STEPPING UP EU SIMPLIFICATION EFFORTS IN THE FIELD OF SOCIAL AFFAIRS

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STATEMENT

BusinessEurope is strongly committed to helping shape an economically viable social market economy to preserve Europe's social model. In our priorities for the EU social dimension 2024–2029, we called for two key horizontal shifts in EU social policy:

1. Focus on boosting competitiveness, employment and productivity to sustain Europe's social model amid demographic change. Avoid new regulatory initiatives that increase compliance burdens, especially for SMEs.

2. Move towards a trust-based approach made of less detailed regulation in social directives, with more room for social dialogue.

3. Stronger efforts are needed to simplify existing EU social legislation and reduce regulatory complexity for businesses. The social acquis plays an important role for EU competitiveness.

BusinessEurope is making concrete proposals on how to simplify EU social legislation without diminishing workers' rights by:

- strengthening labour mobility and provision of services in the Single Market through swiftly adopting and implementing recent EU initiatives such as eDeclaration or ESSPASS to reduce administrative burdens and foster stronger use of digitalisation in social security coordination processes;

- introducing the changes suggested by BusinessEurope in the directives on pay transparency, platform work, transparent and predictable working conditions, working time and the REACH regulation;

- leaving flexibility on the methods to implement EU social directives at national level, including by giving the possibility to implement them by collective agreements negotiated in accordance with national industrial relations systems. It is important to develop the space for social partners to implement, apply, and where appropriate, derogate from social directives.

BusinessEurope calls on the Commission:

- To meet the simplification targets of cutting the regulatory burdens by 25% overall and by at least 35% for SMEs through the swift adoption of a labour market omnibus designed to simplify procedures, facilitate compliance and avoid disproportionate obligations and cost.

- To introduce ambitious simplification measures in the upcoming Fair Labour Mobility Package, including but not limited to digitalisation measures such as a legal proposal on ESSPASS and starting the technical work on the merging of ESSPASS, A1 and eDeclaration.

- To ensure that the upcoming Quality Jobs Act does not undermine European Commission's simplification efforts by imposing additional regulatory burden on employers, and to rigorously apply the subsidiarity and proportionality to it.

We urge the Commission to deliver the necessary regulatory burden reduction across the following five pieces of EU social legislations:

1. **Pay Transparency Directive (EU) 2023/970:** BusinessEurope requests a "Stop the Clock" on the transposition to allow adequate time to make the necessary amendments to the Directive and to ensure a proportionate and effective transposition. We propose the introduction of a presumption of compliance for the companies adhering to collective agreements and other concrete amendments to facilitate compliance with this important directive.
2. **Platform Work Directive (EU) 2024/2831:** We propose amendments to simplify certain definitions and remove inconsistencies with other pieces of European legislation regarding the limitations on the processing of personal data through algorithmic management systems.
3. **Transparent and Predictable Working Conditions Directive (EU) 2019/1152:** We propose simplifying and aligning employer reporting deadlines and increasing flexibility in work organisation.
4. **Working Time Directive 2003/88/EC:** We propose amendments to clarify that this Directive does not entail an obligation for employers to establish a system for recording working time for workers whose working hours are not measured and/or predetermined or can be determined by the workers themselves. We also propose extending the reference period for calculating weekly working hours to 12 months in the body of the directive, in order to provide the necessary flexibility for organising working time and to give social partners more scope to agree on derogations through collective agreements.
5. **REACH Regulation:** We call on the Commission to take action to improve the interface between the REACH regulation and Occupational Safety and Health (OSH) directives - in particular the Chemical Agents Directive (CAD) and the directive protecting workers from exposure to Carcinogens, Mutagens and Reprotoxic substances (CMRD) – by making OSH legislative and non-legislative tools the applicable framework for the risk assessment and risk management of professional and industrial uses of chemicals.

For each of these pieces of EU legislation, the specific amendments we propose do not undermine workers' rights and increase the scope for social partner negotiations at all the appropriate levels.

Regarding the envisaged Quality Jobs Act, it is important that the simplification dimension is delivered. Furthermore, greater efforts at EU level should focus on effective implementation of the existing EU social acquis. Failing that, the Quality Jobs Act risks negatively affecting the attractiveness of the EU as a place to invest and undermining its very objective: creating the conditions that will allow competitive companies to create quality jobs in Europe. This includes targeting non-compliant companies without harming compliant ones. Especially negative impacts on SMEs must be avoided.

We look forward to discussing this with the European Commission and the other EU institutions, with a view to delivering tangible proposals to simplify EU social legislation in order to improve companies' competitiveness and facilitate compliance.

PROPOSED AMENDMENTS

- PAY TRANSPARENCY DIRECTIVE (EU) 2023/970
  (pages 5-14)
- PLATFORM WORK DIRECTIVE (EU) 2024/2831
  (pages 15-18)
- TRANSPARENT AND PREDICTABLE WORKING CONDITIONS DIRECTIVE (EU) 2019/1152
  (pages 19-22)
- WORKING TIME DIRECTIVE 2003/88/EC
  (pages 23-24)
- OSH/REACH INTERFACE (EU) REGULATION 1907/2006
  (pages 25-26)

PAY TRANSPARENCY DIRECTIVE

STOP THE CLOCK: A PREREQUISITE FOR SIMPLIFICATION

BusinessEurope calls for a **"Stop the Clock"** regarding the transposition of the Pay Transparency Directive (PTD). Additional time is required to ensure a proportionate, coherent and workable implementation for both Member States and employers, while also allowing for the identification and consideration of potential simplification measures.

