



Plenary sitting

A9-0301/2022

21.12.2022

*****I**
REPORT

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

Committee on Employment and Social Affairs

Rapporteur: Elisabetta Gualmini

Symbols for procedures

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

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

Amendments to a draft act

Amendments by Parliament set out in two columns

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

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

Amendments by Parliament in the form of a consolidated text

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

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0762),
 - having regard to Article 294(2) and Article 153(2), point (b), in conjunction with Article 153(1), point (b), and Article 16(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0454/2021),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - ***having regard to the opinion of the Committee on Transport and Tourism,***
 - having regard to the report of the Committee on Employment and Social Affairs (A9-0301/2022),
 - having regard to the Commission Staff Working Document Impact Assessment Report (SWD(2021)0396);
1. Adopts its position at first reading hereinafter set out;
 2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 1

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

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 highly competitive social market economy, aiming at full employment and social progress.

based on a ***balanced economic growth and a*** highly competitive social market economy, aiming at full employment and social progress.

Amendment 2

Proposal for a directive Recital 2

Text proposed by the Commission

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

Amendment

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

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Principle No 5 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017⁵³, 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 Pillar⁵⁴ as guidance for its implementation.

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

⁵⁴ 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.

Amendment

(3) Principle No 5 of the European Pillar of Social Rights (***the ‘Pillar’***), proclaimed at Gothenburg on 17 November 2017⁵³, 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 the abuse of atypical contracts.*** The Porto Social Summit of May 2021 welcomed the Action Plan accompanying the Social Pillar⁵⁴ as guidance for its implementation.

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

⁵⁴ 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.

Amendment 4

Proposal for a directive Recital 3 a (new)

(3a) Principle No 7 of the Pillar provides that workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, that prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice and the right to access to effective and impartial dispute resolution and, in the case of unjustified dismissal, a right to redress, including adequate compensation. Principle No 10 of the Pillar provides that workers have 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 of the Pillar 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 protection.

Amendment 5

Proposal for a directive Recital 4

Text proposed by the Commission

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

Amendment

(4) Digitalisation is changing the world of work, improving productivity and enhancing flexibility. **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 the exploitation of workers.*

Amendment 6

Proposal for a directive Recital 5

Text proposed by the Commission

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

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 into 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 platform, 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*,

digital labour platforms are international business actors deploying their activities and business models in several Member States or across borders.

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 of the European Parliament and of the Council^{1a} and national data protection law. 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.

^{1a} *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).*

Amendment 7

Proposal for a directive Recital 6

Text proposed by the Commission

(6) Platform work can provide opportunities for accessing the labour market more easily, gaining additional

Amendment

(6) Platform work can provide opportunities for **employment and for** accessing the labour market more easily,

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.

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 another source of income and tend to be low paid*^{1a}. *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 the unpredictability of working hours and* 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, in particular 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.

^{1a} *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 ([https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU\(2017\)614184_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU(2017)614184_EN.pdf))*

Amendment 8

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

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

Amendment 9

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(7) Court cases in several Member States have shown the persistence of misclassification of the employment status in certain types of platform work, in particular in sectors where digital labour platforms exert a certain degree of control 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

(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

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.

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 internal market and between digital labour platforms and traditional businesses.*

Amendment 10

Proposal for a directive Recital 8

Text proposed by the Commission

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

Amendment

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

those decisions with a contact person or to contest them.

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 those 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 do not receive timely information or the opportunity to discuss, to be effectively consulted, negotiate and to review the algorithmic systems that nonetheless have a direct impact on their working conditions.***

Amendment 11

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.

Amendment 12

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The number of platforms active in

the Union increased from 463 in 2016 to 516 in March 2021. The platform economy in the Union 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 activity of such platforms relates to taxi and food delivery services, both of which were strongly affected by the COVID-19 pandemic (- 35% and +125%, respectively). Platforms that have their origin outside the Union play an important role in the Union's platform economy.

Amendment 13

Proposal for a directive Recital 10

Text proposed by the Commission

(10) A body of legal instruments provides for minimum standards in working conditions and labour rights across the Union. This includes in particular Directive (EU) 2019/1152 of the European Parliament and of the Council⁵⁵ on transparent and predictable working conditions, Directive 2003/88/EC of the European Parliament and of the Council⁵⁶ on working time, Directive 2008/104/EC of the European Parliament and of the Council⁵⁷ 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 Council⁵⁵ on transparent and predictable working conditions, Directive 2003/88/EC of the European Parliament and of the Council⁵⁶ on working time, Directive 2008/104/EC of the European Parliament and of the Council⁵⁷ 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 (Court of Justice) 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^{57a}. The interpretation of*

the Court of Justice is particularly relevant for platform workers who spend 8,9 hours per week^{57b} 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 *genuinely* self-employed *persons*.

⁵⁵ 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).

⁵⁶ 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).

⁵⁷ 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).

⁵⁵ 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).

⁵⁶ 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).

⁵⁷ 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).

^{57a} *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.*

^{57b} *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*

Amendment 14

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) Council Recommendation 2019/C 387/01⁵⁸ 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.

⁵⁸ 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 387/01⁵⁸ 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 ensure the portability of accumulated social rights and entitlements.***

⁵⁸ 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 15

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Regulation (EU) 2016/679 of the

Amendment

(12) Regulation (EU) 2016/679 of the

European Parliament and of the Council⁵⁹ (***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 Council⁶⁰ 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 systems⁶¹.

European Parliament and of the Council 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 Council⁶⁰ 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 systems⁶¹, ***which will apply without prejudice to the more specific rules set out in this Directive.***

59 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).

⁶⁰ 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).

⁶¹ COM(2021) 206 final, 21.4.2021.

⁶⁰ 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).

⁶¹ COM(2021) 206 final, 21.4.2021.

Amendment 16

Proposal for a directive Recital 13

Text proposed by the Commission

(13) While existing or proposed Union

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Amendment

(13) While existing or proposed Union

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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.

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 **and 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 law.**

Amendment 17

Proposal for a directive Recital 14

Text proposed by the Commission

(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.

Amendment

(14) The Commission has undertaken a two-stage consultation of the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the improvement of working conditions in platform work.

There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level in this area by adapting the current legal framework to the emergence of platform work.

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.***

Amendment 18

Proposal for a directive Recital 15

Text proposed by the Commission

(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.

Amendment

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

Amendment 19

Proposal for a directive Recital 16

Text proposed by the Commission

(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

Amendment

(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. 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

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.

management which are related to the processing of personal data should also apply to ***genuinely*** self-employed ***persons*** and ***to*** other persons performing platform work in the Union who do not have an employment relationship.

Amendment 20

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Self-employed intermediary persons covered by Council Directive 86/653/EEC^{1a}, 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 within the scope of this Directive, provided that a digital labour platform does not organise the work of commercial agents or intermediates between such commercial agents and their principals.

^{1a} ***Council Directive 86/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ L 382, 31.12.1986, p.17).***

Amendment 21

Proposal for a directive Recital 17 b (new)

Text proposed by the Commission

Amendment

(17b) 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 genuinely 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 or direction, in accordance with this Directive, over the licensed taxi drivers, namely that, inter alia, 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 to choose how to generate their turnover due to the rights typically received with their license, such as the right to access clients freely by means of street-hailing, dedicated public taxi stops or equivalent ways.

Amendment 22

Proposal for a directive Recital 17 c (new)

Text proposed by the Commission

Amendment

(17c) Crowdwork can be defined as the organising of outsourcing or allocation of tasks potentially provided to a large pool of customers or 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 which is often a platform. Microwork or crowdwork platforms coordinate small online tasks. Those 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 - who can perform individual activities asynchronously and remotely via their personal computers. Digital labour platforms organising crowdwork should fall within the scope of this Directive.

Amendment 23

Proposal for a directive Recital 18

Text proposed by the Commission

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

Amendment

(18) Digital labour platforms differ from other online platforms in that they organise **the** work performed by individuals at 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 *or cleaning, constitutes a necessary and essential and not merely a minor and purely ancillary component.*

goods.

Amendment 24

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) The frequent misclassification of persons performing platform work, together with the lack of a common workplace where platform workers can get to know and communicate with each other, including for the purpose of defending their interests against the employer, make the phenomenon of company trade unions, or workers' representatives that are established or controlled by, and in the interests of, the employer rather than those the workers^{1a}, 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^{1b}. 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 accordance with applicable national law and practice.

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

^{1b} 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 - Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ L 80, 23.3.2002, p. 2).

Amendment 25

Proposal for a directive Recital 18 b (new)

Text proposed by the Commission

Amendment

(18b) Social dialogue and collective bargaining are of utmost importance for achieving the goals of this 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 ILO conventions^{1a} as well as the Council of Europe's European Social Charter.

