



**2021/0414(COD)**

8.12.2022

# **COMPROMISE AMENDMENTS**

## **1 - 38**

**Draft report**  
**Elisabetta Gualmini**  
(PE731.497v01-00)

Improving working conditions in platform work

Proposal for a directive  
(COM(2021)0762 – C9-0454/2021 – 2021/0414(COD))

AM\_Com\_LegCompr

**Amendment A**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 2-5, 171, 172, 173, 176, 177, 179, 182-188, 193, 220-222, 417, 979

**Proposal for a directive**  
**Recital 1-4**

*Text proposed by the Commission*

(1) Pursuant to Article 3 of the Treaty on European Union, the objectives of the Union are, amongst others, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming at full employment and social progress.

(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.

(3) Principle No 5 of the European

*Amendment*

(1) Pursuant to Article 3 of the Treaty on European Union, the objectives of the Union are, amongst others, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a ***balanced economic growth and a*** highly competitive social market economy, aiming at full employment and social progress.

(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 ***as well as access to data which has been collected*** concerning him or her ***and the right to have it rectified. Article 12 of the Charter provides that everyone has the right to freedom of assembly and of association at all levels. Article 15 recognises that everyone has the right to engage in work and to pursue a freely chosen or accepted occupation as well as to provide services.*** Article 16 of the Charter recognises the freedom to conduct a business. ***Article 21 of the Charter provides for the right to non-discrimination.***

(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 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.

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 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, **thus reaffirming the right under Article 15 of the Charter, 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.

**(3 a) Principle No 7 of the European Pillar of Social Rights 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, that prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice and the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation. Principle No 10 provides that workers have the right to a high level of protection of their health and safety at work and the right to have their personal data protected in the employment context. Principle No 12 provides that regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social**

(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.

**protection.**

(4) Digitalisation is changing the world of work, improving productivity and enhancing flexibility. **Innovation in digital tools can contribute to growth in times of crisis and recovery. New forms of digital interaction and new technologies in the world of work, including the trend towards remote working in many sectors, if well regulated and implemented, could create opportunities for access to decent and quality jobs for people who traditionally lacked such access, including persons with disabilities. However, digitalisation also poses risks for employment and working conditions, for the health and safety of workers and for the protection of their fundamental rights, including the right to privacy, as well as for the effective implementation of applicable national labour and tax law thereby also putting the solidarity based social protection system for current and future generations under pressure.**

Algorithm-based technologies, including automated monitoring and decision-making systems, have enabled the emergence and growth of digital labour platforms **but can produce power imbalances and opacity about decision-making, as well as technology-enabled surveillance which could exacerbate discriminatory practices and entail risks for privacy, workers' health and safety and human dignity and may lead to adverse consequences for working conditions and to workers exploitation.**

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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.

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

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**Amendment A**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 2-5, 171, 172, 173, 176, 177, 179, 182-188, 193, 220-222, 417, 979

**Proposal for a directive**  
**Recital 39 a (new)**

*Text proposed by the Commission*

*Amendment*

***(39 a) The European Commission in its 2021 Action Plan for the Social Economy has acknowledged the significant economic and social role of social economy entities as an example of participatory-governed businesses which use digital platforms to facilitate citizen engagement and the selling of locally produced goods and services, aiming to achieve better working conditions for their members. Cooperatives could therefore constitute an important instrument for the bottom-up organisation of platform work and could encourage competition between platforms. Member States should protect and promote cooperative undertakings and small businesses by means that aim to safeguard employment and ensure their capacity for sustainable development and growth;***

Or. en

**Amendment B**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 6-8, 10-11, 13-14, 16-19, 192, 194, 195, 199, 201, 202, 203, 211, 214, 215, 217, 218, 219, 223, 224, 231, 232, 234, 244, 246, 250, 251, 252, 258, 261, 262, 265, 266, 270, 273, 278, 283, 286, 289, 291, 292, 295, 296, 297, 300, 301

**Proposal for a directive**  
**Recital 5 - 7**

*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.

(6) Platform work can provide

*Amendment*

(5) Platform work is performed by individuals through the digital infrastructure of digital labour platforms that provide a service to their customers. ***It is provided, at least in part, at a distance through electronic means, such as a website or a mobile application, which can even be invisible to the client because it is integrated to the website used by the recipient of the service. It occurs in a wide variety of fields and is characterised by a high level of heterogeneity in the types of digital labour platforms, the sectors covered and activities carried out as well as in the profiles of individuals performing platform work.*** By means of the algorithms ***and artificial intelligence***, the digital labour platforms ***supervise, monitor and evaluate***, 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 persons themselves while performing work and, in some cases, also outside their working time, in breach of Regulation (EU) 2016/679 and national data protection legislation. Traditional regulated liberal professions are in principle free from supervision, direction and control from any other undertaking.*** Platform work ***is mostly*** 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.

(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.

opportunities for **employment and for** accessing the labour market more easily, **especially for vulnerable groups**, gaining additional income through a secondary activity or enjoying some flexibility in the organisation of working time. **Most persons performing platform work have another job or other source of income and tend to be low paid<sup>1a</sup>. Particular attention should be given to young people by ensuring that they enjoy the highest level of social protection when performing platform work.** At the same time, platform work brings challenges, as **it can result in unpredictability of working hours, and** 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 to restrict access to existing labour and social rights. It **can also lead to labour exploitation, unfair competition, especially affecting SMEs**, 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.

**(6 a) The labour and social protection legislation of most Member States are generally unprepared to the challenges of the digital world and digitalized labour market in particular, which is causing grave risks to both people, engaged in digitally based work, and to existing solidarity-based healthcare and social security models. If not tackled accordingly, the above-mentioned risks might jeopardise the European social model and the goals of the European Pillar of Social Rights, whereas technological progress might also provide**

(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 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.

*the solutions for adaptation of the European social model to the realities of the 21st century. Therefore, the proposed solutions should help protect the situation of persons performing platform work and improve their working conditions.*

(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 **direction or** 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 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 **as well as hampering a level playing field both within the single market and between digital labour platforms and traditional businesses.**

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***1<sup>a</sup> COMMISSION STAFF WORKING DOCUMENT, IMPACT ASSESSMENT REPORT, Accompanying the Proposal for a Directive of the European Parliament and of the Council to improve the working conditions in platform work in the European Union, SWD(2021) 396 final/2, p. 6; The Social Protection of Workers in the Platform Economy, Study commissioned by the EMPL Committee, European Parliament, 2017***

**Amendment B**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 6-8, 10-11, 13-14, 16-19, 192, 194, 195, 199, 201, 202, 203, 211, 214, 215, 217, 218, 219, 223, 224, 231, 232, 234, 244, 246, 250, 251, 252, 258, 261, 262, 265, 266, 270, 273, 278, 283, 286, 289, 291, 292, 295, 296, 297, 300, 301

**Proposal for a directive**  
**Recital 10 - 11**

*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 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.

*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. ***Those legal instruments have been interpreted by the Court of Justice of the European Union in particularly relevant case law, according to which ‘stand-by’ time, during which the worker's opportunities to carry out other activities are significantly restricted, is to be regarded as working time<sup>1a</sup>. The interpretation of the Court of Justice is particularly relevant for platform workers, who spend 8.9 hours per week<sup>1b</sup> doing unpaid tasks, such as researching tasks,***

*waiting for assignments, participating in contests to get assignments and reviewing work ads, which is not accounted for as working time when they are incorrectly classified as self-employed.* While those instruments provide a level of protection to workers, they do not apply to the genuine self-employed.

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*<sup>1a</sup> Judgement of the Court of 21 February 2018 in *Ville de Nivelles v Rudy Matzak*, C-518/15, ECLI:EU:C:2018:82). This line of reasoning was confirmed and elaborated in two 2021 judgments (Judgment of the Court (Grand Chamber) of 9 March 2021 in *RJ v Stadt Offenbach am Main*, C-580/19, ECLI:EU:C:2021:183; Judgement of the Court (Grand Chamber) of 9 March 2021 in *-D.J. v Radiotelevizija Slovenija*, C-344/19, ECLI:EU:C:2021:182.*

*<sup>1b</sup> COMMISSION STAFF WORKING DOCUMENT, IMPACT ASSESSMENT REPORT, Accompanying the Proposal for a Directive of the European Parliament and of the Council to improve the working conditions in platform work in the European Union, SWD(2021) 396 final/2.*

<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>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).

Or. en

**Amendment B**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 6-8, 10-11, 13-14, 16-19, 192, 194, 195, 199, 201, 202, 203, 211, 214, 215, 217, 218, 219, 223, 224, 231, 232, 234, 244, 246, 250, 251, 252, 258, 261, 262, 265, 266, 270, 273, 278, 283, 286, 289, 291, 292, 295, 296, 297, 300, 301

**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

(11) Council Recommendation 2019/C 387/01<sup>58</sup> on access to social protection for workers and the self-employed recommends Member States to take measures ensuring formal and effective coverage, adequacy and transparency of social protection schemes for all workers and self-employed. Member States currently have varying degrees of providing social protection to the self-employed.

