summit of May 2021 welcomed the Action Plan accompanying the Social Pillar<sup>54</sup> as guidance for its implementation.

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<sup>53</sup> Interinstitutional Proclamation on the European Pillar of Social Rights (OJ C 428, 13.12.2017, p. 10).

<sup>54</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'The European Pillar of Social Rights Action Plan', COM(2021) 102 final, 4.3.2021.

flexibility for employers to adapt swiftly to changes in the economic context is to be ensured; and that innovative forms of work that ensure quality working conditions are to be fostered, that entrepreneurship and self-employment are to be encouraged; that occupational mobility is to be facilitated **and that employment relationships that lead to precarious working conditions are to be prevented, including by prohibiting abuse of atypical contracts.** The Porto Social Summit of May 2021 welcomed the Action Plan accompanying the Social Pillar<sup>54</sup> as guidance for its implementation.

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<sup>53</sup> Interinstitutional Proclamation on the European Pillar of Social Rights (OJ C 428, 13.12.2017, p. 10).

<sup>54</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'The European Pillar of Social Rights Action Plan', COM(2021) 102 final, 4.3.2021.

Or. en

#### Amendment 4

##### Proposal for a directive Recital 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(3a) 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, including workers subject to a probation period, that prior to any dismissal they have the right to be informed of the reasons and be granted a reasonable period of notice, and that they have the right to access to effective and impartial dispute resolution***

*and, in the case of unjustified dismissal, a right to redress, including adequate compensation.*

Or. en

## Amendment 5

### Proposal for a directive Recital 4

#### *Text proposed by the Commission*

(4) Digitalisation is changing the world of work, improving productivity and enhancing flexibility, while also carrying **some** risks for employment and working conditions. Algorithm-based technologies, including automated monitoring and decision-making systems, have enabled the emergence and growth of digital labour platforms.

#### *Amendment*

(4) Digitalisation is changing the world of work, improving productivity and enhancing flexibility, while also carrying risks for employment and working conditions, **for the health and safety of workers and for the protection of their fundamental right to privacy as well as for the effective application of applicable national labour and tax law.** Algorithm-based technologies, including automated **and semi-automated** monitoring and decision-making systems, have enabled the emergence and growth of digital labour platforms. **However, the architecture, or the business model design, of digital labour platforms has significant consequences for workers and certain choices implemented by digital labour platforms to create a successful business model may inadvertently lead to adverse working conditions and worker exploitation.**

Or. en

## Amendment 6

### Proposal for a directive Recital 5



*Text proposed by the Commission*

(5) Platform work is performed by individuals through the digital infrastructure of digital labour platforms that provide a service to their customers. By means of the algorithms, the digital labour platforms **may** control, to a lesser or greater extent – depending on their business model – the performance of the work, its remuneration and the relationship between their customers and the persons performing the work. Platform work **can be** performed exclusively online through electronic tools (‘online platform work’) or in a hybrid way combining an online communication process with a subsequent activity in the physical world (‘on-location platform work’). Many of the existing digital labour platforms are international business actors deploying their activities and business models in several Member States or across borders.

*Amendment*

(5) Platform work is performed by individuals through the digital infrastructure of digital labour platforms that provide a service to their customers. By means of the algorithms **and artificial intelligence**, the digital labour platforms **supervise, monitor and** control, to a lesser or greater extent – depending on their business model – the performance of the work, its remuneration and the relationship between their customers and the persons performing the work **as well as the workers themselves while performing work and, in some cases, also outside their working time**. Platform work **is usually** performed exclusively online through electronic tools (‘online platform work’) or in a hybrid way combining an online communication process with a subsequent activity in the physical world (‘on-location platform work’). Many of the existing digital labour platforms are international business actors deploying their activities and business models in several Member States or across borders.

Or. en

**Amendment 7**

**Proposal for a directive  
Recital 6**

*Text proposed by the Commission*

(6) Platform work can provide opportunities for accessing the labour market more easily, gaining additional income through a secondary activity or enjoying some flexibility in the organisation of working time. At the same time, platform work brings challenges, as it can blur the boundaries between employment relationship and self-

*Amendment*

(6) Platform work can provide opportunities for accessing the labour market more easily, gaining additional income through a secondary activity or enjoying some flexibility in the organisation of working time. At the same time, platform work brings challenges, as it can blur the boundaries between employment relationship and self-

employed activity, and the responsibilities of employers and workers. Misclassification of the employment status has consequences for the persons affected, as it is likely to restrict access to existing labour 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.

employed activity, and the responsibilities of employers and workers. Misclassification of the employment status has consequences for the persons affected, as it is likely to restrict access to existing labour and social rights. It also leads to **labour exploitation, unfair competition, social dumping and** 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.

Or. en

## Amendment 8

### Proposal for a directive Recital 7

#### *Text proposed by the Commission*

(7) Court cases in several Member States have shown the persistence of misclassification of the employment status in certain types of platform work, in particular in sectors where digital labour platforms exert a certain degree of control over the remuneration and performance of work. While digital labour platforms frequently classify persons working through them as self-employed or 'independent contractors', many courts have found that the platforms exercise de facto direction and control over those persons, often integrating them in their main business activities and unilaterally determining the level of remuneration. Those courts have therefore reclassified purportedly self-employed persons as workers employed by the platforms. However, national case law has resulted in

#### *Amendment*

(7) Court cases in several Member States have shown the persistence of misclassification of the employment status in certain types of platform work, in particular in sectors where digital labour platforms exert a certain degree of control **or supervision** over the remuneration and performance of work. While digital labour platforms frequently classify persons working through them as self-employed or 'independent contractors', many courts have found that the platforms exercise de facto direction and control **or supervision** over those persons, often integrating them in their main business activities and unilaterally determining the level of remuneration. Those courts have therefore reclassified purportedly self-employed persons as workers employed by the platforms. However, national case law has

diverse outcomes and digital labour platforms have adapted their business model in various ways, thus increasing the lack of legal certainty over the employment status.

resulted in diverse outcomes and digital labour platforms have adapted their business model in various ways, thus increasing the lack of legal certainty over the employment status.

Or. en

## Amendment 9

### Proposal for a directive Recital 8

#### *Text proposed by the Commission*

(8) Automated monitoring and decision-making systems powered by algorithms increasingly replace functions that managers usually perform in businesses, such as allocating tasks, giving instructions, evaluating the work performed, providing incentives or imposing sanctions. Digital labour platforms use such algorithmic systems as a standard way of organising and managing platform work through their infrastructure. Persons performing **platform** work subject to such algorithmic management often lack information on how the algorithms work, which personal data are being used and how their behaviour affects decisions taken by automated systems. Workers' representatives and labour inspectorates do not have access to this information either. Moreover, persons performing platform work often do not know the reasons for decisions taken or supported by automated systems and lack the possibility to discuss those decisions with a contact person or to contest them.

#### *Amendment*

(8) Automated **or semi-automated** monitoring and decision-making systems powered by algorithms increasingly replace functions that managers usually perform in businesses, such as allocating tasks, giving instructions, evaluating the work performed, providing incentives or imposing sanctions. Digital labour platforms **in particular** use such algorithmic systems as a standard way of organising and managing platform work through their infrastructure. **However, automated or semi-automated monitoring and decision-making systems powered by algorithms are also used by other types of undertakings in many different sectors.** Persons performing work subject to such algorithmic management often lack information on how the algorithms work, which personal data are being used and how their behaviour affects decisions taken by automated **or semi-automated** systems. Workers' representatives and labour inspectorates do not have access to this information either. Moreover, persons performing platform work **and workers whose organisation of work or working conditions are subject to automated or semi-automated monitoring and decision-making systems** often do not know the reasons for decisions taken or supported by automated **or semi-automated** systems and

lack the possibility to discuss those decisions with a contact person or to contest them.

Or. en

## Amendment 10

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(9) When platforms operate in several Member States or across borders, it is often unclear where the platform work is performed and by whom. Also, national authorities do not have easy access to data on digital labour platforms, including the number of persons performing platform work, their employment status, and their working conditions. This complicates the enforcement of applicable rules, including in respect of labour law and social protection.

#### *Amendment*

(9) When platforms operate in several Member States or across borders, it is often unclear where the platform work is performed and by whom. Also, national authorities do not have easy access to data on digital labour platforms, including the number of persons performing platform work, their employment status, and their working conditions. This complicates the enforcement of applicable rules, including in respect of labour *and tax* law and social protection.

Or. en

## Amendment 11

### Proposal for a directive Recital 10

#### *Text proposed by the Commission*

(10) A body of legal instruments provides for minimum standards in working conditions and labour rights across the Union. This includes in particular Directive (EU) 2019/1152 of the European Parliament and of the Council<sup>55</sup> on transparent and predictable working conditions, Directive 2003/88/EC of the European Parliament and of the Council<sup>56</sup> on working time, Directive 2008/104/EC

#### *Amendment*

(10) A body of legal instruments provides for minimum standards in working conditions and labour rights across the Union. This includes in particular Directive (EU) 2019/1152 of the European Parliament and of the Council<sup>55</sup> on transparent and predictable working conditions, Directive 2003/88/EC of the European Parliament and of the Council<sup>56</sup> on working time, Directive 2008/104/EC

of the European Parliament and of the Council<sup>57</sup> on temporary agency work, and other specific instruments on aspects such as health and safety at work, pregnant workers, work-life balance, fixed-term work, part-time work, posting of workers, information and consultation of workers, among others. While those instruments provide a level of protection to workers, they do not apply to the genuine self-employed.

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<sup>55</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>56</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>57</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).

of the European Parliament and of the Council<sup>57</sup> on temporary agency work, and other specific instruments on aspects such as health and safety at work, pregnant workers, work-life balance, fixed-term work, part-time work, posting of workers, information and consultation of workers, among others. ***Those legal instruments are complemented by particularly relevant case-law of the Court of Justice of the European Union finding that ‘stand-by’ time, during which the worker’s opportunities to carry out other activities are significantly restricted, are to be regarded as working time<sup>57aa</sup>***. While those instruments provide a level of protection to workers, they do not apply to the genuine self-employed.

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<sup>55</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>56</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>57</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>57a</sup> Judgment of the Court of 21 February 2018 in *Ville de Nivelles v Rudy Matzak*, C-518/15, ECLI:EU:C:2018:82; confirmed and elaborated in the judgments of 9 March 2021 in *RJ v Stadt Offenbach am Main*, C-580/19, ECLI:EU:C:2021:183; and 9 March 2021 in *-D.J. v Radiotelevizija Slovenija*, C-344/19, ECLI:EU:C:2021:182.***

Or. en

## Amendment 12

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>59</sup> ('General Data Protection Regulation') ensures the protection of natural persons with regard to the processing of personal data, and in particular provides certain rights and obligations as well as safeguards concerning lawful, fair and transparent processing of personal data, including with regard to automated individual decision-making. Regulation (EU) 2019/1150 of the European Parliament and of the Council<sup>60</sup> promotes fairness and transparency for 'business users' using online intermediation services provided by operators of online platforms. The European Commission has proposed further legislation laying down harmonised rules for providers and users of artificial intelligence systems<sup>61</sup>.

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<sup>59</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>60</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).

<sup>61</sup> COM(2021) 206 final, 21.4.2021.

#### *Amendment*

(12) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>59</sup> ('General Data Protection Regulation') ensures the protection of natural persons with regard to the processing of personal data, and in particular provides certain rights and obligations as well as safeguards concerning lawful, fair and transparent processing of personal data, including with regard to automated *or semi-automated* individual decision-making. Regulation (EU) 2019/1150 of the European Parliament and of the Council<sup>60</sup> promotes fairness and transparency for 'business users' using online intermediation services provided by operators of online platforms. The European Commission has proposed further legislation laying down harmonised rules for providers and users of artificial intelligence systems<sup>61</sup>.

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<sup>59</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>60</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).

<sup>61</sup> COM(2021) 206 final, 21.4.2021.

Or. en



## Amendment 13

### Proposal for a directive Recital 13

#### *Text proposed by the Commission*

(13) While existing or proposed Union legal acts provide for certain general safeguards, challenges in platform work require some further specific measures. In order to adequately frame the development of platform work in a sustainable manner, it is necessary for the Union to set new minimum standards in working conditions to address the challenges arising from platform work. Persons performing platform work in the Union should be provided with a number of minimum rights aiming at ensuring correct determination of their employment status, at promoting transparency, fairness **and** accountability in algorithmic management, and at improving transparency in platform work, including in cross-border situations. This should be done with a view to improving legal certainty, creating 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.

#### *Amendment*

(13) While existing or proposed Union legal acts provide for certain general safeguards, challenges in platform work require some further specific measures. In order to adequately frame the development of platform work in a sustainable manner, it is necessary for the Union to set new minimum standards in working conditions to address the challenges arising from platform work **and to protect workers' fundamental rights**. Persons performing platform work in the Union should be provided with a number of minimum rights aiming at ensuring correct determination of their employment status **as well as fair and just working conditions**, at promoting transparency, fairness, accountability, **and preventing health and safety risks** in algorithmic management, and at improving transparency in platform work, including in cross-border situations. This should be done with a view to improving legal certainty, creating 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.

Or. en

## Amendment 14

### Proposal for a directive Recital 14

#### *Text proposed by the Commission*

(14) The Commission has undertaken a

#### *Amendment*

(14) The Commission has undertaken a

two-stage consultation of the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the improvement of working conditions in platform work. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level in this area by adapting the current legal framework to the emergence of platform work.

two-stage consultation of the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the improvement of working conditions in platform work. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level in this area by adapting the current legal framework to the emergence of platform work *and of the use of automated or semi-automated monitoring and decision-making systems.*

Or. en

## Amendment 15

### Proposal for a directive Recital 15

*Text proposed by the Commission*

*Amendment*

**(15) In addition, the Commission held extensive exchanges with relevant stakeholders, including digital labour platforms, associations of persons performing platform work, experts from academia, Member States and international organisations and representatives of civil society.**

**deleted**

Or. en

## Amendment 16

### Proposal for a directive Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

**(16a) This Directive should apply, for the provisions on algorithmic management, to all workers subject to**



*automated or semi-automated monitoring and decision-making systems in relation to their working conditions or the organisation of their work.*

Or. en

## Amendment 17

### Proposal for a directive

#### Recital 17

##### *Text proposed by the Commission*

(17) This Directive should apply to all digital labour platforms, irrespective of their place of establishment and irrespective of the law otherwise applicable, provided that the platform work organised through that digital labour platform is performed in the Union. A targeted set of mandatory rules should be established at Union level to ensure minimum rights **on** working conditions in platform work.

##### *Amendment*

(17) This Directive should apply to all digital labour platforms, irrespective of their place of establishment and irrespective of the law otherwise applicable, provided that the platform work organised through that digital labour platform is performed in the Union. A targeted set of mandatory rules should be established at Union level to ensure minimum rights **and** working conditions in platform work.