Given that the current transposition deadline is 7 June 2026, BusinessEurope members urge the colegislators to grant a two-year extension. Such an extension would provide Member States and employers with adequate time to adapt systems, procedures and legislation to the requirements of the Directive, ensuring a proportionate and effective transposition across the EU.

In this context, BusinessEurope proposes a targeted set of amendments aimed at ensuring that the Directive can be implemented in a proportionate, operational and legally coherent manner. The proposed amendments come in two parts, namely, **1. Collective Bargaining – Presumption of Compliance** and **2. Other Simplification Priorities.** The former covers amendments that accommodate preexisting industrial relations infrastructures to avoid duplication and disproportionate burdens for companies already subject to well defined requirements due to their adherence to collective agreements covering similar issues. The latter presents further amendments that are essential to making the directive operational for all companies, including those that do not adhere to collective agreements.

1. COLLECTIVE BARGAINING - PRESUMPTION OF COMPLIANCE

RATIONALE

In many Member States, job classification frameworks established through Collective Agreements (CAs) **already apply objective and gender-neutral** criteria such as skills, responsibility, effort, and working conditions. These systems have been developed jointly by social partners precisely to guarantee fairness and transparency in pay determination, also delivering gender-neutral pay structures.

Given CAs role in ensuring pay equity, companies applying such CAs could be **presumed compliant** with several of the obligations contained in the Pay Transparency Directive (PTD). To reflect this reality, and as is further explained below, a **presumption of compliance** should be established in the PTD for companies adhering to collective agreements. Not only would this result in a massive administrative burden reduction in the specific case of the PTD but, it would also constitute an incentive to engage in collective bargaining and thereby, in the long term, increase collective agreement coverage throughout the EU.

This is very much in line with both the European social market model and the EU's simplification agenda.

PROPOSAL

Under this presumption:

- Companies adhering to CAs are to be deemed compliant with Article 4(4), unless proven otherwise. This presumption of compliance would also cover the Directive's Articles 6 **(Transparency of pay setting and pay progression policy)**, 7 **(Right to information)**, 9 **(Reporting on pay gaps)**, and 10 **(Joint pay assessment)**.
- The **burden of proof** in Article 18 should not shift automatically to employers where CAs apply. Instead, employees should first establish a *prima facie* case suggesting non-compliance.

Proposed amendments:

1.1 ARTICLE 4: ADD A PARAGRAPH ESTABLISHING A PRESUMPTION OF COMPLIANCE FOR COMPANIES ADHERING TO COLLECTIVE AGREEMENTS

Explanation: This approach would reduce unnecessary administrative duplication while maintaining employee's rights to challenge alleged discriminations. Such a rebuttable presumption would strike a fair balance between pay transparency and the recognition of social dialogue mechanisms that already deliver gender-neutral pay structures.

NEW ARTICLE 4 – Concept of equal work and work of equal value

adding a new paragraph 4.5

Where an employer adheres to a collective agreement that contains job classification or pay structures established jointly by the social partners and based on gender-neutral criteria, the employer shall be presumed to comply with this Article.

1.2 ARTICLE 6: ADD A PARAGRAPH ALLOWING EMPLOYERS ADHERING TO COLLECTIVE AGREEMENTS TO FULFIL THE INFORMATION REQUIREMENT ON PAY PROGRESSION BY MAKING A SIMPLE REFERENCE TO THE RELEVANT SECTION OF THE COLLECTIVE AGREEMENT

Explanation: Article 6(1) requires employers to make easily accessible to their workers the criteria that are used to determine workers' pay, pay levels and pay progression. However, for companies bound by collective agreements, **this obligation is redundant**, as these criteria are already defined in the collective agreements negotiated between social partners. Employers would therefore comply with Article 6 by referring to the relevant section of the applicable collective agreement, rather than reproducing the information separately.

This technique of fulfilling information obligations by reference is also applied in other EU Directives. For instance, Article 4(3) of the Directive on Transparent and Predictable Working Conditions allows certain information to be provided by reference to laws, regulations, or collective agreements. Similarly, a comparable approach appears in Article 18 of the Working Time Directive, which enables derogations from several provisions to be introduced through collective agreements. This reflects the broader EU practice of recognising collectively agreed frameworks as valid mechanisms for fulfilling or adapting regulatory obligations.

NEW ARTICLE 6 – Transparency of pay setting and pay progression policy

adding a new paragraph

Employers adhering to collective agreements as described in Article 4 for pay determination, pay levels, and pay progression shall be deemed to comply with the information requirement set out in paragraph 1. In such cases, employers may fulfil their obligation by referring to the relevant provisions of the collective agreement that establish these criteria.

1.3 ARTICLE 7: INTRODUCE AN EXEMPTION FOR COMPANIES ADHERING TO COLLECTIVE AGREEMENTS

Explanation: Art. 7.1 creates a disproportionate right to information requirement for companies adhering to collective agreements, as collective agreements already guarantee that identical or comparable tasks are classified in the same pay category and compensated equally, irrespective of the individual or gender. The revised approach ensures proportionality between transparency and administrative feasibility, recognising that collective agreements already guarantee equal pay for equal work and gender-neutral job classification systems.

NEW ARTICLE 7 – Right to information

adding a new paragraph

Employers that adhere to collective agreements which are presumed to comply with Article 4 shall be exempt from the individual information obligation set out in paragraph 1. In such cases, a reference to the relevant provisions of the collective agreement shall be deemed sufficient to meet the employer's obligation to provide information on pay levels.