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<sup>58</sup> Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01) (OJ C 387, 15.11.2019, p. 1).

*Amendment*

(11) ***Social protection is a solidarity-based safety net that is beneficial not only to the individual but also to society as a whole.*** Council Recommendation 2019/C 387/01<sup>58</sup> on access to social protection for workers and the self-employed recommends Member States to take measures ensuring formal and effective coverage, adequacy and transparency of social protection schemes for all workers and self-employed. Member States currently have varying degrees of providing social protection to the self-employed. ***It is essential to ensure, and where necessary extend, access to social protection to persons performing platform work including for people transitioning from one status to another in order to guarantee the portability of accumulated social rights and entitlements.***

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<sup>58</sup> Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01) (OJ C 387, 15.11.2019, p. 1).

Or. en

**Amendment B**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 6-8, 10-11, 13-14, 16-19, 192, 194, 195, 199, 201, 202, 203, 211, 214, 215, 217, 218, 219, 223, 224, 231, 232, 234, 244, 246, 250, 251, 252, 258, 261, 262, 265, 266, 270, 273, 278, 283, 286, 289, 291, 292, 295, 296, 297, 300, 301

## Proposal for a directive Recital 13 - 16

### *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.

(14) The Commission has undertaken a two-stage consultation of the social partners, in accordance with Article 154 of

### *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 platform workers' rights. Platform workers and, where applicable,** persons performing platform work should be provided with a number of minimum rights, **the** correct determination of their **contractual** status, **as well as fair and just working conditions,** promoting transparency, fairness, accountability, **non-discrimination and preventing health and safety risks** in algorithmic management, improving transparency in platform work, including in cross-border situations **and ensuring the right to bargain collectively in accordance with national law and practice.** 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. **In order to achieve this, persons working via a digital labour platform should be correctly classified in relation to their contractual status in order to access the applicable national labour and social protection laws.**

(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.

(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.

(16) This Directive should apply to persons performing platform work in the Union who have, or who based on an assessment of facts may be 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 of the European Union. This should include situations where the employment status of the person performing platform work is not clear, so as to allow correct determination of that status. The provisions on algorithmic management which are related to the processing of personal data should also apply to genuine self-employed and other persons performing platform work in the Union who do not have an employment relationship.

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 monitoring and decision-making systems*.

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

(16) This Directive should apply to persons performing platform work in the Union who have, or who based on an assessment of facts may be deemed to have, an employment contract or employment relationship as defined by the law, collective agreements or practice in force in *each* Member *State*, with consideration to the case-law of the Court of Justice of the European Union. This should include situations where the employment status of the person performing platform work is not clear, so as to allow correct determination of that status. The provisions on algorithmic management which are related to the processing of personal data should also apply to genuine self-employed and other persons performing platform work in the Union who do not have an employment relationship.

Or. en

**Amendment B**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 6-8, 10-11, 13-14, 16-19, 192, 194, 195, 199, 201, 202, 203, 211, 214, 215, 217, 218, 219, 223, 224, 231, 232, 234, 244, 246, 250, 251, 252, 258, 261, 262, 265, 266, 270, 273, 278, 283, 286, 289, 291, 292, 295, 296, 297, 300, 301

**Proposal for a directive**  
**Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17 a) Self-employed intermediary persons covered by Council Directive on the coordination of the laws of the Member States relating to self-employed commercial agents (86/653/EEC), who have continuing authority to negotiate the sale or the purchase of goods on behalf of another person or to negotiate and conclude such transactions on behalf of and in the name of that person, should not fall under the scope of this Directive provided that a digital labour platform does not organise their work or intermediates between the commercial agents and the principals.***

***(17 b) Taxi dispatch services, as regulated under national law and practice, can be distinguished from ride hailing digital labour platforms, when they are merely an ‘add-on’ to a pre-existing service and only connect genuine self-employed licensed taxi drivers with their customers sending the communications received from persons seeking a taxi service to licensed taxi drivers, provided that they do not exert any type of control and direction, in line with this Directive, over the licensed taxi drivers, including that the service provider does not set and collect the fare for the journey and does not have control over the quality of the vehicles or over the drivers and their performance of the work. Self-employed taxi drivers are usually free in choosing the way to generate their turnover due to the rights typically received with the license, such as the right to do street-hailing, dedicated public taxi stops or equivalent ways of***

*free access to clients.*

*(17 c) Crowdwork can be defined as the organizing of outsourcing or allocation of tasks potentially provided to a large pool of customers/employers, through online platforms. Crowdwork shares many similarities with other forms of non-standard employment such as temporary work, part-time work or temporary agency work. It is typically performed over the internet through a technological intermediary, that is often a platform. Microwork or crowd-work platforms coordinate small online tasks. These microtask platforms are a type of online digital labour platform that provide businesses and other clients with access to a large, flexible workforce (a “crowd”) for the completion of small tasks that can be completed remotely using a computer and Internet connection. Tasks are distributed to a large number of individuals - the so-called crowd - whose members can perform the individual activities asynchronously and remotely via their personal computers. Digital labour platforms organising crowdwork should be covered by the scope of this Directive.*

Or. en

**Amendment B**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 6-8, 10-11, 13-14, 16-19, 192, 194, 195, 199, 201, 202, 203, 211, 214, 215, 217, 218, 219, 223, 224, 231, 232, 234, 244, 246, 250, 251, 252, 258, 261, 262, 265, 266, 270, 273, 278, 283, 286, 289, 291, 292, 295, 296, 297, 300, 301

**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**

*Amendment*

(18) Digital labour platforms differ from other online platforms in that they organise **the** work performed by individuals at

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 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.**

request **of a** recipient of a service **or** by the **allocation of work through an open call, one-off or repeated, through electronic means, such as a website or a mobile application**. 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 contractual relationship with the digital labour platform, **irrespective of the contractual designation of the relationship between that individual and the natural or legal person providing the service**, 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 **for** 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 to resell** goods.

**(18 a) 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<sup>1a</sup>, 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 to Directive 2002/14/EC of the European Parliament and of the Council. 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 should 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.***

***(18 b) Social dialogue and collective bargaining are of utmost importance for achieving the goals of the present Directive. 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 in line with the ILO Conventions<sup>1b</sup>, as well as the Council of Europe's European Social Charter.***

***(18 c) Automated decision-makings and monitoring systems should include any computing mechanism that uses computer science techniques or data sets which can influence working conditions, the organisation of labour, and enable problem-solving actions or recommendations that significantly impact the persons performing platform work. Examples of this include monitoring, performance evaluation, individual profiling, and assignment of tasks, among others. The use of computer-based applications for the exchange of messages (such as emails) is, in principle, regarded as means of communication and thus does not imply***

*that they are automated or semi-automated decisions per se.*

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*<sup>1a</sup> Eurofound definition,  
<https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/company-union>*

*<sup>1a</sup> 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*

Or. en

## **Amendment C** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 305, 307, 309, 312, 313, 318, 322, 326, 327 329 348 353 357 358, 359, 360, 365, 367, 372, 374, 377

### **Proposal for a directive** **Recital 19 – 20**

#### *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

#### *Amendment*

(19) ***A person performing platform work can be either a platform worker or a genuine self-employed. In order*** to combat false self-employment in platform work and to facilitate the correct determination of the employment status, Member States should have **effective** 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 **ensure the correct determination of the employment status, ascertaining** the existence of an employment relationship as defined by

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.

(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 Ruhrländklinik gGmbH v

national *and applicable international* 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 – as defined at national level – is the correct employment status, rights and obligations pursuant to that status should apply.

(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, *creating a situation of unfair competition in respect of law-abiding companies. 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 Ruhrländklinik 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.

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.

Or. en

## **Amendment C** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 305, 307, 309, 312, 313, 318, 322, 326, 327 329 348 353 357 358, 359, 360, 365, 367, 372, 374, 377

### **Proposal for a directive** **Recital 22 – 28 a (new)**

#### *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.

(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**

#### *Amendment*

(22) Where the existence of an employment relationship is established based on facts, the party **or parties** acting as employer should be clearly identified, fulfil all the obligations resulting from **their** role as employer **under national law and relevant national or sectorial collective agreements applicable to the sector of activity, which is to be determined by Member States in cooperation with social partners, in line with national law and practice.**

(23) Ensuring correct determination of the employment status should not prevent the improvement of working conditions of genuine self-employed persons performing platform work. **Collective bargaining is a key tool to improve working conditions of persons performing platform work, irrespective of the contractual designation of the relationship and should be encouraged by the Commission and Member States. The Commission Guidelines on the application of EU competition law to collective agreements**

*determining elements indicating the existence of an employment relationship.*

(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.

