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| From:            | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director                                     |
| date of receipt: | 9 December 2021   |
| To:              | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union                                     |
| No. Cion doc.:   | COM(2021) 762 final   |
| Subject:         | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work |

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Delegations will find attached document COM(2021) 762 final.

Encl.: COM(2021) 762 final



Brussels, 9.12.2021  
COM(2021) 762 final

2021/0414 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on improving working conditions in platform work**

(Text with EEA relevance)

{SEC(2021) 581 final} - {SWD(2021) 395 final} - {SWD(2021) 396 final} -  
{SWD(2021) 397 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

One of the objectives of the Union is the promotion of the well-being of its peoples and sustainable development of Europe based on a highly competitive social market economy, aiming at full employment and social progress.<sup>1</sup> The right of every worker to working conditions which respect their health, safety and dignity, and workers' right to information and consultation are enshrined in the Charter of Fundamental Rights of the European Union. The European Pillar of Social Rights states that “regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions and access to social protection.”<sup>2</sup>

In her political guidelines, President von der Leyen stressed that “digital transformation brings fast change that affects our labour markets” and undertook the commitment to “look at ways to improve the labour conditions of platform workers”.<sup>3</sup> The proposed Directive delivers on this commitment and supports the implementation of the European Pillar of Social Rights Action Plan, welcomed by Member States, social partners and civil society at the Porto Social Summit in May 2021, by addressing the changes brought by the digital transformation to labour markets.

The digital transition, accelerated by the COVID-19 pandemic, is shaping the EU's economy and its labour markets. Digital labour platforms<sup>4</sup> have become an important element of this newly emerging social and economic landscape. They have continued expanding in size, with revenues in the digital labour platform economy in the EU estimated to have grown by around 500% in the last five years.<sup>5</sup> Today, over 28 million people in the EU work through digital labour platforms. In 2025, their number is expected to have reached 43 million.<sup>6</sup> Digital labour platforms are present in a variety of economic sectors. Some offer services “on-location”, such as ride-hailing, delivery of goods, cleaning or care services. Others operate solely online with services such as data encoding, translation or design. Platform work varies in terms of level of skills required as well as the way the work is organised and controlled by the platforms.

Digital labour platforms promote innovative services and new business models and create many opportunities for consumers and businesses. They can efficiently match supply and demand for labour and offer possibilities to make a living or earn additional income, including for people who face barriers in access to the labour market, such as young people, people with disabilities, migrants, people with minority racial and ethnic background or people with caring responsibilities. Platform work creates opportunities to establish or broaden a client base, sometimes across borders. It brings businesses a much wider access to consumers,

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<sup>1</sup> Article 3 of the Treaty on European Union.

<sup>2</sup> Principle 5 of the European Pillar of Social Rights.

<sup>3</sup> Political Guidelines for the Next European Commission 2019-2024. ‘A Union that Strives for More. My Agenda for Europe.’ Available [online](#).

<sup>4</sup> As defined in this proposal for a directive.

<sup>5</sup> De Groen W., Kilhoffer Z., Westhoff L., Postica D. and Shamsfakhr F. (2021). Digital Labour Platforms in the EU: Mapping and Business Models. Available [online](#).

<sup>6</sup> PPMI (2021), Study to support the impact assessment of an EU initiative on improving working conditions in platform work. Available [online](#).

opportunities to diversify revenues and develop new business lines, thereby helping them to grow. For consumers it means improved access to products and services which would be otherwise hard to reach, as well as access to a new and more varied choice of services. Still, as digital labour platforms introduce new forms of work organisation, they challenge existing rights and obligations related to labour law and social protection.

Nine out of ten platforms active in the EU currently are estimated to classify people working through them as self-employed.<sup>7</sup> Most of those people are genuinely autonomous in their work and can use platform work as a way to develop their entrepreneurial activities.<sup>8</sup> Such genuine self-employment is making a positive contribution to job creation, business development, innovation, accessibility of services, and digitalisation in the EU.

However, there are also many people who experience subordination to and varying degrees of control by the digital labour platforms they operate through, for instance as regards pay levels or working conditions. According to one estimate, up to five and a half million people working through digital labour platforms could be at risk of employment status misclassification.<sup>9</sup> Those people are especially likely to experience poor working conditions and inadequate access to social protection.<sup>10</sup> As a result of the misclassification, they cannot enjoy the rights and protections to which they are entitled as workers. These rights include the right to a minimum wage, working time regulations, occupational safety and health protection, equal pay between men and women and the right to paid leave, as well as improved access to social protection against work accidents, unemployment, sickness and old age.

Digital labour platforms use automated systems to match supply and demand for work. Albeit in different ways, digital platforms use them to assign tasks, to monitor, evaluate and take decisions for the people working through them. Such practices are often referred to as “algorithmic management”. While algorithmic management is used in a growing number of ways in the wider labour market, it is clearly inherent to digital labour platforms’ business model. It creates efficiencies in the matching of supply and demand but has also a significant impact on working conditions in platform work. Algorithmic management also conceals the existence of subordination and control by the digital labour platform on the persons performing the work. The potential for gender bias and discrimination in algorithmic management could also amplify gender inequalities. Understanding how algorithms influence or determine certain decisions (such as the access to future task opportunities or bonuses, the imposition of sanctions or the possible suspension or restriction of accounts) is paramount, given the implications for the income and working conditions of people working through digital labour platforms. Currently, however, there is insufficient transparency regarding such automated monitoring and decision-making systems and people lack efficient access to remedies in the face of decisions taken or supported by such systems. Algorithmic management is a relatively new and – apart from EU data protection rules – largely unregulated phenomenon in the platform economy that poses challenges to both workers and the self-employed working through digital labour platforms.

Difficulties in enforcement and lack of traceability and transparency, including in cross-border situations, are also thought to exacerbate some instances of poor working conditions or

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<sup>7</sup> De Groen W., et al. (2021).

<sup>8</sup> PPMI (2021).

<sup>9</sup> Ibid.

<sup>10</sup> See accompanying impact assessment, Section 2.1. SWD(2021) 396.

inadequate access to social protection. National authorities do not always have sufficient access to data on digital labour platforms and people working through them, such as the number of persons performing platform work on a regular basis, their contractual or employment status, or digital labour platforms' terms and conditions. The problem of traceability is especially relevant when platforms operate across borders, making it unclear where platform work is performed and by whom. This, in turn, makes it difficult for national authorities to enforce existing obligations, including in terms of social security contributions.

The general objective of the proposed Directive is to improve the working conditions and social rights of people working through platforms, including with the view to support the conditions for the sustainable growth of digital labour platforms in the European Union.

The specific objectives through which the general objective will be addressed are:

- (1) to ensure that people working through platforms have – or can obtain – the correct employment status in light of their actual relationship with the digital labour platform and gain access to the applicable labour and social protection rights;
- (2) to ensure fairness, transparency and accountability in algorithmic management in the platform work context; and
- (3) to enhance transparency, traceability and awareness of developments in platform work and improve enforcement of the applicable rules for all people working through platforms, including those operating across borders.

The first specific objective will be attained by establishing a comprehensive framework to tackle employment status misclassification in platform work. This framework includes appropriate procedures to ensure correct determination of the employment status of people performing platform work, in line with the principle of primacy of facts, as well as a rebuttable presumption of employment relationship (including a reversal of the burden of proof) for persons working through digital labour platforms that control certain elements of the performance of work. This legal presumption would apply in all legal and administrative proceedings, including those launched by national authorities competent for enforcing labour and social protection rules, and can be rebutted by proving that there is no employment relationship by reference to national definitions. This framework is expected to benefit both the false and the genuine self-employed working through digital labour platforms. Those who, as a result of correct determination of their employment status, will be recognised as workers will enjoy improved working conditions – including health and safety, employment protection, statutory or collectively bargained minimum wages and access to training opportunities – and gain access to social protection according to national rules. Conversely, genuine self-employed people working through platforms will indirectly benefit from more autonomy and independence, as a result of digital labour platforms adapting their practices to avoid any risk of reclassification. Digital labour platforms will also gain from increased legal certainty, including with respect to potential court challenges. Other businesses that compete with digital labour platforms by operating in the same sector will benefit from a level playing field as regards the cost of social protection contributions. Member States will enjoy increased revenues in the form of additional tax and social protection contributions.

The proposed Directive aims at attaining the second specific objective of ensuring fairness, transparency and accountability in algorithmic management by introducing new material rights for people performing platform work. These include the right to transparency regarding the use and functioning of automated monitoring and decision-making systems, which specifies and complements existing rights in relation to the protection of personal data. The

proposed Directive also aims at ensuring human monitoring of the impact of such automated systems on working conditions with a view to safeguarding basic workers' rights and health and safety at work. To ensure fairness and accountability of significant decisions taken or supported by automated systems, the proposed Directive also includes establishing appropriate channels for discussing and requesting review of such decisions. With certain exceptions, these provisions apply to all people working through platforms, including the genuine self-employed. As regards workers, the proposed Directive also aims at fostering social dialogue on algorithmic management systems by introducing collective rights regarding information and consultation on substantial changes related to use of automated monitoring and decision-making systems. As a result, all people working through platforms and their representatives will enjoy better transparency and understanding of algorithmic management practices as well as more effective access to remedies against automated decisions, leading to improved working conditions. These rights will build on and extend existing safeguards in respect of processing of personal data by automated decision-making systems laid down in the General Data Protection Regulation as well as proposed obligations for providers and users of artificial intelligence (AI) systems in terms of transparency and human oversight of certain AI systems in the proposal for an AI Act (see more details below).

