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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on improving working conditions in platform work

In preparation of the meeting of the Social Questions Working Party on 26 and 27 September 2022, delegations will find attached a Presidency compromise proposal covering the whole operational part of the proposal. The recitals have been taken out as they do not reflect yet the changes made to the operational part of the text. They will be aligned in a future Presidency compromise proposal.

The changes in relation to the Commission proposal (document 14450/21) are marked in **bold** and deletions with [...], the changes related to document 8584/22 are marked in **bold underlined**, deletions by [...], reinstated Commission text by underlined only.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on improving working conditions in platform work

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153 (2), point (b), in conjunction with Article 153 (1), point (b), and Article 16(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p.

² OJ C , , p. .

Whereas:

[taken out as not subject to changes in this iteration of the text]

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject matter and scope

1. The purposes of this Directive **are** to improve the working conditions of [...] platform workers and the protection of [...] persons performing platform work regarding the processing of their personal data.
2. [...] **These purposes are pursued by:**
 - **introducing measures to facilitate the correct determination of the employment status of persons performing platform work;**
 - **improving transparency, fairness and accountability in algorithmic management for every person performing platform work; and**
 - improving transparency **on** platform work.
3. This Directive applies to **every person performing platform work in the Union, to every digital labour platform[...] organising platform work performed in the Union and to intermediaries between them,** irrespective of **the platform's or intermediaries'** place of establishment and irrespective of the law otherwise applicable.

Article 2

Definitions

1. For the purposes of this Directive, the following definitions shall apply:
 - (1) ‘digital labour platform’ means any natural or legal person providing a [...] service which meets all of the following requirements:
 - (a) it is provided, at least in part, at a distance through electronic means, such as a website or a mobile application;
 - (b) it is provided at the request of a recipient of the service;
 - (c) it involves, as a necessary and essential component, the organisation of work performed by individuals **in return for payment**, irrespective of whether that work is performed online or in a certain location;
 - (d) it involves the use of automated monitoring or decision-making systems.**
 - (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 [...], or between the intermediary and the individual** irrespective of whether a contractual relationship exists between **the** individual [...] and the recipient of the service;
 - (3) ‘person performing platform work’ means any individual performing platform work, irrespective of the **nature of the contractual relationship or its** designation [...] by the parties involved;

- (4) ‘platform worker’ means any **individual** performing platform work who has, **or who based on an assessment of facts is deemed to have**, an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice;

(4a)new: ‘intermediary’ means any natural or legal person who establishes a contractual relationship with a person performing platform work and a digital labour platform for the purposes of making platform work available to that digital labour platform;

- (5) ‘representatives **of persons performing platform work**’ means the [...] organisations or representatives **of persons performing platform work, if** provided for by national law or practices, or both;

- (6) **[...]**

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 **or to resell goods or services [...]**.

Article 2a(new)

Intermediaries

Where an intermediary makes platform work available to a digital labour platform, Member States shall ensure that either the digital labour platform or the intermediary or both are responsible for the obligations and enjoy the rights arising from this Directive. Member States shall ensure that the use of intermediaries does not lead to a reduction in the protection afforded to persons performing platform work.

CHAPTER II

EMPLOYMENT STATUS

Article 3

Correct determination of the employment status

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 **platform workers** enjoy the rights deriving from Union law applicable to workers.
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 **automated monitoring and decision-making systems** 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.

Legal presumption

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[...], **if at least two of the criteria below are de facto fulfilled**:
 - (a) **The digital labour platform** [...] **determines**, or sets upper limits for the level of remuneration **per work assignment or per time period worked**;
 - (b) **The digital labour platform** **requires** the person performing platform work to respect specific [...] rules with regard to appearance, conduct towards the recipient of the service or performance of the work;
 - (c) **The digital labour platform** **supervises** the performance of work or **verifies** the quality of the results of the work including by electronic means;
 - (d) **The digital labour platform** [...] **restricts the freedom [...]**to organise one's work **by limiting** 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) [...] **restricts** the possibility to build a client base or to perform work for any third party.

2a(new). By way of derogation from paragraph 1, the contractual relationship between a digital labour platform and a person performing platform work through that platform shall not be legally presumed to be an employment relationship, if only criteria (a) and (b) referred to in paragraph 1 are fulfilled.

2b(new). The compliance with specific legal obligations of the digital labour platform in accordance with Union law, national law and collective agreements or that are necessary to protect the health and safety of the recipients of the service shall not be taken into account when evaluating whether the criteria of paragraph 1 are fulfilled.