*regarding the working conditions of solo self-employed persons can to this end serve as useful guidance without prejudice to national law and practice regarding the scope and form of collective representation and provided that those agreements cover genuinely self-employed persons. Member States should take measures to ensure effective protection to persons performing platform work especially female workers, as well as the most vulnerable workers, young workers, older workers, workers in the informal economy, migrant workers and workers with disabilities.*

(24) When digital labour platforms **supervise or exert some sort of control over** 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, **the** contractual relationships **between those persons performing platform work and the digital labour platform** should be deemed, by virtue of a legal presumption, to be an employment relationship. **National authorities are to apply the presumption when they consider that there might be incorrect classification of persons performing platform work. The presumption should also be applied when a person performing platform work or a trade union acting on behalf or in support of several persons performing platform work dispute their classification in an administrative or legal proceeding.** 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 **apply the**

presumption. Member States should put in place a national framework to reduce litigation and increase legal certainty *that ensures the correct classification of persons performing platform work from the outset of the contractual relationship. The legal presumption of an employment relationship should not lead to an automatic classification of all persons performing platform work as workers, as the platform will always have the possibility to rebut the presumption before a decision of reclassification is taken by the competent administrative or legal authority. The presumption should not cover situations where the persons performing platform work are genuine self-employed. Persons performing platform work who are genuine self-employed should be allowed to remain so and can access work through platforms. Genuinely self-employed persons are themselves responsible vis-à-vis their customers for how they perform their work and the quality of their outputs.*

(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*

(25) *The authorities and competent institutions determining, based on an objective assessment, the correct classification of persons performing platform work regarding the existence of an employment relationship as defined by applicable law, collective agreements or practice in force in the Member State in question with consideration to the case-law of the Court of Justice should be guided by factual elements* indicating that *the digital labour platform exerts control and direction over the performance of work. Those elements should be 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 its constant evolution, also following the evolution of automated monitoring and decision-making systems. Among the concrete elements that can indicate that the digital*

*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 *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.

*labour platform exerts control or direction 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 payments to the worker; requires the respect of rules with regard to appearance or conduct*, gives instructions on how the work is to be performed or prevents the person performing platform work from developing business contacts with potential clients, *including via controlling or restricting the communication between the person performing platform work and the recipient of the service or the good, while and after the work is being performed; supervises the performance of work, including by electronic means; tracks or supervises the person performing platform work while performing the work; 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 person performing platform work with tools, digital means, materials or machinery that are necessary for the performance of the work; restricts the freedom of the person performing platform work to choose social protection, accident insurance, pension scheme or other forms of insurance, including through adverse consequences.* 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, *while not proving it per se*. Therefore, de facto restricting such discretions *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 uses subcontractors or substitutes* by a number of conditions or through a system of *penalties, including restricting access to work, or using customer rating systems as*

(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***.

***a tool of control and basis for penalties or as a tool to allocate work assignments*** should also be ***taken into consideration*** as an element ***indicating control and direction on*** the performance of work. Verifying the quality of the results of that work, including through electronic means, should also be ***taken into consideration*** as ***elements indicating control and direction on the performance of work. This list is not exhaustive and any other relevant element could indicate that the digital labour platform exert control or direction over*** 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 should not be understood as ***supervising*** the performance of work.

(26) Effective implementation of the legal presumption through appropriate measures is essential to ensure legal certainty and transparency for all parties involved. ***Such measures should include disseminating information to the public, developing comprehensive guidance in the form of concrete and practical recommendations, strengthening controls, cooperation between different national authorities, mechanisms for persons performing platform work and digital labour platforms to consult relevant authorities and field inspections.*** These measures should take into account the specific situation of ***SMEs in the sustainable development*** of digital labour platforms. In the ***interest of fairness, the legal presumption should not have as a consequence that some digital labour platforms incorporate a subcontracting undertaking between the platform and the service providing persons in order to circumvent the obligations set out in this Directive. The digital labour platform of which the employer is a subcontractor should 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, including with respect to any outstanding remuneration and contributions due to the common funds or institutions of social partners.***

***(26 a) In order to ensure that labour inspections are carried out effectively, Member States should have sufficient labour inspectors, in accordance with ILO Convention 81 on Labour Inspection and ILO Report III on the 95th International Labour Conference in 2006, which recommend that there should be one labour inspector per 10 000 workers. Member States should 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 ensure the correct classification of workers. 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 verify the status of the other persons performing platform work for the same digital labour platform.***

***(26 b) 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. Given the high incidence of misclassification, labour inspectors should be required to develop proactive controls.***

(27) In the interest of legal certainty, the

(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.

(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

legal presumption should not have any retroactive legal effects and should therefore only apply starting from **the date set in the transposing legislation**, 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**.

(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 **for any of the parties** 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. **Where a digital labour platform challenges an administrative or judicial decision determining the employment status of a person performing platform work, such proceeding** should not have a suspensive effect on **that decision**. 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

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 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.

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. **Inside a common European framework**, Member States should provide the necessary guidance for procedures to rebut the legal presumption **and proving that a person performing platform work is a genuine self-employed**. **The Directive should include some elements indicating control and direction that should be taken into consideration in the process of the rebuttal. Those criteria should be regularly assessed by Member States, reviewed and, where necessary, complemented, in consultation with the social partners.**

**(28 a) Member States should have enforcement provisions which ensure the use of favourable presumptions in cases of misclassification of persons performing platform work when reclassifying them, including, where relevant, a presumption that the platform worker has an open-ended employment relationship, that there is no probationary period and that the platform worker has a full-time position in the undertaking.**

Or. en

## **Amendment D** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 9, 12, 37-45, 235, 236, 240, 241, 242, 381, 385, 387, 390, 391, 394, 396, 398, 400, 401, 402, 403, 404

### **Proposal for a directive** **Recital 8**

*Text proposed by the Commission*

(8) Automated monitoring and decision-making systems powered by algorithms increasingly replace functions

*Amendment*

(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.

that managers usually perform in businesses, such as allocating tasks, **pricing of individual assignments and working time**, 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. Persons performing platform work subject to such algorithmic management often **do not have access to** information on how the algorithms work, which personal data are being used and how their behaviour affects decisions taken by automated systems. Workers' representatives, **representatives of persons performing platform work**, and labour inspectorates **and competent supervisory authorities** 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 **obtain an explanation for these decisions, to** discuss those decisions with a contact person or to contest them **and to seek rectification and, where relevant, redress. Persons performing platform work and their representatives often lack receiving timely information as well as the opportunity to discuss, be effectively consulted, negotiate and review the algorithmic systems that nonetheless directly impact on their working conditions.**

Or. en

## **Amendment D** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 9, 12, 37-45, 235, 236, 240, 241, 242, 381, 385, 387, 390, 391, 394, 396, 398, 400, 401, 402, 403, 404

## **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 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> ***which will apply without prejudice to the more specific rules set out in this Directive.***

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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 D**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 9, 12, 37-45, 235, 236, 240, 241, 242, 381, 385, 387, 390, 391, 394, 396, 398, 400, 401, 402, 403, 404

**Proposal for a directive**  
**Recital 30 - 33**

*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 provides for specific rules for the processing of special categories of personal data; considering the intrusive nature of the processing of biometric data, especially in a work relationship, biometric identification should never be mandatory. Employers should always guarantee less intrusive ways to achieve the intended purpose of identification. Persons performing platform work should always be offered an easily accessible, freely available and effective alternative way of identifying themselves, such as with identity, travel or other documents or in-person verification and they should not be offered any incentives to use the biometric identification mechanism nor suffer from any type of adverse consequence.*** 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 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. . ***Therefore, algorithmic management that entails automated decision-making that has significant effects on individuals without input from human managers is unlawful under Union law. 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 ***rights and*** obligations apply also to digital labour platforms ***as well as to persons performing platform work.***

***(30 a) The use of algorithmic scheduling systems heightens the use of precarious, short shifts and unstable and unpredictable schedules<sup>1a</sup>. 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.***

(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

(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.

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, including gender 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 allows for more specific rules in the context of employment. This Directive establishes specific measures in the context of platform work to safeguard human dignity, legitimate interests and fundamental rights of persons performing platform work, 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. In order to ensure the balance of power in the transparency of algorithms as well as in the employment relationships, the worker's informed consent is not to replace the undertakings' obligations on data protection referred to in article 6 of the Directive.*

(32) Digital labour platforms should be subject to transparency obligations in

(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.

relation to automated monitoring and decision-making systems that are used to monitor, supervise or evaluate the work performance through electronic means *or to monitor the persons performing platform work themselves*; 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, *their social protection 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 *and consultation* 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 *and the competent supervisory authorities*, in order to enable them to exercise their functions *as well as to competent authorities at their request. Individual platform workers should receive that information in a concise, simple and understandable form, in so far as the systems and their features directly affect him/her and his/her working conditions, so they are effectively*

*informed. As more detailed information is necessary for full transparency, for effective consultation and negotiation between the parties and for enforcement, digital labour platforms will also provide a detailed and robust report containing those information to platform workers, their representatives and the competent authorities.*

*(32 a) Certain decisions, such as those having an impact on health and safety and on the contractual relationship or introducing changes to the employment relations, as well as decisions to apply disciplinary measures, or restricting, suspending or terminating the contractual relationship and the person performing platform work's account, or any decision of equivalent detriment, should always be taken by humans, not by automated systems. Considering the impact for workers of such decisions, including their livelihood and fundamental rights, including social rights, there should always be a human responsible for these decisions.*

*(32 b) Some types of processing of data in digital labour platforms may 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, where appropriate, is to seek the views of data subjects or their representatives on the intended processing, without prejudice to information transmitted on a confidential basis. 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. Before each deployment of automated monitoring systems and systems to take or*

(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.