Finally, concrete measures are proposed to achieve the third objective of enhancing transparency and traceability of platform work with a view to supporting competent authorities in enforcing existing rights and obligations in relation to working conditions and social protection. This includes clarifying the obligation for digital labour platforms which are employers to declare platform work to the competent authorities of the Member State where it is performed. The proposed Directive will also improve labour and social protection authorities' knowledge of which digital labour platforms are active in their Member State by giving those authorities access to relevant basic information on the number of people working through digital labour platforms, their employment status and their standard terms and conditions. These measures will help those authorities in ensuring compliance with labour rights and in collecting social security contributions, and thus improve working conditions of people performing platform work.

- **Consistency with existing policy provisions in the policy area**

In order to prevent a race to the bottom in employment practices and social standards to the detriment of workers, the EU has created a minimum floor of labour rights that apply to workers across all Member States. The EU labour and social *acquis* sets minimum standards through a number of key instruments.

Only workers who fall under the personal scope of such legal instruments benefit from the protection they afford.<sup>11</sup> Self-employed people, including those working through platforms, fall outside the scope and typically do not enjoy these rights, making the worker status a gateway to the EU labour and social *acquis*. (The only exception are the equal treatment directives which also cover access to self-employment<sup>12</sup>, due to broader legal bases.)

Relevant legal instruments for employed people working through platforms include:

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<sup>11</sup> Some instruments define the personal scope by reference to national definitions of 'worker' or 'employee' while others do not include such reference. The CJEU has developed comprehensive case-law defining the personal scope of those instruments

<sup>12</sup> Directives 2000/43, 2000/78, 2006/54 and 2010/41.

- The **Directive on transparent and predictable working conditions**<sup>13</sup> provides for measures to protect working conditions of people who work in non-standard work relationships. This includes rules on transparency, the right to information, probationary periods, parallel employment, minimum predictability of work and measures for on-demand contracts. These minimum standards are particularly relevant for people working through platforms, given their atypical work organisation and patterns. However, while the Directive ensures transparency on basic working conditions, the information duty on employers does not extend to the use of algorithms in the workplace and how they affect individual workers.
- The **Directive on work-life balance for parents and carers**<sup>14</sup> lays down minimum requirements related to parental, paternity and carers' leave and flexible work arrangements for parents or carers. It complements the **Directive on safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding**<sup>15</sup>, which provides for a minimum period of maternity leave, alongside other measures.
- The **Working Time Directive**<sup>16</sup> lays down minimum requirements for the organisation of working time and defines concepts such as 'working time' and 'rest periods'. While the Court of Justice of the European Union (CJEU) has traditionally interpreted the concept of 'working time' as requiring the worker to be physically present at a place determined by the employer, in recent cases the Court has extended this concept in particular when a 'stand-by' time system is in place (i.e. where a worker is not required to remain at their workplace but shall remain available to work if called by the employer). In 2018, the Court made clear that 'stand-by' time, during which the worker's opportunities to carry out other activities are significantly restricted, shall be regarded as working time.<sup>17</sup>
- The **Directive on temporary agency work**<sup>18</sup> defines a general framework applicable to the working conditions of temporary agency workers. It lays down the principle of non-discrimination, regarding the essential conditions of work and of employment, between temporary agency workers and workers who are recruited by the user company. Due to the typically triangular contractual relationship of platform work, this Directive can be of relevance for platform work. Depending on the business model of a digital labour platform and on whether its customers are private consumers or businesses, it might qualify as a temporary-work agency assigning its workers to user companies. In some cases, the platform might be the user company making use of the services of workers assigned by temporary-work agencies.
- The **Occupational Health and Safety (OSH) Framework Directive**<sup>19</sup> lays down the main principles for encouraging improvements in the health and safety at work. It guarantees minimum safety and health requirements throughout the EU. The

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<sup>13</sup> Directive (EU) 2019/1152. Member States have until 1 August 2022 to transpose it.

<sup>14</sup> Directive (EU) 2019/1158.

<sup>15</sup> Directive 92/85/EEC.

<sup>16</sup> Directive 2003/88/EC.

<sup>17</sup> Judgment of the Court of 21 February 2018 in *Ville de Nivelles v Rudy Matzak*, C-518/15, ECLI:EU:C:2018:82; confirmed and elaborated in the judgments of 9 March 2021 in *RJ v Stadt Offenbach am Main*, C-580/19, ECLI:EU:C:2021:183; and 9 March 2021 in *-D.J. v Radiotelevizija Slovenija*, C-344/19, ECLI:EU:C:2021:182.

<sup>18</sup> Directive 2008/104/EC.

<sup>19</sup> Directive 89/391/EEC.

Framework Directive is accompanied by further directives focusing on specific aspects of safety and health at work.

- The **Directive establishing a general framework for informing and consulting employees**<sup>20</sup> plays a key role in promoting social dialogue by setting minimum principles, definitions and arrangements for information and consultation of workers' representatives at the company level within each Member State.
- When adopted, the proposed **Directive on adequate minimum wages**<sup>21</sup> will establish a framework to improve the adequacy of minimum wages and to increase the access of workers to minimum wage protection.
- When adopted, the proposed **Directive on pay transparency**<sup>22</sup> will strengthen the application of the principle of equal pay for equal work or work of equal value between men and women.

In addition, regulations on the **coordination of national social security systems** apply to both employed and self-employed people working through platforms in a cross-border situation<sup>23</sup>.

Finally, the **Council Recommendation on access to social protection for workers and the self-employed**<sup>24</sup> recommends Member States to ensure that both workers and the self-employed have access to effective and adequate social protection. The Recommendation covers unemployment, sickness and health care, maternity and paternity, invalidity, old-age and survivors' benefits and benefits in respect of accidents at work and occupational diseases.

- **Consistency with other Union policies**

Existing and proposed EU internal market and data protection instruments are relevant for digital labour platforms' operations and the people working through them. Still, not all identified challenges in platform work are sufficiently addressed by those legal instruments. While they tackle algorithmic management in certain respects, they do not specifically address the perspective of workers, labour market specificities and collective labour rights.

Relevant EU internal market and data protection instruments include:

- The Regulation on promoting fairness and transparency for business users of online intermediation services (or '**Platform-to-Business Regulation**')<sup>25</sup> aims at ensuring that self-employed 'business users' of an online platform's intermediation services are treated in a transparent and fair way and that they have access to effective redress in the event of disputes. The relevant provisions focus, among others, on transparency of terms and conditions for business users, procedural safeguards in case of the restriction, suspension and termination of accounts, transparency regarding ranking, and complaint-handling mechanisms. These are linked to algorithmic management, but the Regulation does not cover other key aspects, such as transparency of automated monitoring and decision-making systems (other than

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<sup>20</sup> Directive 2002/14/EC.

<sup>21</sup> COM(2020) 682 final.

<sup>22</sup> COM(2021) 93 final.

<sup>23</sup> Regulation (EC) No 883/2004 of 29 May 2004 and its implementing Regulation (EC) No 987/2009.

<sup>24</sup> Council Recommendation of 8 November 2019 (2019/C 387/01).

<sup>25</sup> Regulation (EU) 2019/1150.



ranking), human monitoring of such systems and specific rights regarding the review of significant decisions affecting working conditions. The Regulation does not apply to persons in an employment relationship or to digital labour platforms that are considered, as a result of an overall assessment, as not providing ‘information society services’, but for instance a transport service.