3. [...] *[most of the content moved to Article 8a(new)]*

4. [...] *[content moved to Article 4a(new) paragraph 4]*

Article 4a (new)

Application of the presumption and rebuttal

1. The legal presumption shall apply in all relevant administrative and judicial proceedings where the correct determination of the employment status of the person performing platform work is either the central aspect of the proceeding or a preliminary question to be answered. Tax and criminal proceedings are not relevant proceedings in the sense of this directive. Member States may decide not to apply the presumption in social security proceedings.

- 2. In proceedings where the presumption applies, the digital labour platform or the person performing platform work may rebut the legal presumption. To this effect:**
- a) **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 case-law of the Court of Justice, the burden of proof shall be on the digital labour platform;**
- b) **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.**
- 3. By derogation to paragraph 1, competent national administrative authorities verifying compliance with or enforcing relevant legislation have the discretion not to apply the presumption, if it is manifest that the presumption would be successfully rebutted in accordance with paragraph 2. This derogation shall not apply in proceedings through which a person performing platform work seeks the correct determination of their employment status.**
- 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 Article 4 shall only apply to the period starting from that date.**
- 5. Where a digital labour platform challenges an administrative or judicial decision determining the employment status of a person performing platform work on the basis of the application of the presumption, such a proceeding shall not have a suspensive effect.**

Article 4b(new)

Supporting measures

Member States shall take supporting measures to ensure the effective implementation of the legal presumption referred to in Article 4. In particular, they shall:

- (a) ensure that information on the application of the legal presumption is made publicly available in a clear, comprehensive and easily accessible way;**
- (b) develop guidance for digital labour platforms, persons performing platform work and social partners to understand and put in practice the legal presumption including its rebuttal in accordance with Article 4a(new) paragraph 2;**
- (c) in line with national law or practice, develop guidance for competent national authorities to proactively target and pursue non-compliant digital labour platforms;**
- (d) in line with national law or practice, provide for effective 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.**

Article 5

[...]

[mostly moved to Article 4a(new) paragraph 2]

CHAPTER III

ALGORITHMIC MANAGEMENT

Article 6

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

1. **[...]**Member States shall require digital labour platforms to inform **persons performing platform work** of:
 - (a) automated monitoring systems which are used to **collect data on**, supervise or evaluate **their** work performance **[...]**through electronic means;
 - (b) automated decision-making systems which are used to take or support decisions that significantly affect **them [...]**, in particular the **[...] offer or assignment of tasks to them**, their earnings, their **[...]** safety and health, their working time, **their access to training** and their contractual status, including the restriction, suspension or termination of their account.

2. The information referred to in paragraph 1 shall concern:
- (a) as regards automated monitoring systems:
 - (i) the fact that such systems are in use or are in the process of being introduced;
 - (ii) the categories of actions [...] supervised, evaluated **or for which data is collected** by such systems, including evaluation by the recipient of the service;
 - (b) as regards automated decision-making systems:
 - (i) the fact that such systems are in use or are in the process of being introduced;
 - (ii) the categories of decisions that are taken or supported by such systems;
 - (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 [...] personal data or behaviour **of the person performing platform work** influence the decisions;
 - (iv) the grounds for decisions to restrict, suspend or terminate the account **of the person performing platform work**, to refuse the **payment** for work performed by **them, as well as for decisions on their** contractual status or any decision with similar effects.
3. Digital labour platforms shall provide the information referred to in paragraphs **1 and 2** in the form of a **written** 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 [...] request **of the person performing platform work**. The information shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

4. **Upon request of platform workers’ representatives and the competent national authorities, digital labour platforms shall also make the information referred to in paragraphs 1 and 2 available to them.**
5. Digital labour platforms shall [...] process, **by means of automated monitoring and decision-making systems, any personal data concerning persons performing platform work only if and to the extent that such processing is deemed lawful in accordance with Article 6 of Regulation (EU) 2016/679. This concerns** in particular [...]:
- (a) the processing of any personal data on the emotional or psychological state of the **person performing platform work**;
 - (b) the processing of any personal data relating to the health of the **person performing platform work** [...];
 - (c) the processing of any personal data in relation to private conversations [...];
 - (d) the collection of any personal data while the **person performing platform work** is not offering or performing platform work.