1.4 ARTICLE 9: ADD A PARAGRAPH EXEMPTING COMPANIES COVERED BY THE PRESUMPTION FROM REPORTING OBLIGATIONS AND IN PARAGRAPH 6 INSERT A SENTENCE STATING THAT A HEARING OF EMPLOYEE REPRESENTATIVES IS NOT REQUIRED IN COMPANIES THAT ADHERE TO COLLECTIVE AGREEMENTS

Explanation: A simplified reporting is needed to give companies entering into collective agreements a clear advantage in terms of reduced reporting burdens:

NEW ARTICLE 9 – Reporting on the pay gap

adding a new paragraph

Employers adhering to collective agreements covered by the presumption of compliance under Article 4 shall limit reporting to the overall gender pay gap (Article 9(1)(a)) and shall be exempted from Article 9(1)(b-g)

Explanation: Clarify the consultation requirements in paragraph 6 to ensure that companies adhering to collective agreements are not subject to redundant procedures and that obligations remain proportionate. In particular, the Directive should recognise that where employers already apply collective agreements, the hearing of employee representatives is unnecessary.

REVISED ARTICLE 9, paragraph 6

6. The accuracy of the information shall be confirmed by the employer's management, after consulting workers' representatives. Workers' representatives shall have access to the methodologies applied by the employer. **Consulting workers' representatives shall not be required in companies that are adhering to collective agreements.**

1.5 ARTICLE 10: ADD A PARAGRAPH EXEMPTING COMPANIES COVERED BY THE PRESUMPTION FROM JOINT PAY ASSESSMENTS

Explanation: Article 10 creates redundant wage disparity evaluations for companies subject to collective agreements negotiated at regular intervals as set by social partners. The objective is to avoid duplication and ensure that the Directive recognises the value of collective bargaining frameworks that already guarantee gender-neutral and transparent pay structures, while maintaining workers' rights to information and consultation.

NEW ARTICLE 10 – Joint Pay Assessment

- **adding a new paragraph**

Employers adhering to collective agreements covered by the presumption of compliance under Article 4 shall be deemed to comply with the obligations set out in paragraphs 1 and 2 of this Article. In such cases, employers may fulfil the requirement to conduct a joint pay assessment by referring to the relevant provisions of the collective agreement, and/or through equivalent comparison procedures aimed at preventing, identifying and remedying unjustified differences in the average pay levels between female and male workers, in accordance with national laws and/or practices, without being required to carry out any additional assessment under this Article.

1.6 ARTICLE 18: ADD A PARAGRAPH CLARIFYING THAT NO SHIFT OF THE BURDEN OF PROOF APPLIES WHERE CAS ARE IN PLACE AND A CORRESPONDING RECITAL

Explanation: BusinessEurope calls for the introduction of a presumption that, given that concluded jointly by the social partners, companies that adhere to CAs should not be subject to a shift of the burden of proof since the collective agreement's content is deemed to be compliant, unless proven otherwise.

NEW ARTICLE 18 – Burden of proof

adding a new paragraph

In cases where an employer adheres to a collective agreement covered by the presumption of compliance under Article 4, the burden of proof shall not shift to the employer. In such cases, the complainant shall first provide sufficient, precise and consistent evidence suggesting that provisions or the application of the collective agreement may not be in line with the principle of equal pay.

NEW RECITAL should be added stating that:

In many Member States, collective agreements already contain gender-neutral job classification systems and pay structures negotiated jointly by social partners. These systems ensure transparency, fairness, and objective pay setting based on gender-neutral criteria, such as skills, responsibility, effort, and working conditions. To recognise the effectiveness of such systems, undertakings applying such collective agreements should be presumed to comply with the obligations of this Directive, unless proven otherwise. This presumption should be rebuttable and without prejudice to employee's rights to challenge potential cases of discrimination.

2. OTHER SIMPLIFICATION PRIORITIES

2.1 ARTICLE 4 - EQUAL WORK AND WORK OF EQUAL VALUE

Article 4(4) establishes a list of criteria to be used when assessing work of equal value. Making this list mandatory may limit the flexibility of employers to rely on existing job classification systems and sectoral practices. An optional approach would allow the Directive to accommodate different national systems while ensuring that the overarching principle of gender neutrality is respected.

The provision should also be clarified to ensure that the criteria can be applied in a manner consistent with national law and/or practices on the role of workers' representatives. This approach avoids introducing any unintended obligations for co-decision or procedural requirements (as further explained in paragraph 2.5 below).

PROPOSAL

Make the list of criteria **optional** rather than mandatory.

In addition, clarify the wording to ensure that the provision is applied in accordance with national law and practice, without creating new co-decision obligations for workers' representatives.

Proposed amendment

- Replace "shall" with "may" in Article 4(4), allowing employers to apply the listed criteria where appropriate, without being required to follow them exhaustively, and delete "if appropriate".

- Delete the word "agreed" and replace with "set in consultation with", followed by "in accordance with national law and/or practice", and delete "where such representatives exist".

REVISED ARTICLE 4 – Equal work and work of equal value

4. Pay structures shall be such as to enable the assessment of whether workers are in a comparable situation in regard to the value of work on the basis of objective, gender-neutral criteria ~~agreed~~ **set in consultation** with workers' representatives **in accordance to national law and/or practice** ~~where such representatives exist~~. Those criteria shall not be based directly or indirectly on workers' sex. They **may** ~~shall~~ include skills, effort, responsibility and working conditions, and, ~~if appropriate,~~ any other factors which are relevant to the specific job or position. They shall be applied in an objective gender-neutral manner, excluding any direct or indirect discrimination based on sex. In particular, relevant soft skills shall not be undervalued.