- The **General Data Protection Regulation (GDPR)**<sup>26</sup> lays down rules for the protection of natural persons concerning the processing of their personal data. It grants people working through platforms a range of rights regarding their personal data, regardless of their employment status. Such rights include, in particular, the right not to be subject to a decision based solely on automated processing which produces legal effects concerning the data subject or similarly significantly affects them (with certain exceptions), as well as the right to transparency on the use of automated decision-making. Where automated processing is permitted under the exceptions, the data controller must 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 their point of view and to contest the decision. While these rights are particularly relevant for people working through platforms subject to algorithmic management, recent court cases have highlighted the limitations and difficulties that workers – and most notably persons performing platform work – face when aiming to assert their data protection rights in the context of algorithmic management.<sup>27</sup> This concerns in particular the difficulty to draw the line between algorithmic decisions that do or do not affect workers in a sufficiently ‘significant’ way. Moreover, while the GDPR grants individual rights to the people affected, it does not encompass important collective aspects inherent in labour law, including those related to the role of workers’ representatives, information and consultation of workers and the role of labour inspectorates in enforcing labour rights. The legislator therefore provided for the possibility of more specific rules to ensure the protection of workers’ personal data in the employment context, including as regards the organisation of work (Article 88 GDPR).
- When adopted, the proposed **Artificial Intelligence Act**<sup>28</sup> will address risks linked to the use of certain artificial intelligence (AI) systems. The proposed AI Act aims to ensure that AI systems placed on the market and used in the EU are safe and respect fundamental rights, such as the principle of equal treatment. It tackles issues related to development, deployment, use and regulatory oversight of AI systems and addresses inherent challenges such as bias (including gender bias) and lack of accountability, including by setting requirements for high-quality datasets, helping to tackle the risk of discrimination. The proposed AI regulation lists AI systems used in employment, worker management and access to self-employment that are to be considered as high-risk. It puts forward mandatory requirements that high-risk AI systems must comply with, as well as obligations for providers and users of such systems. The proposed AI Act provides specific requirements on transparency for certain AI systems, and will ensure that digital labour platforms, as users of high-risk AI systems, will have access to the information they need to use the system in a lawful and responsible manner. Where digital labour platforms are providers of high

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<sup>26</sup> Regulation (EU) 2016/679.

<sup>27</sup> ECE, Jurisprudence of national courts in Europe on algorithmic management at the workplace (forthcoming).

<sup>28</sup> COM(2021) 206 final.

risk AI systems, they will need to test and document their systems appropriately. Furthermore, the proposal for an AI Act imposes requirements on providers of AI systems to enable human oversight and to issue instructions in this regard. By ensuring transparency and traceability of high-risk AI systems, the AI Act aims to facilitate the implementation of existing rules on the protection of fundamental rights, whenever such AI systems are in use. Nonetheless, it does not take into account the diversity of rules on working conditions in different Member States and sectors, and it does not provide safeguards in relation to the respect of working conditions for the people directly affected by the use of the AI systems, such as workers.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The proposed Directive is based on Article 153(1)(b) of Treaty on the Functioning of the European Union (TFEU), which empowers the Union to support and complement the activities of the Member States with the objective to improve working conditions. In this area, Article 153(2)(b) TFEU enables the European Parliament and the Council to adopt – in accordance with the ordinary legislative procedure – directives setting minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

This legal basis allows the Union to set minimum standards regarding the working conditions of people performing platform work where they are in an employment relationship and thus classified as ‘workers’. The CJEU has ruled that the classification of a ‘self-employed person’ under national law does not prevent that person being classified as a worker within the meaning of EU law if their independence is merely notional, thereby disguising an employment relationship.<sup>29</sup> False self-employed people are thus also covered by EU labour legislation based on Article 153 TFEU.

The proposed Directive is also based on Article 16(2) TFEU insofar as it addresses the situation of persons performing platform work in relation to the protection of their personal data processed by automated monitoring and decision-making systems. This Article empowers the European Parliament and the Council to lay down rules relating to the protection of individuals with regard to the processing of personal data.

### **• Subsidiarity (for non-exclusive competence)**

Flexibility and constant adaptation of business models are key features of the platform economy, whose primary means of production are algorithms, data and clouds. As they are not tied to any fixed assets and premises, digital labour platforms can easily move and operate across borders, swiftly starting operations in certain markets, sometimes closing down for business or regulatory reasons and re-opening in another country with laxer rules.

While Member States operate in one single market, they have taken different approaches on whether or not to regulate platform work, and in what direction. More than 100 court decisions and 15 administrative decisions dealing with the employment status of people

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<sup>29</sup> CJEU, cases C-256/01, Allonby, and C-413/13, FNV Kunsten Informatie en Media.

working through platforms have been observed in the Member States, with varying outcomes but predominantly in favour of reclassifying people working through platforms as workers.<sup>30</sup> In addition to the legal uncertainty this entails for the digital labour platforms and for those working through them, the high number of court cases points to difficulties in maintaining a level playing field among Member States as well as between digital labour platforms and other businesses, and in avoiding downward pressure on labour standards and working conditions. Certain digital labour platforms may engage in unfair commercial practices with respect to other businesses, for example, by not complying with the same rules and operating under the same conditions. Consequently, EU action is needed to ensure that the highly mobile and fast-moving platform economy develops alongside the labour rights of people working through platforms.

Digital labour platforms are often based in one country, while operating through people based elsewhere. 59% of all people working through platforms in the EU engage with clients based in another country.<sup>31</sup> This adds complexity to contractual relationships. The working conditions and social protection coverage of people performing cross-border platform work is equally uncertain and depends strongly on their employment status. National authorities (such as labour inspectorates, social protection institutions and tax authorities) are often not aware of which digital labour platforms are active in their country, how many people are working through them and under what employment status the work is performed. Risks of non-compliance with rules and obstacles to tackling undeclared work are higher in cross-border situations, in particular when online platform work is concerned. In this context, relevant actions aimed at tackling the cross-border challenges of platform work, including notably the lack of data to allow for a better enforcement of rules, are best taken at EU level.

National action alone would not achieve the EU's Treaty-based core objectives of promoting sustainable economic growth and social progress, as Member States may hesitate to adopt more stringent rules or to strictly enforce existing labour standards, while they compete with one another to attract digital labour platforms' investments.

Only an EU initiative can set common rules that apply to all digital labour platforms operating in the EU, while also preventing fragmentation in the fast-developing single market for digital labour platforms. This would ensure a level playing field in the area of working conditions and algorithmic management between digital labour platforms operating in different Member States. Hence, the specific EU added value lies in the establishment of minimum standards in these areas which will foster upward convergence in employment and social outcomes across the Union, and facilitate the development of the platform economy across the EU.

- **Proportionality**

The proposed Directive provides for minimum standards, thus ensuring that the degree of intervention will be kept to the minimum necessary in order to reach the objectives of the proposal. Member States which have already more favourable provisions in place than those put forward in the proposed Directive will not have to change or lower them. Member States may also decide to go beyond the minimum standards set out in the proposed Directive.

The principle of proportionality is respected considering the size and nature of the identified problems. For instance, the rebuttable presumption proposed to address the problem of

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<sup>30</sup> ECE, Case Law on the Classification of Platform Workers: Cross-European Comparative Analysis and Tentative Conclusions (2021). Available [online](#).

<sup>31</sup> PPMI (2021), section 7.1.

misclassification of the employment status will only apply to digital labour platforms that exert a certain level of control over the performance of work. Other digital labour platforms will thus not be concerned by the presumption. Similarly the provisions on automated monitoring and decision-making systems do not go beyond what is necessary to achieve the objectives of fairness, transparency and accountability in algorithmic management.

- **Choice of the instrument**

**ARTICLE 153(2)(B) TFEU IN COMBINATION WITH 153(1)(B) TFEU PROVIDES EXPLICITLY THAT DIRECTIVES MAY BE USED FOR ESTABLISHING MINIMUM REQUIREMENTS CONCERNING WORKING CONDITIONS TO BE IMPLEMENTED BY MEMBER STATES. RULES BASED ON ARTICLE 16(2) TFEU MAY ALSO BE LAID DOWN IN DIRECTIVES.****3.**  
**RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

In line with Article 154 TFEU, the Commission has carried out a two-stage consultation of the social partners on possible EU action to improve working conditions in platform work. In the first stage, between 24 February and 7 April 2021, the Commission consulted social partners on the need for an initiative on platform work, and its possible direction.<sup>32</sup> In the second stage, between 15 June and 15 September 2021, the Commission consulted social partners on the content and legal instrument of the envisaged proposal.<sup>33</sup>

Both trade unions and employers' organisations agreed with the overall challenges as identified in the second-stage consultation document, but differed on the need for concrete action at EU level.

Trade unions called for a Directive based on Article 153(2) TFEU providing for the rebuttable presumption of an employment relationship with reversed burden of proof and a set of criteria to verify the status. They maintained that such an instrument should apply both to online and on-location platforms. Trade unions also supported the introduction of new rights related to the algorithmic management in the employment domain, and generally opposed a third status for people working through platforms. They highlighted the need for social dialogue.

Employers' organisations agreed that there are issues that should be tackled, such as regarding working conditions, misclassification of employment status or access to information. However, action should be taken at national level, on a case-by-case basis and within the framework of the different national social and industrial relations systems. Regarding algorithmic management, they highlighted that the focus should be on efficient implementation and enforcement of existing and upcoming legal instruments.

There was no agreement among social partners to enter into negotiations to conclude an agreement at Union level, as foreseen in Article 155 TFEU.

In addition, the Commission held a substantial number of exchanges with many stakeholders to inform this initiative, including dedicated and bilateral meetings with platform companies, platform workers' associations, trade unions, Member States' representatives, experts from

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<sup>32</sup> Consultation Document, C(2020) 1127 final.

<sup>33</sup> Consultation Document, C(2020) 4230 final, accompanied by Staff Working Document SWD(2021) 143 final.

academia and international organisations and representatives of civil society.<sup>34</sup> On 20 and 21 September 2021, the Commission held two dedicated meetings with platform operators and representatives of platform workers to hear their views on the possible directions for EU action.