Or. en

## Amendment 18

### Proposal for a directive

#### Recital 18

##### *Text proposed by the Commission*

(18) Digital labour platforms differ from other online platforms in that they organise work performed by individuals at **the** request, one-off or repeated, **of the recipient of a service provided by the platform**. Organising work performed by individuals should imply at a minimum a **significant** role in matching the demand **for the service** with the supply of labour by an individual who has a contractual

##### *Amendment*

(18) Digital labour platforms differ from other online platforms in that they organise work **or intermediate in the organisation of work** performed by individuals at request, one-off or repeated, **involving computer programs and procedures**. Organising work performed by individuals should imply at a minimum a role in matching the demand with the supply of labour by an individual who has a

relationship with the digital labour platform and who is available to perform a specific task, and can include other activities such as processing payments. Online platforms which do not organise the work performed by individuals but merely provide the means by which service providers can reach the end-user, for instance by advertising offers or requests for services or aggregating and displaying available service providers in a specific area, without any further involvement, should not be considered a digital labour platform. The definition of digital labour platforms should not include providers of a service whose *primary* purpose is to exploit or share assets, such as short-term rental of accommodation. ***It should be limited to providers of a service for which the organisation of work performed by the individual, such as transport of persons or goods or cleaning, constitutes a necessary and essential and not merely a minor and purely ancillary component.***

contractual relationship with the digital labour platform and who is available to perform a specific task, and can include other activities such as processing payments. Online platforms which do not organise the work performed by individuals but merely provide the means by which service providers can reach the end-user, for instance by advertising offers or requests for services or aggregating and displaying available service providers in a specific area, without any further involvement, should not be considered a digital labour platform. The definition of digital labour platforms should not include providers of a service whose purpose is to exploit or share assets, such as short-term rental of accommodation.

Or. en

## Amendment 19

### Proposal for a directive Recital 18 a (new)

*Text proposed by the Commission*

*Amendment*

***(18a) The frequent misclassification of persons performing platform work, together with the lack of a common workplace where platform workers can get to know and communicate with each other, including for the purpose of defending their interests against the employer, make the phenomenon of company trade unions or workers' representatives that are established or controlled by the employer itself in the interests of the employer rather than those of the workers, particularly serious in***

*platform work. Such company trade unions or workers' representatives are contrary to Article 2 of International Labour Organization (ILO) Convention No 98 and and to Directive 2002/14/EC of the European Parliament and of the Council<sup>1a</sup>. When establishing or implementing practical arrangements for information and consultation, employers and the workers' representatives should work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the workers. Digital labour platforms will ensure, together with the most representative trade unions, that elections for workers' representatives comply with fundamental rights and freedoms and are in line with applicable national law and practices.*

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*<sup>1a</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).*

Or. en

## **Amendment 20**

### **Proposal for a directive Recital 18 b (new)**

*Text proposed by the Commission*

*Amendment*

*(18b) The exclusive prerogatives of trade unions should be preserved, such as their right to participate in collective bargaining and to conclude collective agreements. The rights and prerogatives of trade union and other workers' representatives set out in this Directive should be ensured and respected inline*

*with the ILO Conventions (in particular Convention 87 on Freedom of Association and Protection of the Right to Organise, ILO Convention 98 on the Right to Organise and Collective Bargaining, and having due regard to ILO Convention 135 on Workers' Representatives, ILO Convention 151 on Labour Relations (Public Service), ILO Convention 154 on Collective Bargaining and the related ILO Recommendations, as well as the Council of Europe's European Social Charter.*

Or. en

## Amendment 21

### Proposal for a directive

#### Recital 19

##### *Text proposed by the Commission*

(19) To combat false self-employment in platform work and to facilitate the correct determination of the employment status, Member States should have appropriate procedures in place to prevent and address misclassification of the employment status of persons performing platform work. The aim of those procedures should be to ascertain the existence of an employment relationship as defined by national law, collective agreements or practice with consideration to the case-law of the Court of Justice, and, where such employment relationship exists, to ensure full compliance with Union law applicable to workers as well as national labour law, collective agreements and social protection rules. Where self-employment *or an intermediate employment status – as defined at national level* – is the correct employment status, rights and obligations pursuant to that status should apply.

##### *Amendment*

(19) *A person performing platform work is either a platform worker or a self-employed.* To combat false self-employment in platform work and to facilitate the correct determination of the employment status, Member States should have appropriate procedures in place to prevent and address misclassification of the employment status of persons performing platform work, *including proper compensation and the payment of any outstanding remuneration, taxes and social security contributions due to the misclassification.* The aim of those procedures should be to ascertain the existence of an employment relationship as defined by national law, collective agreements or practice with consideration to the case-law of the Court of Justice, and, where such employment relationship exists, to ensure full compliance with Union law applicable to workers as well as national labour law, collective agreements and social protection rules. Where self-employment is the correct employment

status, rights and obligations pursuant to that status should apply.

Or. en

## Amendment 22

### Proposal for a directive

#### Recital 20

##### *Text proposed by the Commission*

(20) In its case law, the Court of Justice has established criteria for determining the status of a worker<sup>62</sup>. The interpretation by the Court of Justice of those criteria should be taken into account in the implementation of this Directive. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. False self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations.

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<sup>62</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; 14 October 2010, Union Syndicale Solidaires Isère v Premier ministre and Others, C-428/09, ECLI:EU:C:2010:612; 4 December 2014, FNV Kunsten Informatie en Media v Staat der Nederlanden, C-413/13, ECLI:EU:C:2014:2411; 9 July 2015, Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH, C-229/14, ECLI:EU:C:2015:455; 17 November 2016, Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH, C-216/15,

##### *Amendment*

(20) In its case law, the Court of Justice has established criteria for determining the status of a worker<sup>62</sup>. The interpretation by the Court of Justice of those criteria should be taken into account in the implementation of this Directive. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. False self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. ***Such persons should fall within the scope of this Directive.***

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<sup>62</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; 14 October 2010, Union Syndicale Solidaires Isère v Premier ministre and Others, C-428/09, ECLI:EU:C:2010:612; 4 December 2014, FNV Kunsten Informatie en Media v Staat der Nederlanden, C-413/13, ECLI:EU:C:2014:2411; 9 July 2015, Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH, C-229/14, ECLI:EU:C:2015:455; 17 November 2016, Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH, C-216/15,

ECLI:EU:C:2016:883; 16 July 2020, UX v Governo della Repubblica italiana, C-658/18, ECLI:EU:C:2020:572; and order of the Court of Justice of 22 April 2020, B v Yodel Delivery Network Ltd, C-692/19, ECLI:EU:C:2020:288.

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.

Or. en

## Amendment 23

### Proposal for a directive Recital 22

#### *Text proposed by the Commission*

(22) Where the existence of an employment relationship is established based on facts, the party acting as employer should be clearly identified and that party should fulfil all the obligations resulting from its role as employer.

#### *Amendment*

(22) Where the existence of an employment relationship is established based on facts, the party acting as employer should be clearly identified and that party should fulfil all the obligations resulting from its role as employer ***and comply with national law and collective agreements linked to the relevant sector of activity.***

Or. en

## Amendment 24

### Proposal for a directive Recital 22 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(22a) Experience has shown that the existing Member States' sanctions have not been sufficient to achieve full compliance with prohibitions against the use of false self-employment employment. One of the reasons is that administrative sanctions alone are likely not to be enough to deter certain unscrupulous employers. Compliance can and should be strengthened by the application of***

*effective and dissuasive sanctions, which could imply the suspension of the operating licence in cases of persistent infringements or particularly exploitative working conditions. Particularly exploitative working conditions means working conditions, including those resulting from gender-based or other discriminations, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, fundamental rights and which offends against human dignity.*

Or. en

## **Amendment 25**

### **Proposal for a directive Recital 22 c (new)**

*Text proposed by the Commission*

*Amendment*

*(22c) Member States should be encouraged to determine, every year, a national target for the number of inspections to be carried out in respect of the sectors of activity in which digital labour platforms operate in order to determine the correct classification of workers.*

Or. en

## **Amendment 26**

### **Proposal for a directive Recital 22 d (new)**

*Text proposed by the Commission*

*Amendment*

*(22d) With a view to increasing the effectiveness of inspections for the purposes of applying this Directive,*



*Member States should ensure that national law provides for adequate powers to competent authorities to carry out inspections; that information about false self employment, including the results of previous inspections, is collected and processed for the effective implementation of this Directive; and that sufficient staff are available with the skills and qualifications needed to carry out inspections effectively.*

Or. en

## Amendment 27

### Proposal for a directive Recital 22 e (new)

*Text proposed by the Commission*

*Amendment*

*(22e) Experience shows that when national law has introduced the presumption of an employment relationship for digital labour platforms, the use of subcontracting chains has been used as a way of circumventing the application of labour law to platform workers. In order to prevent the misuse of subcontracting by the digital labour platforms to circumvent this Directive, it is necessary to ensure that at least the contractors of which the employer is a subcontractor may be considered to be the true employer and therefore held liable to pay wages, social security contributions and financial sanctions in addition to or in place of the direct employer. In specific cases involving illegally staying third country nationals, all the contractors involved in the subcontracting chain may be liable of criminal offences as provided for in Directive 2009/52/EC of the European Parliament and of the Council<sup>1a</sup>.*



*<sup>1a</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).*

Or. en

## Amendment 28

### Proposal for a directive Recital 22 f (new)

*Text proposed by the Commission*

*Amendment*

*(22f) It is necessary to introduce enforcement provisions which ensure the use of favourable presumptions in cases of misclassification of workers when reclassifying them, including a presumption that the worker has an open-ended employment relationship, that there is no probationary period and that the worker has a full-time position in the undertaking.*

Or. en

## Amendment 29

### Proposal for a directive Recital 22 g (new)

*Text proposed by the Commission*

*Amendment*

*(22g) The use of undeclared work in delivery platforms has been evidenced in several Member States. This practice is carried out through rented identities: platform workers or people with the right to work who registers in the platform rent their accounts mainly to undocumented migrants and to minors. In order to*

*prevent this illegal practice and protect the potential victims from labour exploitation, provisions on subcontracting chains in platform work are needed, so that all those in the chain can be held accountable as well as ensuring the right to redress also for undocumented migrants. Member States should provide that undocumented migrants can have access to justice without fearing any retaliation or risk of deportation, also in accordance with Directive 2009/52/EC. This might require the establishment of a division between enforcement of labour legislation and mechanisms of migration control.*

Or. en

## Amendment 30

### Proposal for a directive

#### Recital 23

##### *Text proposed by the Commission*

(23) Ensuring correct determination of the employment status should not prevent the improvement of working conditions of genuine self-employed persons performing platform work. *Where a digital labour platform decides – on a purely voluntary basis or in agreement with the persons concerned – to pay for social protection, accident insurance or other forms of insurance, training measures or similar benefits to self-employed persons working through that platform, those benefits as such should not be regarded as determining elements indicating the existence of an employment relationship.*

##### *Amendment*

(23) Ensuring correct determination of the employment status should not prevent the improvement of working conditions of genuine self-employed persons performing platform work. *Member States should take particular care in their national policies to ensure effective protection to workers especially affected by the uncertainty as to the existence of an employment relationship, including female workers, as well as the most vulnerable workers, young workers, older workers, workers in the informal economy, migrant workers and workers with disabilities.*

Or. en

## Amendment 31

### Proposal for a directive Recital 24

#### *Text proposed by the Commission*

(24) When digital labour platforms control certain elements of the performance of work, they act like employers in an employment relationship. Direction and control, or **legal** subordination, is an essential element of the definition of an employment relationship in the Member States and in the case-law of the Court of Justice. Therefore contractual relationships **in which digital labour platforms exert a certain level of control over certain elements of the performance of work** should be deemed, by virtue of a legal presumption, to be an employment relationship between the platform and the person performing platform work through it. As a result, that person should be classified as a worker having all the rights and obligations in accordance with that status, as laid down in national and Union law, collective agreements and practice. The legal presumption should apply in all relevant administrative and legal proceedings and should benefit the person performing platform work. Authorities in charge of verifying the compliance with or enforcing relevant legislation, such as labour inspectorates, social protection bodies or tax authorities, should also be able to rely on that presumption. Member States should put in place a national framework to reduce litigation and increase legal certainty.

#### *Amendment*

(24) When digital labour platforms **supervise or exert some sort of control on** certain elements of the performance of work, they act like employers in an employment relationship. Direction and control, or subordination, is an essential element of the definition of an employment relationship in the Member States and in the case-law of the Court of Justice. Therefore contractual relationships **between workers and a digital labour platform** should be deemed, by virtue of a legal presumption, to be an employment relationship between the platform and the person performing platform work through it, **unless it can be proven that the platform does not supervise or exert any sort of control over any elements linked to the performance of work. The presumption should be legally based on the platform supervising the performance of work, where supervision should be meant in an extensive and evolutionary way, also in relation to the evolving features of automated or semi-automated monitoring and decision-making systems and encompassing sanctioning systems (also through ranking)**. As a result, that person should be classified as a worker having all the rights and obligations in accordance with that status, as laid down in national and Union law, collective agreements and practice. The legal presumption should apply in all relevant **administrative procedures and** administrative and legal proceedings and should benefit the person performing platform work. Authorities in charge of verifying the compliance with or enforcing relevant legislation, such as labour inspectorates, social protection bodies or tax authorities, should also be able to

*proactively* rely on that presumption. Member States should put in place a national framework to reduce litigation and increase legal certainty.

Or. en

## Amendment 32

### Proposal for a directive Recital 25

#### *Text proposed by the Commission*

(25) *Criteria* indicating that a digital labour platform *controls* the performance of work *should be included in the Directive* in order to *make the legal presumption operational and* facilitate the enforcement of workers' rights. Those *criteria should be* inspired by Union and national case law and take into account national concepts of the employment relationship. *The criteria should include* concrete elements showing that the digital labour platform, for instance, determines in practice *and not merely recommends* the working conditions or the remuneration or both, gives instructions on how the work is to be performed or prevents the person performing platform work from developing business contacts with potential clients. *In order for it to be effective in practice, two criteria should be always fulfilled to trigger the application* of the presumption,. At the same time, the *criteria* should not cover situations where the persons performing platform work are genuine self-employed. Genuine self-employed persons are themselves responsible vis-à-vis their customers for how they perform their work and the quality of their outputs. The freedom to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or to work for any third party is characteristic of genuine self-employment. Therefore, de facto

#### *Amendment*

(25) *The authorities and competent institutions applying the legal presumption should be guided by factual elements* indicating that *the* digital labour platform *supervises or exert some control over* the performance of work in order to facilitate the enforcement of workers' rights. Those *elements are* inspired by Union and national case law *as well as by the ILO Employment Relationship Recommendation, 2006 (No 198)* and take into account national concepts of the employment relationship, *and are therefore in constant evolution, also following the evolution of automated or semi-automated monitoring and decision-making systems. Among the* concrete elements *that can indicate that the digital labour platform supervises or exert some control over the performance of work, there are those* showing that the digital labour platform, for instance: determines in practice the working conditions or the remuneration or both, *or issues periodic payment of remuneration to the worker;* gives instructions on how the work is to be performed or prevents the person performing platform work from developing business contacts with potential clients; *supervises the performance of work or verifies the quality of the work, including by electronic means, that leads to the final result; tracks or monitor the person*

restricting such discretions by a number of conditions or through a system of **sanctions**, should also be considered as an element of controlling the performance of work. **Closely supervising the performance of work or thoroughly verifying the quality of the results of that work, including through electronic means, which does not merely consist in using reviews or ratings by the recipients of the service**, should also be considered as an element of controlling the performance of work. At the same time, digital labour platforms should be able to design their technical interfaces in a way to ensure **good consumer experience**. Measures or rules which are required by law or which are necessary to safeguard the health and safety of the recipients of the service should not be understood as **controlling** the performance of work.