Article 7

Human monitoring of automated systems

1. Member States shall ensure that digital labour platforms [...] monitor and **regularly** evaluate the impact of individual decisions taken or supported by automated monitoring and decision-making systems, as referred to in Article 6(1), on **[...] persons performing platform work.**
2. **[...]** *[moved to Article 8a(new)]*

3. Member States shall require digital labour platforms to ensure sufficient human resources for monitoring **and evaluating** the impact of individual decisions taken or supported by automated monitoring and decision-making systems, **as referred to in Article 6(1)**. The persons charged by the digital labour platform with the function of monitoring **and evaluating** shall have the necessary competence, training and authority to exercise that function, **including for overriding automated decisions**. They shall enjoy protection from dismissal, **termination of contract or its equivalent**, disciplinary measures or other adverse treatment for **exercising their functions**.
4. **Reports on the evaluation pursuant to paragraph 1 shall be made available, upon request, to persons performing platform work, to platform workers' representatives and to the competent national authorities.**

Article 8

Human review of significant decisions

1. Member States shall ensure that **persons performing platform work** 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 **them [...]**, as referred to in Article 6(1), point (b), **within a reasonable period of time**. [...] Member States shall ensure that digital labour platforms provide **persons performing platform work** 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.

Digital labour platforms shall provide the **person performing platform work** with a written statement of the reasons for any decision taken or supported by an automated decision-making system to restrict, suspend or terminate **that person's** account, any decision to refuse the **payment** for work performed [...], any decision on the [...] contractual status **of the person performing platform work** or any decision with similar effects, **without delay**.

2. Where **persons performing platform work** are not satisfied with the explanation or the 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 **person performing platform work** with a substantiated reply **in the form of a written document which may be in electronic format** without undue delay and in any event within **two weeks** of receipt of the request.

[...]

3. Where the decision referred to in paragraph 1 infringes the **[...]**rights **of a person performing platform work**, the digital labour platform shall rectify that decision without delay **and in any event within two weeks** or, where such rectification is not possible, offer adequate compensation **for the damage sustained**. **The digital labour platform shall take the necessary steps, including, if appropriate, a modification of the automated decision-making system, in order to avoid such decisions in the future.**

4. This Article **does not affect** dismissal procedures laid down in national law **and practices and collective agreements**.

Safety and health

[ex- Art. 7(2)] 1. With regard to platform workers, digital labour platforms shall:

- (a) evaluate the risks of automated monitoring and decision-making systems to their safety and health, in particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks;**
- (b) assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment;**
- (c) introduce appropriate preventive and protective measures.**

Digital labour platforms shall not use 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.

2. Reports on the evaluation and assessment pursuant to paragraph 1 shall be made available, upon request, to platform workers, their representatives and the competent national authorities.

Article 9

Information and consultation

1. [...]
2. **In the event of substantial changes within the meaning of Article 6(3) and in the absence of platform workers' representatives, the digital labour platform shall ensure that the rights laid down in** Article 4(1), (3) and (4), Article 6 and Article 7 of Directive 2002/14/EC **can be exercised directly by the platform workers concerned.**
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 **employs** more than 500 [...] workers in **the** Member State **concerned**, the expenses for the expert shall be borne by the digital labour platform, provided that they are proportionate. **Member States may determine the frequency of requests for an expert and the upper limit of expenses to be borne by the digital labour platform, while ensuring the effectiveness of the assistance.**

Article 10

Relationship with Regulation 2019/1150 [...]

1. [...]
2. **[...] When persons performing platform work are also 'business users' within the meaning of Regulation (EU) 2019/1150, the rules laid down in** Article 8 of this Directive shall not apply to **them [...]**.

CHAPTER IV

TRANSPARENCY ON PLATFORM WORK

Article 11

Declaration of platform work

[...] Member States shall require digital labour platforms which are employers to declare work performed by platform workers to the competent [...] authorities of the Member State in which the work is performed [...], in accordance with the rules and procedures laid down in the law of the Member States concerned. **This shall not affect more specific provisions under Union law according to which work shall be declared to an authority of the Member State in which the work is performed.**

Access to relevant information on platform work

1. **[...]** Member States shall ensure that digital labour platforms make the following information available to **the authorities competent for ensuring compliance with legal obligations applicable to the contractual status of persons performing platform work as well as to representatives of platform workers:**
 - (a) the number of persons performing platform work through the digital labour platform concerned on a regular basis and their contractual or employment status;
 - (b) the general terms and conditions, **determined by the digital labour platform,** applicable to those contractual relationships, **[...] which** apply to a large number of contractual relationships;
 - (c) **the intermediaries the digital labour platform has a contractual relationship with.**
2. The information shall be provided for each Member State in which persons are performing platform work through the digital labour platform concerned. The information shall be updated at least every six months, and, as regards paragraph 1, point (b), each time the terms and conditions are **substantially** modified.
3. **The competent** authorities **set out in paragraph 1** and representatives of **platform workers** shall have the right to ask digital labour platforms for additional clarifications and details regarding any of the **information** provided. The digital labour platforms shall respond to such request within a reasonable period of time by providing a substantiated reply.
4. With regard to digital labour platforms which are micro, small or medium-sized enterprises, Member States may provide that the periodicity for updating information in accordance with paragraph 2 is reduced to once every year.