2.2 ARTICLE 6 - TRANSPARENCY OF PAY SETTING AND PAY PROGRESSION POLICY

Article 6(2) allows Member States to exempt employers with fewer than 50 workers from certain obligations. Leaving this exemption **optional** risks uneven implementation and unnecessary burdens on micro and small enterprises. According to EU's simplification agenda, the Commission has set the targets to reduce reporting burdens by at least for 35% for SMEs.

PROPOSAL

Make the exemption **mandatory** for all companies with fewer than 50 employees.

Proposed amendment: Replace "may" with "shall" in Article 6(2) and make the **exclusion obligatory.**

REVISED ARTICLE 6.2 – Transparency of pay setting and progression policy

2. Member States ~~may~~ **shall** exempt employers with fewer than 50 workers from the obligation related to the pay progression set out in paragraph 1.

2.3 ARTICLE 7 – RIGHT TO INFORMATION

Article 7 poses a potential risk of unproportionate use of right to information, as it does not specify any timeframe, presumably allowing employees to assert claims for information repeatedly.

PROPOSAL

Introduce a **limit on the frequency** of employees' information requests, such as a minimum **waiting period of one year** before allowing another request for information to employees.

Proposed amendment: adding a new paragraph limiting the frequences of employees' information requests.

NEW ARTICLE 7

adding a new paragraph

Member States shall provide that a request for information under paragraph 1 may be submitted no more than once within a twelve-month period.

2.4 ARTICLE 9 - REPORTING ON PAY GAPS

The current reporting framework under Article 9 is **overly detailed** and not proportionate to company size or data capacities.

PROPOSALS

Raise the threshold so that reporting obligations apply only to companies meeting the threshold established in the CSRD (i.e. 1000 employees), ensuring consistency with its requirements. Companies with fewer workers should not fall within the scope of this Article, in order to avoid disproportionate administrative and financial burdens.

Proposed amendment: Replace paragraph 2 and delete paragraphs 3, 4, and 5 to ensure consistency with CSRD requirements.

REVISED ARTICLE 9 – Reporting on pay gaps

2. **Employers meeting the employee threshold set out in Directive 2022/2464/EU of the European Parliament and of the Council shall provide the information set out in paragraph 1 in accordance with the reporting period and modalities foreseen for the management report, established under the Directive 2022/2464/EU of the European Parliament and of the Council.** ~~Employers with 250 workers or more shall, by 7 June 2027 and every year thereafter, provide the information set out in paragraph 1 relating to the previous calendar year.~~

~~3. Employers with 150 to 249 workers shall, by 7 June 2027 and every three years thereafter, provide the information set out in paragraph 1 relating to the previous calendar year.~~

~~4. Employers with 100 to 149 workers shall, by 7 June 2031 and every three years thereafter, provide the information set out in paragraph 1 relating to the previous calendar year.~~

~~5. Member States shall not prevent employers with fewer than 100 workers from providing the information set out in paragraph 1 on a voluntary basis. Member States may, as a matter of national law, require employers with fewer than 100 workers to provide information on pay.~~

2.5 ARTICLE 12 – DATA PROTECTION

Article 12 creates inconsistencies with GDPR requirements, as it does not adequately protect against the risk of individualisation of the pay data that must be disclosed mandatorily. The co-legislators did not take into account the European Data Protection Supervisor's (EDPS) key observation (Observations of 27/04/2021), which recommended "adding in the substantive part of the Proposal, as a separate paragraph under Article [12], the specification contained in the recital [44]".[1]

[1] Extract from Recital [44] : " Specific safeguards should be added to prevent the direct or indirect disclosure of information of an identifiable worker".

PROPOSAL

Introduce a minimum number of comparative employees. The thresholds already in place in certain Member States, varying from 3 to 10, must be preserved, in particular pursuant to Article 27, which prohibits any reduction in the level of protection when transposing the Directive (standstill obligation). Thresholds are already applied in countries such as Belgium, Denmark, Finland, Germany, Greece, Norway and Spain.

Proposed amendment:

- Introduce a minimum number of comparative employees (data protection), allowing each Member State to decide that number. For example, the German Pay Transparency Law requires at least six employees of the opposite sex for comparison.
- Delete in paragraph 3 the references to workers' representatives and equality bodies, and replace them with *"the labour inspectorate, judicial bodies and/or other relevant bodies advising workers, in accordance with national law and practices"*.

NEW ARTICLE 12 – Data protection

adding a new paragraph

To ensure compliance with data protection requirements and prevent the identification of individual workers, the disclosure of pay information shall only be permitted where a minimum number of comparative employees is met. Member States shall determine the minimum number of employees required for disclosure, ensuring that data cannot lead to the direct or indirect identification of individual pay levels.

REVISED ARTICLE 12, PARAGRAPH 3 – Data protection

3. Member States may decide that, where the disclosure of information pursuant to Articles 7, 9 and 10 would lead to the disclosure, either directly or indirectly, of the pay of an identifiable worker, only the labour inspectorate, judicial bodies and/or other relevant bodies advising workers, in accordance with national law and practices, shall have access to that information. ~~The workers' representatives or the equality body~~ **Such bodies** shall advise workers regarding a possible claim under this Directive without disclosing actual pay levels of individual workers performing the same work or work of equal value. For the purposes of monitoring pursuant to Article 29, the information shall be made available without restriction.

2.6 ARTICLE 16 – RIGHT TO COMPENSATION

Compensation must be limited to harm for which the employer can be held directly accountable. This includes remuneration paid in connection with the employment relationship. Hypothetical future losses linked to pension entitlements arising after the employment contract has ended cannot reasonably be attributed to the employer. Pension entitlements do not constitute a missed opportunity caused by the employer.

PROPOSAL

Remove the reference to compensation for lost opportunities, as it goes beyond the employer's responsibility and introduces liability for elements outside the employment relationship.

