

## Amendments suggested by the French delegation on chapter II, V and VI of the platform workers directive 12/09/22

### 1- Amendments Chapter II

Compromise text	FR draft amendments on the compromise text	Observations
CHAPTER II	CHAPTER II	
EMPLOYMENT STATUS	EMPLOYMENT STATUS	
<p style="text-align: center;"><i>Article 4</i></p> <p><b>Legal presumption</b></p> <p>1. The contractual relationship between a digital labour platform [...] and a person performing platform work through that platform shall be legally presumed to be an employment relationship <u>when the digital labour platform restricts that person's freedom, including through sanctions, to organise his or her work and controls its execution, within the meaning of paragraph 2.</u> [...]</p> <p style="text-align: center;">[...]</p>	No change	<p>As mentioned in SQWP of 05/09, FR would like to review the criteria applicable to the legal presumption of article 4 in order to avoid the reclassification of genuine self-employed as workers.</p> <p>In this sense, the criteria should indicate that the digital platform restrict the person's freedom including sanctions to organize his work and control its execution, as mentioned in the current compromise text.</p>
<p>2. <u>Restricting the freedom to organise one's work and</u> controlling <u>its execution</u> within the meaning of paragraph 1 shall be understood as <u>de facto</u> fulfilling at least two of the following:</p>	<p><u>2. Restricting the freedom to organise one's work and</u> controlling <u>its execution</u> within the meaning of paragraph 1 shall be understood as <u>de facto</u> fulfilling at least <b>three</b> of the following:</p>	<p>It is suggested to request the fulfillment of 3 criterion out of 5 in order to apply the presumption to ensure its effectiveness. Otherwise, we believe that genuine self-employed risk to fall within the scope of the legal presumption.</p>

Compromise text	FR draft amendments on the compromise text	Observations
(a) [...] determining, or setting upper limits for the level of remuneration;	<u>No change</u>	
(b) requiring the person performing platform work to respect specific [...] rules with regard to appearance, conduct towards the recipient of the service or performance of the work;	<u>No change</u>	
(c) supervising the performance of work or verifying the quality of the results of the work including by electronic means;	(c) <b>closely</b> supervising the performance of work <b>and thoroughly</b> verifying the quality of the results of the work including by electronic means;	FR authorities suggest to review criterion c) in order to include a specific degree of control and supervision of the work performed and its quality in order to ensure that any usual commercial relationship are not covered. Therefore FR authorities suggest to use the wording of recital 25. In this regard, the suggested amendment aims at clarifying the fact that not all types of supervision and control are characteristic of an employment relationship but rather those which are sufficiently strong to be a decisive component of subordination between the worker and its employer.
(d) [...] restricting [...] the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;	<u>No change</u>	
(e) [...] restricting the possibility to build a client base or to perform work for any third party.	<u>No change</u>	

Compromise text	FR draft amendments on the compromise text	Observations
	<p><b><u>The compliance with specific rules required by the platform in accordance with national law and collective agreements or that are necessary to protect the health and safety of persons performing platform work or the recipients of the service may not be taken into account to determine the restriction of the freedom to organize one's work and the control of its execution</u></b></p>	<p>The suggested amendment aim to ensure that collective agreements and national legislation applicable to platforms should not be considered to determine the restriction of freedom of the worker and the control of the work performance (e.g. : use of green vehicle, equipment to ensure food preservation). This suggested amendment is inspired by Recital (25c), which is, in our view, not legally sufficient to ensure the legal effect expected from this limitation.</p>
<p>3. The legal presumption shall apply in all relevant administrative <u>or</u> legal proceedings <b><u>where the employment status of the person performing platform work is at issue.</u></b></p> <p><b><u>In addition,</u></b> competent authorities verifying compliance with or enforcing relevant legislation <b><u>may also</u></b> rely on that presumption <b><u>in assessing whether a contractual relationship should be considered an employment relationship, unless it is manifest that the presumption would be rebutted on the basis of the law, collective agreements or practice in force in the Member</u></b></p>	No change	

Compromise text	FR draft amendments on the compromise text	Observations
<p><b><u>State in question, with consideration to the case-law of the Court of Justice.</u></b></p> <p>To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems.</p>		
<p><b>4.</b> 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:</p> <ul style="list-style-type: none"> <li>(a) ensure that information on the application of the legal presumption is made publicly available in a clear, comprehensive and easily accessible way;</li> <li>(b) develop guidance for digital labour platforms, persons performing</li> </ul>	No change	

