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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work

In preparation of the meeting of the Social Questions Working Party on 24 May 2022, delegations will find attached a draft compromise text of the Directive referred to in subject.

Changes compared with the Commission proposal are set out in **bold underlined**. Deletions are marked with [...].

AT Comments, September 2022

CHAPTER V

REMEDIES AND ENFORCEMENT

Article 13

Right to redress

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. **Member States shall ensure that** 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.

AT comment:

In the WP of 4 and 5 April 2022, the COM was of the opinion that the wording of this provision gives MS sufficient flexibility to resolve the questions on the nature of the power of representation at national level. From AT's point of view, the wording could nevertheless cause problems, due to its scope of the power of attorney, the duty of representation by a lawyer and multiple representation.

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~~ **platform workers**, on the grounds that they have exercised the rights provided for in this Directive.
2. ~~Persons performing platform work~~ **Platform workers** 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~~ **platform workers** 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~~ **platform workers**.

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.

AT comment:

The aim of the Directive is, on the one hand, to improve the working conditions for platform workers, on the other hand, to protect all persons who perform platform work with regard to data processing. To this end, this directive creates a process for determining the status of workers, which will improve working conditions of genuine employees including protection against dismissal.

The COM stated in the WP on 4 and 5 April that self-employed workers are at a disadvantage due to the unequal power structure, e.g. by being removed from the platform due to a request for information, which is why the protection against dismissal under Article 18 should also cover self-employed persons. From AT's point of view, however, this issue is sufficiently taken into account by Art. 17.

No protection against dismissal for self-employed persons can be derived from the legal basis. Therefore, the protection against dismissal according to Art. 18 should in principle be limited to those persons who are considered platform workers. The legal basis must in any case be complied with.

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.~~

AT comment:

According to Article 19, the data protection authority is to be made responsible for complying with labour law claims instead of the labour and social courts, which is to be rejected.

Although the proposed provisions of Articles 6 and 7 are to be brought into line with the GDPR, they are still labour law claims and obligations, which exist parallel to data protection law.

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.~~

AT comment:

Clarification is necessary on what information is to be shared with the competent authorities under Regulation (EU) 2016/679.

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

For the Council

The President

The President