Proposed amendment:

Delete the second sentence of paragraph 3.

REVISED ARTICLE 16 – Right to compensation

3. The compensation or reparation shall place the worker who has sustained damage in the position in which that person would have been if he or she had not been discriminated against based on sex or if there had been no infringement of any of the rights or obligations relating to the principle of equal pay. ~~Member States shall ensure that the compensation or reparation includes full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities, non-material damage, any damage caused by other relevant factors which may include intersectional discrimination, as well as interest on arrears.~~

2.7 ARTICLE 19 – PROOF OF EQUAL WORK FOR EQUAL VALUE

The concept of a "single source" for establishing comparable pay conditions is unworkable and incompatible with decentralised wage-setting systems. It would undermine flexibility and the ability to reward individual performance.

PROPOSALS

For the purposes of assessing whether workers perform the same work or work of equal value, **comparisons shall be limited to workers employed by the same employer or within the same undertaking or organisation**, where the employer exercises effective control over pay-setting decisions.

Comparisons with **hypothetical workers** shall not be used to establish a presumption of discrimination.

In applying this Article, Member States shall ensure that the assesment of work of equal value respects **national wage-setting systems** and the autonomy of social partners to define remuneration structures through collective bargaining.

The requirement of a "single source" shall not apply. Employers shall not be required to compare workers employed by different entities, legal persons, or undertakings not under their direct control.

Proposed amendments:

- Delete the **"single source"** requirement in Article 19(1).
- Remove references to any **external and hypothetical comparators** in Recital (28).
- Clarify that employers are only required to compare workers **within the same organisation or company** and for a **limited time retrospectively.**

REVISED ARTICLE 19 – Proof of equal work for equal value

1. When assessing whether female and male workers are carrying out the same work or work of equal value, the assessment shall ~~not be limited to situations in which female and male workers work for the same employer, but shall be extended to a single source establishing the pay conditions. A single source shall exist where it stipulates the elements of pay relevant for the comparison of workers~~ **be limited to workers employed by the same employer or within the same undertaking or organisation, where the employer exercises direct control over pay-setting.**

2. ~~The assessment of whether workers are in a comparable situation shall not be limited to workers who are employed at the same time as the worker concerned.~~

3. Where no real comparator can be established, any other evidence may be used to prove alleged pay discrimination, including ~~statistics or~~ a comparison of how a worker would be treated in a comparable situation **within the same undertaking or organisation** and, for a limited time, retrospectively.

PLATFORM WORK DIRECTIVE

The proposed amendments to the Platform Work Directive would make this currently overly complex and administratively burdensome directive workable for European employers.

Proposed amendments:

1.1 ARTICLE 2,1(H) AND 2,1(I): MERGE THE DEFINITION OF "AUTOMATED DECISION-MAKING SYSTEM" AND "AUTOMATED MONITORING SYSTEM" AND FURTHER SIMPLIFY IT SO IT EFFECTIVELY TARGETS THOSE SYSTEMS WHERE CHALLENGES MIGHT ARISE

NEW Article 2,1(h) and 2,1(i) – definition of "automated decision-making system" and "automated monitoring system" merged into new definition of "algorithmic management systems"

(h) 'algorithmic management systems' means automated monitoring and decision-making systems, which are used by electronic means and that process personal data, to monitor, supervise, evaluate, or make decisions significantly affecting workers regarding their work performance and working conditions, including in the selection and recruitment procedure.

Explanation: Both articles 2,1(h) and 2,1(i) introduce an overly broad definition of "automated decision-making system" and "automated monitoring system", in particular by including systems that only "support" monitoring or decision-making. Whilst this definition aims to close a so-called legal gap from article 22 GDPR, it should be noted that Court of Justice of the European Union already provides a very broad interpretation to the notion of 'decisions based solely on automated processing'[2].

As both concepts are closely linked and sometimes overlap, it is more appropriate to establish a definition on what constitutes "algorithmic management systems" instead of having two separate, unclear definitions. Furthermore, by narrowing down the definition, more legal certainty is provided as the vague and broad element of "significance threshold" is removed. This is of particular importance as the use of automated decision-making systems and automated monitoring systems is one of the four key criteria to identify a digital labour platform.

All further references in the Directive to either "automated decision-making system" or "automated monitoring system" should be replaced by "algorithmic management systems".

[2] Judgment of the Court of Justice of 29 January 2024, OQ v Land Hessen, C-634/21, ECLI:EU:C:2024:913.

1.2 ARTICLE 7: REMOVE INCONSISTENCIES WITH OTHER PIECES OF EUROPEAN LEGISLATION AS REGARDS THE LIMITATIONS ON THE PROCESSING OF PERSONAL DATA BY MEANS OF ALGORITHMIC MANAGEMENT SYSTEMS

REVISED ARTICLE 7 – Limitations on the processing of personal data by means of algorithmic management systems

adding new exceptions

Digital labour platforms shall not, by means of **algorithmic management systems:**

(a) process any personal data on the emotional or psychological state of a person performing platform work, **except for when articles 9.2 sub b GDPR or 5.1(f) of the AI Act apply;**

(b) process any personal data in relation to private conversations, including exchanges with other persons performing platform work and the representatives of persons performing platform work, **except to assess whether trade secrets or other business sensitive data are leaked by persons performing platform work;**

(f) process any biometric data, as defined in Article 4, point (14), of Regulation (EU) 2016/679, of a person performing platform work to establish that person's identity by comparing that data to stored biometric data of natural persons in a database, **except when this is allowed under the AI Act.**

Explanation: Art. 7.1 limits the areas in which a digital labour platform can use its algorithmic management systems. Whilst the Directive makes a direct reference to the application of the General Data Protection Regulation, it omits any reference to the AI Act Regulation (EU) 2024/1689. As algorithmic management systems oftentimes fall within the scope of artificial intelligence technologies, potentially classified as high-risk within the meaning of the AI Act, it is imperative that provisions laid out in both pieces of legislation remain consistent.