The European Parliament has called<sup>35</sup> for a strong EU action to address employment status misclassification, and improve transparency in the use of algorithms, including for workers' representatives. The Council of Ministers of the EU<sup>36</sup>, the European Economic and Social Committee<sup>37</sup> and the Committee of the Regions<sup>38</sup> have also called for specific action on platform work.

- **Collection and use of expertise**

The Commission contracted external experts to produce several studies gathering relevant evidence, which was used to support the impact assessment and prepare this proposal:

- “Study to support the impact assessment of an EU Initiative on improving the working conditions in platform work” (2021) by PPMI.<sup>39</sup>
- “Digital Labour Platforms in the EU: Mapping and Business Models” (2021) by CEPS.<sup>40</sup>
- “Study to gather evidence on the working conditions of platform workers” (2019) by CEPS.<sup>41</sup>

The Commission also based its assessment on the reviews by the European Centre of Expertise in the field of labour law, employment and labour market policies (ECE).

- “Thematic Review 2021 on Platform work” (2021) based on country articles for the 27 EU Member States.<sup>42</sup>
- “Case Law on the Classification of Platform Workers: Cross-European Comparative Analysis and Tentative Conclusions” (2021).<sup>43</sup>
- “Jurisprudence of national Courts in Europe on algorithmic management at the workplace” (2021).<sup>44</sup>

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<sup>34</sup> See Annex A.3.1 of the Impact Assessment, SWD(2021) 396.

<sup>35</sup> European Parliament report on “fair working conditions, rights and social protection for platform workers – new forms of employment linked to digital development.” (2019/2186(INI)). Available [online](#).

<sup>36</sup> Council Conclusions “The Future of Work: the European Union promoting the ILO Centenary Declaration”, October 2019; Available [online](#). In December 2020, EU employment and social affairs ministers held a debate on platform work where they acknowledged that platform work is an international phenomenon with a strong cross-border dimension, and that therefore there is a role for the EU to address the related challenges.

<sup>37</sup> EESC opinion: Fair work in the platform economy (Exploratory opinion at the request of the German presidency). Available [online](#).

<sup>38</sup> CoR opinion: Platform work – local and regional regulatory challenges. Available [online](#).

<sup>39</sup> Available [online](#).

<sup>40</sup> Available [online](#).

<sup>41</sup> Available [online](#).

<sup>42</sup> Synthesis available [online](#).

<sup>43</sup> Available [online](#).

<sup>44</sup> Forthcoming.

The Commission additionally drew on external expertise and used the following studies and reports to support the impact assessment:

- Eurofound reports: “Employment and Working Conditions of Selected Types of Platform Work” (2018).<sup>45</sup>
- JRC reports: “Platform Workers in Europe Evidence from the COLLEEM Survey” (2018),<sup>46</sup> and “New evidence on platform workers in Europe. Results from the second COLLEEM survey” (2020).<sup>47</sup>
- ILO report: “The role of digital labour platforms in transforming the world of work” (2021).<sup>48</sup>

Moreover, the Commission’s assessment has also relied on its mapping of policies in Member States, relevant academic literature and CJEU case-law.

- **Impact assessment**

The Impact Assessment<sup>49</sup> was discussed with the Regulatory Scrutiny Board (RSB) on 27 October 2021. The RSB issued a positive opinion with comments, which have been addressed by further clarifying the coherence with linked initiatives, explaining why and how the issues related to algorithmic management are particularly relevant for the platform economy and better reflecting the views of different categories of stakeholders, including digital labour platforms and people working through them. The combination of measures put forward in this proposal was assessed in the Impact Assessment as the most effective, efficient and coherent. The quantitative and qualitative analysis of the preferred combination of measures shows that a substantial improvement in the working conditions and access to social protection for people working through platforms is expected. Digital labour platforms will also benefit from increased legal certainty and conditions for a sustainable growth, in line with the EU’s social model. As a spillover effect, other businesses competing with digital labour platforms will benefit from a newly levelled playing field.

As a result of actions to address the risk of misclassification, between 1.72 million and 4.1 million people are expected to be reclassified as workers (circa 2.35 million on-location and 1.75 million online considering the higher estimation figures). This would grant them access to the rights and protections of the national and EU labour *acquis*. People who currently earn below the minimum wage would enjoy increased annual earnings of up to EUR 484 million, as statutory laws and/or industry-wide collective agreements would cover them as well. This means an average annual increase in EUR 121 per worker, ranging from EUR 0 for those already earning above the minimum wage before reclassification to EUR 1 800 for those earning below it. In-work poverty and precariousness would thus decrease as a result of reclassification and the resulting improved access to social protection. Hence, income stability and predictability would improve. Up to 3.8 million people would receive confirmation of their self-employment status and, as a result of actions by platforms aimed at relinquishing control to avoid reclassification as employers, they would enjoy more autonomy and flexibility. New rights related to algorithmic management in platform work may lead to

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<sup>45</sup> Available [online](#).

<sup>46</sup> Available [online](#).

<sup>47</sup> Available [online](#).

<sup>48</sup> Available [online](#).

<sup>49</sup> SWD(2021) 396.

improved working conditions for over 28 million people (both workers and self-employed) and greater transparency in the use of artificial intelligence (AI) at the workplace, with positive spill-over effects for the wider market of AI systems. The initiative would also improve transparency and traceability of platform work, including in cross-border situations, with positive effects for national authorities in terms of better enforcement of existing labour and fiscal rules, as well as improved collection of tax and social protection contributions. To this end, Member States could benefit from up to EUR 4 billion in increased tax and social protection contributions per year.

Actions to address the risk of misclassification could result in up to EUR 4.5 billion increase in costs per year for digital labour platforms. Businesses relying on them and consumers may be faced with part of these costs, depending on how digital labour platforms decide to pass them onto third parties. New rights related to algorithmic management and the foreseen measures to improve enforcement, transparency and traceability imply negligible to low costs for digital labour platforms. The initiative may negatively affect the flexibility enjoyed by people working through platforms. However, such flexibility, especially in terms of arranging work schedules, may be only apparent already now, since actual working times depend on the real-time demand for services, supply of workers, and other factors. It was not possible to meaningfully quantify what this would entail in terms of change in full-time equivalents and potential job losses, given the very high number of variables such calculation would entail (e.g. evolving national regulatory landscapes, shifts in platforms' sources of investment, reallocation of tasks from part-time false self-employed to full-time workers). For some people working through digital labour platforms currently earning above the minimum wage, reclassification might lead to lower wages, as some digital labour platforms might offset higher social protection costs by reducing salaries.

Other measures considered in the Impact Assessment included: non-binding guidelines on how to deal with misclassification cases; a combination of a shift in the burden of proof with out-of-court administrative procedures for dealing with the misclassification of the employment status; non-binding guidelines on algorithmic management; algorithmic management rights for workers only; data interoperability obligations for digital labour platforms; setting up national registers to improve relevant data collection and keep track of platform work developments, including in cross border situations. They were overall considered less efficient, less effective and less coherent vis-à-vis the stated objectives of the initiative, as well as with the overarching values, aims, objectives and existing and forthcoming initiatives of the EU.

- **Regulatory fitness and simplification**

The initiative includes different sets of measures, some of which aim at minimising compliance costs for micro, small and medium-sized enterprises (SME). While measures addressing the risk of misclassification cannot be mitigated because they directly pertain to fundamental workers' rights, the administrative procedures required by the measures on algorithmic management and on improving enforcement, traceability and transparency allow for mitigations tailored to SMEs. Notably, these include longer deadlines to provide responses for requests of review of algorithmic decisions and the reduction in the frequency of updating relevant information.

- **Fundamental rights**

The Charter of Fundamental Rights of the European Union protects a broad range of rights in the employment context. These include the workers' right to fair and just working conditions

(Article 31) and to information and consultation within the undertaking (Article 27) , as well as the right to the protection of personal data (Article 8) and the freedom to conduct a business (Article 16). The proposed Directive promotes the rights contained in the Charter in the platform work context by addressing the employment status misclassification and by putting forward specific provisions regarding the use of automated monitoring and decision-making systems in platform work. It also strengthens information and consultation rights for platform workers and their representatives on decisions likely to lead to the introduction of or substantial changes in the use of automated monitoring and decision-making systems.

#### **4. BUDGETARY IMPLICATIONS**

The proposal does not require additional resources from the European Union's budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Member States must transpose the Directive two years after it enters into force and communicate to the Commission the national execution measures via the MNE-Database. In line with Article 153(3) TFEU, they may entrust the social partners with the implementation of the Directive. The Commission stands ready to provide technical support to Member States to implement the Directive.

The Commission will review the implementation of the Directive five years after it enters into force and propose, where appropriate, legislative amendments. Progress towards achieving the objectives of the initiative will be monitored by a series of core indicators (listed in the Impact Assessment Report). The monitoring framework will be subject to further adjustment according to the final legal and implementation requirements and timeline.