CHAPTER V

REMEDIES AND ENFORCEMENT

Article 13

Right to redress

Without **affecting** Articles 79 and 82 of Regulation (EU) 2016/679, Member States shall ensure that, **without prejudice to specific forms of redress and dispute resolution provided for, where applicable, in collective agreements,** 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.

Article 14

Procedures on behalf or in support of persons performing platform work

1. Without **affecting** Article 80 of Regulation (EU) 2016/679, Member States shall ensure that representatives of persons performing platform work **and** legal entities which have, in accordance with **[...]** 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 **one or several** persons performing platform work in the case of an infringement of any right or obligation arising from this Directive, with **those** persons' approval.
2. **[...]**

2a(new). When necessary for the defence of the rights of persons performing platform work with regard to data protection , digital labour platforms shall make the information and reports referred to in Article 6, paragraph 4 and Article 7, paragraph 4, available to representatives of persons performing platform work other than representatives of platform workers, upon their request.

Article 15

Communication channels for persons performing platform work

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 **communicate with** 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.

Article 16

Access to evidence

1. Member States shall ensure that in **the proceedings referred to in Article 4(a)new**, national courts or competent authorities are able to order the digital labour platform to disclose any relevant evidence which lies in their control.
2. Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the **proceeding**. They shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.
3. **[...]**

Article 17

Protection against adverse treatment or consequences

Member States shall introduce the measures necessary to protect persons performing platform work, including those **among them** 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.

Article 18

Protection from dismissal or termination of contract

1. Member States shall take the necessary measures to prohibit the dismissal, **termination** or its equivalent and all preparations for dismissal, **termination of contract** or **their** equivalent of persons performing platform work, on the grounds that they have exercised the rights provided for in this Directive.
2. Persons performing platform work who consider that they have been dismissed, **their contract has been terminated** 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, **termination of contract** or **[...]equivalent** measures. The digital labour platform shall provide those grounds in writing **without delay**.

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, **termination of contract** or equivalent measures, it shall be for the digital labour platform to prove that the dismissal, **termination of contract** or equivalent measures were based on grounds other than those referred to in paragraph 1.
4. **[...]**
5. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or other competent authority or body to investigate the facts of the case.
6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member State.

Article 19

Supervision and penalties

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 Articles **6 to 8 [...]** of this Directive, in accordance with the relevant provisions in Chapters VI, VII and VIII of Regulation (EU) 2016/679. **The ceiling for administrative fines referred to in Article 83(5) of that Regulation shall be applicable to infringements of Articles 6 to 8 of this Directive.**

2. The authorities referred to in paragraph 1 and **other competent** national [...] 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 [...] 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.
3. Member States shall lay down the rules on penalties applicable to infringements
 - a) of national provisions adopted pursuant to provisions of this Directive, **other than Articles 6 to 8 of this Directive, and**
 - b) of the relevant provisions already in force concerning the rights which are within the scope of this Directive, **other than Articles 6 to 8 of this Directive.**

The penalties provided for shall be effective, proportionate and dissuasive.

CHAPTER VI

FINAL PROVISIONS

Article 20

Non-regression and more favourable provisions

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to workers within Member States.
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 apply [...] insofar as such national rules are compatible with the rules on the functioning of the internal market.
3. This Directive is without prejudice to any other rights conferred on persons performing platform work by other legal acts of the Union.

Article 21

Transposition and implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years after entry into force] at the latest. They shall immediately inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main **measures** of national law which they adopt in the field covered by this Directive.
3. Member States shall, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing this Directive.
4. Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

Article 22

Review by the Commission

By [5 years after entry into force], the Commission shall, after consulting the Member States, the social partners at Union level and key stakeholders, and taking into account the impact on micro, small and medium-sized enterprises, review the implementation of this Directive and propose, where appropriate, legislative amendments.

Article 23

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 24

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
