

CHAPTER II  
**EMPLOYMENT STATUS**

*Article 3*

**(1) Correct determination of the employment status**

1. Member States shall have appropriate procedures, in accordance with national law and practice 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.

*Reasoning/comments:*

- 1) *DK notes that “appropriate procedures” can be procedures at national courts, administrative procedures etc. DK propose to add “in accordance with national law and practise” in order to make it clear, that no new authorities or procedures are needed if existing structures are in place.*

*Article 4*

**Legal presumption**

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 **when two of the following criteria de facto are met**
  - (a) [...] determining, or setting upper limits for the level of remuneration;
  - (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;
  - (c) supervising the performance of work or verifying the quality of the results of the work including by electronic means;
  - (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;
  - (e) [...] restricting the possibility to build a client base or to perform work for any third party.
3. The legal presumption shall apply in all relevant administrative **or** legal proceedings **where the employment status of the person performing platform work is at issue.**

**In addition,** competent authorities verifying compliance with or enforcing relevant legislation **may also** rely on that presumption **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 State in question, with consideration to the case-law of the Court of Justice.**

To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems.

4. 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) **in line with national law or practice**, develop guidance for **competent national** authorities to proactively target and pursue non-compliant digital labour platforms;
- (d) **in line with national law or practice**, 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.

**5.** 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.

*Reasoning/comments:*

1. *Art. 4.1: DK suggests a simplification of 4,1 and 4,2. Firstly, measures and procedures are regulated in article 3 and article 4,3, and is therefore superfluous in 4,1. Secondly, the proposal from the French Presidency concerns us, as this interferes with national definitions of workers.*
2. *DK reserves the right to make amendments to the formulation of the criteria at a later stage.*
3. *Art. 4.3: DK supports the French presidency's proposal of emphasizing that the authorities are left with a discretion as to whether to apply the presumption rule when the platform worker is obviously genuinely self-employed.*

*Article 5*

**[...] Rebuttal of the legal presumption**

1. Member States shall ensure the possibility for any of the parties to rebut the legal presumption [...].

**To this effect:**

- a) **where, in the context of the administrative or legal proceedings referred to in Article 4,** 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 [...]; **where, in the context of the administrative or legal proceedings referred to in Article 4,** 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.

2. **Member States may decide that 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.**

*Reasoning/comments:*

- 1) *Art. 5.2: The question of suspensive effect should be left for Member States to decide. Absence of suspensive effect breaks with Danish practice.*

### 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 in accordance with national law and practice make the information referred to in paragraph 2 available to platform workers' representatives and competent 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.

*Reasoning/comments:*

- 1) *DK proposes amending article 6(4) in order to take national labour market models into account. In DK trade unions and worker's representatives have a special role compared to other representatives.*

#### *Article 7*

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

1. Member States shall ensure that digital labour platforms based on a risk assessment 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 exercising their function outlined in this article in accordance with national law and practice.

*Reasoning/comments:*

- 1) *Article 7(1), seems unclear as to the intended scope of the digital labour platforms' obligation to "monitor and evaluate the impact of individual decisions". DK proposes adding a risk assessment to help determine the scope of the obligations.*

- 2) *Regarding the use of the term “undue pressure” DK would suggest to consider a clarification of what is meant by this, e.g. in a recital.*
- 3) *In article 7(3) it is not clear to us, whether the persons should be protected from dismissal etc. in relation to any decision, including decisions not protected by the directive. DK proposes amending this para to clarify.*

#### *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 of receipt of the request.
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 and practices or collective agreements.

#### *Reasoning/comments:*

- 1) *An ultimate deadline of one week seems very short. DK proposes deleting the specific time indication “and in any event within one week” making “undue delay” the decisive factor and making the provision more flexible.*
- 2) *DK proposes adjusting 8(4) in order to take national labour market models into account.*

*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.