*assist in decision-making and before any changes affecting working conditions, the organisation of work or monitoring work performance, digital labour platforms should perform an impact assessment of the systems' impact on data protection.*

(33) Digital labour platforms should be required to disclose the detailed functioning of their automated monitoring and decision-making systems, including algorithms, *which may affect the rights covered by this Directive. Information transmitted as confidential to the representatives of persons performing platform work and any experts who assist them* should not *justify* a refusal to provide all the information required by this Directive. *Member states should determine a list of objective criteria to determine the confidential nature of that information that representatives of persons performing platform work and any experts are not authorised to reveal, as expressly provided to them in confidence.*

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*<sup>1a</sup> Algorithmic Management.  
Consequences for Work Organisation and Working Conditions, Joint Research Centre, European Commission (Seville, Spain)*

Or. en

## **Amendment D** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 9, 12, 37-45, 235, 236, 240, 241, 242, 381, 385, 387, 390, 391, 394, 396, 398, 400, 401, 402, 403, 404

## **Proposal for a directive** **Recital 34 a (new)**

***(34 a) Digital labour platforms should not under any circumstances provide for discriminatory practices when processing personal data. Digital labour platforms should ensure workers and workers' representatives tools to facilitate effective, free of charge and machine readable data portability in order to exercise their rights under this Directive and Regulation (EU) 2016/679, in particular the rights under Chapter 3 of that Regulation. Persons performing platform work should have the right both to transfer data as well as not to transfer data as it could endanger them, for example in relation to reputational data.***

Or. en

**Amendment E**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 45, 49, 402, 403, 404, 412, 413

**Proposal for a directive**  
**Recital 35**

*Text proposed by the Commission*

*Amendment*

(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 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

(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 **ensure human oversight** and evaluate **together with the workers' representatives** the impact of individual decisions taken or supported by automated monitoring and decision-making systems on working

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.

conditions **and on fundamental rights and freedoms of workers, including their human dignity and health and safety.** Digital labour platforms should ensure sufficient human resources for this purpose. The persons charged by the digital labour platform with the function of **overseeing** 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.

Or. en

## **Amendment E** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 45, 49, 402, 403, 404, 412, 413

### **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

#### *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 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.

potentially have significant impact on **workers' safety and on** the physical and mental health of persons performing platform work, digital labour platforms should **avoid** those risks, **evaluate and combat 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, protective **and corrective** measures. **Particularly 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 article 9 of this Directive as well as in line 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 or her workstation or job in the event of the introduction of any new technology.**

**(38 a) At least yearly, the digital labour platforms should perform an assessment of the impact of individual decisions taken**

*or supported by automated monitoring and decision-making systems on working conditions, health and safety and fundamental rights and include measures to combat any impact on fundamental rights and health and safety, including mental health. Where the possible impacts on fundamental rights, health and safety, including mental health, cannot be mitigated, the systems should not be put into use.*

*(38 b) Platform work, and especially online platform work, poses a range of both pre-existing and new OSH risks, both physical and psychosocial. Moreover, people working through platforms are exposed to particular health and safety risks. They usually receive little or no training, and have low prospects of career advancement<sup>1a</sup>. Digital labour platforms should not use automated monitoring and decision-making systems in any manner that puts undue pressure on persons performing platform work or otherwise puts at risk the physical and mental health of platform workers for example through the use of incentivising practices, such as exceptional bonuses, or punitive practices, such as ratings impacting working time and leading to the assignment of less work. They should ensure that automated monitoring and decision-making systems avoid any potential discriminatory decisions issued out of previously existing biases or practices.*

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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).

<sup>1a</sup> *Protecting Workers in EU Platform Economy, EU OSHA 2017, p. 28*

Or. en

**Amendment F**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 46-48, 405, 406, 407, 410

**Proposal for a directive**  
**Recital 36**

*Text proposed by the Commission*

*Amendment*

***(36 a) The persons in charge of reviewing decisions significantly affecting working conditions 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 and to revert it. 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 persons’ performing platform work rights as well as their health and safety.***

(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

(37) In that context, persons performing platform work should have the right to obtain ***a human review and*** 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 ***at the earliest opportunity and at the latest on the day on which such decisions take effect.*** 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

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 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.

statement of reasons for any decision to restrict *access to work assignments, 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 such decisions are likely to have significant negative effects on persons performing platform work, in particular their potential earnings. *The written statement can be provided and transmitted on paper or in electronic form, provided that it is accessible to the person performing platform work, that it can be stored and printed, and that the platform retains proof of transmission or receipt.* Where the explanation or reasons obtained are not satisfactory or where persons performing platform work consider *they have been discriminated against or have had* 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 *without undue delay and in any event within two weeks of receipt of the request, or one month in the case of micro, small and medium enterprises*. 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 should rectify such decisions without delay or, where that is not possible, provide adequate compensation.

Or. en

## Amendment G Elisabetta Gualmini

Compromise amendment replacing Amendment(s): 50, 414

## Proposal for a directive Recital 39

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*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.

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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).

*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 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 **effectively** consult 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 effective consultation and** with the assistance of an expert chosen by the workers' representatives in a concerted manner where needed. **In line with Directive 2002/14/EC, those provisions are meant to foster effective social dialogue on these features and, because automated monitoring and decision-making systems directly impact working conditions, it should be possible to subject them 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).

Or. en

**Amendment H**  
**Elisabetta Gualmini**

**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 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.

*Amendment*

(40) 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 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.

Or. en

**Amendment I**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 10, 27, 29, 53, 54, 244, 246, 247, 248, 249, 424, 425, 426, 427, 429, 430, 319, 936

**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, ***especially online based platform work***. 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 ***national and European*** rules, including in respect of labour ***and tax*** law and social protection.

***(9 a) The number of platforms active in the EU has increased from 463 in 2016 to 516 in March 2021. The platform economy in the EU has increased almost fivefold during the same period, from an estimated EUR 3.4 billion in 2016 to about EUR 14 billion in 2020. The majority of this activity falls under taxi and food delivery services, both of which were strongly impacted by the COVID-19 outbreak (-35% and +125% respectively). Platforms with their origin outside the EU play an important role in the EU Platform economy.***

Or. en

**Amendment I**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 10, 27, 29, 53, 54, 244, 246, 247, 248,

**Proposal for a directive**  
**Recital 41 - 42**

*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.

(42) Information on the number of persons performing platform work through digital labour platforms *on a regular basis*, their contractual or employment status and

*Amendment*

(41) In order to ensure that digital labour platforms comply with labour legislation and regulations, **taxation and** 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 enforcement of relevant Union law, to ensure information to employers and workers on their rights and obligation in the framework of labour mobility, to coordinate EURES and to foster the exchange of information between Member States, including through promoting the use of electronic data exchange tools between national authorities such as the Commission's Internal Market Information (IMI) System, Electronic Exchange of Social Security Information (EESSI) system, and to coordinate and support concerted or joint inspections with the aim of enforcing relevant EU legislation.***

(42) ***Digital labour platforms should be listed in the applicable public business register, which should include relevant information on all digital labour***

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.

**platforms operating in the country.** Information on the number of persons performing platform work through digital labour platforms, their contractual or employment status, **copy of employment contract, average duration of activity and average income from activity** and the general terms and conditions applicable to those contractual relationships. **Such information** 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, **including trade unions**, 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. **Eurofound and the European Labour Authority should, according to their respective prerogatives and mandates, support the collection and sharing of those data for the purpose of developing appropriate risk assessment tools.**

**(42 a) 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<sup>1a</sup>. The use of undeclared work in delivery platforms has also been evidenced in several Member States. This practice is carried out through rented identities: platform workers or people with the right to work who register in the platform rent their accounts mainly to undocumented migrants and to minors<sup>1b</sup>. In order to prevent undeclared work as**

*well as the misuse of subcontracting as a mean to circumvent this Directive, Member States should introduce legal provisions on subcontracting that provide for joint and several liability and effective access to redress across subcontracting chains, ensuring that the contractors in a subcontracting chain may be held liable to pay wages, social security contributions and financial penalties 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. 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. In order to combat undeclared platform work, digital labour platforms should ensure reliable verification processes of platform workers' identity.*

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<sup>1a</sup> *EU-OSHA, "Spain: the 'riders' law', new regulation on digital platform work", 16.02.2022*

<sup>1b</sup> *EESC, "The definition of worker in the platform economy: Exploring workers' risks and regulatory solutions", 13.09.2021; European Platform tackling undeclared work (ELA WG), "Thematic review workshop: Undeclared work in the collaborative economy", 19-20.05.2021*

Or. en

**Amendment J**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 432, 450

**Proposal for a directive**  
**Recital 43**

*Text proposed by the Commission*

(43) An extensive system of enforcement provisions for the social acquis in the Union has been developed, elements of which should be applied to this Directive in order to ensure that persons performing platform work have access to effective and impartial dispute resolution and a right to redress, including adequate compensation. Specifically, having regard to the fundamental nature of the right to effective legal protection, persons performing platform work should continue to enjoy such protection even after the end of the employment or other contractual relationship giving rise to an alleged breach of rights under this Directive.