In particular, Article 5.1(f) of the AI Act, which introduces an exception "where the use of the AI system is intended to be put in place or into the market for medical or safety reasons", has not been included in the Platform Work Directive. Not only is the inclusion of this exception necessary for legal certainty within the digital legal framework, but it is also paramount to underline that this exception has far-reaching practical implications on systems already being used in the labour market to ensure the safety and health of European workers.

Lastly, we also note the following misalignments between the GDPR, the AI Act and the platform work directive:

- exception to process personal data on the emotional or psychological state of a person performing work for "security and medical reasons" to align with article 9.2 sub b GDPR.
- exception to process personal data in relation to private conversations to assess whether trade secrets or other business sensitive data are leaked by persons performing platform work to align with articles 6 sub f and 9.2 sub b, e and f GDPR;

inconsistency between the ban to process any biometric data of a person performing platform work to establish that person's identity by comparing that data to stored biometric data of natural persons in a database with article 3 sub 35-36 AI Act and Annex III 1.a of the AI Act, which establishes that "processing biometric data to uniquely identify a natural person" (one out of many) is considered a high-risk AI system under the AI Act.

1.3 ARTICLE 8.2: INTRODUCE A REFERENCE TO DIRECTIVE 2016/943 TO LIMIT THE OBLIGATION TO SHARE DATA UNDER THE DATA PROTECTION IMPACT ASSESSMENT

REVISED ARTICLE 8.2 – Data protection impact assessment

adding a new exception

Digital labour platforms shall provide the assessment as referred to in paragraph 1 to workers' representatives, **except where the data is protected by Directive 2016/943.**

Explanation: Article 8.2 requires the digital labour platform to share the data protection impact assessment with workers' representatives, regardless of the sensitive information that could be contained in these types of documents. The Directive omits any type of reference or safeguard for digital labour platforms as regards their right to protect their trade secrets and intellectual property as foreseen under Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets).

1.4 ARTICLE 9: REDUCTION OF GRANULARITY OF THE TRANSPARENCY MEASURES WITH REGARD TO ALGORITHMIC MANAGEMENT SYSTEMS

REVISED ARTICLE 9 - Transparency measures with regard to **algorithmic management systems**

That information shall concern:

(a) as regards automated monitoring systems:

(i) the fact that such systems are in use or are in the process of being introduced;

(ii) the categories of data and action monitored, supervised or evaluated by such systems, **and the categories of decision that are taken or supported by such systems;**

(iii) the aim of the monitoring and how the system is to carry out that monitoring."

~~(iv) the recipients or categories of recipient of the personal data processed by such systems and any transmission or transfer of such personal data, including within a group of undertakings;~~

(b) as regards automated decision-making systems:

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

(iv) the grounds for decisions to restrict, suspend or terminate the account of the person performing platform work, to refuse the payment for work performed by them, as well as for decisions on their contractual status or any decision of equivalent or detrimental effect;

~~(c) all categories of decision taken or supported by automated systems that affect persons performing platform work in any manner.~~

3. Digital labour platforms shall provide persons performing platform work, in a concise form, with the information referred to in paragraph 1 with regard to the systems and their features that directly affect them, including, where applicable, their working conditions:

~~(c) at any time upon their request.~~

Explanation: Article 9 provides for a high level of frequency and granularity of the information requirements that digital labour platforms have to provide to workers, workers' representatives, and the competent national authorities. Not only is this approach unpragmatic and disproportionate, but it also leads to high administrative costs for companies, in particular SMEs.

In order to be consistent with the above-mentioned merger of definitions under article 2, transparency requirements will be grouped in a meaningful manner.

1.5 ARTICLE 11.2: HUMAN REVIEW

Explanation: Article 11.2 introduces a right to review for any automated decision, with a mandatory written response within two weeks. Although this requirement may be justified in certain cases, applying it uniformly and systematically fails to consider the fact that not all decisions are of equal importance or affect workers in an equally meaningful way.

In order to allow for a more meaningful exchange between the digital labour platform and the platform worker as well as reducing unnecessary administrative burdens on the digital labour platform, especially when they are SMEs, it is more appropriate that the Directive provides for proportionate arrangements tailored to the type and impact of the decisions.

REVISED ARTICLE 11.2 – Human review

Persons performing platform work and, in accordance with national law or practice, representatives of persons performing platform work acting on their behalf 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 person performing platform work with a **proportionate and appropriate reply tailored to the type and impact of the decisions without undue delay.** ~~sufficiently precise and adequately substantiated reply in the form of a written document, which may be in electronic form, without undue delay and in any event within two weeks of receipt of the request.~~

TRANSPARENT AND PREDICTABLE WORKING CONDITIONS DIRECTIVE

Two strands of simplification have been identified and grouped under two headings: **1. Clarified deadlines reflecting business realities**, and **2. Increased flexibility and reduced administrative burdens for employers**. The former covers amendments aimed at aligning and simplifying reporting deadlines for businesses, while the latter encompasses amendments designed to give employers greater flexibility in work organisation.