**performing platform work; enforces the performance through penalties, including restricting access to work, or uses customer rating systems as a tool of control and basis for penalties; relies on measures of performance and (mis)conduct as a basis for determining remuneration levels, working conditions and penalties; determines access to jobs through internal rankings; restricts the freedom, including through penalties, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes; controls and organises the business activity linked to the platform work performed by individuals or detains the responsibility for related investment and management; provides the worker performing platform work with tools, digital means, materials or machinery that are necessary for the performance of the work; provides the worker with any kind of support for social protection, accident insurance, pension scheme or other forms of insurance, training measures or similar benefits. That list is not exhaustive and any other relevant concrete element can indicate that digital labour platform supervises or exert some control over the performance of work. When assessing on the rebuttal of the presumption, competent authorities should be guided, inter alia, by the concrete elements provided above, as any of them should lead to confirmation of the presumption.** At the same time, the **presumption** should not cover situations where the persons performing platform work are genuine self-employed. Genuine self-employed persons are themselves responsible vis-à-vis their customers for how they perform their work and the quality of their outputs. The freedom to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or to work for any third party is characteristic of genuine

self-employment. Therefore, de facto restricting such discretions by a number of conditions or through a system of **penalties**, should also be considered as an element of **supervising or** controlling the performance of work. Verifying the quality of the results of that work, including through electronic means should also be considered as an element of controlling the performance of work. At the same time, digital labour platforms should be able to design their technical interfaces in a way to ensure **that** measures or rules which are required by law or which are necessary to safeguard the health and safety of the recipients of the service should not be understood as **supervising** the performance of work.

Or. en

### Amendment 33

#### Proposal for a directive Recital 25 a (new)

*Text proposed by the Commission*

*Amendment*

***(25a) The existence of a collective agreement signed by one or several digital labour platforms and representatives of self-employed workers does not preclude the existence of an employment relationship. This will not in any way prevent the application of the legal presumption of employment relationship in line with this Directive.***

Or. en

### Amendment 34

#### Proposal for a directive Recital 26

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*Text proposed by the Commission*

(26) Effective implementation of the legal presumption through appropriate measures, such as disseminating information to the public, developing guidance and strengthening controls and field inspections is essential to ensure legal certainty and transparency for all parties involved. ***These measures should take into account the specific situation of start-ups to support the entrepreneurial potential and the conditions for the sustainable growth of digital labour platforms in the Union.***

*Amendment*

(26) Effective implementation of the legal presumption through appropriate measures, such as disseminating information to the public, developing guidance and strengthening controls, ***cooperation between different national authorities*** and field inspections is essential to ensure legal certainty and transparency for all parties involved. ***Next to that, the reclassification of a person performing platform work from self-employed to platform worker should immediately generate an inspection of relevant authorities in order to rapidly correct the misclassification that possibly concern the other persons performing platform work for the same digital labour platform.***

Or. en

## Amendment 35

### Proposal for a directive Recital 27

*Text proposed by the Commission*

(27) In the interest of legal certainty, the legal presumption should not have any retroactive legal effects before the transposition date of this Directive and should therefore only apply to the period starting from that date, including for contractual relationships entered into before and still ongoing on that date. Claims relating to the possible existence of an employment relationship before that date and resulting rights and obligations until that date should therefore be assessed only on the basis of national law and Union law predating this Directive.

*Amendment*

(27) In the interest of legal certainty, the legal presumption should not have any retroactive legal effects before the transposition date of this Directive and should therefore only apply to the period starting from that date, including for contractual relationships entered into before and still ongoing on that date. Claims relating to the possible existence of an employment relationship before that date and resulting rights and obligations until that date should therefore be assessed only on the basis of national law and Union law predating this Directive, ***and in particular on Directive (EU) 2019/1152.***

## Amendment 36

### Proposal for a directive Recital 28

#### *Text proposed by the Commission*

(28) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down in the law, collective agreements or practice in force of the respective Member State with consideration to the case-law of the Court of Justice, ***even though the digital labour platform controls the performance of work on a given aspect***. Member States should ensure the possibility to rebut the legal presumption in legal or administrative proceedings or both by proving, on the basis of the aforementioned definition, that the relationship in question is not an employment relationship. The shift in the burden of proof to digital labour platforms is justified by the fact that they have a complete overview of all factual elements determining the relationship, in particular the algorithms through which they manage their operations. Legal proceedings and administrative proceedings initiated by the digital labour platforms in order to rebut the legal presumption should not have a suspensive effect on the application of the legal presumption. A successful rebuttal of the presumption in administrative proceedings should not preclude the application of the presumption in subsequent judicial proceedings. When the person performing platform work who is the subject of the presumption seeks to rebut the legal presumption, the digital labour platform should be required to assist ***that person***, notably by providing all

#### *Amendment*

(28) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down in the law, collective agreements or practice in force of the respective Member State with consideration to the case-law of the Court of Justice. Member States should ensure the possibility to rebut the legal presumption in legal or administrative proceedings or both by proving, on the basis of the aforementioned definition, that the relationship in question is not an employment relationship. The shift in the burden of proof to digital labour platforms is justified by the fact that they have a complete overview of all factual elements determining the relationship, in particular the algorithms through which they manage their operations. Legal proceedings and administrative proceedings initiated by the digital labour platforms in order to rebut the legal presumption should not have a suspensive effect on the application of the legal presumption. A successful rebuttal of the presumption in administrative proceedings should not preclude the application of the presumption in subsequent judicial proceedings. When the person performing platform work who is the subject of the presumption seeks to rebut the legal presumption, the digital labour platform should be required to assist ***the proceedings***, notably by providing all relevant information held by the platform in respect of that person. Member States



relevant information held by the platform in respect of that person. Member States should provide the necessary guidance for procedures to rebut the legal presumption.

should provide the necessary guidance for procedures to rebut the legal presumption.

Or. en

## Amendment 37

### Proposal for a directive Recital 29

#### *Text proposed by the Commission*

(29) While Regulation (EU) 2016/679 establishes the general framework for the protection of natural persons with regard to the processing of personal data, it is necessary to lay down rules addressing the concerns that are specific in the processing of personal data in the context of platform work. This Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679. In this context, terms relating to the protection of personal data in this Directive should be understood in light of the definitions set out in Regulation (EU) 2016/679.

#### *Amendment*

(29) While Regulation (EU) 2016/679 establishes the general framework for the protection of natural persons with regard to the processing of personal data, it is necessary to lay down rules addressing the concerns that are specific in the processing of personal data in the context of platform work **and work subject to automated or semi-automated monitoring and decision-making systems**. This Directive provides for more specific rules in the context of platform work **and work subject to those systems**, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679. In this context, terms relating to the protection of personal data in this Directive should be understood in light of the definitions set out in Regulation (EU) 2016/679.

Or. en

## Amendment 38

### Proposal for a directive Recital 30

*Text proposed by the Commission*

(30) In addition to rights and obligations provided in this Directive, rights and obligations provided in Regulation (EU) 2016/679 continue to apply when personal data are processed. Articles 13, 14 and 15 of Regulation (EU) 2016/679 require data controllers to ensure transparency towards data subjects on the collection and processing of personal data. Moreover, Article 22(1) of Regulation (EU) 2016/679 provides for the data subjects' right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her, subject to the exceptions provided for in paragraph 2 of that article. Those obligations apply also to digital labour platforms.

*Amendment*

(30) In addition to rights and obligations provided in this Directive, rights and obligations provided in Regulation (EU) 2016/679 continue to apply when personal data are processed. ***Article 9 of Regulation (EU) 2016/679 prohibits the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation and allows Member States to maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.*** Articles 13, 14 and 15 of Regulation (EU) 2016/679 require data controllers to ensure transparency towards data subjects on the collection and processing of personal data. ***Articles 16 to 21 of Regulation (EU) 2016/679 introduce the rights to rectification, to erasure, to restriction of processing of data, to data portability and to object the processing of personal data.*** Moreover, Article 22(1) of Regulation (EU) 2016/679 provides for the data subjects' right not to be subject to a decision based solely on automated ***or semi-automated*** processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her, subject to the exceptions provided for in paragraph 2 of that article. ***Article 22(3) of Regulation (EU) 2016/679 mandates the data controller to implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.*** Those obligations apply also to

digital labour platforms *and other undertakings using automated or semi-automated monitoring and decision-making systems.*

Or. en

## Amendment 39

### Proposal for a directive Recital 30 a (new)

*Text proposed by the Commission*

*Amendment*

*(30a) The use of algorithmic scheduling systems heightens the use of precarious, short shifts and unstable and unpredictable schedules. 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 use of non-transparent algorithms to make managerial decisions creates feelings of insecurity among workers and may lead to unfair treatment and the denial of procedural due process at work. The limited learning at work and influence over tasks due to the use of non-transparent algorithms, work intensification and insecurity highlighted above is likely to increase workforce stress and anxiety and be harmful to wellbeing and health as well as to human dignity and other fundamental rights.*

Or. en

## Amendment 40

### Proposal for a directive Recital 31

*Text proposed by the Commission*

(31) This Directive is without prejudice to Articles 13, 14, 15 and 22 of Regulation (EU) 2016/679, except for Articles 13(2)(f), 14(2)(g) and 15(1)(h) thereof, in relation to which Article 6 of this Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.

*Amendment*

(31) This Directive is without prejudice to Articles 13, 14, 15 and 22 of Regulation (EU) 2016/679, except for Articles 13(2)(f), 14(2)(g) and 15(1)(h) thereof, in relation to which Article 6 of this Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679, ***which allows for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship. Article 88 of Regulation (EU) 2016/679 also establishes that those rules are to include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place.***

Or. en

## Amendment 41

### Proposal for a directive Recital 32

#### *Text proposed by the Commission*

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

#### *Amendment*

(32) Digital labour platforms **and any other undertaking** should be subject to transparency obligations in relation to automated **or semi-automated** monitoring and decision-making systems that are used to monitor, supervise or evaluate the work performance through electronic means **or to monitor the workers themselves**; and automated **or semi-automated** decision-making systems which are used to take or support decisions that affect working conditions, including access of persons performing platform **work or subject to these systems when performing their** work to work assignments, their earnings, their occupational safety and health, their working time, their promotion, **their entitlements** and their contractual status, including the restriction, suspension or termination of their account. In addition to what is provided in Regulation (EU) 2016/679, information concerning such systems should also be provided where decisions are not solely based on automated **or semi-automated** processing, provided that they are supported by automated **or semi-automated** systems. It should also be specified which kind of information should be provided to persons performing platform work **or subject to these systems when performing their work** regarding such automated **or semi-automated** systems, as well as in which form and when it should be provided. The obligation of the controller under Articles 13, 14 and 15 of Regulation (EU) 2016/679 to provide the data subject with certain information in relation to the processing of personal data concerning the data subject as well as with access to such data should continue to apply in the context of platform work **or work subject to those systems**.

Information on automated *or semi-automated* monitoring and decision-making systems should also be *periodically* provided to *trade unions and* representatives of persons performing platform *work or subject to these systems when performing their* work and to national labour authorities at their request, in order to enable them to exercise their functions.

Or. en

## Amendment 42

### Proposal for a directive Recital 32 a (new)

*Text proposed by the Commission*

*Amendment*

***(32a) The type of processing of data in digital labour platforms and other undertakings using automated or semi-automated monitoring and decision-making systems is likely to result in a high risk to the rights and freedoms of the workers. Article 35 of Regulation (EU) 2016/679 establishes that the controller is to, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. It also provides that the controller is to seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations. That consultation should be carried out in an appropriate manner and with appropriate content to enable, in particular, workers' representatives to conduct an adequate study and, where necessary, prepare for the consultation.***

Or. en



## Amendment 43

### Proposal for a directive Recital 33

*Text proposed by the Commission*

(33) Digital labour platforms **should not** be required to disclose the detailed functioning of their automated monitoring and decision-making systems, including algorithms, **or other detailed data that contains commercial secrets or is protected by intellectual property** rights. **However, the result of those considerations should not be a refusal to provide all the information required by this Directive.**

*Amendment*

(33) Digital labour platforms **and any other undertaking should** be required to disclose the detailed functioning of their automated **or semi-automated** monitoring and decision-making systems, including algorithms, **fundamental rights and freedoms of the workers or affecting working conditions or work organisation.**

Or. en

## Amendment 44

### Proposal for a directive Recital 34

*Text proposed by the Commission*

(34) Articles 5 and 6 of Regulation (EU) 2016/679 require that personal data are processed in a lawful, fair and transparent manner. Digital labour platforms should therefore not be allowed to process any personal data concerning persons performing platform work that are not intrinsically connected to and strictly necessary for the performance of the contract between those persons and the digital labour platform. Article 6(5) of this Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.