*Regarding art. 9(3):*

- 1) *DK finds it necessary to clarify the text as to when an expert can be involved in order to formulate an opinion. According to article 9(1) information and consultation must take place not only on decisions to introduce or substantial change [...], but also on decisions "likely to lead" to the introduction or change. This seems to be a very low threshold for the platform to bare the expenses of such an expert's opinion.*
- 2) *At SQWP 14 July the Commission indicated they would look into similar provisions in other Directives. DK looks forward to the Commission's follow-up on this*

*Reasoning/comments:*

- 1) *Article 10 sets out which rights also apply to the solo self-employed. Normally, provisions in labour law directives only apply to workers. DK propose deleting the provision as it risks creating a "third category", where the solo self-employed obtain workers rights, which they under normal contractual circumstances could agree upon in accordance with national contractual law. Labour law directives should only contain rights for workers.*



## TRANSPARENCY ON PLATFORM WORK

### *Article 11*

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

Without prejudice to Regulations (EC) No 883/2004<sup>1</sup> and 987/2009<sup>2</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 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.

*Reasoning/comments:*

- 1) *Does the directive entail a new registration obligation in addition to those that already exist in the member states?*
- 2) *The chapter refers in several places to social protection/social protection authorities. This should be changed to “competent authorities”.*

### *Article 12*

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

1. Where competent authorities exercise their functions in ensuring compliance with legal obligations applicable to the employment status of persons performing platform work and where platform workers’ representatives 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 substantially modified.

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<sup>1</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>2</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).

3. Competent authorities and platform workers' representatives 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.

*Reasoning/comments:*

- 1) 12.2: It is unclear whether any change will require an update "each time" they are modified. DK suggest adding a qualitative restriction so that insignificant/minor changes do not require immediate updates.

## 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 platform workers**

1. Without prejudice to Article 80 of Regulation (EU) 2016/679, Member States shall ensure that worker's representatives of 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 platform workers, 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 or according to national law or practice.

2. Workers representatives of shall also have the right to act on behalf or in support of several persons performing platform work, with those persons' approval or in accordance with national law and practice.

*Reasoning/comments:*

- 1) *DK proposes that the self-employed is excluded from the directive, which has been taken into account in the following.*
- 2) *DK proposes amending article 14 (1) and (2) in order to take national labour market models into account.*
- 3) *In Denmark, pay and working conditions of Danish workers are regulated through collective agreements. It follows from the Danish Administration of Justice Act that trade unions may act as agents representing their members in cases concerning their members' employment and working conditions, etc. In addition, it follows from general principles of association and employment law that for workers who are members, a trade union has powers to act on the workers' behalf. Similarly, employers' organisations may act on behalf of a single employer.*
- 4) *It is the parties, i.e. the unions and the employers organisations/employers who decide if they want to conclude an agreement and are responsible for the compliance of the collective agreement. Thus, it is the parties who have entered into the agreement who have rights and obligations under a collective agreement, which means that the right to bring cases before the Industrial Court or the industrial arbitration system is vested in the organisations of workers and employers on behalf of both members and non-members to ensure that the collective agreement is observed.*
- 5) *The organisations have entered into the collective agreements in question, and the parties to the agreements are those who are most qualified to assess whether a collective agreement has been breached or not, and whether the underlying assumptions have been set aside. If a union does not intend to pursue a case concerning breach of the collective agreement, a member or non-member may bring his/her own case before the regular courts. However, the worker cannot, as an individual, bring a case before the Industrial Court or an industrial arbitration tribunal. The principle of approval from the person concerned is therefore a breach with the fundamental principles in the Danish model.*

*Article 15*

**Communication channels for platform workers**

Member States shall take the necessary measures to ensure that digital labour platforms create the possibility for platform workers to contact and communicate with each other, and to be contacted by worker's representatives, 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.

*Reasoning/comments:*

- 1) Access to evidence is a matter which should be left for national procedural law. DK therefore agree with the Swedish proposal to delete this article.*

#### *Article 17*

#### **Protection against adverse treatment or consequences**

Member States shall introduce the measures necessary to protect platform workers, including 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 platform workers, on the grounds that they have exercised the rights provided for in this Directive.
2. 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 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 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.

## *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 competent 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 platform workers 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.
3. This Directive is without prejudice to any other rights conferred on platform workers 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.