^{1a} In particular, Convention No 87 on Freedom of Association and Protection of the Right to Organise, ILO Convention No 98 on the Right to Organise and Collective Bargaining, and having due regard to ILO Convention No 135 on Workers' Representatives, ILO Convention No 151 on Labour Relations (Public Service), ILO Convention No 154 on Collective Bargaining and the related ILO Recommendations.

Amendment 26

Proposal for a directive Recital 18 c (new)

Text proposed by the Commission

Amendment

(18c) Automated decision-making 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 have a significant impact on the persons performing platform work. Such automated decision-making includes, inter alia, monitoring, performance evaluation, individual profiling, and the assignment of tasks. The use of computer-based applications for the exchange of messages (such as emails) is, in principle, regarded as a means of communication and thus does not imply that those applications are automated decisions per se.

Amendment 27

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

(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

(19) ***A person performing platform work may be either a platform worker or a genuinely self-employed person. 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***

to the case-law of the Court of Justice, and, where such employment relationship exists, to ensure full compliance with Union law applicable to workers as well as national labour law, collective agreements and social protection rules. Where self-employment *or an intermediate employment status* – as defined at national level – is the correct employment status, rights and obligations pursuant to that status should apply.

employment status, ascertaining the existence of an employment relationship as defined by 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.

Amendment 28

Proposal for a directive Recital 20

Text proposed by the Commission

(20) In its case law, the Court of Justice has established criteria for determining the status of a worker⁶². 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.

⁶² 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,

Amendment

(20) In its case law, the Court of Justice has established criteria for determining the status of a worker⁶². 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.*

⁶² Judgments of the Court of Justice of 3 July 1986, Deborah Lawrie-Blum v Land Baden-Württemberg, C-66/85, ECLI:EU:C:1986:284; 14 October 2010,

Union Syndicale Solidaires Isère v Premier ministre and Others, C-428/09, ECLI:EU:C:2010:612; 4 December 2014, FNV Kunsten Informatie en Media v Staat der Nederlanden, C-413/13, ECLI:EU:C:2014:2411; 9 July 2015, Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH, C-229/14, ECLI:EU:C:2015:455; 17 November 2016, Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH, C-216/15, ECLI:EU:C:2016:883; 16 July 2020, UX v Governo della Repubblica italiana, C-658/18, ECLI:EU:C:2020:572; and order of the Court of Justice of 22 April 2020, B v Yodel Delivery Network Ltd, C-692/19, ECLI:EU:C:2020:288.

Union Syndicale Solidaires Isère v Premier ministre and Others, C-428/09, ECLI:EU:C:2010:612; 4 December 2014, FNV Kunsten Informatie en Media v Staat der Nederlanden, C-413/13, ECLI:EU:C:2014:2411; 9 July 2015, Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH, C-229/14, ECLI:EU:C:2015:455; 17 November 2016, Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH, C-216/15, ECLI:EU:C:2016:883; 16 July 2020, UX v Governo della Repubblica italiana, C-658/18, ECLI:EU:C:2020:572; and order of the Court of Justice of 22 April 2020, B v Yodel Delivery Network Ltd, C-692/19, ECLI:EU:C:2020:288.

Amendment 29

Proposal for a directive Recital 22

Text proposed by the Commission

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

Amendment

(22) Where the existence of an employment relationship is established based on facts, the party **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 sectoral collective agreements applicable to the sector of activity, which is to be determined by Member States in cooperation with the social partners, in accordance with national law and practice.**

Amendment 30

Proposal for a directive Recital 23

Text proposed by the Commission

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

Amendment

(23) Ensuring correct determination of the employment status should not prevent the improvement of working conditions of ***genuinely*** self-employed persons performing platform work. ***Collective bargaining is a key tool by which to improve the 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 communication of 30 September 2022 containing Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons can, to that 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.***

Amendment 31

**Proposal for a directive
Recital 24**

Text proposed by the Commission

(24) When digital labour platforms control certain elements of the performance of work, they act like employers in an employment relationship. Direction and control, or ***legal*** subordination, is an essential element of the definition of an employment relationship in the Member

Amendment

(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

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.

relationship in the Member States and in the case-law of the Court of Justice. Therefore, ***the contractual relationships between 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 administrative or legal proceedings.*** 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 always has the possibility to rebut the presumption before a decision of reclassification is made by the competent administrative or legal authority. The presumption should not cover situations where the persons performing platform work are genuinely self-employed. Persons performing platform work who are genuinely self-employed should be allowed to remain so and to be able to access work through platforms. Genuinely self-employed persons are themselves responsible vis-à-vis their customers for***

how they perform their work and for the quality of their outputs.

Amendment 32

Proposal for a directive

Recital 25

Text proposed by the Commission

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

Amendment

(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 the 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 labour platform exerts control and 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; **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; prevents the person performing platform work from developing business contacts with potential clients, **including via controlling or restricting the communication between the person**

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

performing platform work and the ***recipient of goods or services, during and after the performance of the work; 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 retains 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; or 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 a tool of control and a 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 an element 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 exerts control and 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.

Amendment 33

Proposal for a directive Recital 26

Text proposed by the Commission

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

Amendment

(26) Effective implementation of the legal presumption through appropriate measures 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 the**

social partners.

Amendment 34

Proposal for a directive Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) In order to ensure that labour inspections are carried out effectively, Member States should have sufficient labour inspectors, in accordance with ILO Convention No 81 on Labour Inspection and ILO Report III on the 95th International Labour Conference in 2006, which recommend that there 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.

Amendment 35

Proposal for a directive Recital 26 b (new)

Text proposed by the Commission

Amendment

(26b) 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.

Amendment 36

Proposal for a directive Recital 27

Text proposed by the Commission

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

Amendment

(27) In the interest of legal certainty, the legal presumption should not have any retroactive legal effects 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.***

Amendment 37

Proposal for a directive Recital 28

Text proposed by the Commission

(28) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment

Amendment

(28) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment

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

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, proceedings arising from such a challenge*** 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 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. ***Within 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 genuinely self-employed***. ***This Directive should include some elements indicating control and direction that are to 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.

Amendment 38

Proposal for a directive Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) 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.

Amendment 39

Proposal for a directive Recital 30

Text proposed by the Commission

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. 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

(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***

labour platforms.

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 rights to rectification, to erasure, to the restriction of processing of data, to data portability and to objecting to 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.*

Amendment 40

Proposal for a directive Recital 30 a (new)

(30a) The use of algorithmic scheduling systems heightens the use of precarious, short shifts and unstable and unpredictable schedules^{1a}. 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.

^{1a} Algorithmic Management. Consequences for Work Organisation and Working Conditions, Joint Research Centre, European Commission (Seville, Spain)

Amendment 41

Proposal for a directive Recital 31

Text proposed by the Commission

(31) This Directive is without prejudice to Articles 13, 14, 15 and 22 of Regulation (EU) 2016/679, except for Articles 13(2)(f), 14(2)(g) and 15(1)(h) thereof, in relation to which Article 6 of this Directive provides for more specific rules in the

Amendment

(31) This Directive is without prejudice to Articles 13, 14, 15 and 22 of Regulation (EU) 2016/679, except for Articles 13(2)(f), 14(2)(g) and 15(1)(h) thereof, in relation to which Article 6 of this Directive provides for more specific rules in the

context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.

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 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 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 with regard to data protection as provided for in this Directive.*

Amendment 42

Proposal for a directive
Recital 32

Text proposed by the Commission

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

Amendment

(32) Digital labour platforms 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 **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 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 them and their 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 should also provide a detailed and robust report containing that information for platform workers, their representatives and the competent authorities.*

Amendment 43

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) 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 on workers of such decisions, including their livelihood and fundamental rights, including social rights, there should always be a human responsible for those decisions.

Amendment 44

Proposal for a directive Recital 32 b (new)

(32b) 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 an automated monitoring system or a system to take or 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 system's impact on data protection.

Amendment 45

Proposal for a directive

Recital 33

Text proposed by the Commission

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

Amendment

(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***

provide all the information required by this Directive.

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.**

Amendment 46

Proposal for a directive Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) Digital labour platforms should under no circumstances provide for discriminatory practices when processing personal data. Digital labour platforms should ensure workers and workers' representatives tools to facilitate effective, machine-readable data portability that is free of charge in order to exercise their rights under this Directive and under 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 and not to transfer data as it could endanger them, for example in relation to reputational data.

Amendment 47

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

(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 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.

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 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.