*Amendment*

(34) Articles 5 and 6 of Regulation (EU) 2016/679 require that personal data are **accessed, collected and** processed in a lawful, fair and transparent manner. Digital labour platforms **and any other undertaking using automated or semi-automated monitoring and decision-making systems** should therefore not be allowed to **access, collect and** process any personal data concerning persons performing platform work that are not intrinsically connected to and strictly necessary for the performance of the contract between those persons and the digital labour platform **or the undertaking**. Article 6(5) of this Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in

respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679. ***Workers and workers' representatives have the right to access the data collection of workers, to obtain the rectification or erasure of the data, to restrict the processing and to be notified about any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 16, Article 17(1) and Article 18 of Regulation (EU) 2016/679. Workers and workers' representatives have the right to object at any time to processing of personal data concerning them, which is based on Article 6(1), point (e) or (f), including profiling based on those provisions. In those cases, the undertaking should no longer process the personal data unless it can demonstrate compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.***

Or. en

## Amendment 45

### Proposal for a directive Recital 35

*Text proposed by the Commission*

(35) Digital labour platforms make extensive use of automated monitoring and ***decision-making*** systems in managing their human resources. Monitoring by electronic means can be intrusive and decisions taken or supported by such systems directly affect the persons performing platform work, who might not have a direct contact with a human manager or supervisor. Digital labour platforms should therefore regularly

*Amendment*

(35) Digital labour platforms ***and an increasing number of other undertakings*** make extensive use of automated ***or semi-automated*** monitoring and ***decision-making*** systems in managing their human resources. Monitoring by electronic means can be intrusive and decisions taken or supported by such systems directly affect the persons performing platform work ***or subject to these systems when performing their work***, who might not have a direct



**monitor** and evaluate the impact of individual decisions taken or supported by automated monitoring and decision-making systems on working conditions. **Digital labour platforms** should ensure sufficient human resources for this purpose. The persons charged by the **digital labour platform** with the function of **monitoring** should have the necessary competence, training and authority to exercise that function and should be protected from dismissal, disciplinary measures or other adverse treatment for overriding automated decisions or suggestions for decisions. In addition to obligations under Article 22 of Regulation (EU) 2016/679, Article 7(1) and (3) of this Directive provides for distinct obligations of digital labour platforms in relation to human monitoring of the impact of individual decisions taken or supported by automated systems, which apply as specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.

contact with a human manager or supervisor. Digital labour platforms **and any other undertaking making use of those systems** should therefore regularly **oversight** and evaluate the impact of individual decisions taken or supported by automated **or semi-automated** monitoring and decision-making systems on working conditions **and on fundamental rights and freedoms of workers, including their human dignity**. **Undertakings** should ensure sufficient human resources for this purpose. The persons charged by the **undertaking** with the function of **supervising** should have the necessary competence, training and authority to exercise that function and should be protected from dismissal, disciplinary measures or other adverse treatment for overriding automated **or semi-automated** decisions or suggestions for decisions. In addition to obligations under Article 22 of Regulation (EU) 2016/679, Article 7(1) and (3) of this Directive provides for distinct obligations of digital labour platforms **and undertakings using those systems** in relation to human monitoring of the impact of individual decisions taken or supported by automated **or semi-automated** systems, which apply as specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.

Or. en

## Amendment 46

### Proposal for a directive Recital 36

*Text proposed by the Commission*

(36) Article 22(3) of Regulation (EU)

*Amendment*

(36) Article 22(3) of Regulation (EU)

2016/679 requires data controllers to implement suitable measures to safeguard data subjects' rights and freedoms and legitimate interests in cases where the latter are subject to decisions based solely on automated processing. That provision requires, as a minimum, the data subject's right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision. Those requirements apply also to digital labour platforms. Article 8 of this Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.

2016/679 requires data controllers to implement suitable measures to safeguard data subjects' rights and freedoms and legitimate interests in cases where the latter are subject to decisions based solely on automated *or semi-automated* processing. That provision requires, as a minimum, the data subject's right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision. Those requirements apply also to digital labour platforms *and other undertakings using those systems*. Article 8 of this Directive provides for more specific rules in the context of platform work *and work subject to automated or semi-automated monitoring and decision-making systems*, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679. *Article 22 of Regulation (EU) 2016/679 provides that the data subject have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her. Therefore, algorithmic management that entails fully automated decision-making that has significant effects on individuals without input from human managers is unlawful under Union law.*

Or. en

## Amendment 47

### Proposal for a directive Recital 36 a (new)

*Text proposed by the Commission*

*Amendment*

***(36a) Human reviewers should be involved in checking the system's***

*recommendation and should not “routinely” apply the automated recommendation to an individual; reviewers’ involvement should be active and not just a token gesture. They should have actual concrete influence on the decision, including the “authority and competence” to go against the recommendation; reviewers should ‘weigh-up’ and ‘interpret’ the recommendation, consider all available input data, and also take into account other additional factors’ in order to safeguard workers’ rights as well as their health and safety.*

Or. en

## Amendment 48

### Proposal for a directive Recital 37

#### *Text proposed by the Commission*

(37) In that context, persons performing platform work should have the right to obtain an explanation from the digital labour platform for a decision, the lack of decision or a set of decisions taken or supported by automated systems that **significantly** affect their working conditions. For that purpose the digital labour platform should provide the possibility for them to discuss and clarify the facts, circumstances and reasons for such decisions with a human contact person at the digital labour platform. In addition, digital labour platforms should provide the person performing platform work with a written statement of reasons for any decision to restrict, suspend or terminate that person’s account, to refuse the remuneration for work performed by that person, or affecting his or her contractual status, as such decisions are likely to have significant negative effects

#### *Amendment*

(37) In that context, persons performing platform work **and any other worker subject to automated or semi-automated systems** should have the right to obtain an explanation from the digital labour platform for a decision, the lack of decision or a set of decisions taken or supported by automated **or semi-automated** systems that affect their working conditions **at the earliest opportunity and at the latest on the day on which such decisions take effect**. For that purpose the digital labour platform **and any other undertaking using automated or semi-automated monitoring and decision-making systems** should provide the possibility for them to discuss and clarify the facts, circumstances and reasons for such decisions with a human contact person at the digital labour platform. In addition, digital labour platforms **and any other undertaking using those systems** should provide the

on persons performing platform work, in particular their potential earnings. Where the explanation or reasons obtained are not satisfactory or where persons performing platform work consider their rights infringed, they should also have the right to request the digital labour platform to review the decision and to obtain a substantiated reply within a reasonable period of time. Where such decisions infringe those persons' rights, such as labour rights or the right to non-discrimination, the digital labour platform should rectify such decisions without delay or, where that is not possible, provide adequate compensation.

person performing platform work **and any other worker subject to automated or semi-automated systems** with a written statement of reasons for any decision to restrict, suspend or terminate that person's account, to **reject work and to** refuse the remuneration for work performed by that person, or affecting his or her contractual status **at the earliest opportunity and at the latest on the day on which such decisions take effect**, as they are likely to have significant negative effects on persons performing platform work, in particular their potential earnings. **Such decisions should be taken in line with applicable provisions in national legislation and collective agreements and those most severely affecting the existence of the contractual relationship should never be taken by automated or semi-automated systems.** Where the explanation or reasons obtained are not satisfactory or where persons performing platform **work or subject to these systems when performing their** work consider their rights infringed, they should also have the right to request the digital labour platform **or the undertaking** to review the decision and to obtain a substantiated reply within a reasonable period of time. Where such decisions infringe those persons' rights, such as **fundamental rights and freedoms**, labour rights or the right to non-discrimination, the digital labour platform **or the undertaking** should rectify such decisions without delay or, where that is not possible, provide adequate compensation.

Or. en

## Amendment 49

### Proposal for a directive Recital 38

*Text proposed by the Commission*

(38) Council Directive 89/391/EEC<sup>63</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. As automated monitoring and **decision-making** systems potentially have significant impact on the physical and mental health of persons performing platform work, digital labour platforms should **evaluate** those risks, assess whether the safeguards of the systems are appropriate to address those risks and take appropriate preventive and protective measures.

*Amendment*

(38) Council Directive 89/391/EEC<sup>63</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. As automated **or semi-automated** monitoring and **decision-making** systems potentially have significant impact **on workers' safety and** on the physical and mental health of persons performing platform work **or subject to those systems when performing work**, digital labour platforms **and undertakings using those systems** should **avoid** those risks, **evaluate the risks that cannot be avoided, combat the risks at source**, assess whether the safeguards of the systems are appropriate to address those risks and take appropriate preventive and protective measures. **Especially relevant in this context is the employer's obligation to adapt the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their consequences on health. This Directive provides for employers to consult workers and workers' representatives and allow them to take part in discussions on all questions relating to safety and health at work. In particular, the planning and introduction of new technologies should be subject to consultation with the workers and workers' representatives, as regards the consequences of the choice of equipment, the working conditions and the working environment on the worker's safety and health. This presupposes the consultation of workers, the right of workers and workers' representatives to make proposals and a balanced participation in accordance with national law and**

*practices. In addition, the employer should ensure that each worker receives adequate safety and health training, in particular in the form of information and instructions specific to his workstation or job in the event of the introduction of any new technology.*

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<sup>63</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).

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<sup>63</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).

Or. en

## Amendment 50

### Proposal for a directive Recital 39

#### *Text proposed by the Commission*

(39) Directive 2002/14/EC of the European Parliament and of the Council<sup>64</sup> establishes a general framework for informing and consulting employees in the Union. The introduction of or **substantial** changes in the use of automated monitoring and decision-making systems by digital labour platforms have direct impacts on the work organisation and individual working conditions of platform workers. Additional measures are necessary to ensure that digital labour platforms inform and consult platform workers **or their** representatives before such decisions are taken, at the appropriate level and, given the technical complexity of algorithmic management systems, with the assistance of an expert chosen by the platform workers or their representatives in a concerted manner where needed.

#### *Amendment*

(39) Directive 2002/14/EC of the European Parliament and of the Council<sup>64</sup> establishes a general framework for informing and consulting employees in the Union. The introduction of or changes in the use of automated **or semi-automated** monitoring and decision-making systems by digital labour platforms **or undertakings using those systems** have direct impacts on the work organisation and individual working conditions of platform workers **or workers subject to those systems when performing work**. Additional measures are necessary to ensure that digital labour platforms inform and **effectively** consult platform workers, **and workers' representatives in good faith** before such decisions are taken, at the appropriate level and, given the technical complexity of algorithmic management systems, **in due time in order to allow for real consultation and** with the assistance of an expert chosen by the platform



workers, *and the workers'* representatives in a concerted manner where needed. *In accordance with Directive 2002/14/EC, those provisions are meant to foster effective social dialogue on these features and, because automated or semi-automated monitoring and decision-making systems directly impact working conditions, they have to be subject to collective bargaining.*

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<sup>64</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).

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<sup>64</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).

Or. en

## Amendment 51

### Proposal for a directive Recital 40

#### *Text proposed by the Commission*

(40) Persons who do not have an employment relationship constitute a significant part of the persons performing platform work. The impact of automated monitoring and decision-making systems used by digital labour platforms on their working conditions and their earning opportunities is similar to that on platform workers. Therefore, the rights in Articles 6, 7 and 8 of this Directive pertaining to the protection of natural persons in relation to the processing of personal data in the context of algorithmic management, namely those regarding transparency on automated monitoring and decision-making systems, restrictions to process or collect personal data, human monitoring and review of significant decisions, should also apply to persons in the Union performing

#### *Amendment*

(40) Persons who do not have an employment relationship constitute a significant part of the persons performing platform work. The impact of automated *or semi-automated* monitoring and decision-making systems used by digital labour platforms on their working conditions and their earning opportunities is similar to that on platform workers. Therefore, the rights in Articles 6, 7 and 8 of this Directive pertaining to the protection of natural persons in relation to the processing of personal data in the context of algorithmic management, namely those regarding transparency on automated *or semi-automated* monitoring and decision-making systems, restrictions to process or collect personal data, human monitoring and review of significant decisions, should



platform work who do not have an employment contract or employment relationship. The rights pertaining to health and safety at work and information and consultation of platform workers *or their* representatives, which are specific to workers in view of Union law, should not apply to them. Regulation (EU) 2019/1150 provides safeguards regarding fairness and transparency for self-employed persons performing platform work, provided that they are considered business users within the meaning of that Regulation. Where such safeguards conflict with elements of specific rights and obligations laid down in this Directive, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.

also apply to persons in the Union performing platform work who do not have an employment contract or employment relationship. The rights pertaining to health and safety at work and information and consultation of platform workers, *and workers'* representatives, which are specific to workers in view of Union law, should not apply to them. Regulation (EU) 2019/1150 provides safeguards regarding fairness and transparency for self-employed persons performing platform work, provided that they are considered business users within the meaning of that Regulation. Where such safeguards conflict with elements of specific rights and obligations laid down in this Directive, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.

Or. en

## Amendment 52

### Proposal for a directive Recital 40 a (new)

*Text proposed by the Commission*

*Amendment*

***(40a) While automated and semi-automated monitoring and decision-making systems are present on all digital labour platforms and are part of their business model, such technologies are increasingly used in all workplaces, affecting therefore all workers. According to the 2020 Commission's "European enterprise survey on the use of technologies based on artificial intelligence : final report"<sup>1a</sup>, 42% of enterprises in the Union had used at least one of the artificial intelligence-related technologies included in the survey. According to the 2019 EU-OSHA's European Survey of Enterprises on New and Emerging Risks (ESENER),***

*machines are used for workers management or surveillance in 12% of Union undertakings. For these reasons, the provisions of this Directive pertaining to algorithmic management should apply to all workers subject to those systems.*

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1a

<https://data.europa.eu/doi/10.2759/759368>

Or. en

## Amendment 53

### Proposal for a directive

#### Recital 41

*Text proposed by the Commission*

(41) In order to ensure that digital labour platforms comply with labour legislation and regulations, social security contribution obligations, social security coordination and other relevant rules, in particular if they are established in another country than the Member State in which the platform worker is performing work, digital labour platforms should declare work performed by platform workers to the competent labour and social protection authorities of the Member State in which the work is performed, in accordance with the rules and procedures laid down in the law of the Member States concerned.

*Amendment*

(41) In order to ensure that digital labour platforms comply with labour legislation and regulations, social security contribution obligations, social security coordination and other relevant rules, ***and with a view to prevent unfair competition*** in particular if they are established in another country than the Member State in which the platform worker is performing work, digital labour platforms should declare work performed by platform workers to the competent labour and social protection authorities of the Member State in which the work is performed, in accordance with the rules and procedures laid down in the law of the Member States concerned. ***As regards to such cross-border cases, the European Labour Authority was established to facilitate and support cooperation between the competent national authorities in the provision of information to employers and workers, to foster the exchange of information, including through promoting where relevant the use of electronic exchange mechanisms between national authorities such as the***

## Amendment 54

### Proposal for a directive Recital 42

#### *Text proposed by the Commission*

(42) Information on the number of persons performing platform work through digital labour platforms on a regular basis, their contractual or employment status and the general terms and conditions applicable to those contractual relationships is essential to support labour inspectorates, social protection bodies and other relevant authorities in correctly determining the employment status of persons performing platform work and in ensuring compliance with legal obligations as well as representatives of persons performing platform work in the exercise of their representative functions and should therefore be made accessible to them. Those authorities and representatives should also have the right to ask digital labour platforms for additional clarifications and details, such as basic data on working conditions regarding working time and remuneration.

