

## ES-proposals art. 6, 7, 8, 16, 18, 19

### Directive on improving working conditions in platform work

DOC. 14450/21	ES AMENDMENTS	JUSTIFICATION
<b>Recital 23</b>	<b>Recital 23</b>	
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.	<del>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.</del>	This recital, which could lead to the fact that platforms voluntarily pay for social protection, accident insurance or other forms of insurance, training measures or similar benefits for self-employed persons, being disregarded as an indication of employment status in the courts. Our proposals is to delete this references, as it could conflict with the objective of the directive and prevent the application of the presumption
<b>Article 6. Transparency on and use of automated monitoring and decision-making system</b>	<b>Article 6. Transparency on and use of automated monitoring and decision-making system</b>	
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	No change.	

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<p>performance of platform workers through electronic means;</p> <p>(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.</p>		
<p>2. The information referred to in paragraph 1 shall concern:</p> <p>(a) as regards automated monitoring systems:</p> <p>(i) the fact that such systems are in use or are in the process of being introduced;</p> <p>(ii) the categories of actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;</p> <p>(b) as regards automated decision-making systems:</p> <p>(i) the fact that such systems are in use or are in the process of being introduced;</p> <p>(ii) the categories of decisions that are taken or supported by such systems;</p> <p>(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</p>	<p>2. The information referred to in paragraph 1 shall concern:</p> <p>(a) as regards automated monitoring systems:</p> <p>(i) the fact that such systems are in use or are in the process of being introduced;</p> <p>(ii) the categories of actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;</p> <p><b>(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;</b></p>	<p>Art. 6.2. (a) (adding (iii))</p> <p>The use of automated monitoring systems, even if they do not directly result in a decision significantly affecting the working conditions, could involve the evaluation of work performed and may lead to the profiling of workers in relation to their professional performance, ultimately affecting their working conditions. It is therefore considered appropriate to include in Article 6(2)(a) a subparagraph similar to that contained in Article 6(2)(b)(iii), so that the worker can know not only what actions are being evaluated, but also how they are being evaluated.</p>

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<p>platform worker's personal data or behaviour influence the decisions;</p> <p>(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.</p>		
<p>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.</p>	No change	
<p>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.</p>	<p>4. <i>Without prejudice to the information and consultation rights and obligations under Article 9</i>, digital labour platforms <del>shall make the information referred to in paragraph 2 available to platform workers' representatives</del> shall <b>provide the information referred to in paragraph 2 to platform workers' representatives</b>. They shall also make this information available to national labour authorities upon their request.</p>	<p>In order to strengthen the right of information of the workers' representation contained in Article 6(4), and to ensure the proper exercise of its functions, we propose, the introduction of an automatic duty to provide information, which does not require a request for such information, and which is provided by the company without prejudice to the information and consultation obligations contained in Article 9</p>
<p>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</p>	No change	

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<p>between the platform worker and the digital labour platform. In particular they shall not:</p> <p>(a) process any personal data on the emotional or psychological state of the platform worker;</p> <p>(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;</p> <p>(c) process any personal data in relation to private conversations, including exchanges with platform workers' representatives;</p> <p>(d) collect any personal data while the platform worker is not offering or performing platform work.</p>		
<p><b>Article 7. Human monitoring of automated systems</b></p>	<p><b>Article 7. Human monitoring of automated systems</b></p>	
<p>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.</p>	<p>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. <i>That monitoring shall take place on a continuous basis and the evaluation in periods not exceeding six months.</i></p>	<p>Monitoring and evaluation obligations must be carried out in a way that ensures their effectiveness. In the terms indicated by the Commission, monitoring should be carried out on a continuous basis and if it is necessary to establish a minimum period for evaluation, it is considered that it should not be less than six months.</p>
<p>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:</p> <p>(a) evaluate the risks of automated monitoring and decision-making systems to the</p>	<p>No change</p>	

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<p>safety and health of platform workers, in particular as regards possible risks of work-related accidents, psychosocial and ergonomic risks;</p> <p>(b) assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment;</p> <p>(c) introduce appropriate preventive and protective measures.</p> <p>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.</p>		
<p>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.</p>	No change	
	<p><b><i>4. Member States shall ensure that digital labour platforms inform platform workers' representatives of the results of the evaluation referred to in paragraph 1, as well as of the</i></b></p>	<p>The role of workers' representatives in monitoring and controlling compliance with labour legislation, especially in the area of occupational risk prevention, must be preserved, which requires the establishment of adequate information duties on</p>