Amendment 48

Proposal for a directive Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) 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. The involvement of reviewers should be active and not only a token gesture. They should have actual concrete influence on the decision, including the authority and competence to reject, revoke and replace 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 the rights of persons performing platform work as well as their health and safety.

Amendment 49

Proposal for a directive Recital 37

Text proposed by the Commission

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

Amendment

(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 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

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.

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 or 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.

Amendment 50

Proposal for a directive Recital 38

Text proposed by the Commission

(38) Council Directive 89/391/EEC⁶³ 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

Amendment

(38) Council Directive 89/391/EEC⁶³ 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 ***workers' safety and on*** the physical and

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.

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 requires employers to consult workers and workers' representatives and to 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 this Directive as well as in accordance with national law and practice. 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.*

⁶³ 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,

⁶³ 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,

Amendment 51

Proposal for a directive Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) 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.

Amendment 52

Proposal for a directive Recital 38 b (new)

Text proposed by the Commission

Amendment

(38b) Platform work, in particular online platform work, poses a range of both pre-existing and new occupational safety and health 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^{1a}. 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 incentives, such as exceptional bonuses, or punitive practices, such as ratings that have an impact on working time and lead to the assignment of less work. They should ensure that automated monitoring and decision-making systems avoid any potential discriminatory decisions issued on the basis of existing biases or practices.

^{1a} Protecting Workers in EU Platform Economy, EU OSHA 2017, p. 28

Amendment 53

Proposal for a directive Recital 39

Text proposed by the Commission

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

Amendment

(39) Directive 2002/14/EC 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 effective consultation and** with the assistance of an expert chosen by the workers' representatives in a concerted manner where needed. **In accordance with Directive 2002/14/EC, those provisions are meant to foster effective social dialogue on these features and, because automated monitoring and decision-making systems have a direct impact on**

working conditions, it should be possible to subject them to collective bargaining.

64 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 54

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

Text proposed by the Commission

Amendment

(39a) In its 2021 Action Plan for the Social Economy, the Commission 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.

Amendment 55

**Proposal for a directive
Recital 40**

(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.

(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.

Amendment 56

Proposal for a directive Recital 41

Text proposed by the Commission

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

Amendment

(41) In order to ensure that digital labour platforms comply with labour legislation and regulations, ***taxation and*** social security contribution obligations, social security coordination and other relevant rules, ***and with a view to preventing 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 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 access to information to employers and workers on their rights and obligation in the framework of labour mobility, to coordinate the European Employment Services network (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 System, Electronic Exchange of Social Security Information system, and to coordinate and support concerted or joint inspections with the aim of enforcing relevant Union law.***

Amendment 57

**Proposal for a directive
Recital 42**

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

(42) ***Digital labour platforms should be listed in the applicable public business register, which should include relevant information on all digital labour 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. ***The European Foundation for the improvement of living and working conditions (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.***

Amendment 58

Proposal for a directive Recital 42 a (new)

(42a) 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^{1a}. 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^{1b}. In order to prevent undeclared work as well as the misuse of subcontracting as a means by which 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^{1c}. Member States should ensure 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.

^{1a} EU-OSHA, "Spain: the 'riders' law",

*new regulation on digital platform work”,
16.02.2022*

*^{1b} 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.*

^{1c} Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

Amendment 59

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***, effective and impartial dispute resolution and a right to redress, including adequate compensation. ***Access to such dispute resolution and right to redress should be free of charge at least for persons who do not have sufficient means.*** 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 60

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.

Amendment 61

Proposal for a directive Recital 45

Text proposed by the Commission

(45) Platform work is characterised by the lack of a common workplace where workers can get to know each other and communicate with each other and with their representatives, also in view of defending their interests towards the employer. It is therefore necessary to create digital communication channels, in line with the digital labour platforms' work organisation, where persons performing platform work can exchange with each other and be contacted by their representatives. Digital labour platforms should create such communication channels within their digital infrastructure or through similarly effective means, while respecting the protection of personal data and refraining from accessing or monitoring those communications.

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. ***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 accordance with national law and practice, 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.***

Amendment 62

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

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

such information.

to protect such information

Amendment 63

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 case of persons without employment contract or employment relationship, the national supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 should be competent to monitor the application of those safeguards. Chapters VI, VII and VIII of Regulation (EU) 2016/679 should apply in terms of procedural framework for the enforcement of those safeguards, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and penalties, including the competence to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.

Amendment

(47) Given that Article 6, Article 7(1) and (3) and Article 8 of this Directive provide for specific rules in the context of platform work 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 ***the*** 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.

Amendment 64

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

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

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 supervisory authorities.

Amendment 65

Proposal for a directive Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) 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.

Amendment 66

Proposal for a directive Recital 49

Text proposed by the Commission

Amendment

(49) Since the objective of this

(49) Since ***one of*** the objective of this

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

Directive, namely to improve working conditions in platform work, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. ***Minimum harmonisation at Union level is necessary to improve working conditions in platform work and to protect workers' rights across the Union considering the Union-wide dimension of many digital labour platforms, in order to avoid a Union-wide race to the bottom regarding working conditions and in order to create a level playing field for businesses that respect social standards.*** In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment 67

Proposal for a directive Recital 51

Text proposed by the Commission

(51) In implementing this Directive Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small and medium-sized enterprises. Member States should assess the impact of their transposition measures on start-ups and on small and medium-sized enterprises in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden. Member States should also publish the results of such assessments.

Amendment

deleted

Amendment 68

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.

Amendment 69

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

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

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 employment contract or employment relationship.

Amendment 70

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point b

Text proposed by the Commission

(b) it is provided at the request of a

Amendment

(b) it is provided at the request of a

recipient of the service;

recipient of the service *or it involves the allocation of work through an open call*;

Amendment 71

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

Text proposed by the Commission

(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;

Amendment

(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*;

Amendment 72

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;

Amendment 73

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

Text proposed by the Commission

(5) ‘representatives’ means *the workers’ organisations or* representatives

Amendment

(5) ‘*workers'* representatives’ means representatives *of recognised trade unions*

provided for by national law or practices, or both;

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;

Amendment 74

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

Text proposed by the Commission

Amendment

(5a) ‘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;

Amendment 75

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

Text proposed by the Commission

Amendment

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

Amendment 76

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

Text proposed by the Commission

Amendment

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

Amendment 77

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

Text proposed by the Commission

Amendment

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

Amendment 78

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

Text proposed by the Commission

Amendment

(5e) ‘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.

Amendment 79

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

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.

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.

Amendment 80

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 accordance 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 **such persons** enjoy the rights deriving from Union law applicable to workers.

Amendment 81

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

Amendment

2. The determination of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, taking into account the use of algorithms in the organisation of platform work, irrespective of how the relationship is classified in any

contractual arrangement that may have been agreed between the parties involved. Where the existence of an employment relationship is established based on facts, the party assuming the obligations of the employer shall be clearly identified in accordance with national legal systems.

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

Amendment 82

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

Text proposed by the Commission

Amendment

2a. Where 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 accordance with national law, collective agreements or practice in force in the Member States, including the rights to join a trade union, to organise, and to bargain collectively.

Amendment 83

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

Text proposed by the Commission

Amendment

2b. This Directive applies in full to digital labour platforms exerting the function of temporary work agencies, in addition to Directive 2008/104/EC.

Amendment 84

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

Text proposed by the Commission

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

Amendment

A person performing platform work shall be either a platform worker or a genuinely self-employed person. 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.***

Amendment 85

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

Text proposed by the Commission

Amendment

Where 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. Where 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.

Amendment 86

Proposal for a directive Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

The 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 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 that end, 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.

Amendment 87

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

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

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

Amendment

deleted

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

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

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

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

Amendment 88

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 of workers performing work in the context of an employment relationship.*** In particular they shall:

Amendment 89

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

Amendment

(b) develop ***comprehensive*** guidance, ***including in the form of concrete and***

work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5;

practical recommendations, for digital labour platforms, persons performing platform work and ***the*** social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5;

Amendment 90

Proposal for a directive Article 4 – paragraph 3 – point c

Text proposed by the Commission

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

Amendment

(c) develop guidance, ***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 this Directive, including by imposing dissuasive penalties on*** non-compliant digital labour platforms;

Amendment 91

Proposal for a directive Article 4 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

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

Amendment 92

Proposal for a directive
Article 4 – paragraph 3 – point d

Text proposed by the Commission

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

Amendment

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

Amendment 93

Proposal for a directive
Article 4 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

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

Amendment 94

Proposal for a directive
Article 4 – paragraph 3 – point d b (new)

Text proposed by the Commission

Amendment

(db) provide for sufficient resources and training 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 (d) and (da), including by carrying out routine or announced visits;

Amendment 95

Proposal for a directive

Article 4 – paragraph 3 – point d c (new)

Text proposed by the Commission

Amendment

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

Amendment 96

Proposal for a directive

Article 4 – paragraph 4

Text proposed by the Commission

Amendment

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

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

Amendment 97

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall ensure the possibility for any of the parties to rebut the legal

1. Member States shall ensure the possibility for any of the parties to rebut

presumption referred to in Article 4 in legal or administrative proceedings or both.

the legal presumption referred to in Article 4 in legal or administrative proceedings or both.