*Amendment*

(43) An extensive system of enforcement provisions for the social acquis in the Union has been developed, elements of which should be applied to this Directive in order to ensure that persons performing platform work have access to ***appropriate, timely, free of charge at least for those persons performing platform work who do not have sufficient means,*** effective and impartial dispute resolution and a right to redress, including adequate compensation. Specifically, having regard to the fundamental nature of the right to effective legal protection, persons performing platform work should continue to enjoy such protection even after the end of the employment or other contractual relationship giving rise to an alleged breach of rights under this Directive.

Or. en

**Amendment J**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 432, 450

**Proposal for a directive**  
**Recital 48 a (new)**

*Text proposed by the Commission*

*Amendment*

***(48 a) As the rights and freedoms of individuals can be seriously undermined by automated monitoring or decision-making systems, it is essential that affected individuals have meaningful access to reporting and redress mechanisms with the relevant national authority, be it the data protection authority or the labour inspectorate. They should be able to report possible***

*infringements of this Directive to the competent national authority and have the right to be heard and to be informed about the outcome of their complaint and the right to a timely decision.*

Or. en

**Amendment K**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 55, 434

**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, **including trade unions**, 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 L**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 56, 437, 438

**Proposal for a directive**  
**Recital 45**

*Text proposed by the Commission*

(45) Platform work is characterised by

*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.

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. ***In some areas prevalent in platform work, such as digital remote services or design work, many Member States lack established workers' representatives organisations or trade unions. In line with national law and practices, persons performing platform work should be free to organise, choose representatives and be taken into account in social dialogue and collective bargaining processes, regardless of their employment status. Persons performing platform work can also be exposed to the increased risk of violence, including gender-based violence and harassment.*** It is therefore necessary to create ***private, secure, possibly through encryption,*** digital communication ***and reporting*** 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 ***and report incidents of violence or harassment.*** Digital labour platforms should create such communication ***and reporting*** 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. ***For the same reasons, collective bargaining should be promoted by ensuring that trade unions are able to effectively exercise their role.***

Or. en

**Amendment M**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 57, 443

### 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 directs* 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

Or. en

### Amendment N

**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 58-59, 446, 448

### Proposal for a directive

#### Recital 47

*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

*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 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.

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 **as well as the communication and reporting channels established in Article 15 of this Directive**, 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 N** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 58-59, 446, 448

### **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 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

#### *Amendment*

(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 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

protection supervisory authorities.

supervisory authorities.

Or. en

**Amendment 1**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 62-64, 463, 464, 465, 472

**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 of persons performing platform work by ensuring **the** correct determination of their employment status, by promoting transparency, fairness, **human oversight, safety** and accountability in algorithmic management in platform work and by improving transparency in platform work, including in cross-border situations, while **fostering** the sustainable growth of digital labour platforms in the Union.

Or. en

**Amendment 1**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 62-64, 463, 464, 465, 472

**Proposal for a directive**  
**Article 1 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

In accordance with Article 10, rights laid down in this Directive pertaining to the protection of natural persons **in relation to the processing of personal data** in the context of algorithmic management also apply to every person performing platform

*Amendment*

In accordance with Article 10, rights laid down in this Directive pertaining to the protection of natural persons in the context of algorithmic management also apply to every person performing platform work in the Union who does not have an

work in the Union who does not have an employment contract or employment relationship.

employment contract or employment relationship.

Or. en

**Amendment 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

**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;

(b) it is provided at the request of a recipient of the service ***or it involves the allocation of work through an open call;***

Or. en

**Amendment 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

**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;

(c) it involves the organisation of work performed by individuals, irrespective of whether that work is performed online or in a certain location ***and irrespective of the contractual designation of the relationship between that individual and the natural or legal person providing the service;***

Or. en

**Amendment 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 2**

*Text proposed by the Commission*

(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;

*Amendment*

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

Or. en

**Amendment 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

**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 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

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

*Text proposed by the Commission*

*Amendment*

***(5 a) ‘representatives of persons performing platform work’ means the 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 or by the self-employed performing platform work in an organisation to represent them in accordance with national law or practices, or both;***

Or. en

**Amendment 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

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

*Text proposed by the Commission*

*Amendment*

***(5 b) ‘automated monitoring systems’ means any automated systems used for or supporting monitoring, supervising or evaluating the work performance;***

Or. en

**Amendment 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

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

*Text proposed by the Commission*

*Amendment*

**(5 c) ‘automated decision-making systems’ means any automated systems used to take or support decision-making;**

Or. en

**Amendment 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

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

*Text proposed by the Commission*

*Amendment*

**(5 d) ‘biometric data’ means biometric data as defined in Article 4 (14) of Regulation 2016/679;**

Or. en

**Amendment 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

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

*Text proposed by the Commission*

*Amendment*

**(5 e) ‘biometrics-based data’ means data resulting from specific technical processing relating to physical, physiological, or behavioural features, signals, or characteristics of a natural person, such as facial expressions, movements, pulse frequency, voice, keystrokes or gait.**

Or. en

**Amendment 2**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 65-72, 482, 495, 498, 506, 513, 514, 515, 520, 521, 522, 523, 527, 533, 534, 535, 539

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

*Text proposed by the Commission*

*Amendment*

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.

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 that allow private individuals to resell goods**. 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 3**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 73, 74, 75, 542, 543, 548, 550, 552, 554, 557, 558, 562, 573, 574, 588

## 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 **applying the presumption** of an employment relationship **in line with article 4(1) for the purpose of ascertaining the existence of such a relationship** as defined by **applicable** law, collective agreements or practice in force in the Member States **and** with consideration to the case-law of the Court of Justice, and ensuring that **these persons** enjoy the rights deriving from Union law applicable to workers.

Or. en

## Amendment 3 Elisabetta Gualmini

Compromise amendment replacing Amendment(s): 73, 74, 75, 542, 543, 548, 550, 552, 554, 557, 558, 562, 573, 574, 588

## 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

### *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 **such** facts, the party **or parties** assuming the

employer shall be clearly identified in accordance with national legal systems.

obligations of the employer shall be clearly identified in accordance with national legal systems **and taking into account Article 12b on subcontracting liability, and shall dully fulfil those obligations.**

Or. en

**Amendment 3**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 73, 74, 75, 542, 543, 548, 550, 552, 554, 557, 558, 562, 573, 574, 588

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

*Text proposed by the Commission*

*Amendment*

**2 a. Whenever digital labour platforms are recognised to exercise the prerogatives of employers, they shall comply with the corresponding employers' obligations under national law and collective agreements applicable in the sector of activity, including in relation to labour law, income tax and financing of social protection. Platform workers shall fully enjoy the status of worker in line with national law, collective agreements or practice in force in the Member States, including the rights to join a trade union, to organise, and bargain collectively.**

Or. en

**Amendment 3**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 73, 74, 75, 542, 543, 548, 550, 552, 554, 557, 558, 562, 573, 574, 588

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

*Text proposed by the Commission*

*Amendment*

**2 b.** *The provisions of this Directive apply in full to digital labour platforms exerting the function of temporary work agencies, in addition to the provisions of Directive 2008/104/EC.*

Or. en

**Amendment 4**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 76-85, 573, 576-579, 588, 591, 592, 594, 596-600, 666, 669, 671, 680, 684, 686, 688-690, 694-697, 699-701, 706, 708, 710-712, 611, 622, 636, 643

**Proposal for a directive**  
**Article 4 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

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.

1. ***A person performing platform work shall be either a platform worker or a genuine self-employed.*** 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 ***and therefore digital labour platforms shall be presumed to be employers.*** To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems, ***in order to ensure that the legal presumption can be relied upon by competent authorities and bodies that verify compliance with or enforce relevant legislation as well as by persons performing platform work and their representatives.***

Or. en

**Amendment 4**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 76-85, 573, 576-579, 588, 591, 592, 594, 596-600, 666, 669, 671, 680, 684, 686, 688-690, 694-697, 699-701, 706, 708, 710-712, 611, 622, 636, 643

**Proposal for a directive**  
**Article 4 – paragraph 1 – subparagraph 1a (new)**

*Text proposed by the Commission*

*Amendment*

***Whenever competent authorities and bodies, including those responsible for registering administrative procedures, consider that a person performing platform work might be wrongly classified, they shall apply the presumption. Whenever a person performing platform work or a trade union acting on behalf or in support of several persons performing platform work, in accordance with national law or practice, dispute their classification in an administrative or legal proceeding, the presumption shall be applied.***

Or. en

**Amendment 4**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 76-85, 573, 576-579, 588, 591, 592, 594, 596-600, 666, 669, 671, 680, 684, 686, 688-690, 694-697, 699-701, 706, 708, 710-714, 719, 611, 622, 636, 643

**Proposal for a directive**  
**Article 4 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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***

***The application of the legal presumption shall not lead to an automatic reclassification of all persons performing platform work as platform workers. Digital labour platforms shall have the possibility to rebut the presumption of***

that presumption.