#### *Amendment*

(42) Information on the number of persons performing platform work through digital labour platforms on a regular basis, their contractual or employment status and the general terms and conditions applicable to those contractual relationships is essential to support labour inspectorates, social protection bodies and other relevant authorities in correctly determining the employment status of persons performing platform work and in ensuring compliance with legal obligations as well as *workers'* representatives of persons performing platform work in the exercise of their representative functions and should therefore be made accessible to them. Those authorities and *workers'* representatives should also have the right to ask digital labour platforms for additional clarifications and details, such as basic data on working conditions regarding working time and remuneration. *The European Labour Authority should support the collection and sharing of those data for the purpose of developing appropriate risk assessment tools.*

## Amendment 55

### Proposal for a directive Recital 44

#### *Text proposed by the Commission*

(44) Representatives of persons performing platform work should be able to represent one or several persons performing platform work in any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive. Bringing claims on behalf of or supporting several persons performing platform work is a way to facilitate proceedings that would not have been brought otherwise because of procedural and financial barriers or a fear of reprisals.

#### *Amendment*

(44) Representatives of persons performing platform work ***or subject to automated and semi-automated monitoring and decision-making systems*** should be able to represent one or several persons performing platform work in any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive. Bringing claims on behalf of or supporting several persons performing platform work is a way to facilitate proceedings that would not have been brought otherwise because of procedural and financial barriers or a fear of reprisals.

Or. en

## Amendment 56

### Proposal for a directive Recital 45

#### *Text proposed by the Commission*

(45) Platform work is characterised by the lack of a common workplace where workers can get to know each other and communicate with each other and with their representatives, also in view of defending their interests towards the employer. It is therefore necessary to create digital communication channels, in line with the digital labour platforms' work organisation, where persons performing platform work can exchange with each other and be contacted by their representatives. Digital labour platforms should create such communication channels within their digital infrastructure

#### *Amendment*

(45) Platform work is characterised by the lack of a common workplace where workers can get to know each other and communicate with each other and with their representatives, also in view of defending their interests towards the employer. It is therefore necessary to create digital communication channels, in line with the digital labour platforms' work organisation, where persons performing platform work can exchange with each other and be contacted by their representatives. Digital labour platforms should create such communication channels within their digital infrastructure

or through similarly effective means, while respecting the protection of personal data and refraining from accessing or monitoring those communications.

or through similarly effective means, while respecting the protection of personal data and refraining from accessing or monitoring those communications. ***For the same reasons, collective bargaining should be promoted by ensuring that trade unions are able to effectively exercise their role.***

Or. en

## Amendment 57

### Proposal for a directive Recital 46

#### *Text proposed by the Commission*

(46) In administrative or judicial proceedings regarding the correct determination of the employment status of persons performing platform work, the elements regarding the organisation of work allowing to establish the employment status and in particular whether the digital labour platform controls certain elements of the performance of work may be in the possession of the digital labour platform and not easily accessible to persons performing platform work and competent authorities. National courts or competent authorities should therefore be able to order the digital labour platform to disclose any relevant evidence which lies in their control, including confidential information, subject to effective measures to protect such information.

#### *Amendment*

(46) In administrative or judicial proceedings regarding the correct determination of the employment status of persons performing platform work, the elements regarding the organisation of work allowing to establish the employment status and in particular whether the digital labour platform controls ***or supervise*** certain elements of the performance ***or the quality*** of work may be in the possession of the digital labour platform and not easily accessible to persons performing platform work and competent authorities. National courts or competent authorities should therefore be able to order the digital labour platform to disclose any relevant evidence which lies in their control, including confidential information, subject to effective measures to protect such information.

Or. en

## Amendment 58

### Proposal for a directive Recital 47

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*Text proposed by the Commission*

(47) Given that Article 6, Article 7(1) and (3) and Article 8 of this Directive provide for specific rules in the context of platform work to ensure the protection of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679 and that Article 10 of this Directive applies those safeguards also in case of persons without employment contract or employment relationship, the national supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 should be competent to monitor the application of those safeguards. Chapters VI, VII and VIII of Regulation (EU) 2016/679 should apply in terms of procedural framework for the enforcement of those safeguards, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and penalties, including the competence to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.

*Amendment*

(47) Given that Article 6, Article 7(1) and (3) and Article 8 of this Directive provide for specific rules in the context of platform work ***and work subject to automated and semi-automated monitoring and decision-making systems*** to ensure the protection of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679 and that Article 10 of this Directive applies those safeguards also in case of persons without employment contract or employment relationship, the national supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 should be competent to monitor the application of those safeguards. Chapters VI, VII and VIII of Regulation (EU) 2016/679 should apply in terms of procedural framework for the enforcement of those safeguards, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and penalties, including the competence to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.

Or. en

## **Amendment 59**

### **Proposal for a directive**

#### **Recital 48**

*Text proposed by the Commission*

(48) Automated monitoring and decision-making systems used in the context of platform work involve the processing of personal data and affect the working conditions and rights of persons performing platform work. They therefore raise issues of data protection law as well as labour and social protection law. Data

*Amendment*

(48) Automated ***or semi-automated*** monitoring and decision-making systems used in the context of platform work ***and work subject to those systems*** involve the processing of personal data and affect the working conditions and rights of persons performing platform ***work or subject to those systems when performing*** work.

protection supervisory authorities and relevant labour and social protection authorities should therefore cooperate in the enforcement of this Directive, including by exchanging relevant information with each other, without prejudice to the independence of data protection supervisory authorities.

They therefore raise issues of data protection law as well as labour and social protection law. Data protection supervisory authorities and relevant labour and social protection authorities should therefore cooperate, ***including at cross border level***, in the enforcement of this Directive, including by exchanging relevant information with each other, without prejudice to the independence of data protection supervisory authorities.

Or. en

## Amendment 60

### Proposal for a directive Recital 49

#### *Text proposed by the Commission*

(49) Since the objective of this Directive, namely to improve working conditions in platform work, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

#### *Amendment*

(49) Since the objective of this Directive, namely to improve working conditions in platform work ***and work subject to automated or semi-automated monitoring and decision-making systems***, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Or. en

## Amendment 61

### Proposal for a directive Recital 50

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*Text proposed by the Commission*

(50) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain provisions which are more favourable for platform workers. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the general level of protection in the field covered by this Directive.

*Amendment*

(50) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain provisions which are more favourable for platform workers **and workers subject to automated or semi-automated monitoring and decision-making systems**. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the general level of protection in the field covered by this Directive.

Or. en

## **Amendment 62**

### **Proposal for a directive Article 1 – paragraph 1**

*Text proposed by the Commission*

1. The purpose of this Directive is to improve the working conditions of persons performing platform work by ensuring correct determination of their employment status, by promoting transparency, fairness and accountability in algorithmic management in platform work and by improving transparency in platform work, including in cross-border situations, **while supporting the conditions for the sustainable growth of digital labour platforms** in the *Union*.

*Amendment*

1. The purpose of this Directive is to improve the working conditions:

(a) of persons performing platform work by ensuring **the** correct determination of their employment status, by promoting transparency, fairness, **safety** and accountability in algorithmic management

in platform work and by improving transparency in platform work, including in cross-border situations;

***(b) of any other worker subject to automated or semi-automated monitoring and decision-making systems, by promoting transparency, fairness, safety and accountability in algorithmic management.***

Or. en

## **Amendment 63**

### **Proposal for a directive Article 1 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***In accordance with Article 10a, rights laid down in this Directive pertaining to the transparency on, and use of, automated or semi-automated monitoring and decision-making systems, the human monitoring of automated or semi-automated systems, the human review of significant decisions and those related to information and consultation and to the protection of natural persons in relation to the processing of personal data in the context of algorithmic management also apply to every worker in the Union subject to automated or semi-automated monitoring and decision-making systems.***

Or. en

## **Amendment 64**

### **Proposal for a directive Article 1 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Articles 6, 7, 8 and 9 shall also apply to every worker subject to automated or semi-automated monitoring and decision-making systems when performing work and to undertakings using those systems.**

Or. en

## **Amendment 65**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

(1) ‘digital labour platform’ means any natural or legal person **providing a commercial service which meets all of the following requirements:**

(1) ‘digital labour platform’ means any natural or legal person **using computer programs and procedures for intermediating, supervising or organising in any way the work performed by individuals, irrespective of whether that work is performed online or in a certain location;**

Or. en

## **Amendment 66**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) **it is provided, at least in part, at a distance through electronic means, such as a website or a mobile application;**

**deleted**

Or. en

## Amendment 67

### Proposal for a directive

#### Article 2 – paragraph 1 – point 1 – point b

*Text proposed by the Commission*

*Amendment*

**(b) it is provided at the request of a recipient of the service;**

**deleted**

Or. en

## Amendment 68

### Proposal for a directive

#### Article 2 – paragraph 1 – point 1 – point c

*Text proposed by the Commission*

*Amendment*

**(c) it involves, as a necessary and essential component, the organisation of work performed by individuals, irrespective of whether that work is performed online or in a certain location;**

**deleted**

Or. en

## Amendment 69

### Proposal for a directive

#### Article 2 – paragraph 1 – point 2

*Text proposed by the Commission*

*Amendment*

(2) ‘platform work’ means any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service;

(2) ‘platform work’ means any work organised **or enabled** through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service;

Or. en

## Amendment 70

### Proposal for a directive Article 2 – paragraph 1 – point 5

*Text proposed by the Commission*

(5) ‘representatives’ means ***the workers’ organisations or*** representatives ***provided for by*** national law or practices, or both;

*Amendment*

(5) ‘***workers’*** representatives’ means representatives ***of recognised trade unions in accordance with national law and practice or other persons who are freely elected or who are designated by the workers in an organisation to represent them in accordance with*** national law or practices, or both;

Or. en

## Amendment 71

### Proposal for a directive Article 2 – paragraph 1 – point 5 a (new)

*Text proposed by the Commission*

*Amendment*

(5a) ‘***automated or semi-automated monitoring and decision-making systems’*** means ***any system, software, or process that involves the use of data, machines and algorithms to make decisions or uses computations to aid or replace management decisions or policy that impact work organisation, opportunities, access, freedoms, rights and safety of workers;***

Or. en

## Amendment 72

### Proposal for a directive Article 2 – paragraph 2

*Text proposed by the Commission*

2. The definition of digital labour platforms laid down in paragraph 1, point (1), shall not include providers of a service whose **primary** purpose is to exploit or share assets. It shall be limited to providers of a service for which the organisation of work performed by the individual constitutes not merely a minor and purely ancillary component.

*Amendment*

2. The definition of digital labour platforms laid down in paragraph 1, point (1), shall not include providers of a service whose purpose is to exploit or share assets. It shall be limited to providers of a service for which the organisation of work performed by the individual constitutes not merely a minor and purely ancillary component.

Or. en

### **Amendment 73**

#### **Proposal for a directive Article 3 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Member States shall have appropriate ***and effective*** 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.

Or. en

### **Amendment 74**

#### **Proposal for a directive Article 3 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. The determination of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, taking into account the use of algorithms in the organisation of platform work, irrespective of how the relationship is classified in any contractual arrangement that may have been agreed between the parties involved. Where the existence of an employment relationship is established based on facts, the party *or parties* assuming the obligations of the employer *in relation to labour law, including sectorial obligations established by collective agreements, income tax and financing of social protection* shall be clearly identified in accordance with national legal systems, *taking into account Article 12b on subcontracting liability.*

Or. en

**Amendment 75**

**Proposal for a directive  
Article 3 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Digital labour platforms exerting the prerogatives of employers are undertakings and shall comply with the corresponding employers' obligations under national law and collective agreements applicable in the sector of activity. Platform workers shall fully enjoy the status of worker in line with national law and sectorial collective agreements, including the right to join a trade union, to organise, and bargain collectively.**

Or. en



## Amendment 76

### Proposal for a directive

#### Article 4 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. The contractual relationship between a digital labour platform ***that controls, within the meaning of paragraph 2, the performance of work*** and a person performing platform work through that platform shall be legally presumed to be an employment relationship. To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems.

*Amendment*

1. The contractual relationship between a digital labour platform, and a person performing platform work through that platform shall be legally presumed to be an employment relationship. To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems.

Or. en

## Amendment 77

### Proposal for a directive

#### Article 4 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

The legal presumption shall apply in all relevant administrative and legal proceedings. Competent authorities verifying compliance with or enforcing relevant legislation shall be able to rely on that presumption.

*Amendment*

The legal presumption shall apply in all relevant administrative ***procedures and administrative*** and legal proceedings. Competent authorities ***and bodies responsible for registering administrative procedures***, verifying compliance with or enforcing relevant legislation shall be able to rely on that presumption.

Or. en

## Amendment 78

### Proposal for a directive

#### Article 4 – paragraph 2

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*Text proposed by the Commission*

*Amendment*

**2. Controlling the performance of work within the meaning of paragraph 1 shall be understood as fulfilling at least two of the following:**

**deleted**

**(a) effectively determining, or setting upper limits for the level of remuneration;**

**(b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work;**

**(c) supervising the performance of work or verifying the quality of the results of the work including by electronic means;**

**(d) effectively restricting the freedom, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;**

**(e) effectively restricting the possibility to build a client base or to perform work for any third party.**

Or. en

## **Amendment 79**

### **Proposal for a directive**

#### **Article 4 – paragraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

**3. Member States shall take supporting measures to ensure the effective implementation of the legal presumption referred to in paragraph 1 *while taking into account the impact on start-ups, avoiding capturing the genuine self-employed and supporting the sustainable growth of digital labour platforms.* In particular they**

**3. Member States shall take supporting measures to ensure the effective implementation of the legal presumption referred to in paragraph 1, *in order to ensure the effective protection for workers performing work in the context of an employment relationship.* In particular**

shall:

they shall:

Or. en

## Amendment 80

### Proposal for a directive

#### Article 4 – paragraph 3 – point c

*Text proposed by the Commission*

(c) develop guidance for enforcement authorities to proactively target **and** pursue non-compliant digital labour platforms;

*Amendment*

(c) develop guidance for ***national competent and*** enforcement authorities to proactively ***identify***, target, pursue ***and sanction*** non-compliant digital labour platforms;

Or. en

## Amendment 81

### Proposal for a directive

#### Article 4 – paragraph 3 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) develop guidance and establish procedures for competent administrative authorities and institutions to proactively apply the legal presumption in the administrative procedures and to share data with other relevant authorities in order to apply the legal presumption in the processing and registration of contractual relations and social security related data;***

Or. en

## Amendment 82

### Proposal for a directive

#### Article 4 – paragraph 3 – point d

PE731.497v01-00

64/105

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*Text proposed by the Commission*

(d) strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of labour law, while ensuring that such controls and inspections are proportionate and non-discriminatory.