(Paragraph 1 in the Commission text has become subparagraph 1 of paragraph 1 in Parliament's amendment.)

Amendment 98

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

(Paragraph 2 in the Commission text has become subparagraph 2 of paragraph 1 in Parliament's amendment.)

Amendment 99

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

Amendment

Where the digital labour platform argues that the contractual relationship in question is not an employment relationship ***in accordance 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 platform.

Amendment

Where the person performing the platform work argues that the contractual relationship in question is not an employment relationship ***in accordance 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

all relevant information held by it.

relevant information held by it.

(Paragraph 3 in the Commission text had become subparagraph 3 of paragraph 1 in Parliament's amendment.)

Amendment 100

Proposal for a directive

Article 5 – paragraph 3 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:

Amendment 101

Proposal for a directive

Article 5 – paragraph 3 a – point a (new)

Text proposed by the Commission

Amendment

(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;

Amendment 102

Proposal for a directive

Article 5 – paragraph 3 a – point b (new)

Text proposed by the Commission

Amendment

(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.

Amendment 103

**Proposal for a directive
Article 5 – paragraph 3 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), point (a), shall be taken into consideration:

Amendment 104

**Proposal for a directive
Article 5 – paragraph 3 b – point a (new)**

Text proposed by the Commission

Amendment

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

Amendment 105

**Proposal for a directive
Article 5 – paragraph 3 b – point b (new)**

Text proposed by the Commission

Amendment

(b) effectively determining or controlling working conditions, including restricting time schedule and working

time duration, or enforcing the performance of work, including through penalties or incentives, restricting access to work, or using rating systems as a tool of control and a basis for penalties and as a tool to allocate work assignments;

Amendment 106

Proposal for a directive

Article 5 – paragraph 3 b – point c (new)

Text proposed by the Commission

Amendment

(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 goods or services during or after the performance of the work;

Amendment 107

Proposal for a directive

Article 5 – paragraph 3 b – point d (new)

Text proposed by the Commission

Amendment

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

Amendment 108

Proposal for a directive

Article 5 – paragraph 3 b – point e (new)

Text proposed by the Commission

Amendment

(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;

Amendment 109

Proposal for a directive Article 5 – paragraph 3 b – point f

Text proposed by the Commission

Amendment

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

Amendment 110

Proposal for a directive Article 5 – paragraph 3 b – point g

Text proposed by the Commission

Amendment

(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;

Amendment 111

Proposal for a directive Article 5 – paragraph 3 b – point h

Text proposed by the Commission

Amendment

(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.

Amendment 112

Proposal for a directive Article 5 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

1c. Member States shall regularly review, assess and, where necessary, complement the elements set out in paragraph 1b, 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, proceedings arising from such a challenge shall not have a suspensive effect on that decision.

Amendment 113

Proposal for a directive Article 6 – paragraph 1 – subparagraph 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:

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

Amendment 114

Proposal for a directive Article 6 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

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

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

Amendment 115

Proposal for a directive

Article 6 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(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.

Amendment 116

Proposal for a directive

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

Text proposed by the Commission

Amendment

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 any service provider that sells its management services to the platform.

Amendment 117

Proposal for a directive

Article 6 – paragraph 2 – point a – point ii

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;

Amendment 118

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ii) the aim of the monitoring and how the system is to achieve it;

Amendment 119

Proposal for a directive

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

Text proposed by the Commission

Amendment

(iib) the functioning and mode of operation of features that affect the employment relationship, in particular recruitment, access to work assignments, earnings, health and safety, working time, promotion, ranking, and the restriction, suspension or termination of accounts;

Amendment 120

Proposal for a directive

Article 6 – paragraph 2 – point b – point iii

Text proposed by the Commission

Amendment

(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;

(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;***

Amendment 121

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

Text proposed by the Commission

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

Amendment

(iv) the grounds for decisions to restrict, suspend 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 reasons for the evaluation.***

Amendment 122

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

Text proposed by the Commission

Amendment

2a. 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 accordance with national law and collective agreements.

Amendment 123

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

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 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.**

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. ***The information shall be presented in a transparent, intelligible and easily 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 them and their working conditions at the latest on the first working day, or prior to the introduction of the 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. That information shall not be subject to confidentiality rules established by Article 6a.

Amendment 124

**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.

Amendment 125

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;***

Amendment 126

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;***

Amendment 127

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

Text proposed by the Commission

Amendment

(ca) 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 person, or data concerning a person's sex life or sexual orientation;

Amendment 128

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

Text proposed by the Commission

Amendment

(da) make use of mandatory biometric identification or disproportionate or undue surveillance of work performance;

Amendment 129

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

Text proposed by the Commission

Amendment

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

Amendment 130

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

Text proposed by the Commission

Amendment

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

Amendment 131

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

Text proposed by the Commission

Amendment

(dd) process biometrics-based data.

Amendment 132

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 133

Proposal for a directive

Article 6 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. 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 those 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.

Amendment 134

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

Text proposed by the Commission

Amendment

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

Amendment 135

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

Text proposed by the Commission

Amendment

5c. Member States shall ensure that digital labour platforms provide platform workers with an interface and tools to facilitate effective, machine-readable data portability that is free of charge, including with regard to reputational data, the right to rectification, to 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.

Amendment 136

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

Text proposed by the Commission

Amendment

Article 6a

Confidential information

1. Member States shall provide that, in the context of information and consultation processes and subject to the

conditions and limits laid down by Union and national law and 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) communication between workers' representatives and European, national or local works councils and the competent recognised trade union organisations on information that may affect the jobs or the working conditions of workers;

(b) information concerning elements that may affect the rights protected by this Directive.

2. The digital 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 shall ensure that workers representatives have the possibility of reviewing the classification of a matter by means of an urgent administrative or judicial decision.

Amendment 137

Proposal for a directive Article 7 – title

Text proposed by the Commission

Amendment

Human *monitoring* of automated systems

Human *oversight* of automated systems

Amendment 138

Proposal for a directive Article 7 – paragraph -1 (new)

Text proposed by the Commission

Amendment

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

Amendment 139

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Member States shall ensure that digital labour platforms, **with the involvement of workers' representatives oversee and carry out an assessment**, regularly **and at least annually**, 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**.

Amendment 140

Proposal for a directive Article 7 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(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;

Amendment 141

Proposal for a directive Article 7 – paragraph 2 – subparagraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) 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;

Amendment 142

Proposal for a directive

Article 7 – paragraph 2 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) introduce appropriate preventive and protective measures.

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

Amendment 143

Proposal for a directive

Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The impact assessment referred to in paragraph 1 shall include the matters referred to in paragraphs 1 and 2 and shall be submitted to the competent labour and data protection authorities, and to workers' representatives.

Amendment 144

Proposal for a directive

Article 7 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. If the impact 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.

Amendment 145

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

Text proposed by the Commission

Amendment

2c. 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.

Amendment 146

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

Amendment

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

Amendment 147

Proposal for a directive Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 148

Proposal for a directive Article 8 – title

Text proposed by the Commission

Amendment

Human review of *significant* decisions

Human review of decisions *significantly affecting working conditions*

Amendment 149

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

Text proposed by the Commission

Amendment

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

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 manner, using clear and plain language in due time and**

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.

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.

Amendment 150

Proposal for a directive Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

Digital labour platforms shall provide the platform worker ***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 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.***

Amendment 151

Proposal for a directive Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.

Amendment 152

Proposal for a directive Article 8 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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**.

Amendment 153

Proposal for a directive Article 8 – paragraph 3

Text proposed by the Commission

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

Amendment

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.

Amendment

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

Amendment

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

Amendment 154

Proposal for a directive Article 8 – subparagraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 155

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Without prejudice to the rights and obligations under ***Directives 89/391/EEC, 2002/14/EC and 2009/38/EC***, 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.***

Amendment 156

Proposal for a directive Article 9 – paragraph 2

Text proposed by the Commission

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.

Amendment 157

**Proposal for a directive
Article 9 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment 158

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

Text proposed by the Commission

3. The platform workers’ representatives or the platform workers concerned may be assisted by an expert of their choice, in so far as this is necessary for them to examine the matter that is the subject of information and consultation and formulate an opinion. Where a digital

Amendment

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.