***employment before a decision for reclassification is taken in administrative or legal proceedings. The rebuttable presumption of employment shall apply in all relevant administrative procedures and administrative and legal proceedings. Competent authorities and bodies, including those responsible for registering administrative procedures, verifying compliance with or enforcing relevant legislation, including collective agreements, shall effectively apply that presumption. To this end, the digital labour platforms shall be required by the competent authorities and bodies to provide all relevant information in order for the authorities to determine, based on an objective assessment, the correct classification of the persons performing platform work.***

Or. en

#### **Amendment 4 Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 76-85, 573, 576-579, 588, 591, 592, 594, 596-600, 666, 669, 671, 680, 684, 686, 688-690, 694-697, 699-701, 706, 708, 710-714, 719, 611, 622, 636, 643

#### **Proposal for a directive Article 4 – paragraph 2 – introductory part**

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<b>2. Controlling the performance of work within the meaning of paragraph 1 shall be understood as fulfilling at least two of the following:</b>	<b>deleted</b>
<b>(a) effectively determining, or setting upper limits for the level of remuneration;</b>	<b>deleted</b>
<b>(b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or</b>	<b>deleted</b>

*performance of the work;*

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

(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;* *deleted*

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

Or. en

#### **Amendment 4** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 76-85, 573, 576-579, 588, 591, 592, 594, 596-600, 666, 669, 671, 680, 684, 686, 688-690, 694-697, 699-701, 706, 708, 710-714, 719, 611, 622, 636, 643

#### **Proposal for a directive** **Article 4 – paragraph 3 – introductory part**

*Text proposed by the Commission*

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 shall:

*Amendment*

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 they shall:

Or. en

#### **Amendment 4** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 76-85, 573, 576-579, 588, 591, 592, 594, 596-600, 666, 669, 671, 680, 684, 686, 688-690, 694-697, 699-701, 706, 708, 710-714, 719, 611, 622, 636, 643

**Proposal for a directive**  
**Article 4 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) develop guidance for digital labour platforms, persons performing platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5;

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

(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*

(b) develop **comprehensive** guidance, **including in the form of concrete and practical recommendations**, for digital labour platforms, persons performing platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5;

(c) develop guidance, **capacity building and training and establish procedures for national competent and enforcement authorities to proactively identify**, target, and pursue **digital labour platforms in order to ensure effective compliance with the provisions established in this Directive, including by imposing dissuasive sanctions against** non-compliant digital labour platforms;

**(c a) 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;**

(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, **and 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;*

*(d a) provide for an inspection within one month 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;*

*(d b) provide for sufficient resources and 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 (e) and (f), also by carrying out routine and announced visits;*

*(d c) ensure that duly qualified technical experts and specialists, particularly with respect to algorithmic management, assist the labour inspectorates in their work when necessary.*

Or. en

#### **Amendment 4** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 76-85, 573, 576-579, 588, 591, 592, 594, 596-600, 666, 669, 671, 680, 684, 686, 688-690, 694-697, 699-701, 706, 708, 710-714, 719, 611, 622, 636, 643

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

*Text proposed by the Commission*

4. With regard to contractual relationships entered into before and still ongoing on the date set out in Article

*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.

21(1), the legal presumption referred to in paragraph 1 shall only apply to the period starting from that date ***without prejudice to Directive (EU) 2019/1152 that could apply before that date.***

Or. en

**Amendment 5**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 86, 87, 741, 749, 759, 762, 763, 765

**Proposal for a directive**  
**Article 5 – paragraph 1**

*Text proposed by the Commission*

Member States shall ensure the possibility for any of the parties to rebut the legal presumption referred to in Article 4 in legal or administrative proceedings or both.

*Amendment*

***1.*** Member States shall ensure the possibility for any of the parties to rebut the legal presumption referred to in Article 4 in legal or administrative proceedings or both.

Or. en

**Amendment 5**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 86, 87, 741, 749, 759, 762, 763, 765

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

*Text proposed by the Commission*

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. ***Such proceedings shall not have***

*Amendment*

Where the digital labour platform argues that the contractual relationship in question is not an employment relationship ***in line with article 4(1) and*** as defined by ***applicable*** 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

*suspensive effect on the application of the legal presumption.*

platform.

Or. en

**Amendment 5**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 86, 87, 741, 749, 759, 762, 763, 765

**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 *in line with article 4(1), and* as defined by *applicable* law, collective agreements or practice in force in the Member State in question *and* 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.

Or. en

**Amendment 5**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 86, 87, 741, 749, 759, 762, 763, 765

**Proposal for a directive**  
**Article 5 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall ensure the possibility to rebut the presumption referred to in article 4 by means of demonstrating that the person performing platform work is genuinely self-employed***

*as both the following criteria are satisfied:*

*(a) The contractual relationship in question is not an employment relationship as defined by applicable law, collective agreements or practice in force in the Member State in question with consideration to the case-law of the Court of Justice and the person performing platform work is free from control and direction of the digital labour platform in connection with the performance of the work, both under the contract for the performance of the work and in fact.*

*(b) The person performing platform work is usually engaged in an independently established trade, profession or business of the same nature as that with which the work performed is related.*

Or. en

**Amendment 5**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 86, 87, 741, 749, 759, 762, 763, 765

**Proposal for a directive**  
**Article 5 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. The following elements indicating control and direction in connection with the performance of work within the meaning of article 5.2(a) shall be taken into consideration:***

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

***(b) effectively determining or controlling working conditions, including restricting time schedule and working time duration, or enforcing the performance of work, including through sanctions or incentives,***

*restricting access to work, or using rating systems as a tool of control and basis for sanctions and as a tool to allocate work assignments;*

*(c) effectively preventing the person performing platform work from developing business contacts with potential clients, including via controlling or restricting the communication between the person performing platform work and the recipient of the service or the good while and after the work is being performed;*

*(d) tracking or supervising the person performing platform work while performing the work;*

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

*(f) effectively restricting the use of subcontractors or substitutes to perform the work;*

*(g) effectively restricting the possibility of the person performing platform work to perform work for any third party, including competitors of the digital labour platforms;*

*(h) restricting the freedom of the person performing platform work to choose social protection, accident insurance, pension scheme or other forms of insurance, including through adverse consequences.*

Or. en

**Amendment 5**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 86, 87, 741, 749, 759, 762, 763, 765

**Proposal for a directive**  
**Article 5 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

***1c. Member States shall regularly review assess and, where necessary, complement these conditions, in consultation with the social partners. Where a digital labour platform challenges an administrative or judicial decision determining the employment status of a person performing platform work, such a proceeding shall not have a suspensive effect on that decision.***

Or. en

**Amendment 6**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

**Proposal for a directive**  
**Article 6 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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:

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

1. Without prejudice to the obligations and rights of digital labour platforms and platform workers under ***Regulation (EU) 2016/679, Directive (EU) 2019/1152, Directive 89/391/EEC and Directive 2009/38/EC***, Member States shall require digital labour platforms to inform platform workers, ***workers' representatives and the labour inspectorate and other competent authorities*** of:

(a) automated monitoring systems which are used ***for, or support monitoring, supervising or evaluating*** the work performance of platform workers through electronic means;

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

(b) automated decision-making systems which are used to take or support decisions that significantly affect those platform workers' working conditions, in particular their **recruitment, their** access to **and organisation of** work assignments, their earnings **including the pricing of individual assignments**, their occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account.

***The information referred to in points a) and b) shall be provided irrespectively of the automated monitoring and decision-making systems being managed by the digital labour platform or a service provider that sells its management services to the platform.***

Or. en

## **Amendment 6** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

### **Proposal for a directive** **Article 6 – paragraph 2 – point a**

*Text proposed by the Commission*

(ii) the categories of actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;

*Amendment*

(ii) the categories of **data and** actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;

***(ii a) the aim of the monitoring and how the system will achieve it;***

***(ii b) the functioning and mode of operation of features that affect the employment relationship; in particular recruitment, access to work assignments,***

*earnings, health and safety, working time, promotion, ranking, and the restriction, suspension or termination of accounts;*

Or. en

**Amendment 6**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

**Proposal for a directive**  
**Article 6 – paragraph 2 – point b – point iii and iv**

*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;

(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*

(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 decision-making, including the way in which the platform worker's personal data or behaviour influence the decisions ***and any performance evaluation mechanisms;***

(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, ***the grounds for promotion, for task allocation and, where decision-making is supported or based on monitoring and evaluating performance, how behaviour has been evaluated and the justification for the evaluation.***

Or. en

**Amendment 6**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

**Proposal for a directive**  
**Article 6 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2 a. Decisions having an impact on health and safety and on the contractual relationship or introducing changes to the agreed terms of the employment relationship, and decisions to apply disciplinary measures, or restricting, suspending or terminating the contractual relationship and the platform worker's account, or any decision of equivalent detriment, shall not be taken by automated monitoring and decision-making systems and shall be taken in line with national law and collective agreements.**

Or. en

**Amendment 6**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

**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 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**

3. Digital labour platforms shall provide the information referred to in paragraph 2 in the form of a document which may be in electronic format. **The information shall be presented in a transparent, intelligible and easily**

*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.