1. CLARIFIED DEADLINES REFLECTING BUSINESS REALITIES

ARTICLE 4 & 5: REMOVE FRAGMENTED REPORTING DEADLINES AND INTRODUCE A SINGLE, HARMONISED REPORTING DEADLINE

Proposed amendment:

ARTICLE 5 – Timing and means of information

5 (1). Where not previously provided, the information referred ~~to in points (a) to (e), (g), (k), (l) and (m) of Article 4(2) shall be provided individually to the worker in the form of one or more documents during a period starting on the first working day and ending no later than the seventh calendar day. The other information referred~~ to in Article 4(2) shall be provided individually to the worker in the form of a document within one month of the first working day.

Explanation: This amendment would avoid overlaps and duplications. It would also create a harmonised deadline, requiring employers to provide all mandatory information within one month from the first working day. This would replace the current fragmented timeline and enhance clarity for both employers and employees.

ARTICLE 6: INTRODUCE GREATER FLEXIBILITY FOR EMPLOYERS REGARDING REPORTING TIMEFRAMES

Proposed amendment:

ARTICLE 6 – Modification of the employment relationship

6 (1) Member States shall ensure that any change in the aspects of the employment relationship referred to in Article 4(2) and any change to the additional information for workers sent to another Member State or to a third country referred to in Article 7 shall be provided in the form of a document by the employer to the worker **within a reasonable period of time** ~~at the earliest opportunity~~ and at the latest **within seven days of the change taking effect** ~~on the day on which it takes effect.~~

Explanation: The amendment grants employers with a more reasonable timeframe to comply with reporting obligations. In practice, employers may have legitimate reasons for delays in providing information, and this amendment better reflects the realities of how businesses operate.

ARTICLE 8: EXTENSION OF THE MAXIMUM DURATION OF THE PROBATIONARY PERIOD

Proposed amendment:

ARTICLE 8 – Maximum duration of any probationary period

1. Member States **may** ~~shall~~ ensure that, ~~where~~ an employment relationship is subject to a probationary period as defined in national law or practice, ~~that period shall not exceed six months.~~

2. In the case of fixed-term employment relationships, Member States shall ensure that the length of such a probationary period is proportionate to the expected duration of the contract and the nature of the work. In the case of the renewal of a contract for the same function and tasks, the employment relationship shall not be subject to a new probationary period.

3. ~~Member States may, on an exceptional basis, provide for longer probationary periods where justified by the nature of the employment or in the interest of the worker.~~ Where the worker has been absent from work during the probationary period, Member States may provide that the probationary period can be extended correspondingly, in relation to the duration of the absence.

Explanation: The proposed amendments grant greater flexibility regarding the duration of the probationary period, while also taking into account national differences.

2. INCREASED FLEXIBILITY AND REDUCED ADMINISTRATIVE BURDENS FOR EMPLOYERS

ARTICLE 10: STREAMLINED TO ALLOW GREATER FLEXIBILITY IN WORK ORGANISATION

Proposed amendment:

ARTICLE 10 – Minimum predictability of work

10 (1) Member States shall ensure that where a worker's work pattern is entirely or mostly unpredictable the worker shall not be required to work by the employer unless both of the following conditions are fulfilled:

(a) the work takes place within **broadly defined** ~~predetermined~~ reference hours and days as referred to in point (m)(ii) of Article 4(2). **These may be subject to reasonable adjustments, particularly in sectors where work is by its nature unpredictable**; and

(b) the worker is informed by his or herr employer of a work assignment within a reasonable notice period, **which may be subject to reasonable adjustments in inherently unpredictable sectors,** established in accordance with national law, collective agreements or practice as referred to in point (m)(iii) of Article 4(2).

Explanation: The proposed amendment would allow greater flexibility in work organisation, particularly for those who work in sectors such as transport, hospitality, care and other sectors whose work is by its nature unpredictable.

ARTICLE 12: REMOVAL OF EXCESSIVE ADMINISTRATIVE OBLIGATIONS ON EMPLOYERS ON HOW TO PROVIDE A WRITTEN RESPONSE WHEN AN EMPLOYEE TRANSITIONS TO ANOTHER FORM OF EMPLOYMENT

Proposed amendment:

ARTICLE 12 – Transition to another form of employment

12 (1) Member States shall ensure that a worker with at least six months' service with the same employer, who has completed his or her probationary period, if any, may request a form of employment with more predictable and secure working conditions where available and receive a reasoned written reply. Member States may limit the frequency of requests triggering the obligation under this Article.

~~12 (2) Member States shall ensure that the employer provides the reasoned written reply referred to in paragraph 1 within one month of the request. With respect to natural persons acting as employers and micro, small, or medium enterprises, Member States may provide for that deadline to be extended to no more than three months and allow for an oral reply to a subsequent similar request submitted by the same worker if the justification for the reply as regards the situation of the worker remains unchanged.~~

Explanation: Article 12.2 defines a overly detailed administrative demand on how to do the reasoned written reply referred to in article 12.1.

ARTICLE 13: REMOVAL OF THE PROVISION REGARDING THE CONDITIONS UNDER WHICH MANDATORY TRAINING IS PROVIDED

Proposed amendment:

ARTICLE 13 – Mandatory Training

~~13 Member States shall ensure that where an employer is required by Union or national law or by collective agreements to provide training to a worker to carry out the work for which he or she is employed, such training shall be provided to the worker free of cost, shall count as working time and, where possible, shall take place during working hours.~~

Explanation: This provision is misplaced within the Directive. Its content does not align with the Directive's purpose, which is to ensure transparency and information for workers about their employment conditions. Article 13 does not concern information obligations toward workers but instead introduces a substantive rule on the organisation and the cost of mandatory training. As such, it goes beyond the Directive's core objective and would be more appropriately regulated in a different legal instrument.

WORKING TIME DIRECTIVE

The proposed amendments to the Working Time Directive would make this currently overly complex and administratively burdensome directive more workable for European employers.