- **Explanatory documents (for directives)**

The proposed Directive touches on labour law, specifies and complements data protection rules and contains both substantive and procedural rules. Member States might use different legal instruments to transpose it. It is therefore justified that Member States accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of the Directive and the corresponding parts of national transposition instruments, in accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents.<sup>50</sup>

- **Detailed explanation of the specific provisions of the proposal**

*Chapter I – General provisions*

*Article 1 – Subject matter and scope*

This provision establishes the purpose of the Directive, namely 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.

This article also defines the personal scope of the Directive, which includes persons performing platform work in the Union, irrespective of their employment status, albeit to a

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<sup>50</sup> OJ C 369, 17.12.2011, p. 14.



various extent depending on the provisions concerned. As a general rule, the Directive covers persons 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 CJEU. This approach is meant to include situations where the employment status of the person performing platform work is not clear, including instances of false self-employment, so as to allow correct determination of that status.

However, the provisions of the chapter on algorithmic management, which are related to the processing of personal data and thus covered by the legal basis of Article 16(2) TFEU, also apply to persons performing platform work in the Union who do not have an employment relationship, i.e. the genuine self-employed and those with another employment status that may exist in some Member States.

The digital labour platforms concerned by this proposal are those which organise platform work in the Union, irrespective of their place of establishment and irrespective of the law otherwise applicable. The decisive element for the territorial applicability is thus the place where platform work is performed and not the place where the digital labour platform is established or where the service to the recipient is offered or provided.

#### *Article 2 – Definitions*

This provision defines a number of terms and concepts necessary to interpret the provisions of the Directive, including ‘digital labour platform’, ‘platform work’ and ‘representative’. It distinguishes between ‘persons performing platform work’ – irrespective of their employment status – and ‘platform workers’ – who are in an employment relationship.

#### *Chapter II – Employment status*

##### *Article 3 – Correct determination of the employment status*

This article requires Member States to have in place appropriate procedures to verify and ensure the correct determination of the employment status of persons performing platform work, so as to allow persons that are possibly misclassified as self-employed (or any other status) to ascertain whether they should be considered to be in an employment relationship – in line with national definitions – and, if so, to be reclassified as workers. This will ensure that false self-employed have the possibility to obtain access to working conditions laid down in Union or national law in line with their correct employment status.

The provision also clarifies that the correct determination of the employment status should be based on the principle of the primacy of facts, i.e. guided primarily by the facts relating to the actual performance of work and the remuneration, taking into account the use of algorithms in platform work, and not by how the relationship is defined in the contract. Where an employment relationship exists, the procedures in place should also clearly identify who is to assume the obligations of the employer.

##### *Article 4 – Legal presumption*

This provision establishes the legal presumption that an employment relationship exists between the digital labour platform and a person performing platform work, if the digital labour platform controls certain elements of the performance of work. Member States are required to establish a framework to ensure that the legal presumption applies in all relevant administrative and legal proceedings and that enforcement authorities, such as labour inspectorates or social protection bodies, can also rely on that presumption.

The article defines criteria that indicate that the digital labour platform controls the performance of work. The fulfillment of at least two indicators should trigger the application of the presumption.

Member States are also required to ensure effective implementation of the legal presumption through supporting measures, such as disseminating information to the public, developing guidance and strengthening controls and field inspections, which are essential to ensure legal certainty and transparency for all parties involved.

The provision also clarifies that the legal presumption should not have retroactive effects, i.e. should not apply to factual situations before the transposition deadline of the Directive.

#### *Article 5 – Possibility to rebut the legal presumption*

This provision ensures the possibility to rebut the legal presumption in relevant legal and administrative proceedings, i.e. to prove that the contractual relationship at stake is in fact not an ‘employment relationship’ in line with the definition in force in the Member State concerned. The burden of proof that there is no employment relationship will be on the digital labour platform.

### *Chapter III – Algorithmic management*

#### *Article 6 – Transparency on and use of automated monitoring and decision-making systems*

This provision requires digital labour platforms to inform platform workers of the use and key features of automated monitoring systems – which are used to monitor, supervise or evaluate the work performance of platform workers through electronic means – and automated decision making systems – which are used to take or support decisions that significantly affect platform workers’ working conditions.

The information to be provided includes the categories of actions monitored, supervised and evaluated (including by clients) and the main parameters that such systems take into account for automated decisions. The article specifies in what form and at which point in time this information is to be provided and that it should also be made available to labour authorities and platform workers’ representatives upon request.

In addition, the article provides that digital labour platforms must not process any personal data concerning platform workers that are not intrinsically connected to and strictly necessary for the performance of their contract. This includes data on private conversations, on the health, psychological or emotional state of the platform worker and any data while the platform worker is not offering or performing platform work.

#### *Article 7 – Human monitoring of automated systems*

This provision requires digital labour platforms to regularly monitor and evaluate the impact of individual decisions taken or supported by automated monitoring and decision-making systems on working conditions. In particular, digital labour platforms will have to evaluate the risks of automated monitoring and decision-making systems to the safety and health of platform workers and ensure that such systems do not in any manner put undue pressure on platform workers or otherwise put at risk the physical and mental health of platform workers.

The article also stipulates the need for digital labour platforms to ensure sufficient human resources for this monitoring of automated systems. The persons charged by the digital labour platform with that task must have the necessary competence, training and authority to exercise their function and must be protected from negative consequences (such as dismissal or other sanctions) for overriding automated decisions.

### *Article 8 – Human review of significant decisions*

This provision establishes the right for platform workers to obtain an explanation from the digital labour platform for a decision taken or supported by automated systems that significantly affects 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, the article requires digital labour platforms to provide a written statement of reasons for any decision to restrict, suspend or terminate the platform worker's account, to refuse the remuneration for work performed by the platform worker, or affecting the platform worker's contractual status.

Where the explanation obtained is not satisfactory or where platform workers consider their rights infringed, they also have the right to request the digital labour platform to review the decision and to obtain a substantiated reply within a week. Digital labour platforms have to rectify the decision without delay or, if that is not possible anymore, to provide adequate compensation, if the decision infringes the platform worker's rights.

### *Article 9 – Information and consultation*

This provision requires digital labour platforms to inform and consult platform workers' representatives or, if there are no representatives, the platform workers themselves on algorithmic management decisions, for instance if they intend to introduce new automated monitoring or decision-making systems or make substantial changes to those systems. The aim of this provision is to promote social dialogue on algorithmic management. Given the complexity of the subject matter, the representatives or the platform workers concerned can be assisted by an expert of their choice. This article is without prejudice to existing information and consultation requirements under Directive 2002/14/EC.

### *Article 10 – Persons performing platform work who do not have an employment relationship*

This provision ensures that the provisions on transparency, human monitoring and review of Articles 6, 7 and 8 – which relate to the processing of personal data by automated systems – also apply to persons performing platform work who do not have an employment contract or employment relationship, i.e. the genuine self-employed. This does not include the provisions on health and safety at work, which are specific to workers.

This is without prejudice to the provisions of the Platforms-to-Business Regulation (2019/1150). Its provisions prevail if they cover specific aspects of the Directive in respect of self-employed 'business users' within the meaning of the Regulation. Article 8 does not apply to 'business users' at all.

### *Chapter IV – Transparency on platform work*

#### *Article 11 – Declaration of platform work*

This provision clarifies that digital labour platforms which are employers have 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 national rules and procedures. This clarification is particularly relevant for digital labour platforms which are established in another country than the one where platform work is performed.

#### *Article 12 – Access to relevant information on platform work*

This provision requires digital labour platforms to make certain information accessible to labour, social protection and other relevant authorities ensuring compliance with legal obligations and the representatives of persons performing platform work. This information includes the number of persons performing platform work through the digital labour platform concerned on a regular basis and their contractual or employment status, as well as the general terms and conditions applicable to those contractual relationships. The information should be regularly updated and further clarifications and details should be provided at request.

#### *Chapter V – Remedies and enforcement*

##### *Article 13 – Right to redress*

This provision requires Member States to provide access to effective and impartial dispute resolution and a right to redress and, where appropriate, adequate compensation, for infringements of the rights established under the Directive.

##### *Article 14 – Procedures on behalf or in support of persons performing platform work*

This provision enables representatives of persons performing platform work or other legal entities which have a legitimate interest in defending the rights of persons performing platform work, to engage in any judicial or administrative procedure to enforce any of the rights or obligations under this proposal. Such entities should have the right to act on behalf or in support of a person performing platform work, with the person's approval, in such procedures and also to bring claims on behalf of more than one person performing platform work. This aims at overcoming the procedural and cost-related obstacles that persons performing platform work face in particular when seeking to have their employment status correctly determined.

##### *Article 15 – Communication channels for persons performing platform work*

This article requires digital labour platforms to 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. The aim is to ensure the possibility for persons performing platform work to get to know and communicate with each other, also in view of defending their interests, despite the lack of a common place of work.