Amendment

2a. 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.

Amendment

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.

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.

Amendment 159

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

Text proposed by the Commission

Amendment

3a. 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.

Amendment 160

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 161

Proposal for a directive Chapter III a (new) – title

Text proposed by the Commission

Amendment

**Chapter IIIa
PROMOTION OF COLLECTIVE
BARGAINING**

Amendment 162

Proposal for a directive Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

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 the social partners, as well as to their right to negotiate and conclude collective agreements.

Amendment 163

Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

Without prejudice to Regulations (EC) No 883/2004⁶⁹ and 987/2009⁷⁰ 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.

⁶⁹ 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).

⁷⁰ 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).

Amendment 164

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

1. Where labour, social protection and

Amendment

Without prejudice to Regulations (EC) No 883/2004⁶⁹ and 987/2009⁷⁰ 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.**

⁶⁹ 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).

⁷⁰ 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. Where labour, **health and safety**,

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

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;

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

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

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

Amendment 165

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

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 ***within a reasonable period of time*** by providing a substantiated reply.

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 in any event within one month of receipt of the request. That deadline shall be extended to two months for micro and small enterprises.***

Amendment 166

Proposal for a directive Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

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.

Amendment 167

Proposal for a directive Article 12 b (new)

Text proposed by the Commission

Amendment

Article 12b

Subcontracting liability

- 1. Member States shall, after consulting the relevant social partners in accordance with national law and practice, provide 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 the 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 168

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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, ,** 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. **Access to such dispute resolution and right to redress shall be free of charge, at least for workers who do not have sufficient means.**

Amendment 169

Proposal for a directive Article 13 – paragraph 1a (new)

Text proposed by the Commission

Amendment

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

Amendment 170

Proposal for a directive
Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Without prejudice to Article 80 of Regulation (EU) 2016/679 **and 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**.

Amendment 171

Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

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**.

Amendment

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**.

Amendment 172

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

Text proposed by the Commission

Amendment

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

Amendment 173

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

Text proposed by the Commission

Amendment

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

Amendment 174

Proposal for a directive Article 15 – title

Text proposed by the Commission

Amendment

Article 15

Article 15

Communication channels for persons performing platform work

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

Amendment 175

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall take the necessary measures to ensure that digital labour platforms create the possibility for persons performing platform work to contact and communicate with each other, and to be contacted by representatives of persons performing platform work, through the

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**

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.

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.

Amendment 176

Proposal for a directive Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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 177

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 178

Proposal for a directive
Article 17

Text proposed by the Commission

Article 17

Protection against adverse treatment or consequences

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

Amendment

Article 17

Protection against adverse treatment or consequences

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 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.

Amendment 179

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.

Amendment 180

Proposal for a directive Article 19 – paragraph 1

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.

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.

Amendment 181

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The authorities referred to in paragraph 1 and national 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.

Amendment 182

Proposal for a directive Article 19 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Member States shall lay down the rules on 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.

Amendment 183

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

Text proposed by the Commission

Amendment

3a. 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 those related to infringements of Regulation (EU) 2016/679, which may include setting a percentage of the digital labour platform's total annual turnover in the preceding financial year.

Amendment 184

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

Text proposed by the Commission

Amendment

3b. 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 Union 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^{1a}.

^{1a} Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

Amendment 185

Proposal for a directive Article 20 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 186

Proposal for a directive Article 20 a (new)

Text proposed by the Commission

Amendment

Article 20a

Dissemination of information

Member States shall ensure that the national measures transposing this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1, are

brought to the attention of persons performing platform work and digital labour platforms, including SMEs as well as to the general public. That information shall be provided in a comprehensive and easily accessible way, including to persons with disabilities and where necessary in the most relevant language(s), as determined by the Member State concerned.

EXPLANATORY STATEMENT

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

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

Employment status

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

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

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

Algorithmic management

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

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

Transparency and remedies concerning platform work

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

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

5.10.2022

OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM

for the Committee on Employment and Social Affairs

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

Rapporteur for opinion: Karima Delli

SHORT JUSTIFICATION

According to the Commission estimates, over 28 million people in the EU are involved in platform work, and by 2025 this number will rise to 43 million. The COVID-19 pandemic accelerated this trend, promoting sectors that were already moving towards platform work such as low-skilled platform-determined on-location work in the European transport sector like food delivery, ride hailing and freight transport. The platform economy has a growing potential in terms of creating employment opportunities for people on the edge of the labour market, however, the flexibility and exponential growth of platform work risk to bring about precarious working conditions for the people performing that work without proper regulation. Furthermore, platform economies based on misclassification of workers, insufficient social protection and tax avoidance are unacceptable and are costly for Member States in missed tax remuneration and creates an uneven level playing field between online platforms and traditional business models operating in the transport and tourism sectors in the Union.

Based on last year's opinion the rapporteur seeks to ensure fair and just working conditions, which respect the psychosocial and physical health, safety and dignity of the platform workers. This applies especially for the European transport sectors and particularly for low-skilled platform-determined on-location work, where platform work has increased significantly due to the COVID-19 pandemic.

Health and safety

Besides the typical risks of work, such as fatigue, stress and exhaustion, people performing platform work in the transport and tourism sectors are exposed to psychosocial risk due to the precariousness of the platform work such as pressure due to online monitoring, rating, and tight deadlines. The COVID-19 pandemic has also demonstrated that people performing platform work, particularly those performing low-skilled platform-determined on-location work in the European transport and tourism sector, were exposed to safety and health risk and should therefore be equipped with protective equipment, accident insurances and social protection such as access to sick leave and unemployment protection. Vulnerable workers such as migrant and young workers are especially affected by the uncertainty of the employment relationship as well as the health and safety risks, why they need effective protection.

Algorithmic management

Algorithmic management is a core component of the business model of the platform sectors, including the platform companies in the European transport and tourism sector. The rapporteur seeks to broaden the protection of fundamental rights, health and dignity of all workers subject to algorithmic management including automated and semi-automated monitoring and decision-making systems. This includes the need for human oversight of all decisions affecting working conditions, health and safety or introducing changes to the agreed terms of the employment relationship.

Social dialogue

The lack of a common workplace for the people performing platform work also applies for platform work in the European transport and tourism sector. Therefore, the rapporteur seeks to ensure social dialogue through the proper representation, including the right to join a trade union, to organise, and bargain collectively.

Access to training and upskilling

Due to the precarious character and the health and safety risks of platform work, particularly in the low-skilled, platform-determined on-location work in the European transport and tourism sector, there is a need for developing regular obligatory security training and offer professional development pathways in order to broaden professional options of people working through these platforms ensuring safety, security and health at work.

AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Employment and Social Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

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

Amendment

(2) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union ('the Charter'). In particular, Article 31 of the Charter provides for the right of every worker to **fair and just** working conditions which respect **the** health, safety and dignity **of the persons performing platform work, especially in the European transport and tourism sectors and particularly for platform-determined on-location work**

the right to the protection of personal data concerning him or her. Article 16 of the Charter recognises the freedom to conduct a business.

such as driving and delivery services. 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. ***Article 21 of the Charter provides for the right to non-discrimination.***

Amendment 2

Proposal for a directive Recital 4

Text proposed by the Commission

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

Amendment

(4) Digitalisation is changing the world of work, improving productivity and enhancing flexibility, ***and has led to new employment and business opportunities, in particular in the transport and tourism sectors,*** while also carrying some ***potential*** risks for employment and working conditions ***in terms of classification of correct employment status and in promoting transparency, fairness and safety, for the health and safety of workers and for the protection of their fundamental right to privacy.*** Algorithm-based technologies, including automated monitoring and decision-making systems, have enabled the emergence and growth of digital labour platforms, ***which have created economic opportunity for hundreds of thousands of EU citizens and businesses while offering choice and value to consumers in the EU. However, the business model of digital labour platforms has significant consequences that platforms should mitigate in order to avoid potential adverse working conditions for workers.***

Amendment 3

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Platform companies can play a role in facilitating mobility as a service (MaaS), logistics as a service (LaaS) and collaborative mobility. New digital and innovative solutions may create possibilities for a modal shift in transport in urban and sub-urban areas, by addressing potential environmental and health concerns, saving time and efforts for consumers and enhancing the competitiveness of the related businesses. Furthermore, new digital technologies can help us better manage and track resource use, improve efficiency, and collaborate on reaching ambitious environmental EU goals.

