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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
N° Cion doc.:	ST 14450 2021 INIT
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work

Delegations will find in the attached document a courtesy translation of document 8161/22.

Note from the Presidency

Social Question Working Party on 28 April 2022

Questions/guidelines for input in view of drafting on Chapters 1 and 2

With a view to drafting a first compromise text of the Directive on improving working conditions in platform work, the Presidency is seeking the views of Member States on a number of provisions and possible amendments to the text following our initial discussions (and written contributions) on Chapters I and II.

Delegations are asked to respond to the questions below **and, if they so wish, make proposals for amendments, including on parts of Chapters I and II not covered by any question.** Delegations will have the opportunity to present their answers and proposed amendments at the next meeting of the Working Group on 28 April.

Article 1 : Subject matter and scope

The Presidency has taken note of the various questions raised by delegations on the need to define more clearly the scope of the Directive and the terms used, and therefore invites them to comment on the following points:

Questions :

- *Is the objective pursued by the draft directive with regard to the improvement of working conditions for platform workers only, on the one hand, and protection of data for all persons performing platform work, on the other hand, sufficiently reflected in the text?*
- *Would you like clarification as to the impact of the proposed directive on the social protection of all persons performing platform work?*
- *Concerning the minimum rights mentioned in Article 1, do you think that a more precise definition of these rights would be necessary?*

Article 2 : Definitions

Questions :

- *Do you agree with the definition of a digital labour platform? Do you think it would be useful to clarify it and if so, in what way? In particular, do you think that the notion of "commercial service" mentioned in Article 2 § 1 (1) is sufficiently explicit?*

- *Do you think that the distinction between platform workers and persons performing platform work is necessary? If so, is this distinction clear enough?*

Article 3: Correct determination of the employment status

In the interests of clarifying the text, the Presidency intends to specify certain terms or expressions used in Article 3.

Questions :

- *In the context of Article 3, do you think that the term "appropriate procedures" is sufficiently explicit in the text?*
- *Do you think it is necessary to specify the nature and role of the national authorities competent for determining the employment status?*
- *Do you think the Directive should apply to cases where the platform is not the employer of the person performing platform work, i.e. cases where an "intermediary" company is the employer?*

Article 4: Legal presumption

According to the Commission's explanations, platforms which meet the definition of a digital labour platform would assess their situation with regard to the criteria of the presumption of employment and could adapt their model, if necessary. If the platform meets the definition of a digital labour platform as set out in Article 2 (1) (1) and if at least two of the criteria set out in Article 4 are met, the presumption of employment would apply.

An individual or a national authority could take legal or administrative action on the basis of the legal presumption, in order to benefit from appropriate rights, if that individual or national authority provides evidence that at least two of the criteria mentioned in Article 4 are met.

According to Article 5, the platform could rebut this presumption in the course of the same administrative or judicial procedure before the decision applying the presumption is taken, by proving that the person concerned is not in an employment relationship as defined by national legislation or case law. An appeal against such an administrative or judicial decision applying the presumption would not have suspensive effect.

In addition, the competent national authorities would have a margin of discretion not to activate the presumption if it is clear that the person concerned is genuinely self-employed.

Questions on paragraph 1:

- In your opinion, would it be appropriate to reflect in the text the different stages of the presumption mechanism as described by the Commission in its Powerpoint presentation, while respecting the principle of procedural autonomy of Member States?
- Would it be useful to specify that platforms can self-assess whether the presumption of employment applies to persons working via their platform?
- Would it be useful to exclude from the application of the legal presumption workers performing marginal activity via platforms?
- According to the Commission's explanations, national authorities have a margin of manoeuvre not to rely on the legal presumption for the genuine self-employed persons : is this explicit enough in Article 4? Would you like this to be clarified? If so, in what way?

Questions on paragraph 2:

- Do you consider "controlling the performance of work" as defined in Article 4.2 to be an adequate notion to qualify an employment relationship?
- What is your position on the principle that all the criteria proposed in the text are of equal importance for the activation of the presumption?
- Do the criteria preserve the autonomy of the genuine self-employed persons within the meaning of the Directive?
- Do you think that the criteria take sufficient account of the specific nature of platform work or should they be more focused on it?
- Do you think it is necessary to further specify some of these criteria?
- Do you think that the threshold of two out of five criteria to trigger the legal presumption is adequate?

5- Article 5: possibility to rebut the legal presumption**Questions:**

- Is the possibility of rebutting the presumption on the basis of a national definition of the employment relationship that is not specific to platforms sufficiently specified in the text?
- What do you think of the absence of suspensive effect of an appeal against a decision applying the legal presumption?
- Would you like it to be made clear that it is up to each Member State to define who bears the burden of proof in the event that the rebuttal procedure is triggered by a person performing platform work?