*accessible form, using clear and plain language. For newly deployed automated systems information shall be provided prior to their use and before any changes affecting working conditions, the organisation of work or monitoring work performance.*

*Individual platform workers shall receive that information by the digital labour platform in so far as the systems and their features directly affect him/her and his/her working conditions at the latest on the first working day, or prior to the newly introduced changes affecting working conditions, the organisation of work or monitoring work performance 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. This information shall not be subject to confidentiality referred to in article 6a.*

Or. en

## **Amendment 6** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

### **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 *always* make the information referred to in paragraph 2 available to national labour authorities *and other national competent authorities also* upon their request.

Or. en

**Amendment 6**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

**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) process any personal data on the emotional or psychological state of the platform worker ***or infer the emotional or psychological state of the platform worker by making use of any personal data collected;***

Or. en

**Amendment 6**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

**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) process any personal data in relation to private conversations, including exchanges with ***or among*** platform ***workers and*** workers' representatives, ***also in relation to the possibility to organise collectively and to defend their rights;***

***(c a) process any personal data revealing racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs,***

*disability or state of health, including chronic disease or HIV status, or trade union membership and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, or data concerning a natural person's sex life or sexual orientation;*

Or. en

**Amendment 6**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

**Proposal for a directive**  
**Article 6 – paragraph 5 – point da - dd**

*Text proposed by the Commission*

*Amendment*

*(d a) make use of mandatory biometric identification or disproportionate or undue surveillance of work performance;*

*(db) under any circumstances provide for discriminatory practices when processing personal data;*

*(dc) process personal data to predict, prevent or restrict the exercise of fundamental rights, notably social rights, such as the right of association, the right of collective bargaining and action or the right to information and consultation;*

*(dd) process biometrics-based data.*

*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 6**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

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

*Text proposed by the Commission*

*Amendment*

**5 a. Digital labour platforms shall carry out a data protection impact assessment and shall seek the views of data subjects or their representatives on the intended processing. The assessment shall be carried out once, prior to the introduction of these processing operations and before any changes affecting working conditions, the organisation of work or monitoring work performance. The information contained in the impact assessment 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.**

**5 b. 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 monitoring systems.**

**5 c. Member States shall ensure that digital labour platforms provide platform workers with an interface and tools to facilitate effective, free of charge and machine-readable data portability, including reputational data, the right to rectification, erasure and to be forgotten in accordance with Regulation (EU) 2016/679. Platform workers shall also**

*have the right not to have those data transferred.*

Or. en

**Amendment 6A**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 88, 772, 89, 776, 779, 90, 91, 784, 786, 92, 93, 792, 793, 794, 797, 94-99, 798, 799, 100, 101, 102, 791, 801, 802, 803, 804, 806, 810, 104- 110, 813, 814, 816, 817, 820, 821, 823, 828, 829, 830, 832, 833, 834, 935, 937, 111-114, 836

**Proposal for a directive**  
**Article 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 6 a**

**Confidential information**

***1. Member States shall provide that, in the context of information and consultation processes and within the conditions and limits laid down by Union and national legislation and subject to objective criteria, representatives of persons performing platform work and any experts who assist them are not authorised to reveal any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence.***

***This paragraph shall not apply to:***

- a. the communication between workers' representatives and European, national or local work councils and the competent recognised trade union organisations on information that may affect the jobs or the working conditions of workers;***
- b. information regarding elements that may affect the rights protected by this directive.***

***2. The labour platform shall specify to the***

*workers' representatives the objective criteria used to decide on the confidential nature of the information, as well as how long the confidentiality applies. Member States shall determine by law the list of such objective criteria and ensure that workers representatives may have the classification of a matter reviewed by an urgent administrative or judicial decision.*

Or. en

## **Amendment 7** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 116 843, 845, 117, 846, 847, 849, 850, 118, 119, 852, 854, 120, 121, 122, 855, 863, 865, 866, 868

## **Proposal for a directive** **Article 7**

*Text proposed by the Commission*

*Amendment*

Human **monitoring** of automated systems

Human **oversight** of automated systems

**-1** *Member States shall ensure that digital labour platforms provide for human oversight of all decisions affecting working conditions.*

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 **with the involvement of workers' representatives** regularly, **and at least annually, oversee and carry out an assessment of** 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, **health and safety and fundamental rights.**

(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;

(a) **avoid** the risks, **or evaluate and combat the risks that cannot be avoided** of 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;

*(a a) evaluate the risk of discrimination resulting from decisions taken by those systems, including in replicating gender, racial and other social biases in the selection and treatment of different groups;*

Or. en

**Amendment 7**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 116, 843, 845, 117, 846, 847, 849, 850, 118, 119, 852, 854, 120, 121, 122, 855, 863, 865, 866, 868

**Proposal for a directive**  
**Article 7 – paragraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

(c) introduce appropriate preventive and protective measures.

(c) introduce appropriate preventive, *corrective* and protective measures.

Or. en

**Amendment 7**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 116, 843, 845, 117, 846, 847, 849, 850, 118, 119, 852, 854, 120, 121, 122, 855, 863, 865, 866, 868

**Proposal for a directive**  
**Article 7 – paragraph 2 and 3**

*Text proposed by the Commission*

*Amendment*

*2 a. The impact assessment referred to in paragraph 1 shall include the aspects covered by Article 7 (1) and (2) and shall be submitted to the competent labour and data protection authorities, and to workers' representatives.*

*2 b. If the assessment referred to in paragraph 1 finds risks to health and*

*safety or fundamental rights that cannot be avoided nor mitigated, as referred to in paragraph 2, the digital labour platform shall immediately cease the use of the automated system.*

*2 c. 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.*

3. Member States shall require digital labour platforms to ensure sufficient human resources for **monitoring** 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.

3. Member States shall require digital labour platforms to ensure sufficient human resources for **effective oversight of** 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 **carrying out the assessment referred to in this article and of overseeing or reviewing decision-making taken or supported by automated monitoring or automated decision-making systems** shall have the necessary competence, training and authority to exercise that function, **including the possibility of intervening on and reverting those decisions**. They shall enjoy protection from dismissal, disciplinary measures or other adverse treatment for overriding automated decisions or suggestions for decisions.

*3 a. Where an assessment as referred to in paragraph 1 is found to be non-compliant with the provisions of this article, the relevant health and safety, data protection, labour and other competent authorities shall take coordinated measures to enforce those provisions.*

Or. en

## Amendment 8 Elisabetta Gualmini

Compromise amendment replacing Amendment(s): 123, 870, 873, 125, 879, 127, 128, 895, 896, 897, 898, 899

### Proposal for a directive Article 8

*Text proposed by the Commission*

Human review of **significant** decisions

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 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.

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*

Human review of decisions **significantly affecting working conditions**

1. Member States shall ensure that platform workers have the right to **receive** 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). **The explanation shall be presented in a transparent and intelligible way, using clear and plain language in due time and at the latest on the first day of application of the decision.** In particular, Member States shall ensure that digital labour platforms 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.

Digital labour platforms shall provide the platform worker **in due time and at the latest on the first day of application** with a written statement of the reasons for any decision supported by an automated decision-making system **to restrict access to work assignments, or** 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, **any**

2. *Where platform workers 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 platform worker with a substantiated reply without undue delay and in any event within one week of receipt of the request.*

With regard to digital labour platforms which are micro, small or medium-sized enterprises, Member States may provide that *the deadline for reply referred to in the first subparagraph is extended to two weeks.*

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.

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

*decision producing an effect on the agreed terms of the employment relationship* or any decision with similar effects. *Those decisions shall be taken in accordance with national law or practice and applicable collective agreements.*

2. Platform workers *and workers' representatives* shall have the right to 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 *sufficiently precise and adequately* substantiated reply without undue delay and in any event within *two weeks* of receipt of the request.

With regard to digital labour platforms which are micro, small or medium-sized enterprises, Member States may provide that *this* deadline is extended to *one month*.

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, *provide* adequate compensation, *which shall be proportionate to the gravity of the infringement*.

4. This Article shall be without prejudice to dismissal procedures *or any other disciplinary procedures* laid down in national law, *practice or applicable collective agreements*.

Or. en

## Amendment 9 Elisabetta Gualmini

Compromise amendment replacing Amendment(s): 129, 130, 131, 901, 907, 911, 918

## Proposal for a directive Article 9

### *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.

2. For the purposes of this Article, the definitions of 'information' and 'consultation' as laid down in Article 2, points (f) and (g), of Directive 2002/14/EC shall apply. The rules laid down in Article 4(1), (3) and (4), ***Article 6*** and Article 7 of Directive 2002/14/EC shall apply accordingly.