*Amendment*

(d) strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of labour law, while ensuring that such controls and inspections are proportionate and non-discriminatory.  
***Member States shall be encouraged to determine every year a national target for the number of inspections to be carried out in respect of the sectors of activity in which digital labour platforms operate in order to determine the correct classification of workers;***

Or. en

**Amendment 83**

**Proposal for a directive**

**Article 4 – paragraph 3 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) provide for an automatic and immediate inspection by labour inspectorates or the bodies responsible for the enforcement of labour law every time a person performing platform work is newly recognised as platform worker, in order to verify the status of the other persons performing platform work for the same digital labour platform;***

Or. en

**Amendment 84**

**Proposal for a directive**

**Article 4 – paragraph 3 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

***(db) provide for trainings for labour inspectorates or the bodies responsible for the enforcement of labour law in order to strengthen their capacities, especially in the technological field, in order to enable them to effectively comply with points (ca) and (da).***

Or. en

## **Amendment 85**

### **Proposal for a directive Article 4 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

4. With regard to contractual relationships entered into before and still ongoing on the date set out in Article 21(1), the legal presumption referred to in paragraph 1 shall only apply to the period starting from that date ***without prejudice to other applicable national and Union law, in particular Directive (EU) 2019/1152 that could apply before that date.***

Or. en

## **Amendment 86**

### **Proposal for a directive Article 5 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

Where the digital labour platform argues that the contractual relationship in question is not an employment relationship ***as defined by the law, collective agreements or practice in force in the Member State in question, with consideration to the***

Where the digital labour platform argues that the contractual relationship in question is not an employment relationship, the burden of proof shall be on the digital labour platform. Such proceedings shall not have suspensive effect on the

*case-law of the Court of Justice*, the burden of proof shall be on the digital labour platform. Such proceedings shall not have suspensive effect on the application of the legal presumption.

application of the legal presumption.

Or. en

## Amendment 87

### Proposal for a directive Article 5 – paragraph 3

#### *Text proposed by the Commission*

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

#### *Amendment*

Where the person performing the platform work argues that the contractual relationship in question is not an employment relationship, the digital labour platform shall be required to assist the proper resolution of the proceedings, notably by providing all relevant information held by it.

Or. en

## Amendment 88

### Proposal for a directive Article 6 – title

#### *Text proposed by the Commission*

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

#### *Amendment*

Transparency on and use of automated *or semi-automated* monitoring and decision-making systems

Or. en

## Amendment 89

### Proposal for a directive

#### Article 6 – paragraph 1 – introductory part

##### *Text proposed by the Commission*

1. Without prejudice to the obligations and rights of digital labour platforms and platform workers under Directive (EU) 2019/1152, Member States shall require digital labour platforms to inform platform workers of:

##### *Amendment*

1. Without prejudice to the obligations and rights of digital labour platforms and platform workers under **Regulation (EU) 2016/679**, Directive (EU) 2019/1152 **and Directive 89/391/EEC**, Member States shall require digital labour platforms to inform, **in advance**, platform workers, **workers representatives and the labour inspectorate and competent authorities**, of:

Or. en

## Amendment 90

### Proposal for a directive

#### Article 6 – paragraph 1 – point a

##### *Text proposed by the Commission*

(a) automated monitoring systems which are used to monitor, supervise or evaluate the work performance of platform workers through electronic means;

##### *Amendment*

(a) automated **or semi-automated** monitoring systems which are used to monitor, supervise or evaluate the work performance of platform workers through electronic means;

Or. en

## Amendment 91

### Proposal for a directive

#### Article 6 – paragraph 1 – point b

##### *Text proposed by the Commission*

(b) automated decision-making systems which are used to take or support decisions that significantly affect those

##### *Amendment*

(b) automated **or semi-automated** decision-making systems which are used to take or support decisions that significantly

platform workers' working conditions, in particular their access to work assignments, their earnings, their occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account.

affect those platform workers' working conditions, in particular ***their recruitment***, their access to work assignments, their earnings, their occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account.

Or. en

## Amendment 92

### Proposal for a directive

#### Article 6 – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***That information shall be provided irrespectively of the automated or semi-automated monitoring and decision-making systems being managed by the digital labour platform or a sub-contracted service provider which sells its management services to the platform.***

Or. en

## Amendment 93

### Proposal for a directive

#### Article 6 – paragraph 2 – point a – introductory part

*Text proposed by the Commission*

*Amendment*

(a) as regards automated monitoring systems:

(a) as regards automated ***or semi-automated*** monitoring systems:

Or. en



## Amendment 94

### Proposal for a directive

#### Article 6 – paragraph 2 – point a – point ii a (new)

*Text proposed by the Commission*

*Amendment*

***(iia) the goals and purposes of the monitoring;***

Or. en

## Amendment 95

### Proposal for a directive

#### Article 6 – paragraph 2 – point a – point ii b (new)

*Text proposed by the Commission*

*Amendment*

***(iib) the functioning and mode of operation of features that affect the employment relationship;***

Or. en

## Amendment 96

### Proposal for a directive

#### Article 6 – paragraph 2 – point a – point ii c (new)

*Text proposed by the Commission*

*Amendment*

***(iic) an explanation of how the system complies with applicable law and collective agreements;***

Or. en

## Amendment 97

### Proposal for a directive

#### Article 6 – paragraph 2 – point b – introductory part

*Text proposed by the Commission*

(b) as regards automated decision-making systems:

*Amendment*

(b) as regards automated ***or semi-automated*** decision-making systems:

Or. en

## **Amendment 98**

### **Proposal for a directive**

#### **Article 6 – paragraph 2 – point b – point iii**

*Text proposed by the Commission*

(iii) the main parameters that such systems take into account and the relative importance of those main parameters in the automated decision-making, including the way in which the platform worker's personal data or behaviour influence the decisions;

*Amendment*

(iii) the ***categories of data and*** main parameters that such systems take into account and the relative importance of those main parameters in the automated ***or semi-automated*** decision-making, including the way in which the platform worker's personal data or behaviour influence the decisions ***and the performance evaluation mechanisms;***

Or. en

## **Amendment 99**

### **Proposal for a directive**

#### **Article 6 – paragraph 2 – point b – point iv**

*Text proposed by the Commission*

(iv) the grounds for decisions to restrict, suspend ***or terminate*** the platform worker's account, to refuse the remuneration for work performed by the platform worker, on the platform worker's contractual status or any decision with similar effects.

*Amendment*

(iv) the grounds for decisions to restrict, suspend the platform worker's account, to refuse the remuneration for work performed by the platform worker, on the platform worker's contractual status or any decision with similar effects. ***These decisions shall be taken in line with applicable provisions provided by national legislation and collective agreements;***

Or. en

## Amendment 100

### Proposal for a directive

#### Article 6 – paragraph 2 – point b – point iv a (new)

*Text proposed by the Commission*

*Amendment*

***(iva) an explanation of how the system complies with national law and collective agreements.***

Or. en

## Amendment 101

### Proposal for a directive

#### Article 6 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Decisions that have an impact on working conditions, health and safety and on the contractual relationship or introducing changes to the agreed terms of the employment relationship, and decisions suspending or terminating the contractual relationship and the platform worker's account, shall not be taken by automated or semi-automated monitoring and decision-making systems and shall be taken in line with national law and collective agreements.***

Or. en

## Amendment 102

### Proposal for a directive

#### Article 6 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. Digital labour platforms shall provide the information referred to in

3. Digital labour platforms shall provide ***to workers and***

paragraph 2 in the form of a document which may be in electronic format. They shall provide that information at the latest on the first working day, as well as ***in the event of substantial*** changes and at any time upon the platform workers' request. The information shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

***workers' representatives in due time as to allow a thorough examination and effective consultation*** the information referred to in paragraph 2 in the form of a document which may be in electronic format. They shall provide that information ***in due time and*** at the latest on the first working day, as well as ***before any changes affecting working conditions or the organisation of work*** and at any time upon the platform workers' request. The information shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

Or. en

### Amendment 103

#### Proposal for a directive Article 6 – paragraph 4

##### *Text proposed by the Commission*

4. Digital labour platforms shall make the information referred to in paragraph 2 available to platform workers' representatives and national labour authorities upon their request.

##### *Amendment*

4. Digital labour platforms shall make the information referred to in paragraph 2 available to platform workers' ***and workers'*** representatives and national labour authorities upon their request.

Or. en

### Amendment 104

#### Proposal for a directive Article 6 – paragraph 4 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

***4a. The features of automated or semi-automated monitoring and decision-making systems having an impact on working conditions shall be object of collective bargaining and collective***

*agreements between the parties.*

Or. en

## **Amendment 105**

### **Proposal for a directive**

#### **Article 6 – paragraph 5 – introductory part**

*Text proposed by the Commission*

5. Digital labour platforms shall not process any personal data concerning platform workers that are not intrinsically connected to and strictly necessary for the performance of the contract between the platform worker and the digital labour platform. In particular they shall not:

*Amendment*

5. Digital labour platforms shall not **access, collect or** process any personal data concerning platform workers that are not intrinsically connected to and strictly necessary for the performance of the contract between the platform worker and the digital labour platform, **in line with Regulation (EU) 2016/679**. In particular they shall not:

Or. en

## **Amendment 106**

### **Proposal for a directive**

#### **Article 6 – paragraph 5 – point a**

*Text proposed by the Commission*

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

*Amendment*

(a) **access, collect or** process any personal data on the emotional or psychological state of the platform worker;

Or. en

## **Amendment 107**

### **Proposal for a directive**

#### **Article 6 – paragraph 5 – point b**

*Text proposed by the Commission*

(b) process any personal data relating to the health of the platform worker, except in cases referred to in Article 9(2), points (b) to (j) of Regulation (EU) 2016/679;

*Amendment*

(b) **access, collect or** process any personal data relating to the health of the platform worker, except in cases referred to in Article 9(2), points (b) to (j) of Regulation (EU) 2016/679;

Or. en

**Amendment 108**

**Proposal for a directive  
Article 6 – paragraph 5 – point c**

*Text proposed by the Commission*

(c) process any personal data in relation to private conversations, including exchanges with platform workers' representatives;

*Amendment*

(c) **access, collect or** process any personal data in relation to private conversations, including exchanges with platform workers' **and workers'** representatives;

Or. en

**Amendment 109**

**Proposal for a directive  
Article 6 – paragraph 5 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

**(ca) access, collect or process any personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, disability or state of health, or trade union membership and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, or data concerning a natural person's sex life or sexual orientation, chronic diseases or HIV status;**

## Amendment 110

### Proposal for a directive

#### Article 6 – paragraph 5 – point d a (new)

*Text proposed by the Commission*

*Amendment*

***(da) make use of biometric checks or constant video surveillance of work performance.***

Or. en

## Amendment 111

### Proposal for a directive

#### Article 6 – paragraph 5 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***The protection of personal data as referred to in this paragraph shall apply to all platform workers from the recruitment stages before the start of the employment relationship.***

Or. en

## Amendment 112

### Proposal for a directive

#### Article 6 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. Digital labour platforms shall, prior to their introduction, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data of platform workers and shall seek the views of data subjects or their representatives on the intended***



*processing. The information shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in order to allow platform workers and workers' representatives to prepare, where necessary, for consultation.*

Or. en

## **Amendment 113**

### **Proposal for a directive Article 6 – paragraph 5 b (new)**

*Text proposed by the Commission*

*Amendment*

**5b. Digital labour platforms shall inform platform workers and workers' representatives, about any transfer of personal data within a group of undertakings, or a group of undertakings engaged in a joint economic activity making use of automated or semi-automated monitoring systems.**

Or. en

## **Amendment 114**

### **Proposal for a directive Article 6 – paragraph 5 c (new)**

*Text proposed by the Commission*

*Amendment*

**5c. Member States shall ensure that platform workers enjoy the right to data portability, including reputational data, (and the right not to transport those data), the right to rectification, erasure and to be forgotten in accordance with Regulation (EU) 2016/679.**

Or. en

## Amendment 115

### Proposal for a directive Article 6 – paragraph 5 d (new)

*Text proposed by the Commission*

*Amendment*

**5d. A worker's informed consent shall not replace the obligations set out in this Article.**

Or. en

## Amendment 116

### Proposal for a directive Article 7 – title

*Text proposed by the Commission*

*Amendment*

Human **monitoring** of automated systems

Human **oversight** of automated **or semi-automated** systems

Or. en

## Amendment 117

### Proposal for a directive Article 7 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that digital labour platforms regularly **monitor** and evaluate the impact of individual decisions taken or supported by automated monitoring and decision-making systems, as referred to in Article 6(1), on working conditions.

1. Member States shall ensure that digital labour platforms regularly **oversight** and evaluate the impact of individual decisions taken or supported by automated **or semi-automated** monitoring and decision-making systems, as referred to in Article 6(1), on working conditions. **Member States shall ensure that digital labour platforms provide for human oversight of all decisions affecting working conditions, health and safety or introducing changes to the agreed terms**

*of the employment relationship.*

Or. en

## **Amendment 118**

### **Proposal for a directive**

#### **Article 7 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) *evaluate* the risks of automated monitoring and decision-making systems to the safety and health of platform workers, *in particular* as regards possible risks of work-related accidents, psychosocial and ergonomic risks;

*Amendment*

(a) *avoid* the risks, *or evaluate and prevent the risks that cannot be avoided* of automated *or semi-automated* monitoring and decision-making systems to the safety and health of platform workers, *including* as regards possible risks of work-related accidents, psychosocial and ergonomic risks;

Or. en

## **Amendment 119**

### **Proposal for a directive**

#### **Article 7 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

(aa) *evaluate the risk of discrimination resulting from decisions taken by those systems;*

Or. en

## **Amendment 120**

### **Proposal for a directive**

#### **Article 7 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

They shall not use automated monitoring

They shall not use automated *or semi-*

and decision-making systems in any manner that puts undue pressure on platform workers or otherwise puts at risk the physical and mental health of platform workers.

*automated* monitoring and decision-making systems in any manner that puts undue pressure on platform workers or otherwise puts at risk the physical and mental health of platform workers.

Or. en

## Amendment 121

### Proposal for a directive Article 7 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Digital labour platforms shall consult platform workers and workers' representatives and allow them to take part in discussions on all questions relating to safety and health at work. In particular, digital labour platforms shall consult platform workers and workers' representatives with regard to the planning and introduction of new technologies. Where automated or semi-automated monitoring and decision-making systems are in use, digital labour platforms shall periodically, and at least once a year, inform and consult workers' representatives with regard to the matters referred to in paragraph 2.**

Or. en

## Amendment 122

### Proposal for a directive Article 7 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. Member States shall require digital labour platforms to ensure sufficient human resources for **monitoring** the impact of individual decisions taken or supported

3. Member States shall require digital labour platforms to ensure sufficient human resources for **overseeing** the impact of individual decisions taken or supported

by automated monitoring and decision-making systems in accordance with this Article. The persons charged by the digital labour platform with the function of monitoring shall have the necessary competence, training and authority to exercise that function. They shall enjoy protection from dismissal, disciplinary measures or other adverse treatment for overriding automated decisions or suggestions for decisions.

by automated *or semi-automated* monitoring and decision-making systems in accordance with this Article. The persons charged by the digital labour platform with the function of monitoring shall have the necessary competence, training and authority to exercise that function, *including influencing and reverting automated decision*. They shall enjoy protection from dismissal, disciplinary measures or other adverse treatment for overriding automated *or semi-automated* decisions or suggestions for decisions.