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	<i>measures taken to comply with paragraphs 2 and 3.</i>	the part of the company. To this end, it is proposed to introduce a new paragraph 4 in this article.
<b>Article 8. Human review of significant decisions</b>	<b>Article 8. Human review of significant decisions</b>	
<p>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.</p> <p>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.</p>	No change	
<p>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,</p>	No change	

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<p>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.</p> <p>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.</p>		
<p>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.</p>	<p>No change</p>	
<p>4. This Article shall be without prejudice to dismissal procedures laid down in national law.</p>	<p>4. This Article shall be without prejudice to dismissal procedures <b>and any other relevant procedures</b> laid down in national <b>labour</b> law.</p>	<p>Concerning to paragraph (4) that safeguards dismissal procedures laid down in national law, in Spanish law we also have labour procedures that protect workers from decisions of the employer that may substantially modify working conditions.</p> <p>Therefore, it may be advisable to introduce a safeguard of this regulation in Article 8(4), where it is laid down for dismissal procedures, given that the decisions referred to in Article 8 (in conjunction with Article 6) could affect Spanish regulations on substantial modification of working conditions, functional mobility, geographical mobility or on the exercise of the employer's disciplinary power.</p>

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	<p><i>5. Digital labour platforms shall also inform platform workers' representatives about these review procedures and the decisions resulting from them, in addition to the participation they may have in accordance with national legislation in the labour procedures referred to in the previous paragraph.</i></p>	<p>Article 8(3) states that 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”.</p> <p>Given that this infraction may concern labour rights and the right to non-discrimination (as exemplified in recital 37), it should be considered that workers' representation should be able to play a role in monitoring these complaints procedures and the decisions resulting from them, in addition to the participation they may have in accordance with national legislation in the procedures referred to in the previous paragraph. It is therefore desirable to introduce a specific right of information for workers' representation on this article.</p>
<b>Ar. 16. Acces to evidence</b>	<b>Ar. 16. Acces to evidence</b>	
<p>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.</p> <p>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</p>	<p>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.</p> <p><b>Likewise, they shall ensure that national courts or competent authorities order the digital labour platform to disclose any relevant evidence for the application of the legal presumption referred</b></p>	<p>With the aim to ensuring the effective application of the legal presumption this measure will avoid the legal defencelessness of the platform worker who wants to uphold the legal presumption in an administrative or judicial procedure since, in many cases, the proof that the criteria of Art. 4.2 (especially letters c, d and e) are met, will require that access to the evidence under the control of the platform is ordered.</p>



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<p>shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.</p> <p>3. This Article shall not prevent Member States from maintaining or introducing rules which are more favourable to persons performing platform work.</p>	<p><b>to in Article 4 which lies in their control when requested by the platform worker.</b></p> <p>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.</p> <p>3. This Article shall not prevent Member States from maintaining or introducing rules which are more favourable to persons performing platform work.</p>	
<b>Art. 18. Protection from dismissal</b>	<b>Art. 18. Protection from dismissal.</b>	
<p>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.</p>	<p>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, <b>including those who are their representatives</b>, on the grounds that they have exercised the rights provided for in this Directive.</p>	<p>Ensuring that workers' representatives are afforded the protection against dismissal provided for in Article 18 for the exercise of the specific rights granted to them by the directive, such as those of Articles 6.4 or 9 on information and consultation (and which would not be covered because they are also platform workers. This addition would be also consistent with the protection expressly granted to them by Art. 17.</p>
<b>Art. 19. Supervision and penalties</b>	<b>Art. 19. Supervision and penalties</b>	
<p>1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be</p>	<p>1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be</p>	<p>The purpose is to ensure an appropriate distribution of competences between data protection supervisory authorities and national</p>

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<p>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.</p> <p>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 EN 42 EN 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.</p> <p>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</p>	<p>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, <b>without prejudice to the competences of the labour authorities in relation to the provisions of Chapters III and VI.</b></p> <p>2. <b>National labour authorities shall ensure the application of the provisions of the directive in matters within their competence. Furthermore, supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679</b> 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 EN 42 EN 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.</p> <p>3. <i>No change.</i></p>	<p>employment authorities in the sense indicated by the European Economic and Social Committee in its opinion of 23 March 2022.</p> <p>It is important to ensure not only proper coordination but also that each authority acts within its own sphere of competence.</p> <p><a href="https://www.eesc.europa.eu/en/agenda/our-events/events/working-conditions-platform-workers-package/opinions">https://www.eesc.europa.eu/en/agenda/our-events/events/working-conditions-platform-workers-package/opinions</a></p>