3. The platform workers' representatives or the platform workers

### *Amendment*

1. Without prejudice to the rights and obligations under Directive 2002/14/EC, ***2009/38/EC, and 89/391/EEC*** Member States shall ensure ***timely*** information and ***effective*** consultation of platform workers ***and workers'*** representatives on decisions likely to lead to the introduction of or substantial changes ***affecting working conditions and health and safety*** in the use of automated monitoring and decision-making systems referred to in Article 6(1), in accordance with this Article. ***When defining or implementing practical arrangements for information and consultation, the digital labour platform and the workers' representatives shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the digital labour platform and of the workers.***

2. For the purposes of this Article, the definitions of 'information' and 'consultation' as laid down in Article 2, points (f) and (g), of Directive 2002/14/EC shall apply. The rules laid down in Article 4(1), (3) and (4), and Article 7 of Directive 2002/14/EC shall apply accordingly.

***2 a. Digital labour platforms shall provide the information referred to in article 6(1), (2), (5a) and (5b) and article 7 to workers' representatives with sufficient time as to allow a thorough examination and effective consultation. For newly deployed automated systems, the consultation shall take place prior to their use and before any changes affecting working conditions, the organisation of work or the monitoring of work performance.***

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 the digital labour platform, provided that they are proportionate.

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.

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

Or. en

## **Amendment 10** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 132, 133, 922, 924

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

#### *Text proposed by the Commission*

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.

#### *Amendment*

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

Or. en

## **Amendment 10B** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 150, 771, 982, 987, 988, 989, 1022

**Proposal for a directive  
Chapter III a (new)**

*Text proposed by the Commission*

*Amendment*

***PROMOTION OF COLLECTIVE  
BARGAINING***

Or. en

**Amendment 10B  
Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 150, 771, 982, 987, 988, 989, 1022

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

*Text proposed by the Commission*

*Amendment*

***Article 10 a***

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

***1. In accordance with national law and practice, Member States, with the involvement of the social partners, shall promote collective bargaining in platform work, including on the features of automated monitoring and decision-making systems, in order to improve working conditions, by all 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 in order to exercise their right to collective bargaining;***

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

*(c) providing measures in order to ensure that the right of collective bargaining and action is not undermined by any practice.*

*2. This Directive shall be without prejudice to the full respect for the autonomy of social partners, as well as their right to negotiate and conclude collective agreements.*

Or. en

**Amendment 11**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 134, 135, 927, 928, 929, 930, 931, 932, 933

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

*Text proposed by the Commission*

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.

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<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.

*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 to declare work performed by platform workers to the competent labour, ***tax*** and social protection authorities of the Member State in which the work is performed, ***to inform those authorities of work performed by persons performing platform work, and their employment status*** 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.***

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<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).

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 12** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 136-140, 939, 941, 943, 944, 945, 947, 948, 954, 955, 956, 957

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

#### *Text proposed by the Commission*

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 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:

(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 applicable to those contractual ***relationships, provided that those terms***

#### *Amendment*

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 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, ***regardless of the country in which the platform is established:***

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

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

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

*and conditions are unilaterally determined by the digital labour platform and apply to a large number of contractual relationships.*

*(b a) the average duration of activity, average weekly number of hours worked per person and average income from activity of persons performing platform work on a regular basis through the digital labour platform concerned.*

Or. en

## **Amendment 12** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 136-140, 939, 941, 943, 944, 945, 947, 948, 954, 955, 956, 957

### **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 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 by providing a substantiated reply *without undue delay and at the latest within one month of receipt of the request. This deadline shall be extended to two months for micro and small enterprises.*

Or. en

## **Amendment 12A** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 141, 142, 960, 961, 967, 1003

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

*Text proposed by the Commission*

*Amendment*

**Article 12 a**

***Cooperation in cross-border 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, competent national authorities shall be able to rely on existing relevant systems for exchange of information, including the Commission's Internal Market Information System and EURES.***

***2. Without prejudice to Regulation (EU) 2019/1149, 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 support cooperation between Member States in tackling undeclared work, facilitate access to information on rights and obligations regarding labour mobility across the Union, including those stemming from Union law, promote effective cooperation and exchange of information between Member States, and coordinate and support concerted and joint inspections, where requested by one or more Member States.***

Or. en

**Amendment 12B**  
**Elisabetta Gualmini**

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Compromise amendment replacing Amendment(s): 141, 142, 960, 961, 967, 1003

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

*Text proposed by the Commission*

*Amendment*

**Article 12 b**

***Subcontracting liability***

***1. Member States shall provide, after consulting the relevant social partners in line with national law and practice, for measures to ensure that in subcontracting chains persons performing platform work have an effective remedy whereby the digital labour platform of which the employer is a 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, including with respect to any outstanding remuneration and contributions due to the common funds or institutions of social partners.***

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

***3. 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.***

***4. 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 subcontracting relationship, effective and proportionate penalties against the contractor, to tackle fraud and abuse in situations when workers have difficulties in obtaining their rights.***

**Amendment 13**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 143, 962, 966

**Proposal for a directive**  
**Article 13**

*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*

**1.** Without prejudice to Articles 79 and 82 of Regulation (EU) 2016/679 **and Article 13 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, timely, free of charge at least for those workers who do not have sufficient means**, 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.

**1a. Member States shall ensure that persons performing platform work have the right to lodge a complaint with the competent supervisory authority.**

**Amendment 14**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 144-148, 970, 971, 972, 974, 975, 975, 977

**Proposal for a directive**  
**Article 14**

*Text proposed by the Commission*

1. Without prejudice to Article 80 of

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*Amendment*

1. Without prejudice to Article 80 of

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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.

2. Representatives of 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.*

Regulation (EU) 2016/679, **Article 13 of Directive 2009/52/EC and in accordance with Directive 2002/14/EC**, 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 ***where relevant and in accordance with national law or practice.***

2. Representatives of persons performing platform work shall also have the right to act on behalf or in support of several persons performing platform work, ***in accordance with national law or practice.***

***2 a. Paragraphs 1 and 2 shall apply without prejudice to the competences of trade unions as set out in national law or practice.***

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

Or. en

## **Amendment 15** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 149, 982, 985, 986

## **Proposal for a directive** **Article 15**

*Text proposed by the Commission*

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 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*

Communication **and reporting** channels for persons performing platform work

**1.** 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 **privately and securely** with each other, and to be contacted by **trade unions and** 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 **such channels other than for their functional maintenance or from accessing** or monitoring those contacts and communications.

**1a. In order to safeguard persons performing platform work from violence, including gender-based violence and harassment, Member States shall take the necessary measures to ensure that digital labour platforms develop policies against violence and harassment and take preventative measures, in particular by creating, with the involvement of representatives of persons performing platform work, effective reporting channels through the digital labour platforms, digital infrastructure or similarly effective means, while complying with the obligations under Regulation (EU) 2016/679. Digital labour platforms shall ensure that the privacy of those individuals and the confidentiality of the reports are duly protected. Member States shall require digital labour platforms to have effective and timely preventative and protective measures and investigation mechanisms to address such reports.**

**Amendment 16**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 151, 990, 991

**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 ***the provisions of this Directive***, national courts or competent authorities are able to order the digital labour platform to disclose any relevant evidence which lies in their control, ***irrespective of where the digital labour platform is established and of whether the automated monitoring and decision-making systems is managed by the digital labour platform or a service provider which sells its management services to the platform.***

**Amendment 17**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 152, 994

**Proposal for a directive**  
**Article 17**

*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

*Amendment*

***1.*** 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.

lodged with the digital labour platform resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

***1a. Digital labour platforms shall refrain from any act or omission that could directly or indirectly undermine the right of association or to join a trade union or the right of collective bargaining and action, or which discriminates against workers and trade union representatives who participate or wish to participate in collective bargaining.***

Or. en

### **Amendment 18** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 153-156, 995, 996

#### **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, ***including a suspension of the account***, of persons performing platform work, on the grounds that they have exercised the rights provided for in this Directive.

Or. en

### **Amendment 19** **Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 157-161, 137, 999, 1000, 1001, 1002, 1005

## Proposal for a directive

### Article 19

#### *Text proposed by the Commission*

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.

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.

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*

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, **together with national labour authorities. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679** shall be competent to impose administrative fines up to the amount referred to in Article **83 (4), (5) and (6)** of that Regulation.

2. The authorities referred to in paragraph 1 and national 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 **in cross-border situations and 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, **including financial 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.

**3 a. The penalties referred to in paragraph 3 shall include financial penalties that are proportionate to the nature, gravity and duration of the undertaking's infringement and which shall increase in amount according to the number of affected employees.**

***In the case of infringements related to digital labour platforms' refusal to comply with a legal ruling determining the employment status of persons performing platform work, Member States shall provide for significant financial penalties, equivalent to the penalties related to infringements of Regulation 2016/679, which can include setting a percentage of the digital labour platform's total annual turnover in the preceding financial year.***

**3 b. The penalties referred to in paragraph 3 may, where appropriate, include:**

***(a) orders excluding the undertaking from an entitlement to some or all public benefits, aids or subsidies, including EU funds managed by the relevant Member States, for a period of up to three years;***

***(b) orders excluding the undertaking from participating in a public contract as defined in Directive 2014/24/EU of the European Parliament and of the Council.***

Or. en

**Amendment 20**  
**Elisabetta Gualmini**

Compromise amendment replacing Amendment(s): 162-163, 1016

**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

*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. ***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.***

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