Or. en

### Amendment 123

#### Proposal for a directive Article 8 – title

*Text proposed by the Commission*

Human review of *significant* decisions

*Amendment*

Human review of decisions

Or. en

### Amendment 124

#### Proposal for a directive Article 8 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. Member States shall ensure that platform workers have the right to obtain an explanation from the digital labour platform for any decision taken or supported by an automated decision-making system that *significantly* affects the platform worker's working conditions, as referred to in Article 6(1), point (b). In particular, Member States shall ensure that digital labour platforms provide platform

*Amendment*

1. Member States shall ensure that platform workers have the right to obtain an explanation from the digital labour platform for any decision taken or supported by an automated *or semi-automated* decision-making system that affects the platform worker's working conditions, as referred to in Article 6(1), point (b). In particular, Member States shall ensure that digital labour platforms

workers with access to a contact person designated by the digital labour platform to discuss and to clarify the facts, circumstances and reasons having led to the decision. Digital labour platforms shall ensure that such contact persons have the necessary competence, training and authority to exercise that function.

provide platform workers with access to a contact person designated by the digital labour platform to discuss and to clarify the facts, circumstances and reasons having led to the decision. Digital labour platforms shall ensure that such contact persons have the necessary competence, training and authority to exercise that function.

Or. en

## Amendment 125

### Proposal for a directive Article 8 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

Digital labour platforms shall provide the platform worker with a written statement of the reasons for any decision supported by an automated ***or semi-automated*** decision-making system to restrict, suspend or terminate the platform worker's account, any decision to refuse the remuneration for work performed by the platform worker, any decision on the platform worker's contractual status or any decision ***implying a change in the agreed terms of the employment relationship or*** with similar effects. ***Those decisions shall be taken in accordance with national law or practice and collective agreements.***

Or. en

## Amendment 126

### Proposal for a directive Article 8 – paragraph 2 – introductory part

#### *Text proposed by the Commission*

2. ***Where*** platform workers ***are not satisfied with the explanation or the***

#### *Amendment*

2. Platform workers ***and workers' representatives*** shall have the right to

*written statement of reasons obtained or consider that the decision referred to in paragraph 1 infringes their rights, they shall have the right to request the digital labour platform to review **that decision**. The digital labour platform shall respond to such request by providing the platform worker with a substantiated reply without undue delay and in any event within one week of receipt of the request.*

request the digital labour platform to review *the decisions referred to in paragraph 1*. The digital labour platform shall respond to such request by providing the platform worker with a substantiated reply without undue delay and in any event within one week of receipt of the request.

Or. en

### Amendment 127

#### Proposal for a directive Article 8 – paragraph 3

##### *Text proposed by the Commission*

3. Where the decision referred to in paragraph 1 infringes the platform worker's rights, the digital labour platform shall rectify that decision without delay or, where such rectification is not possible, offer adequate compensation.

##### *Amendment*

3. Where the decision referred to in paragraph 1 infringes the platform worker's rights, the digital labour platform shall rectify that decision without delay or, where such rectification is not possible, offer adequate compensation, ***which is increased in the case of an infringement of the fundamental rights of the platform worker.***

Or. en

### Amendment 128

#### Proposal for a directive Article 8 – paragraph 4

##### *Text proposed by the Commission*

4. This Article shall be without prejudice to dismissal procedures laid down in national law.

##### *Amendment*

4. This Article shall be without prejudice to dismissal procedures laid down in national law ***or practice and collective agreements.***

Or. en



## Amendment 129

### Proposal for a directive Article 9 – paragraph 1

*Text proposed by the Commission*

1. Without prejudice to the rights and obligations under Directive 2002/14/EC, Member States shall ensure information and consultation of platform workers' representatives or, where there are no such representatives, of the platform workers concerned by digital labour platforms, on decisions likely to lead to the introduction of or **substantial** changes in the use of automated monitoring and decision-making systems referred to in Article 6(1), in accordance with this Article.

*Amendment*

1. Without prejudice to the rights and obligations under Directive 2002/14/EC, Member States shall ensure information and **effective** consultation of platform workers' **and workers' representatives** or, where there are no such representatives, of the platform workers concerned by digital labour platforms, on decisions likely to lead to the introduction of or changes **affecting working conditions and health and safety** in the use of automated **or semi-automated** monitoring and decision-making systems referred to in Article 6(1), in accordance with this Article. **Social partners shall conduct effective consultations in good faith and foster social dialogue on those issues in order to codetermine them.**

Or. en

## Amendment 130

### Proposal for a directive Article 9 – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

3. The platform workers' **and workers'** representatives or the platform workers concerned may be assisted by an expert of their choice, in so far as this is necessary for them to examine the matter that is the subject of information and consultation and formulate an opinion. Where a digital labour platform has more than **250** workers in a Member State, the expenses for the expert shall be borne by

the digital labour platform, provided that they are proportionate.

the digital labour platform, provided that they are proportionate.

Or. en

## Amendment 131

### Proposal for a directive Article 9 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. Information and effective consultation shall be ensured irrespectively of the automated or semi-automated monitoring and decision-making systems being managed by the digital labour platform or a sub-contracted service provider which sells its management services to the platform.**

Or. en

## Amendment 132

### Proposal for a directive Article 10 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Article 6, **Article 7(1) and (3) and Article 8** shall also apply to persons performing platform work who do not have an employment contract or employment relationship.

1. **Articles 6, 7, 8 and 15** shall also apply to persons performing platform work who do not have an employment contract or employment relationship **for those aspects that can apply to genuine self-employed and without prejudice to the full and effective application of Articles 3 and 4.**

Or. en

## Amendment 133

### Proposal for a directive Article 10 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 10a*

***Workers subject to automated or semi-automated monitoring and decision-making systems***

***Articles 6, 7, 8 and 9 shall also apply to any worker, irrespective of status, subject to automated or semi-automated monitoring and decision-making systems and to any undertaking that uses automated or semi-automated monitoring and decision-making systems.***

Or. en

## Amendment 134

### Proposal for a directive Article 11 – paragraph 1

*Text proposed by the Commission*

*Amendment*

Without prejudice to Regulations (EC) No 883/2004<sup>69</sup> and 987/2009<sup>70</sup> of the European Parliament and of the Council, Member States shall require digital labour platforms ***which are employers*** to declare work performed by platform ***workers*** to the competent labour and social protection authorities of the Member State in which the work is performed and to share relevant data with those authorities, in accordance with the rules and procedures laid down in the law of the Member States concerned.

Without prejudice to Regulations (EC) No 883/2004<sup>69</sup> and 987/2009<sup>70</sup> of the European Parliament and of the Council, Member States shall require digital labour platforms to declare work performed by ***persons performing platform work , and their employment status*** to the competent labour, ***tax*** and social protection authorities of the Member State in which the work is performed and to share relevant data with those authorities, in accordance with the rules and procedures laid down in the law of the Member States concerned, ***also in order to comply with their fiscal and social protection obligations in accordance with national law or practice.***

<sup>69</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

<sup>70</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

<sup>69</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

<sup>70</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

Or. en

## Amendment 135

### Proposal for a directive Article 11 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Member States shall apply effective and dissuasive sanctions to digital labour platforms that fail to comply with the obligations referred to in paragraph 1, including the suspension of the licence to operate in cases of persistent infringements.***

Or. en

## Amendment 136

### Proposal for a directive Article 12 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. Where labour, social protection and other relevant authorities exercise their functions in ensuring compliance with legal obligations applicable to the employment status of persons performing platform work and where the

1. Where labour, ***health and safety***, social protection and other relevant authorities exercise their functions in ensuring compliance with legal obligations applicable to the employment status of persons performing platform work and

representatives of persons performing platform work exercise their representative functions, Member States shall ensure that digital labour platforms make the following information available to them:

where the representatives of persons performing platform work exercise their representative functions, Member States shall ensure that digital labour platforms make the following information available to them:

Or. en

### **Amendment 137**

#### **Proposal for a directive Article 12 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the number of persons performing platform work through the digital labour platform ***concerned on a regular basis*** and their contractual or employment status;

*Amendment*

(a) the number of persons performing platform work through the digital labour platform and their contractual or employment status;

Or. en

### **Amendment 138**

#### **Proposal for a directive Article 12 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) a copy of the employment contracts, in accordance with Regulation (EU) 2016/679;***

Or. en

### **Amendment 139**

#### **Proposal for a directive Article 12 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the general terms and conditions applicable to those contractual relationships, ***provided that those terms and conditions are unilaterally determined by the digital labour platform and apply to a large number of contractual relationships.***

*Amendment*

(b) the general terms and conditions applicable to those contractual relationships.

Or. en

### **Amendment 140**

#### **Proposal for a directive Article 12 – paragraph 3**

*Text proposed by the Commission*

3. Labour, social protection and other relevant authorities and representatives of persons performing platform work shall have the right to ask digital labour platforms for additional clarifications and details regarding any of the data provided. The digital labour platforms shall respond to such request within ***a reasonable period of time*** by providing a substantiated reply.

*Amendment*

3. Labour, social protection and other relevant authorities ***and workers*** representatives of persons performing platform work shall have the right to ask digital labour platforms for additional clarifications and details regarding any of the data provided. The digital labour platforms shall respond to such request within ***one month*** by providing a substantiated reply.

Or. en

### **Amendment 141**

#### **Proposal for a directive Article 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 12a***

***Cooperation in crossborder cases***

***1. The competent labour, social protection and tax authorities shall***

*exchange information with respect to persons performing platform work in a Member State different from that in which the digital labour platform is established. To that end, a specific module for the exchange of information on the relevant aspects of cross-border persons performing platform work shall be set up in the Commission's Internal Market Information System.*

*2. For cases having a cross-border relevance, the European Labour Authority shall facilitate and support cooperation between the competent national authorities in charge of monitoring the enforcement of labour mobility and social security coordination legislation, as well as to tackle undeclared work, in particular to support the provision of information to employers and workers as regards to their rights and obligations stemming from Union law, promote enhanced cooperation and exchange of information between Member States, and coordinate and support concerted and joint inspections.*

Or. en

## **Amendment 142**

### **Proposal for a directive Article 12 b (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 12b*

##### *Subcontracting liability*

*1. In order to tackle fraud and abuse with regard to the provisions of this Directive, Member States may, after consulting the relevant social partners in accordance with national law or practice, take additional measures on a non-discriminatory and proportionate basis in order to ensure that, in the event of a*



*subcontracting chain, platform workers have an effective remedy whereby the digital labour platform of which the employer (service provider) is a direct subcontractor can be held liable, in addition to or in the place of the employer, with respect to any outstanding net remuneration corresponding to the minimum rates of pay and contributions due to the common funds or institutions of social partners.*

*2. Member States shall provide for measures to ensure that in subcontracting chains posted workers have an effective remedy whereby the digital labour platform of which the employer is a direct subcontractor can be held liable, in addition to or in the place of the employer, for any infringement of the platform workers' rights provided for in this Directive.*

*3. The liability of digital labour platforms under this Article shall be limited to worker's rights acquired under the contractual relationship between the contractor and the subcontractor.*

*4. Member States may, in accordance with Union law, provide for more stringent liability rules under national law on a non-discriminatory and proportionate basis with regard to the scope and range of subcontracting liability.*

*5. Member States may provide that a contractor that has undertaken due diligence obligations in accordance with national law or practice shall not be liable.*

*6. Without prejudice to paragraphs 1, 2 and 3, Member States may take other appropriate enforcement measures, in accordance with Union and national law and practice, which provide for, in a direct subcontracting relationship, effective and proportionate sanctions against the contractor, to tackle fraud and abuse in situations when workers have*

*difficulties in obtaining their rights.*

**7. Member States shall inform the Commission about measures taken under this Article.**

**8. The Commission shall closely monitor the application of this Article.**

Or. en

## Amendment 143

### Proposal for a directive Article 13 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

Without prejudice to Articles 79 and 82 of Regulation (EU) 2016/679 **and Article 13(1) of Directive 2009/52/EC**, Member States shall ensure that persons performing platform work, including those whose employment or other contractual relationship has ended, have access to **appropriate, speedy, free of charge, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship and** effective and impartial dispute resolution and a right to redress, including adequate compensation, in the case of infringements of their rights arising from this Directive.

Or. en

## Amendment 144

### Proposal for a directive Article 14 – title

*Text proposed by the Commission*

Procedures on behalf or in support of persons performing platform work

*Amendment*

Procedures on behalf or in support of persons performing platform work **and**

*workers subject to automated or semi-automated monitoring or decision-making systems*

Or. en

## Amendment 145

### Proposal for a directive Article 14 – paragraph 1

*Text proposed by the Commission*

1. Without prejudice to Article 80 of Regulation (EU) 2016/679, Member States shall ensure that representatives of persons performing platform work or *other legal entities which have, in accordance with the criteria laid down by national law or practice, a legitimate interest in defending the rights of persons performing platform work*, may engage in any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive. They may act on behalf or in support of a person performing platform work in the case of an infringement of any right or obligation arising from this Directive, with that person's approval.

*Amendment*

1. Without prejudice to Article 80 of Regulation (EU) 2016/679, **Article 13(2) of Directive 2009/52/EC and in accordance with Directive 2002/14/EC**, Member States shall ensure that *trade unions or* representatives of persons performing platform work or *workers subject to automated or semi-automated monitoring or decision-making systems* may engage in any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive. They may act on behalf or in support of a person performing platform work *or a worker subject to automated or semi-automated monitoring or decision-making systems* in the case of an infringement of any right or obligation arising from this Directive, with that person's approval *where relevant and in accordance with national law or practice*.

Or. en

## Amendment 146

### Proposal for a directive Article 14 – paragraph 2

*Text proposed by the Commission*

2. Representatives of persons

*Amendment*

2. **Trade unions or** representatives of

performing platform work shall also have the right to act on behalf or in support of several persons performing platform work, with those persons' approval.

persons performing platform work shall also have the right to act on behalf or in support of several persons performing platform work, with those persons' approval ***where relevant and in accordance with national law or practice.***

Or. en

## **Amendment 147**

### **Proposal for a directive Article 14 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Paragraphs 1 and 2 shall apply without prejudice to other competences and collective rights of the social partners and workers' representatives, where applicable, including the right to take action on behalf of a collective interest, in accordance with national law or practice.***

Or. en

## **Amendment 148**

### **Proposal for a directive Article 14 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Paragraphs 1 and 2 shall apply without prejudice to national rules of procedure concerning representation and defence in court proceedings.***

Or. en

## Amendment 149

### Proposal for a directive Article 15 – paragraph 1

#### *Text proposed by the Commission*

Member States shall take the necessary measures to ensure that digital labour platforms create the possibility for persons performing platform work to contact and communicate with each other, and to be contacted by representatives of persons performing platform work, through the digital labour platforms' digital infrastructure or similarly effective means, while complying with the obligations under Regulation (EU) 2016/679. Member States shall require digital labour platforms to refrain from accessing or monitoring those contacts and communications.