Proposed amendments:

ARTICLE 6 - Maximum weekly working time

Member States shall take the measures necessary to ensure that, in keeping with the need to protect the safety and health of workers:

(a) the period of weekly working time is limited by means of laws, regulations or administrative provisions or by collective agreements or agreements between the two sides of industry;

(b) the average working time for each seven-day period, including overtime, does not exceed 48 hours. **The period of paid annual leave is not to be taken into account as hours worked for the calculation of overtime.**

Explanation: It is illogical to consider the period of paid annual leave as a period of working time since people don't work when they are on leave.

ARTICLE 17 – Derogations

1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Articles 3 to 6, 8 and 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of:

(a) managing executives or other persons with autonomous decision-taking powers;

(b) family workers; or

(c) workers officiating at religious ceremonies in churches and religious communities, or

(d) workers that are entitled to determine the scheduling of their working time wholly or partly by themselves (trust based working time).

When the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, employers are not obliged to record the duration of time worked each day by each worker.

Explanation: It was never the intention of EU lawmakers to create an obligation on employers to set up a system to record working time as the text of the Working Time Directive makes clear. Such an obligation was created by way of ECJ jurisprudence. It is now important to make clear that this obligation does not apply for workers for whom the duration of the orking time is not measured and/or predetermined or can be determined by the workers themselves.

Amend article 16 (b) and article 17.5

Article 16 - Reference periods

Member States may lay down:

(a) for the application of Article 5 (weekly rest period), a reference period not exceeding 14 days;

(b) for the application of Article 6 (maximum weekly working time), a reference period not exceeding ~~four~~ **twelve** months.

The periods of paid annual leave, granted in accordance with Article 7, and the periods of sick leave shall not be included or shall be neutral in the calculation of the average;

Article 17 – Derogations

With respect to Article 16(b) derogations referred to in the first subparagraph shall be permitted. ~~provided that the reference period does not exceed 12 months, during the first part of the transitional period specified in the fifth subparagraph, and six months thereafter.~~

Explanation: a reference period for the calculation of weekly working hours of 12 months needs to be introduced in the body of the Directive to provide more flexibility for employers to organise working time in view of the changing economic cycle. This is particularly important in view of the necessity for employers and workers to adapt to change. And in a context of higher restructuring operations, this working time flexibility can be key for retaining employment, on top of the use of short time work schemes when necessary. It is also important to create more space for social partners to derogate by way of collective agreements.

OSH/REACH INTERFACE

This is a brief overview on how to improve the interface between the REACH Regulation and Occupational Safety and Health (OSH) Directives, in particular the Chemical Agents Directive (CAD) and the Directive protecting workers from exposure to Carcinogens, Mutagens and Reprotoxic substances (CMRD). The objective is to reduce overlapping and contradictory obligations on employers and create more clarity on the applicable rules.

Proposed amendments:

No derived no-effect levels (DNELs) or derived minimal-effect levels (DMELs) should be set with a restriction in the workplace, as foreseen in section 1.4 of Annex I of REACH, if the issue can be dealt with by OSH legislation.

Explanation: The REACH Regulation and OSH directives should be viewed as complementary tools, with different existing legal procedures and scopes. Whilst both instruments should aim to reinforce each other, the current lack of coordination leads to high levels of confusion amongst employers as well as high implementation costs. In particular, the possibility to set limit values on the basis of DNELs or DMELs under REACH that cover the same scope as an occupational exposure limit value (OEL) under OSH legislation creates difficulties and consequently undermines the effective application of OELs.

For OSH-related restrictions under REACH, the proof of an unacceptable level of risk for workers is an essential prerequisite for demonstrating that action is necessary beyond any measures already in place (art. 69, paragraph 3 REACH). For substances regulated by the OSH legislation, harmonised limit values should always be set as BOELVs pursuant to the CMRD or CAD and not by way of a REACH restriction.

Lastly, these complementary restrictions also completely bypass the long-standing and legally obligatory procedure to consult the tripartite Advisory Committee on Safety and Health at work when setting OELVs. In this regard, the substantial expertise that the Working Party on Chemicals (WPC) provides to the OELV-setting process of priority chemicals should not be undermined or side-lined as the tripartite dialogue between employee representatives, employer organisations and national governments is required specifically to address the feasibility of proposals as well as socioeconomic issues.

Where risks for workers are identified, OSH legislative and non-legislative options should be the exclusive choice for the risk assessment and risk management of professional and industrial uses of chemicals. In turn, if a substance is deemed a general risk to people and the environment, REACH allows for a holistic review of all use cases based on the available exposure scenarios.

Explanation: The requirements in REACH exposure scenarios often differ from those under the OSH legislation since REACH focuses on product-level exposure scenarios, whereas OSH assessments must capture specific conditions and tasks at work. REACH obligations are insufficiently coordinated with the structure and logic of OSH legislation, leading to parallel, non-aligned requirements for organisation, technology, and documentation; these are especially burdensome for SMEs. REACH exposure scenarios are often too generic for workplace-specific OSH assessments.

Recent data from the review of the practical implementation of OSH legislation clearly indicates that employers struggle to interpret the different limit values listed in safety data sheets (SDSs), such as OELs, DNELs, DMELs, no-observed-adverse-effect levels (NOAELs), non-observed-effect levels (NOELs), which adds to the uncertainty surrounding risk management. If an OEL can be applied, this should be the preferred and exclusive limit value listed in the SDS within the workplace setting.

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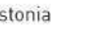

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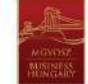
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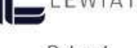

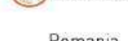
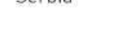

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