Amendment 4

Proposal for a directive Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) The COVID-19 pandemic has significantly increased the growth rate of the digital labour platform industry, particularly for platform-determined on-location work, including driving and delivery. The pandemic has demonstrated that these workers were exposed to safety and health risk and should therefore be equipped with protective equipment, accident insurances and social protection such as access to sick leave and unemployment protection.

Amendment 5

Proposal for a directive
Recital 5

Text proposed by the Commission

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

Amendment 6

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5) Platform work is performed by individuals through the digital infrastructure of digital labour platforms that provide a service to their customers. By means of the algorithms ***and artificial intelligence***, the digital labour platforms 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.

(5a) Individuals performing platform-determined on-location work in the European transport and tourism sectors can, besides the typical risks of online and offline work, also be exposed to additional psychosocial risks such as stress and anxiety related to algorithmic management and performance monitoring of work activities, which can put excessive pressure on workers with implications for their own safety as well as for road safety;

Amendment 7

Proposal for a directive Recital 6

Text proposed by the Commission

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

Amendment

(6) Platform work can provide opportunities for accessing the labour market more easily, gaining additional income through a secondary activity or enjoying some flexibility in the organisation of working time. ***In this regard, platform economy has become an integral and rapidly growing part of the European transport and tourism sectors, providing new business models, talent and work opportunities.*** At the same time, platform work brings challenges, ***when digital platforms do not comply with relevant legislation*** 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.

Amendment 8

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) *Therefore, the proposed solutions should help platform workers to continue their professional activities with their preferred flexibility to organise and control their own status (e.g. as an additional source of income), workload and schedule.*

Amendment 9

Proposal for a directive

Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) *Underlines that most platform workers have another job or other source of income and for most of whom platform activities are not their primary employment^{1a}. According to research, platform workers tend to be low paid, but with a few relatively good incomes. Furthermore, workers in the platform economy tend to be younger and more highly educated than the wider population^{1b}.*

^{1a} *Study of the Value of Flexible Work for Local Delivery Couriers, p.5*

^{1b} *The Social Protection of Workers in the Platform Economy*
[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU\(2017\)614184_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU(2017)614184_EN.pdf)

Amendment 10

Proposal for a directive

Recital 7

Text proposed by the Commission

Amendment

(7) Court cases in several Member States have shown the ***persistence*** of misclassification of the employment status in certain types of platform work, in

(7) Court cases in several Member States have shown the ***cases*** 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.

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, *with different national definitions of employee and employment relationship*, 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.

Amendment 11

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) Automated monitoring and decision-making systems powered by algorithms increasingly replace functions that managers usually perform in businesses, such as allocating tasks, giving instructions, evaluating the work performed, providing incentives or imposing sanctions. Digital labour platforms use such algorithmic systems as a standard way of organising and managing platform work through their infrastructure. Persons performing platform work subject to such algorithmic management often lack information on how the algorithms work, which personal data are being used and how their behaviour affects decisions taken by automated systems. Workers’

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.

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 ***obtain an explanation for these decisions, to discuss those decisions with a contact person or to contest them and seek redress. This directive should aim among others at improving the access of people performing platform work to information, explanations and, when necessary, contestation and redress of such decisions.***

Amendment 12

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The platform workers should benefit from genuine competition between platforms through better access to data and standardisation of data connectivity to enhance conditions for platform workers while also maintaining the dynamic capacity of the platform economy;

Amendment 13

Proposal for a directive Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) The large majority of people working through the selected platforms are, according to the information available, free to choose and change their working time, in that they themselves can log onto the platform when they like or can choose their hours of availability. Only an estimated 3% of earnings of

people working through selected platforms are locked into an agreed working time. Moreover, none of the platforms surveyed included an ‘exclusivity of services’ provision in their T&Cs^{1a}.

^{1a} *Digital Labour Platforms in the EU. Mapping and Business Models, p.11*

Amendment 14

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Council Recommendation 2019/C 387/01⁵⁸ 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.

⁵⁸ 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) Council Recommendation 2019/C 387/01⁵⁸ 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 ***and the issue of social security remains an exclusive competence of the Member States.***

⁵⁸ 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 15

Proposal for a directive Recital 13

Text proposed by the Commission

(13) While existing or proposed Union

Amendment

(13) While existing or proposed Union

legal acts provide for certain general safeguards, challenges in platform work require some further specific measures. In order to adequately frame the development of platform work in a sustainable manner, it is necessary for the Union to set new minimum standards in working conditions to address the challenges arising from platform work. 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.

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 **different** digital labour platforms and **towards** offline providers of services and supporting the **development of platform in a sustainable manner** in the Union.

Amendment 16

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The sharing economy has produced different business models and will continue to evolve as technology develops and behaviour changes. These developments need to be integrated in transportation and sustainable urban mobility planning, optimizing the need for modal shift and the quality of service provision. The platform industry has contributed to business formation and job growth, created flexible working models such as part time jobs, and lowered barriers to entry into the labour market

Amendment 17

Proposal for a directive Recital 17

Text proposed by the Commission

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

Amendment

(17) This Directive should apply to all digital labour platforms, irrespective of their place of establishment and irrespective of the law otherwise applicable, provided that the platform work organised through that digital labour platform is performed in the Union. A targeted set of mandatory rules should be established at Union level to ensure minimum rights on working conditions in platform work ***while ensuring legal certainty and predictability for the most concerned sectors, such as in the fields of transport and tourism*** .

Amendment 18

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) 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.

Amendment 19

Proposal for a directive Recital 23

Text proposed by the Commission

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

Amendment

(23) Ensuring correct determination of the employment status should not prevent the improvement of ***fair and just*** working conditions of genuine self-employed persons performing platform work. ***Member States should take particular care in their national policies to ensure effective protection to workers especially affected by the uncertainty as to the existence of an employment relationship including the most vulnerable workers. This is of particular relevance for migrants and young workers in the delivery sector This is also true for women that make up only 22% of workers in the transportation sector and also represent a minority of platform workers in the transport and tourism sectors.***

Amendment 20

Proposal for a directive Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) The Commission and the Member States shall support and encourage platform companies to develop training and professional development pathways in order to broaden their workers' professional options; Regular obligatory security training on traffic rules and road safety and specific training in the transport sector and ensuring that online platforms and platform workers act responsibly, particularly as regards aspects related to safety, security, health, the protection of privacy and the provision of accurate information; platform workers in the transport sector are exposed to health and safety risks and therefore need to be equipped with adequate protective equipment in accordance with national law. Accident

insurances, technical checks and maintenance and repairs of their vehicles are key to ensure that the vehicles used by the platform workers, including e-bikes, scooters and motorcycles, comply with relevant regulations and standards. It is important that the Commission and the Member States take into account the digitalization in their educational and training programmes to make them fit for the digital age

Amendment 21

Proposal for a directive Recital 23 b (new)

Text proposed by the Commission

Amendment

(23b) Stresses the importance to create a safety nets for platform workers for protection against accidents, unemployment and pension in line with subsidiarity principle and national competences of Member States whereas the potential of voluntary benefits from digital labour platforms should be taken into account;

Amendment 22

Proposal for a directive Recital 23 c (new)

Text proposed by the Commission

Amendment

(23c) Stresses that the criteria of this directive should respect the unique features of platform work; takes account that the Court of Justice of the European Union has assessed the status of the employment relationship in the Yodel case (C-692/19) in April 2020, and addresses co-legislators to be consistent with obeying this criteria, which identify the specificities of platform work;

Amendment 23

Proposal for a directive Recital 24

Text proposed by the Commission

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

Amendment

(24) When digital labour platforms 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. ***In this regards, national frameworks should take into account the opportunities provided by the collaborative services and platforms in the transport and tourism sectors. Furthermore, the national framework should foresee the necessary autonomy and flexibility for these sectors.***

Amendment 24

Proposal for a directive

Recital 25

Text proposed by the Commission

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

Amendment

(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, *and avoid legal uncertainty, a majority of the* criteria should be always fulfilled to trigger the application of the presumption,. At the same time, the criteria should not cover situations where the persons performing platform work are genuine self-employed. Genuine self-employed persons are themselves responsible vis-à-vis their customers for how they perform their work and the quality of their outputs. The freedom to choose working hours or periods of absence, to refuse tasks, to use subcontractors or substitutes or to work for any third party is characteristic of genuine self-employment. Therefore, de facto 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

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.

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 **applicable local law or regulations, or collective bargaining agreements**, to safeguard the health and safety of the recipients of the service, **to provide satisfactory consumer service, to prevent fraud at the expense of consumers or platform workers, to reach goals related to low and zero emission mobility**, should not be understood as controlling the performance of work.