#### *Amendment*

Member States shall take the necessary measures to ensure that digital labour platforms create the possibility for persons performing platform work to contact and communicate with each other, and to be contacted by **workers'** representatives of persons performing platform work, through the digital labour platforms' digital infrastructure or similarly effective means ***in visible and immediately accessible way***, while complying with the obligations under Regulation (EU) 2016/679. Member States shall require digital labour platforms to refrain from accessing or monitoring those contacts and communications ***and shall provide for adequate sanctions in this regard, in accordance with national law.***

Or. en

## Amendment 150

### Proposal for a directive Article 15 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

#### ***Article 15a***

#### ***Promotion of collective bargaining in platform work***

***Without prejudice to the full respect of the autonomy of social partners, Member States shall promote collective bargaining in platform work in order to tackle working conditions by both of the following:***

***(a) ensuring that digital labour platforms, taking into account the size and capacity of the undertaking***

*concerned, provide workers' representatives with relevant information;*

*(b) ensuring that workers' representatives have the right to access platform workers, to meet and contact workers individually or collectively for the purpose of organising workers, negotiating wages on their behalf and representing them.*

*Digital labour platforms shall refrain from any act or omission that could directly or indirectly undermine the right to unionise or to join a trade union, or which discriminate against workers and trade union representatives who participate or wish to participate in collective bargaining.*

Or. en

## Amendment 151

### Proposal for a directive Article 16 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall ensure that in proceedings concerning a claim regarding correct determination of the employment status of persons performing platform work, national courts or competent authorities are able to order the digital labour platform to disclose any relevant evidence which lies in their control.

#### *Amendment*

1. Member States shall ensure that in proceedings concerning a claim regarding correct determination of the employment status of persons performing platform work, national courts or competent authorities are able to order the digital labour platform to disclose any relevant evidence which lies in their control, ***regardless of where the digital labour platform is established and where the platform commissions contractors to ensure part of the algorithmic management.***

Or. en

## Amendment 152

### Proposal for a directive Article 17 – paragraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

Member States shall introduce the measures necessary to protect persons performing platform work **and workers subject to automated or semi-automated monitoring and decision-making systems**, including those who are their representatives, from any adverse treatment by the digital labour platform **or any undertaking using automated or semi-automated monitoring and decision-making systems** and from any adverse consequences resulting from a complaint lodged with the digital labour platform **or the undertaking using those systems**, or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive. **The measures shall include the creation of accessible and effective complaint mechanisms.**

Or. en

## Amendment 153

### Proposal for a directive Article 18 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall take the necessary measures to prohibit the dismissal or its equivalent and all preparations for dismissal or its equivalent of persons performing platform work, on the grounds that they have exercised the rights provided for in this Directive.

#### *Amendment*

1. Member States shall take the necessary measures to prohibit the dismissal or its equivalent and all preparations for dismissal or its equivalent of persons performing platform work **or workers subject to automated or semi-automated monitoring and decision-making systems**, on the grounds that they have exercised the rights provided for in this Directive.

**Amendment 154****Proposal for a directive  
Article 18 – paragraph 2***Text proposed by the Commission*

2. Persons performing platform work who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in this Directive, may request the digital labour platform to provide duly substantiated grounds for the dismissal or the equivalent measures. The digital labour platform shall provide those grounds in writing.

*Amendment*

2. Persons performing platform work ***or workers subject to automated or semi-automated monitoring and decision-making systems*** who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in this Directive, may request the digital labour platform ***or the undertaking using automated or semi-automated monitoring and decision-making systems*** to provide duly substantiated grounds for the dismissal or the equivalent measures. The digital labour platform ***or the undertaking using automated or semi-automated monitoring and decision-making systems*** shall provide those grounds in writing.

**Amendment 155****Proposal for a directive  
Article 18 – paragraph 3***Text proposed by the Commission*

3. Member States shall take the necessary measures to ensure that, when persons performing platform work referred to in paragraph 2 establish, before a court or other competent authority or body, facts from which it may be presumed that there has been such a dismissal or equivalent measures, it shall be for the digital labour

*Amendment*

3. Member States shall take the necessary measures to ensure that, when persons performing platform work ***or workers subject to automated or semi-automated monitoring and decision-making systems*** referred to in paragraph 2 establish, before a court or other competent authority or body, facts from which it may



platform to prove that the dismissal or equivalent measures were based on grounds other than those referred to in paragraph 1.

be presumed that there has been such a dismissal or equivalent measures, it shall be for the digital labour platform ***or the undertaking using such systems*** to prove that the dismissal or equivalent measures were based on grounds other than those referred to in paragraph 1.

Or. en

## Amendment 156

### Proposal for a directive Article 18 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. For the purpose of paragraph 1, a extended suspension of the account of the person performing platform work shall be considered to be equivalent to dismissal.***

Or. en

## Amendment 157

### Proposal for a directive Article 19 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be responsible for monitoring the application of Article 6, Article 7(1) and (3) and Articles 8 ***and 10*** of this Directive, in accordance with the relevant provisions in Chapters VI, VII and VIII of Regulation (EU) 2016/679. They shall be competent to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.

1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be responsible for monitoring the application of Article 6, Article 7(1) and (3) and Articles 8, ***10 and 15*** of this Directive, in accordance with the relevant provisions in Chapters VI, VII and VIII of Regulation (EU) 2016/679. They shall be competent to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.

Or. en

## Amendment 158

### Proposal for a directive Article 19 – paragraph 2

*Text proposed by the Commission*

2. The authorities referred to in paragraph 1 and national labour and social protection authorities shall, where relevant, cooperate in the enforcement of this Directive, within the remit of their respective competences, in particular where questions on the impact of automated monitoring and decision-making systems on working conditions or on rights of persons performing platform work arise. For that purpose, those authorities shall exchange relevant information with each other, including information obtained in the context of inspections or investigations, either upon request or at their own initiative.

*Amendment*

2. The authorities referred to in paragraph 1 and national labour and social protection authorities shall, where relevant, cooperate in the enforcement of this Directive, within the remit of their respective competences, in particular where questions on the impact of automated **or semi-automated** monitoring and decision-making systems on working conditions or on rights of persons performing platform work **or workers subject to algorithmic management** 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.

Or. en

## Amendment 159

### Proposal for a directive Article 19 – paragraph 3

*Text proposed by the Commission*

3. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to provisions of this Directive other than those referred to in paragraph 1 or of the relevant provisions already in force concerning the rights which are within the scope of this Directive. The penalties provided for shall be effective, proportionate and dissuasive.

*Amendment*

3. Member States shall lay down the rules on **sanctions and** penalties applicable to infringements of national provisions adopted pursuant to provisions of this Directive other than those referred to in paragraph 1 or of the relevant provisions already in force concerning the rights which are within the scope of this Directive. The **sanctions and** penalties provided for shall be effective,

proportionate and dissuasive. *They may take the form of fines and shall include provision for proportionate compensation.*

Or. en

## Amendment 160

### Proposal for a directive Article 19 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a.** *Member States shall provide for the possibility of imposing further sanctions against employers, inter alia, exclusions from entitlement to some or all public benefits, aids or subsidies, including agricultural subsidies, exclusions from public procurement procedures and recovery of some or all public benefits, aids or subsidies, including Union funding managed by Member States, that have already been granted.*

Or. en

## Amendment 161

### Proposal for a directive Article 19 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

**3b.** *Member States shall provide or increase financial sanctions and penalties in the case of:*

- (a) the number of infringements;*
- (b) the number of workers affected.*

Or. en

## Amendment 162

### Proposal for a directive Article 20 – paragraph 1

*Text proposed by the Commission*

1. This Directive shall not constitute valid grounds for reducing the **general** level of protection already afforded to workers within Member States.

*Amendment*

1. This Directive shall not constitute valid grounds for reducing the level of protection already afforded to workers within Member States.

Or. en

## Amendment 163

### Proposal for a directive Article 20 – paragraph 2

*Text proposed by the Commission*

2. This Directive shall not affect the Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to platform workers, or to encourage or permit the application of collective agreements which are more favourable to platform workers, in line with the objectives of this Directive. ***As regards persons performing platform work who are not in an employment relationship, this paragraph shall only apply insofar as such national rules are compatible with the rules on the functioning of the internal market.***

*Amendment*

2. This Directive shall not affect the Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to platform workers, or to encourage or permit the application of collective agreements which are more favourable to platform workers, in line with the objectives of this Directive.

Or. en

## EXPLANATORY STATEMENT

Platform work is one of the key transformations that digital technologies are bringing to labour markets across the world. Several sectors are shifting to the labour platform economy, from transportation to proximity services to creative industries. The Covid-19 pandemic accelerated this trend, promoting sectors that were already moving towards platform work such as food delivery. Data reflects such a trend: according to the Commission estimates, over 28 million people in the EU are involved in platform work, and by 2025 this number will rise to 43 million.

The flexibility and exponential growth of platform work however risk, without proper regulation of the phenomenon, to bring about precarious working conditions, at the expenses of the people performing that work. Evidence across the EU shows that people performing platform work often do not enjoy the same rights as workers in the traditional economy, as they are even not recognised as such, even if facts would prove it and, because of the conditions raising for platform work organisation, involving algorithmic management, are particularly subject to exploitation. Therefore, this Directive aims at ensuring that developments brought about by new technologies do not hamper the rights that workers in the EU rightly obtained over the past decades.

### **Employment status**

First of all, the employment status of people performing platform work too often does not match their working conditions. The misclassification of the employment relationship has been a major driver of Court cases across the EU, trying to determine the appropriate employment status of workers on the basis of their tasks and the degree of control and supervision that the platform exercises on them. Most Courts found that the workers under trial were bogus self-employed, meaning that they signed a self-employment contract with the labour platform, but they - as a matter of fact - were proven to have the working conditions of an employment relationship. Facts were therefore telling a different story from the formal relationship between them and the platform. Bogus self-employment combines the worst of both worlds, as those people do not enjoy the independence of self-employment in determining their clients, pay and work organisation, but still carry the business risk of the labour platform while not enjoying the rights and protection assigned to workers in an employment relation. The issue of misclassification is a concern as well for the level-playing field in the Single Market, as platforms making use of bogus self-employment incur in lower labour costs than their competitors, using a legal vacuum in the regulation of platform work. It is important to note that platform work is a complex phenomenon, and many people performing platform work, especially among the high skilled ones, are correctly classified as self-employed. The purpose of the first part of this directive and draft report is therefore to avoid misclassification of the employment status of people performing platform work. In light of that risk, introducing a rebuttable legal presumption of the employment relation is the best way to address the issue in order to protect workers' rights and provide them with the appropriate employment status, while not touching at the genuine self-employed. At the same time, this will ensure the respect on behalf of the platforms of fiscal duties and social security schemes in case they are recognized as employers, while providing for fair competition in the Union. In order not to introduce discrimination among comparable businesses and to ensure that the Directive reaches its objectives and is properly enforced, it is essential that the definition of digital labour platform mirrors the effective reality and variety of platforms. Bogus self-employment in the platform economy leads to precariousness, low pay, security

risks, and the denial of all the rights stemming from the employment status, social protection included. Often workers taking up these jobs come from vulnerable backgrounds and absolutely need the extra income because their first job does not pay enough, and they do not even dare questioning their employment status.

Authorities applying the legal presumption will receive appropriate guidance and Member States will establish procedures in order to identify swift and smooth processes, reduce litigation while avoiding capturing the genuine self-employed. Labour inspectorates or organisations enforcing labour law will receive adequate trainings in the relevant technological field, allowing them to effectively fulfil their duties. The possibility to rebut the legal presumption will always be assured to platforms challenging it and the burden of the proof will consequently be on them. The final judgement will be based on facts and not on formalities. This procedure is the most effective and fair because the worker is the weakest side in the litigation, and the full knowledge of the business model and the functioning of the algorithm is in the hands of the platforms.

### **Algorithmic management**

While across the EU collective bargaining or labour regulations set the labour standards in the traditional economy, people performing platform work accept working conditions unilaterally set by platforms through automated and semi-automated monitoring and decision-making systems, and are sometimes not even in the situation to recognise an abuse. Indeed, they are not aware of the functioning of the algorithm and the decisions it takes regarding their working time, the clients they are assigned, the evaluation of their performance, their health and security guarantees and even access to work. As of today, the majority of platforms employ little human oversight of the decisions taken by their algorithm and there are no uniform and clear provisions determining control on compliance of those systems neither with data protection regulations, nor with respect to their impact on health and safety. Moreover, algorithmic management is not an issue regarding exclusively digital labour platforms, as more and more employers today adopt algorithmic tools to supervise, monitor and control workers. That is the reason why a rich chapter of the Report is dedicated to establish a set of rules protecting all workers from abusive algorithmic management practices throughout the Union.

It appears immediately clear how this chapter is highly relevant not only for people performing platform work (independently of their employment status) but for every worker whose working conditions are affected by those systems. Indeed, the pandemic has even accelerated the so called phenomenon of “platformisation” of the economy, which refers to the increasing use of those systems in order to organise and control work also far beyond platform business. The provisions introduced in this section applies therefore to all workers affected by automated or semi-automated monitoring and decision-making systems information. Workers dealing with algorithmic management and their representatives have to be informed in advance of all elements affecting working conditions and health and security at work, so as to give them the opportunity to understand the functioning of the algorithm and to collectively bargain on it. All decisions impacting on those terms are to be taken by human beings, and, in parallel, human oversights on decisions taken by the algorithm has to be granted. At the same time, platforms have to guarantee that the protection of data of people performing platform is fully respected and that the algorithm does not access or collect data which are not primarily linked to the performance of work.

### **Transparency and remedies concerning platform work**

The sparse nature of platform work makes it difficult for platform workers to come together

and act collectively to improve their situation. Unionising has been actively discouraged by some labour platforms who depend on bogus self-employment for their business model. Platform work is then a very difficult phenomenon to capture as there is no evident workplace and very often persons working for the same platform are not aware of each other. This constitutes an issue not only for those people but also for national authorities, especially tax and social protection public institutions. Once the employment relationship is recognised as subordinate employment, the platform will be recognised as undertaking and therefore all applicable legislation and provisions stemming from collective agreements linked to the sector of activity will apply. Indeed, the last part of the draft Report is focused on transparency in platform work and remedies, which are needed in light of the above-mentioned nature of platform work.