##### *Article 16 – Access to evidence*

This article ensures that national courts or other competent authorities can order the digital labour platform to disclose relevant evidence lying in their control, during proceedings concerning a claim regarding correct determination of the employment status of persons performing platform work. This includes evidence containing confidential information – such as relevant data on algorithms – where they consider it relevant to the claim, provided that effective measures are in place to protect this information.

##### *Article 17 – Protection against adverse treatment or consequences*

This provision requires Member States to provide persons performing platform work complaining about breaches of provisions adopted pursuant to the Directive with adequate judicial protection against any adverse treatment or consequences by the digital labour platform.

##### *Article 18 – Protection from dismissal*

If a person performing platform work considers that he or she has been dismissed or subject to equivalent detriment (such as the deactivation of the account) on the ground that he or she exercises rights established in the Directive, and is able to establish facts which support this assertion, this provision places on the digital labour platform the burden to prove that the dismissal or alleged detrimental treatment was based on other objective reasons.

#### *Article 19 – Supervision and penalties*

This provision clarifies that the procedural framework for the enforcement of GDPR rules, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and penalties applies to the provisions on algorithmic management which are based on Article 16 TFEU and that the data protection supervisory authorities are competent to monitor the application of those provisions, including the power to impose administrative fines.

The provision requires labour and social protection authorities and data protection supervisory authorities to cooperate, including by exchanging relevant information.

It also requires Member States to provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive, and to make sure that they are applied.

#### *Chapter VI – Final provisions*

##### *Article 20 – More favourable provisions*

This provision allows Member States to provide a higher level of protection for workers than that guaranteed by the Directive, and preventing its use to lower existing standards in the same fields. This applies to self-employed persons only insofar as more favourable rules are compatible with internal market rules.

##### *Article 21 – Implementation*

This provision establishes the maximum period that Member States have in order to transpose the Directive into national law and communicate the relevant texts to the Commission. This period is set at two years after the date of entry into force. Moreover, it highlights that Member States may entrust the social partners with the implementation of the Directive, where social partners request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

##### *Article 22 – Review by the Commission*

This is a standard provision requiring the Commission to review the implementation of this Directive five years after its entry into force, and to assess the need to revise and update the Directive.

##### *Articles 23 and 24 – Entry into force and Addressees*

These provisions stipulate that the Directive is to enter into force on the twentieth day following its publication in the Official Journal and is addressed to the Member States.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on improving working conditions in platform work**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Pursuant to Article 3 of the Treaty on European Union, the objectives of the Union are, amongst others, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming at full employment and social progress.
- (2) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union ('the Charter'). In particular, Article 31 of the Charter provides for the right of every worker to working conditions which respect his or her health, safety and dignity. Article 27 of the Charter protects the workers' right to information and consultation within the undertaking. Article 8 of the Charter provides that everyone has the right to the protection of personal data concerning him or her. Article 16 of the Charter recognises the freedom to conduct a business.
- (3) Principle No 5 of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017<sup>3</sup>, provides that, regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training; that, in accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context is to be ensured; and that innovative forms of work that ensure quality working conditions are to be fostered, that

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<sup>1</sup> OJ C , , p.

<sup>2</sup> OJ C , , p. .

<sup>3</sup> Interinstitutional Proclamation on the European Pillar of Social Rights (OJ C 428, 13.12.2017, p. 10).

entrepreneurship and self-employment are to be encouraged and that occupational mobility is to be facilitated. The Porto Social Summit of May 2021 welcomed the Action Plan accompanying the Social Pillar<sup>4</sup> as guidance for its implementation.

- (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.
- (5) Platform work is performed by individuals through the digital infrastructure of digital labour platforms that provide a service to their customers. By means of the algorithms, the digital labour platforms may control, to a lesser or greater extent – depending on their business model – the performance of the work, its remuneration and the relationship between their customers and the persons performing the work. Platform work can be performed exclusively online through electronic tools (‘online platform work’) or in a hybrid way combining an online communication process with a subsequent activity in the physical world (‘on-location platform work’). Many of the existing digital labour platforms are international business actors deploying their activities and business models in several Member States or across borders.
- (6) Platform work can provide 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.
- (7) Court cases in several Member States have shown the persistence of misclassification of the employment status in certain types of platform work, in particular in sectors where digital labour platforms exert a certain degree of control over the remuneration and performance of work. While digital labour platforms frequently classify persons working through them as self-employed or ‘independent contractors’, many courts have found that the platforms exercise *de facto* direction and control over those persons, often integrating them in their main business activities and unilaterally determining the level of remuneration. Those courts have therefore reclassified purportedly self-employed persons as workers employed by the platforms. However, national case law has resulted in diverse outcomes and digital labour platforms have adapted their business model in various ways, thus increasing the lack of legal certainty over the employment status.
- (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

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<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘The European Pillar of Social Rights Action Plan’, COM(2021) 102 final, 4.3.2021.

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.

- (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.
- (10) A body of legal instruments provides for minimum standards in working conditions and labour rights across the Union. This includes in particular Directive (EU) 2019/1152 of the European Parliament and of the Council<sup>5</sup> on transparent and predictable working conditions, Directive 2003/88/EC of the European Parliament and of the Council<sup>6</sup> on working time, Directive 2008/104/EC of the European Parliament and of the Council<sup>7</sup> on temporary agency work, and other specific instruments on aspects such as health and safety at work, pregnant workers, work-life balance, fixed-term work, part-time work, posting of workers, information and consultation of workers, among others. While those instruments provide a level of protection to workers, they do not apply to the genuine self-employed.
- (11) Council Recommendation 2019/C 387/01<sup>8</sup> on access to social protection for workers and the self-employed recommends Member States to take measures ensuring formal and effective coverage, adequacy and transparency of social protection schemes for all workers and self-employed. Member States currently have varying degrees of providing social protection to the self-employed.
- (12) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>9</sup> ('General Data Protection Regulation') ensures the protection of natural persons with regard to the processing of personal data, and in particular provides certain rights and obligations as well as safeguards concerning lawful, fair and transparent processing of personal data, including with regard to automated individual decision-making.

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<sup>5</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

<sup>6</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

<sup>7</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

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

<sup>9</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).



Regulation (EU) 2019/1150 of the European Parliament and of the Council<sup>10</sup> promotes fairness and transparency for ‘business users’ using online intermediation services provided by operators of online platforms. The European Commission has proposed further legislation laying down harmonised rules for providers and users of artificial intelligence systems<sup>11</sup>.

- (13) While existing or proposed Union legal acts provide for certain general safeguards, challenges in platform work require some further specific measures. In order to adequately frame the development of platform work in a sustainable manner, it is necessary for the Union to set new minimum standards in working conditions to address the challenges arising from platform work. Persons performing platform work in the Union should be provided with a number of minimum rights aiming at ensuring correct determination of their employment status, at promoting transparency, fairness and accountability in algorithmic management, and at improving transparency in platform work, including in cross-border situations. This should be done with a view to improving legal certainty, creating a level playing field between digital labour platforms and offline providers of services and supporting the sustainable growth of digital labour platforms in the Union.
- (14) The Commission has undertaken a two-stage consultation of the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the improvement of working conditions in platform work. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level in this area by adapting the current legal framework to the emergence of platform work.
- (15) In addition, the Commission held extensive exchanges with relevant stakeholders, including digital labour platforms, associations of persons performing platform work, experts from academia, Member States and international organisations and representatives of civil society.
- (16) This Directive should apply to persons performing platform work in the Union who have, or who based on an assessment of facts may be deemed to have, an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice of the European Union. This should include situations where the employment status of the person performing platform work is not clear, so as to allow correct determination of that status. The provisions on algorithmic management which are related to the processing of personal data should also apply to genuine self-employed and other persons performing platform work in the Union who do not have an employment relationship.
- (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.

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<sup>10</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

<sup>11</sup> COM(2021) 206 final, 21.4.2021.

- (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 goods or cleaning, constitutes a necessary and essential and not merely a minor and purely ancillary component.
- (19) To combat false self-employment in platform work and to facilitate the correct determination of the employment status, Member States should have appropriate procedures in place to prevent and address misclassification of the employment status of persons performing platform work. The aim of those procedures should be to ascertain the existence of an employment relationship as defined by national law, collective agreements or practice with consideration to the case-law of the Court of Justice, and, where such employment relationship exists, to ensure full compliance with Union law applicable to workers as well as national labour law, collective agreements and social protection rules. Where self-employment or an intermediate employment status – as defined at national level – is the correct employment status, rights and obligations pursuant to that status should apply.
- (20) In its case law, the Court of Justice has established criteria for determining the status of a worker<sup>12</sup>. The interpretation by the Court of Justice of those criteria should be taken into account in the implementation of this Directive. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. False self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations.
- (21) The principle of primacy of facts, meaning that the determination of the existence of an employment relationship should be guided primarily by the facts relating to the actual performance of work, including its remuneration, and not by the parties' description of the relationship, in accordance with the 2006 Employment Relationship Recommendation (No 198) of the International Labour Organisation, is particularly

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<sup>12</sup> Judgments of the Court of Justice of 3 July 1986, *Deborah Lawrie-Blum v Land Baden-Württemberg*, C-66/85, ECLI:EU:C:1986:284; 14 October 2010, *Union Syndicale Solidaires Isère v Premier ministre and Others*, C-428/09, ECLI:EU:C:2010:612; 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, C-413/13, ECLI:EU:C:2014:2411; 9 July 2015, *Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH*, C-229/14, ECLI:EU:C:2015:455; 17 November 2016, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, C-216/15, ECLI:EU:C:2016:883; 16 July 2020, *UX v Governo della Repubblica italiana*, C-658/18, ECLI:EU:C:2020:572; and order of the Court of Justice of 22 April 2020, *B v Yodel Delivery Network Ltd*, C-692/19, ECLI:EU:C:2020:288.

relevant in the case of platform work, where contractual conditions are often unilaterally determined by one party.