Compromise text	FR draft amendments on the compromise text	Observations
<p>platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5;</p> <p>(c) <b><u>in line with national law or practice,</u></b> develop guidance for <b><u>competent national</u></b> authorities to proactively target and pursue non-compliant digital labour platforms;</p> <p>(d) <b><u>in line with national law or practice,</u></b> 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.</p>		

Compromise text	FR draft amendments on the compromise text	Observations
<p><u>5.</u> 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.</p>	<p>No change</p>	

<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;"><b>[...] <u>Rebuttal of the legal presumption</u></b></p> <p>1. Member States shall ensure the possibility for any of the parties to rebut the legal presumption [...].</p> <p><b><u>To this effect:</u></b></p> <p>a) <u>where, in the context of the administrative or legal proceedings referred to in Article 4,</u> 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 [...];</p> <p>b) <u>where, in the context of the administrative or legal proceedings referred to in Article 4,</u> 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.</p>	<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;"><b>[...] <u>Rebuttal of the legal presumption</u></b></p> <p>1. No change</p> <p>2. No change</p>	<p>FR authorities would like to underline the importance of the fact that the suspensive effect is part of the MS procedural autonomy.</p>
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<p>2. <u>Where a digital labour platform challenges an administrative or judicial decision applying the presumption, such a proceeding shall not have a suspensive effect on any relevant decision, as far as the requalification is concerned.</u></p>		



Commission proposal	FR amendments	Observations
CHAPTER V	CHAPTER V	
REMEDIES AND ENFORCEMENT	REMEDIES AND ENFORCEMENT	
<p><i>Article 14</i></p> <p><b>Procedures on behalf or in support of persons performing platform work</b></p> <p>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.</p>	<p><i>Article 14</i></p> <p><b>Procedures on behalf or in support of persons performing platform work</b></p> <p>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 <b>or join</b> any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive. <b>According to national law or practices,</b> 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</p>	<p>French authorities suggest those amendments in order to comply with the principle of the procedural autonomy and to respect the principle of equal treatment regarding remedies applicable to any type of workers.</p>

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CHAPTER V	CHAPTER V	
REMEDIES AND ENFORCEMENT	REMEDIES AND ENFORCEMENT	
<p><i>Article 15</i></p> <p><b>Communication channels for persons performing platform work</b></p> <p>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.</p>	<p><i>Article 15</i></p> <p><b>Communication channels for persons performing platform work</b></p> <p>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 <del>to be contacted by</del> <b>communicate with</b> 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</p>	<p>French authorities suggest this amendment in order to comply with the principle of the procedural autonomy and to respect the principle of equal treatment regarding remedies applicable to any type of workers. To that end, French authorities suggest a modification of Recital 45:</p> <p><i>Recital 45</i>  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 <del>be contacted by</del> <b>with</b> 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.</p>

Commission proposal	FR amendments	Observations
CHAPTER V	CHAPTER V	
REMEDIES AND ENFORCEMENT	REMEDIES AND ENFORCEMENT	
<p><i>Article 18</i></p> <p><b>Protection from dismissal</b></p> <p>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.</p>	<p><i>Article 18</i></p> <p><b>Protection from dismissal</b></p>	<p>FR authorities would like to use a more appropriate wording in order to reflect the termination of the contractual relationship for persons performing platform work. We trust the Presidency for finding the right terms for this clarification, according to the discussions that took place on September 5.</p>

<p style="text-align: center;"><i>Article 19</i></p> <p style="text-align: center;"><b>Supervision and penalties</b></p> <p>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.</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 style="text-align: center;"><i>Article 19</i></p> <p style="text-align: center;"><b>Supervision and penalties</b></p> <p>1. no change</p> <p>2. no change</p> <p>3. no change</p> <p><b><u>4. « According to Article 7(3) (as amended in the FR suggestions for amendments on Chapters III and IV),, when a Member States impose a monitoring of the impact of individual decisions taken or supported by automated monitoring and decision-making systems, established by external auditor, the latter shall exchange relevant information with authorities referred to in paragraph 1 and cooperate in the enforcement of this Directive.»</u></b></p>	<p>In accordance with FR authorities' amendment on article 7.3, we suggest to add a new paragraph in order to insure the cooperation between the external auditor and the authorities referred in paragraph 1.</p>
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Commission proposal	FR amendments	Observations
CHAPTER V	CHAPTER V	
REMEDIES AND ENFORCEMENT	REMEDIES AND ENFORCEMENT	
in force concerning the rights which are within the scope of this Directive. The penalties provided for shall be effective, proportionate and dissuasive.		