Amendment 25

Proposal for a directive Recital 28

Text proposed by the Commission

(28) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down in the law, collective agreements or practice in force of the respective Member State with consideration to the case-law of the Court of Justice, even though the digital labour platform controls the performance of work on a given aspect. Member States should ensure the possibility to rebut the legal presumption in legal or administrative proceedings or both by proving, on the basis of the aforementioned definition, that the relationship in question is not an employment relationship. The shift in the burden of proof to digital labour platforms is justified by the fact that they have a

Amendment

(28) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down in the law, collective agreements or practice in force of the respective Member State with consideration to the case-law of the Court of Justice, even though the digital labour platform controls the performance of work on a given aspect. Member States should ensure the possibility to rebut the legal presumption in legal or administrative proceedings or both by proving, on the basis of the aforementioned definition, that the relationship in question is not an employment relationship. The shift in the burden of proof to digital labour platforms is justified by the fact that they have a

complete overview of all factual elements determining the relationship, in particular the algorithms through which they manage their operations. Legal proceedings and administrative proceedings initiated by the digital labour platforms in order to rebut the legal presumption should **not** have a suspensive effect on the application of the legal presumption. A successful rebuttal of the presumption in administrative proceedings should not preclude the application of the presumption in subsequent judicial proceedings. When the person performing platform work who is the subject of the presumption seeks to rebut the legal presumption, the digital labour platform should be required to assist that person, notably by providing all 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.

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 have a suspensive effect on the application of the legal presumption ***in order to avoid the triggering and subsequent rebuttal in cases of genuine self-employment.*** A successful rebuttal of the presumption in administrative proceedings should not preclude the application of the presumption in subsequent judicial proceedings. When the person performing platform work who is the subject of the presumption seeks to rebut the legal presumption, the digital labour platform should be required to assist that person, notably by providing all 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.

Amendment 26

Proposal for a directive Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) The allocation of work through algorithms, an essential feature of the business model of many platforms, heightens the use of precarious short shifts as well as unstable and unpredictable schedules. Algorithmic direction, evaluation, and discipline intensify work effort by increasing monitoring, raising the pace required from workers, minimising gaps in workflow, and extending work activity beyond the conventional workplace and working hours. However, workers and their representatives often only have a low degree of visibility of or control over these algorithmic systems even though the

systems impact working organisations and conditions. This is particularly true for freight transport and delivery services.

Amendment 27

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) Certain decisions, such as dismissal or any other disciplinary measures should always be taken by humans, not by automated systems, considering the impact for workers of such decisions.

Amendment 28

Proposal for a directive Recital 45

Text proposed by the Commission

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.

(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. ***It is also essential that workers gain access to real collective bargaining or equivalent***

forms of dialogue consistent with national labour market models. Member states should ratify the relevant ILO conventions and strengthen the rights for platform workers to organise in trade unions and to collective bargaining.

Amendment 29

Proposal for a directive Recital 45 a (new)

Text proposed by the Commission

Amendment

(45a) Significant innovations were made in the field of artificial intelligence, which have become integral to the business models and decision-making of platform companies. Artificial intelligence usage on platforms should uphold the health, safety, privacy and working conditions of platform workers.

Amendment 30

Proposal for a directive Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) Individuals concerned by automated monitoring or decision-making systems should have meaningful access to reporting and redress mechanisms with the relevant national authority.

Amendment 31

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

Amendment

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

1. The purpose of this Directive is to improve working conditions, **which**

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.

respects the health, safety, rights and dignity of the persons performing platform work *especially in the European transport and tourism sectors and particularly for platform-determined on-location work. The fair and just working conditions shall be ensured by correctly determining the* employment status, by promoting transparency, *safety*, 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, *maintaining their development, autonomy and flexibility and providing legal certainty;*

Amendment 32

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 *or enabled* through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service;

Amendment 33

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

Amendment

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.

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 *when and where applicable*, and ensuring that they enjoy the rights deriving from Union law applicable to workers.

Amendment 34

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 35

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

Text proposed by the Commission

Amendment

2a. Member States shall take supporting measures to ensure the correct determination of the employment status referred to in paragraph 1 while supporting the sustainable development of digital labour platforms. In particular

they shall:

(a) ensure that information on the correct determination of the employment status is available in a clear, comprehensive and accessible way;

(b) develop guidance for digital labour platforms, persons performing platform work and social partners to understand and implement the correct determination of the employment status;

(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.

Amendment 36

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

Text proposed by the Commission

Amendment

2a. When Digital labour platforms are determined to be employers, they shall comply with the corresponding employers' obligations under national law and collective agreements applicable in the sector of activity.

Amendment 37

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

Text proposed by the Commission

Amendment

The contractual relationship between a digital labour platform that controls, within the meaning of paragraph 2, the performance of work and a person

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.

performing platform work *beyond what commercial relationships require* 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, *in order to ensure that the legal presumption can be relied upon by competent authorities verifying compliance with or enforcing relevant legislation as well as by persons performing platform work who dispute the classification of their employment status.*

Amendment 38

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

The legal presumption shall apply in all relevant administrative and legal proceedings.

Amendment 39

Proposal for a directive

Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 40

Proposal for a directive

Article 4 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 41

Proposal for a directive Article 4 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work ***beyond what is required by law or necessary to safeguard the health and safety of the recipients of the service or to ensure the essential functioning of the service;***

Amendment 42

Proposal for a directive Article 4 – paragraph 2 – point c

Text proposed by the Commission

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

Amendment

(c) ***closely*** supervising the performance of work or verifying the quality of the results of the work including by electronic means ***beyond what is required by law or necessary to safeguard the health and safety of the recipients of the service or to ensure the essential functioning of the service;***

Amendment 43

Proposal for a directive Article 4 – paragraph 2 – point d

Text proposed by the Commission

(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;

Amendment

(d) **de facto** 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, **including from other digital platforms** or to use subcontractors or substitutes;

Amendment 44

**Proposal for a directive
Article 4 – paragraph 2 – point e**

Text proposed by the Commission

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

Amendment

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

Amendment 45

**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 platform work in the context of an employment relationship**, while taking into account the impact on **entrepreneurs and** start-ups, avoiding capturing the genuine self-employed and supporting the sustainable growth of digital labour platforms. In particular they shall:

Amendment 46

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;

Amendment

(b) develop ***precise and comprehensive recommendations providing*** 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;

Amendment 47

Proposal for a directive
Article 4 – paragraph 3 – point c

Text proposed by the Commission

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

Amendment

(c) develop ***capacity building, guidance, training and establish procedures for national competent and*** enforcement authorities to proactively ***identify,*** target and pursue non-compliant digital labour platforms ***following a related administrative or legal decision in order to ensure effective compliance with the provisions established in this directive.***

Amendment 48

Proposal for a directive
Article 4 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

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

Amendment 49

Proposal for a directive Article 4 – paragraph 3 – point d b (new)

Text proposed by the Commission

Amendment

(db) develop a consultation mechanism under which persons performing platform work or digital labour platforms can request the relevant authorities to assess, verify and justify the employment status of persons performing platform work on the basis of the control of the performance of work within the meaning of paragraph 2.

Amendment 50

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

Amendment

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

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

Amendment 51

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

Amendment

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.

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. ***Member States shall also ensure that before the presumption can be applied, each party will have the opportunity to present evidence and arguments.***

Amendment 52

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

Amendment

Where the digital labour platform argues that the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member State in question, with consideration to the case-law of the Court of Justice, the burden of proof shall be on the digital labour platform.

Amendment 53

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 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, by providing all relevant information held by it. ***Member States shall provide the necessary guidance for procedures to rebut the legal presumption. Such proceedings shall be held before the respective national authority under the relevant national procedure, especially in case a legal presumption and/or procedure for granting employment status on national***

level already exists.

Amendment 54

Proposal for a directive Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Improvement of working conditions of genuine self-employed persons performing platform work

Ensuring correct determination of the employment status shall not prevent the improvement of working conditions of genuine self-employed persons performing platform work. Where a digital labour platform decides, either 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 shall not be regarded as determining elements indicating the existence of an employment relationship;

Amendment 55

Proposal for a directive Article 5 b (new)

Text proposed by the Commission

Amendment

Article 5 b

Security trainings and specific training in the transport sector

Digital labour platforms shall provide the information and access to regular security trainings and specific training in the transport sectors, taking into account the requirements and consumer expectations.

They shall develop training and professional development pathways in order to broaden their workers' professional options.

Amendment 56

Proposal for a directive Article 6 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(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 ***and organization of their work***, their earnings, their occupational safety and health, their working time ***or are used to support decisions affecting***, their promotion and their contractual status, including the restriction, suspension or termination of their account.