- (22) Where the existence of an employment relationship is established based on facts, the party acting as employer should be clearly identified and that party should fulfil all the obligations resulting from its role as employer.
- (23) Ensuring correct determination of the employment status should not prevent the improvement of working conditions of genuine self-employed persons performing platform work. Where a digital labour platform decides – on a purely voluntary basis or in agreement with the persons concerned – to pay for social protection, accident insurance or other forms of insurance, training measures or similar benefits to self-employed persons working through that platform, those benefits as such should not be regarded as determining elements indicating the existence of an employment relationship.
- (24) When digital labour platforms control certain elements of the performance of work, they act like employers in an employment relationship. Direction and control, or legal subordination, is an essential element of the definition of an employment relationship in the Member States and in the case-law of the Court of Justice. Therefore contractual relationships in which digital labour platforms exert a certain level of control over certain elements of the performance of work should be deemed, by virtue of a legal presumption, to be an employment relationship between the platform and the person performing platform work through it. As a result, that person should be classified as a worker having all the rights and obligations in accordance with that status, as laid down in national and Union law, collective agreements and practice. The legal presumption should apply in all relevant administrative and legal proceedings and should benefit the person performing platform work. Authorities in charge of verifying the compliance with or enforcing relevant legislation, such as labour inspectorates, social protection bodies or tax authorities, should also be able to rely on that presumption. Member States should put in place a national framework to reduce litigation and increase legal certainty.
- (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 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.

- (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.
- (27) In the interest of legal certainty, the legal presumption should not have any retroactive legal effects before the transposition date of this Directive and should therefore only apply to the period starting from that date, including for contractual relationships entered into before and still ongoing on that date. Claims relating to the possible existence of an employment relationship before that date and resulting rights and obligations until that date should therefore be assessed only on the basis of national law and Union law predating this Directive.
- (28) The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down in the law, collective agreements or practice in force of the respective Member State with consideration to the case-law of the Court of Justice, even though the digital labour platform controls the performance of work on a given aspect. Member States should ensure the possibility to rebut the legal presumption in legal or administrative proceedings or both by proving, on the basis of the aforementioned definition, that the relationship in question is not an employment relationship. The shift in the burden of proof to digital labour platforms is justified by the fact that they have a complete overview of all factual elements determining the relationship, in particular the algorithms through which they manage their operations. Legal proceedings and administrative proceedings initiated by the digital labour platforms in order to rebut the legal presumption should not have a suspensive effect on the application of the legal presumption. A successful rebuttal of the presumption in administrative proceedings should not preclude the application of the presumption in subsequent judicial proceedings. When the person performing platform work who is 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.
- (29) While Regulation (EU) 2016/679 establishes the general framework for the protection of natural persons with regard to the processing of personal data, it is necessary to lay down rules addressing the concerns that are specific in the processing of personal data in the context of platform work. This Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679. In this context, terms relating to the protection of

personal data in this Directive should be understood in light of the definitions set out in Regulation (EU) 2016/679.

- (30) In addition to rights and obligations provided in this Directive, rights and obligations provided in Regulation (EU) 2016/679 continue to apply when personal data are processed. Articles 13, 14 and 15 of Regulation (EU) 2016/679 require data controllers to ensure transparency towards data subjects on the collection and processing of personal data. Moreover, Article 22(1) of Regulation (EU) 2016/679 provides for the data subjects' right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her, subject to the exceptions provided for in paragraph 2 of that article. Those obligations apply also to digital labour platforms.
- (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.
- (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.
- (33) Digital labour platforms should not be required to disclose the detailed functioning of their automated monitoring and decision-making systems, including algorithms, or other detailed data that contains commercial secrets or is protected by intellectual property rights. However, the result of those considerations should not be a refusal to provide all the information required by this Directive.
- (34) Articles 5 and 6 of Regulation (EU) 2016/679 require that personal data are processed in a lawful, fair and transparent manner. Digital labour platforms should therefore not be allowed to process any personal data concerning persons performing platform work that are not intrinsically connected to and strictly necessary for the performance of the contract between those persons and the digital labour platform. Article 6(5) of this Directive provides for more specific rules in the context of platform work, including to

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

- (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.
- (36) Article 22(3) of Regulation (EU) 2016/679 requires data controllers to implement suitable measures to safeguard data subjects' rights and freedoms and legitimate interests in cases where the latter are subject to decisions based solely on automated processing. That provision requires, as a minimum, the data subject's right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision. Those requirements apply also to digital labour platforms. Article 8 of this Directive provides for more specific rules in the context of platform work, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 of Regulation (EU) 2016/679.
- (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 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.

- (38) Council Directive 89/391/EEC<sup>13</sup> introduces measures to encourage improvements in the safety and health of workers at work, including the obligation for employers to assess the occupational health and safety risks. As automated monitoring and decision-making systems potentially have significant impact on the physical and mental health of persons performing platform work, digital labour platforms should evaluate those risks, assess whether the safeguards of the systems are appropriate to address those risks and take appropriate preventive and protective measures.
- (39) Directive 2002/14/EC of the European Parliament and of the Council<sup>14</sup> establishes a general framework for informing and consulting employees in the Union. The introduction of or substantial changes in the use of automated monitoring and decision-making systems by digital labour platforms have direct impacts on the work organisation and individual working conditions of platform workers. Additional measures are necessary to ensure that digital labour platforms inform and consult platform workers or their representatives before such decisions are taken, at the appropriate level and, given the technical complexity of algorithmic management systems, with the assistance of an expert chosen by the platform workers or their representatives in a concerted manner where needed.
- (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.
- (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,

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<sup>13</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

<sup>14</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

in accordance with the rules and procedures laid down in the law of the Member States concerned.

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

- (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.
- (49) Since the objective of this Directive, namely to improve working conditions in platform work, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common minimum requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (50) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain provisions which are more favourable for platform workers. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the general level of protection in the field covered by this Directive.
- (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.
- (52) The Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive. They should also, in accordance with national law and practice, take adequate measures to ensure that the social partners are effectively involved and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.

- (53) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents,<sup>15</sup> Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (54) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>16</sup> and delivered an opinion on XX XXXX<sup>17</sup>,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

##### **Subject matter and scope**

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.
2. This Directive lays down minimum rights that apply to every person performing platform work in the Union who has, 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.  
  
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.
3. This Directive applies to digital labour platforms organising platform work performed in the Union, irrespective of their place of establishment and irrespective of the law otherwise applicable.

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<sup>15</sup> OJ C 369, 17.12.2011, p. 14.

<sup>16</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>17</sup> ...

## *Article 2*

### **Definitions**

1. For the purposes of this Directive, the following definitions shall apply:
  - (1) ‘digital labour platform’ means any natural or legal person providing a commercial service which meets all of the following requirements:
    - (a) it is provided, at least in part, at a distance through electronic means, such as a website or a mobile application;
    - (b) it is provided at the request of a recipient of the service;
    - (c) it involves, as a necessary and essential component, the organisation of work performed by individuals, irrespective of whether that work is performed online or in a certain location;
  - (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;
  - (3) ‘person performing platform work’ means any individual performing platform work, irrespective of the contractual designation of the relationship between that individual and the digital labour platform by the parties involved;
  - (4) ‘platform worker’ means any person performing platform work who has 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;
  - (5) ‘representatives’ means the workers’ organisations or representatives provided for by national law or practices, or both;
  - (6) ‘micro, small or medium-sized enterprises’ means micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC<sup>18</sup>.
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.

## CHAPTER II

### **EMPLOYMENT STATUS**

## *Article 3*

### **Correct determination of the employment status**

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<sup>18</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (C(2003) 1422) (OJ L 124, 20.5.2003, p. 36).

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.
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.

#### *Article 4*

#### **Legal presumption**

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

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.

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;
  - (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.
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:
  - (a) ensure that information on the application of the legal presumption is made publicly available in a clear, comprehensive and easily accessible way;

- (b) develop guidance for digital labour platforms, persons performing platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5;
  - (c) develop guidance for enforcement authorities to proactively target and pursue non-compliant digital labour platforms;
  - (d) strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of labour law, while ensuring that such controls and inspections are proportionate and non-discriminatory.
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.

#### *Article 5*

#### **Possibility to rebut the legal presumption**

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.

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.

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.

### CHAPTER III

### **ALGORITHMIC MANAGEMENT**

#### *Article 6*

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

1. Without prejudice to the obligations and rights of digital labour platforms and platform workers under Directive (EU) 2019/1152, Member States shall require digital labour platforms to inform platform workers of:
- (a) automated monitoring systems which are used to monitor, supervise or evaluate the work performance of platform workers through electronic means;
  - (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.

2. The information referred to in paragraph 1 shall concern:
  - (a) as regards automated monitoring systems:
    - (i) the fact that such systems are in use or are in the process of being introduced;
    - (ii) the categories of actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;
  - (b) as regards automated decision-making systems:
    - (i) the fact that such systems are in use or are in the process of being introduced;
    - (ii) the categories of decisions that are taken or supported by such systems;
    - (iii) the main parameters that such systems take into account and the relative importance of those main parameters in the automated decision-making, including the way in which the platform worker's personal data or behaviour influence the decisions;
    - (iv) the grounds for decisions to restrict, suspend or terminate the platform worker's account, to refuse the remuneration for work performed by the platform worker, on the platform worker's contractual status or any decision with similar effects.
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.
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.
5. Digital labour platforms shall not process any personal data concerning platform workers that are not intrinsically connected to and strictly necessary for the performance of the contract between the platform worker and the digital labour platform. In particular they shall not:
  - (a) process any personal data on the emotional or psychological state of the platform worker;
  - (b) process any personal data relating to the health of the platform worker, except in cases referred to in Article 9(2), points (b) to (j) of Regulation (EU) 2016/679;
  - (c) process any personal data in relation to private conversations, including exchanges with platform workers' representatives;
  - (d) collect any personal data while the platform worker is not offering or performing platform work.

#### *Article 7*

#### **Human monitoring of automated systems**

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.
2. Without prejudice to Council Directive 89/391/EEC and related directives in the field of safety and health at work, digital labour platforms shall:
  - (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;
  - (b) assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment;
  - (c) introduce appropriate preventive and protective measures.

They shall not use automated monitoring and decision-making systems in any manner that puts undue pressure on platform workers or otherwise puts at risk the physical and mental health of platform workers.

3. Member States shall require digital labour platforms to ensure sufficient human resources for monitoring the impact of individual decisions taken or supported by automated monitoring and decision-making systems in accordance with this Article. The persons charged by the digital labour platform with the function of monitoring shall have the necessary competence, training and authority to exercise that function. They shall enjoy protection from dismissal, disciplinary measures or other adverse treatment for overriding automated decisions or suggestions for decisions.

#### *Article 8*

##### **Human review of significant decisions**

1. Member States shall ensure that platform workers have the right to obtain an explanation from the digital labour platform for any decision taken or supported by an automated decision-making system that significantly affects the platform worker's working conditions, as referred to in Article 6(1), point (b). In particular, Member States shall ensure that digital labour platforms provide platform workers with access to a contact person designated by the digital labour platform to discuss and to clarify the facts, circumstances and reasons having led to the decision. Digital labour platforms shall ensure that such contact persons have the necessary competence, training and authority to exercise that function.

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

2. Where platform workers are not satisfied with the explanation or the written statement of reasons obtained or consider that the decision referred to in paragraph 1 infringes their rights, they shall have the right to request the digital labour platform to review that decision. The digital labour platform shall respond to such request by providing the platform worker with a substantiated reply without undue delay and in any event within one week of receipt of the request.

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

3. Where the decision referred to in paragraph 1 infringes the platform worker's rights, the digital labour platform shall rectify that decision without delay or, where such rectification is not possible, offer adequate compensation.
4. This Article shall be without prejudice to dismissal procedures laid down in national law.

#### *Article 9*

##### **Information and consultation**

1. Without prejudice to the rights and obligations under Directive 2002/14/EC, Member States shall ensure information and consultation of platform workers' representatives or, where there are no such representatives, of the platform workers concerned by digital labour platforms, on decisions likely to lead to the introduction of or substantial changes in the use of automated monitoring and decision-making systems referred to in Article 6(1), in accordance with this Article.
2. For the purposes of this Article, the definitions of 'information' and 'consultation' as laid down in Article 2, points (f) and (g), of Directive 2002/14/EC shall apply. The rules laid down in Article 4(1), (3) and (4), Article 6 and Article 7 of Directive 2002/14/EC shall apply accordingly.
3. The platform workers' representatives or the platform workers 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.

#### *Article 10*

##### **Persons performing platform work who do not have an employment relationship**

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.
2. This Article shall be without prejudice to Regulation (EU) 2019/1150. If the provisions of this Directive conflict with a provision of Regulation (EU) 2019/1150 in respect of business users within the meaning of that Regulation, the provision of that Regulation shall prevail and shall apply to those business users. Article 8 of this Directive shall not apply to business users within the meaning of Regulation (EU) 2019/1150.

## CHAPTER IV

### **TRANSPARENCY ON PLATFORM WORK**

#### *Article 11*

##### **Declaration of platform work**



Without prejudice to Regulations (EC) No 883/2004<sup>19</sup> and 987/2009<sup>20</sup> of the European Parliament and of the Council, Member States shall require digital labour platforms which are employers to declare work performed by platform workers to the competent labour and social protection authorities of the Member State in which the work is performed and to share relevant data with those authorities, in accordance with the rules and procedures laid down in the law of the Member States concerned.

### *Article 12*

#### **Access to relevant information on platform work**

1. Where labour, social protection and other relevant authorities exercise their functions in ensuring compliance with legal obligations applicable to the employment status of persons performing platform work and where the representatives of persons performing platform work exercise their representative functions, Member States shall ensure that digital labour platforms make the following information available to them:
  - (a) the number of persons performing platform work through the digital labour platform concerned on a regular basis and their contractual or employment status;
  - (b) the general terms and conditions applicable to those contractual relationships, provided that those terms and conditions are unilaterally determined by the digital labour platform and apply to a large number of contractual relationships.
2. The information shall be provided for each Member State in which persons are performing platform work through the digital labour platform concerned. The information shall be updated at least every six months, and, as regards paragraph 1, point (b), each time the terms and conditions are modified.
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.
4. With regard to digital labour platforms which are micro, small or medium-sized enterprises, Member States may provide that the periodicity for updating information in accordance with paragraph 2 is reduced to once every year.

## CHAPTER V

### **REMEDIES AND ENFORCEMENT**

#### *Article 13*

##### **Right to redress**

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<sup>19</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

<sup>20</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

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.

#### *Article 14*

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

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.
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.

#### *Article 15*

##### **Communication channels for persons performing platform work**

Member States shall take the necessary measures to ensure that digital labour platforms create the possibility for persons performing platform work to contact and communicate with each other, and to 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.

#### *Article 16*

##### **Access to evidence**

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.
2. Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the claim. They shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.
3. This Article shall not prevent Member States from maintaining or introducing rules which are more favourable to persons performing platform work.

## *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.

## *Article 18*

### **Protection from dismissal**

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.
2. Persons performing platform work who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in this Directive, may request the digital labour platform to provide duly substantiated grounds for the dismissal or the equivalent measures. The digital labour platform shall provide those grounds in writing.
3. Member States shall take the necessary measures to ensure that, when persons performing platform work referred to in paragraph 2 establish, before a court or other competent authority or body, facts from which it may be presumed that there has been such a dismissal or equivalent measures, it shall be for the digital labour platform to prove that the dismissal or equivalent measures were based on grounds other than those referred to in paragraph 1.
4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to persons performing platform work.
5. Member States shall not be required to apply paragraph 3 to proceedings in which it is for the court or other competent authority or body to investigate the facts of the case.
6. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member State.

## *Article 19*

### **Supervision and penalties**

1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be responsible for monitoring the application of Article 6, Article 7(1) and (3) and Articles 8 and 10 of this Directive, in accordance with the relevant provisions in Chapters VI, VII and VIII of Regulation (EU) 2016/679. They shall be competent to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.
2. The authorities referred to in paragraph 1 and national labour and social protection authorities shall, where relevant, cooperate in the enforcement of this Directive, within the remit of their respective competences, in particular where questions on the impact of automated monitoring and decision-making systems on working conditions

or on rights of persons performing platform work arise. For that purpose, those authorities shall exchange relevant information with each other, including information obtained in the context of inspections or investigations, either upon request or at their own initiative.

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

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 20*

##### **Non-regression and more favourable provisions**

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to workers within Member States.
2. This Directive shall not affect the Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to platform workers, or to encourage or permit the application of collective agreements which are more favourable to platform workers, in line with the objectives of this Directive. As regards persons performing platform work who are not in an employment relationship, this paragraph shall only apply insofar as such national rules are compatible with the rules on the functioning of the internal market.
3. This Directive is without prejudice to any other rights conferred on persons performing platform work by other legal acts of the Union.

#### *Article 21*

##### **Transposition and implementation**

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

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

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

Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

*Article 22*

**Review by the Commission**

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

*Article 23*

**Entry into force**

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

*Article 24*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*