Amendment 57

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

Text proposed by the Commission

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

Amendment

(iv) the grounds for decisions to restrict, suspend 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 and, where decision-making is supported or based on monitoring and evaluating performance, the criteria used for behaviour evaluation.***

Amendment 58

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

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 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.

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 event of substantial changes and at any time upon the platform workers' request. The information shall be presented in a **complete**, transparent, intelligible and easily accessible form, using clear and plain language.

Amendment 59

Proposal for a directive Article 7 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 60

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

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

Amendment

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.

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, ***decision-making assisted by automated monitoring or automated decision-making systems or review of decisions*** 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.

Amendment 61

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Without prejudice to the rights and obligations under Directive 2002/14/EC, Member States shall ensure information and ***effective*** consultation of platform ***workers and*** workers' representatives or, where there are no such representatives, of the platform workers concerned by digital labour platforms, on decisions likely to lead to the introduction of or 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), ***or changes in the allocation or organisation of work*** in accordance with this Article.

Amendment 62

Proposal for a directive Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Individuals performing work

through a digital platform are granted the right to data portability in line with Regulation EU 2016/679.

Amendment 63

Proposal for a directive

Article 12 – paragraph 1 – introductory part

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:

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:

Amendment 64

Proposal for a directive

Article 12 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the measures taken to ensure the health and safety of the persons performing on location platform work in the driving and delivery services;

Amendment 65

Proposal for a directive

Article 12 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(bb) the number of accidents and collisions leading to death or serious

injuries involving persons providing on-location platform work in the driving and delivery sectors and other road users;

Amendment 66

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, **health and safety** 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 67

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

Member States shall take the necessary measures to ensure that digital labour platforms create the possibility for persons performing platform work to contact and communicate with each other, and to be contacted by representatives of persons performing platform work, through the digital labour platforms' digital infrastructure **high-speed wireless and fixed connectivity** or similarly effective means **is essential for the further development of digitalised transport services**, 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 68

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

Text proposed by the Commission

Amendment

Article 15a

Without prejudice to the full respect of the autonomy of social partners, Member States shall promote collective bargaining in platform work and ensure that workers' representative have the right to access platform workers, including through digital access, for the purpose of organising their representation ;

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Improving working conditions in platform work
References	COM(2021)0762 – C9-0454/2021 – 2021/0414(COD)
Committee responsible Date announced in plenary	EMPL 17.1.2022
Opinion by Date announced in plenary	TRAN 17.1.2022
Rapporteur for the opinion Date appointed	Karima Delli 3.10.2022
Previous rapporteur for the opinion	Marianne Vind
Discussed in committee	16.6.2022
Date adopted	3.10.2022
Result of final vote	+: 25 –: 7 0: 13
Members present for the final vote	Andris Ameriks, Erik Bergkvist, Izaskun Bilbao Barandica, Paolo Borchia, Karolin Braunsberger-Reinhold, Ciarán Cuffe, Jakop G. Dalunde, Anna Deparnay-Grunenberg, Ismail Ertug, Giuseppe Ferrandino, Carlo Fidanza, Mario Furore, Søren Gade, Isabel García Muñoz, Elena Kountoura, Bogusław Liberadzki, Peter Lundgren, Benoît Lutgen, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Cláudia Monteiro de Aguiar, Caroline Nagtegaal, Philippe Olivier, João Pimenta Lopes, Rovana Plumb, Dominique Riquet, Massimiliano Salini, Vera Tax, Barbara Thaler, Henna Virkkunen, Lucia Vuolo, Roberts Zīle
Substitutes present for the final vote	Leila Chaibi, Nicola Danti, Roman Haider, Ljudmila Novak, Jutta Paulus, Dorien Rookmaker, Annalisa Tardino, Kathleen Van Brempt, Marianne Vind, Jörgen Warborn
Substitutes under Rule 209(7) present for the final vote	Ondřej Kovařík, Eugen Tomac, Iuliu Winkler

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

25	+
ECR	Carlo Fidanza, Peter Lundgren, Dorien Rookmaker, Roberts Zīle
ID	Paolo Borchia, Roman Haider, Philippe Olivier, Annalisa Tardino
PPE	Karolin Braunsberger-Reinhold, Elżbieta Katarzyna Łukacijewska, Benoît Lutgen, Marian-Jean Marinescu, Cláudia Monteiro de Aguiar, Ljudmila Novak, Massimiliano Salini, Barbara Thaler, Eugen Tomac, Henna Virkkunen, Lucia Vuolo, Jörgen Warborn, Iuliu Winkler
RENEW	Izaskun Bilbao Barandica, Nicola Danti, Dominique Riquet
S&D	Erik Bergkvist

7	-
THE LEFT	Leila Chaibi, Elena Kountoura, João Pimenta Lopes
VERTS/ALE	Ciarán Cuffe, Jakop G. Dalunde, Anna Deparnay-Grunenberg, Jutta Paulus

13	0
NI	Mario Furore
RENEW	Søren Gade, Ondřej Kovařík, Caroline Nagtegaal
S&D	Andris Ameriks, Ismail Ertug, Giuseppe Ferrandino, Isabel García Muñoz, Bogusław Liberadzki, Rovana Plumb, Vera Tax, Kathleen Van Brempt, Marianne Vind

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Improving working conditions in platform work	
References	COM(2021)0762 – C9-0454/2021 – 2021/0414(COD)	
Date submitted to Parliament	9.12.2021	
Committee responsible Date announced in plenary	EMPL 17.1.2022	
Committees asked for opinions Date announced in plenary	TRAN 17.1.2022	
Rapporteurs Date appointed	Elisabetta Gualmini 2.2.2022	
Discussed in committee	19.5.2022	12.7.2022
Date adopted	12.12.2022	
Result of final vote	+: 41	–: 12
	0: 0	
Members present for the final vote	João Albuquerque, Atidzhe Alieva-Veli, Marc Angel, Dominique Bilde, Gabriele Bischoff, Milan Brglez, Sylvie Brunet, David Casa, Leila Chaibi, Margarita de la Pisa Carrión, Jarosław Duda, Estrella Durá Ferrandis, Lucia Ďuriš Nicholsonová, Loucas Furlas, Cindy Franssen, Helmut Geuking, Elisabetta Gualmini, Alicia Homs Ginel, Agnes Jongerius, Irena Joveva, Radan Kanev, Ádám Kósa, Katrin Langensiepen, Miriam Lexmann, Elena Lizzi, Giuseppe Milazzo, Sandra Pereira, Dennis Radtke, Elżbieta Rafalska, Guido Reil, Daniela Rondinelli, Mounir Satouri, Monica Semedo, Beata Szydło, Eugen Tomac, Romana Tomc, Marianne Vind, Maria Walsh, Stefania Zambelli, Tomáš Zdechovský	
Substitutes present for the final vote	Abir Al-Sahlani, Rosa D’Amato, José Gusmão, Jeroen Lenaers, Alin Mituța, Eugenia Rodríguez Palop, Sara Skytvedal, Kim Van Sparrentak, Marie-Pierre Vedrenne, Anna Zalewska	
Substitutes under Rule 209(7) present for the final vote	Camilla Laureti, Giuliano Pisapia, Sándor Rónai	
Date tabled	23.12.2022	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

41	+
ECR	Giuseppe Milazzo
ID	Dominique Bilde, Elena Lizzi, Stefania Zambelli
NI	Daniela Rondinelli
PPE	David Casa, Jarosław Duda, Loucas Fourlas, Cindy Franssen, Helmut Geuking, Jeroen Lenaers, Dennis Radtke, Eugen Tomac, Maria Walsh
RENEW	Atidzhe Alieva-Veli, Sylvie Brunet, Lucia Ďuriš Nicholsonová, Irena Joveva, Alin Mituța, Monica Semedo, Marie-Pierre Vedrenne
S&D	João Albuquerque, Marc Angel, Gabriele Bischoff, Milan Brglez, Estrella Durá Ferrandis, Elisabetta Gualmini, Alicia Homs Ginell, Agnes Jongerius, Camilla Laureti, Giuliano Pisapia, Sándor Rónai, Marianne Vind
THE LEFT	Leila Chaibi, José Gusmão, Sandra Pereira, Eugenia Rodríguez Palop
VERTS/ALE	Rosa D'Amato, Katrin Langensiepen, Mounir Satouri, Kim Van Sparrentak

12	-
ECR	Margarita de la Pisa Carrión, Elżbieta Rafalska, Beata Szydło, Anna Zalewska
ID	Guido Reil
NI	Ádám Kósa
PPE	Radan Kanev, Miriam Lexmann, Sara Skytvedal, Romana Tomc, Tomáš Zdechovský
RENEW	Abir Al-Sahlani

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention