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Report

Expert Group

Transposition of Directive (EU) 2024/2831 on improving working conditions in platform work

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Transposition of Directive (EU) 2024/2831 on improving working conditions in platform work

Directorate-General for Employment, Social Affairs & Inclusion

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Introduction

Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, hereinafter 'the Directive', establishes an EU framework aimed at facilitating the determination of the correct employment status of persons performing platform work, promoting transparency, fairness, human oversight, safety and accountability in algorithmic management in platform work, and enhancing transparency with regard to platform work, including in cross-border situations.

As for other Directives in the field of labour law, the Commission set up an informal Expert Group to advise and support the Commission's Directorate-General for Employment, Social Affairs and Inclusion in monitoring the correct and timely transposition of the Directive by Member States. The group discussed all the provisions of the Directive. Moreover, it gave national experts, social partners and the Commission services the opportunity to exchange views on the progress in the transposition of the Directive at national level. The Expert Group was composed of national experts representing the governments of the twenty-seven Member States, EEA/EFTA States and European Social Partners. The group was chaired by a representative of the Directorate-General for Employment, Social Affairs and Inclusion. The Directorate-General for Employment, Social Affairs and Inclusion provided secretarial support for the group.

A total of 8 meetings were held between December 2024 and December 2025, during which the main issues arising in relation to the implementation of the Directive were extensively discussed. This report is the result of these discussions. The references to other pieces of EU legislation are made to those versions in force during the discussions.

While aiming at supporting the exchange of views and favouring a better common understanding of the provisions of the Directive, the Commission services have not sought to interfere with the transposition process at national level in any way, nor to intervene in the right of interpretation of the Court of Justice of the European Union, or other courts concerned. The same applies to the experts in the Expert Group who, in their countries, are responsible for producing draft legislation and/or monitoring discussions between the social partners as part of collective agreement-based transposition. The report is by no means binding and is not to be considered as representing the official position of any government participating in the Expert Group nor that of the Commission or the European Social Partners.([1]) The report does not in any way exonerate Member States from the responsibility of ensuring the correct transposition and application of the Directive, and it does not exempt the Commission from its obligation to monitor that work.

([1]) Where a position has been formally adopted by the Commission as an institution, the text refers to 'the Commission' and where the text contains the view of DG EMPL officials, the text refers to 'the Commission services'. The views of 'the Commission services' are not binding on the institution.

1. Chapter I on General provisions

1.1. Subject matter and scope (Article 1)

Article 1:
1. The purpose of this Directive is to improve working conditions and the protection of personal data in platform work by:

(a) introducing measures to facilitate the determination of the correct employment status of persons performing platform work;

(b) promoting transparency, fairness, human oversight, safety and accountability in algorithmic management in platform work; and

(c) improving transparency with regard to platform work, including in cross-border situations.

2. This Directive lays down minimum rights that apply to every person performing platform work in the Union who has or who, on the basis of an assessment of the facts, is deemed to have an employment contract or 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.

This Directive also lays down rules to improve the protection of natural persons in relation to the processing of their personal data by providing measures on algorithmic management applicable to persons performing platform work in the Union, including those who do not have an employment contract or employment relationship.

3. This Directive applies to digital labour platforms organising platform work performed in the Union, irrespective of their place of establishment or of the law otherwise applicable.

***Recital (14):** While existing Union legal acts provide for certain general safeguards, challenges in platform work require some further specific measures. In order to adequately frame the development of platform work in a sustainable manner, it is necessary for the Union to set minimum rights for platform workers and rules to improve the protection of the personal data of persons performing platform work to address those challenges. Measures facilitating the determination of the correct employment status of persons performing platform work in the Union should be introduced, and the transparency with regard to platform work should be improved, including in cross-border situations. In addition, persons performing platform work should be provided with rights, with a view to promoting transparency, fairness, human oversight, safety and accountability. Those rights should also be provided with a view to protecting workers and improving working conditions in algorithmic management, including the exercise of collective bargaining. This should be done with a view to improving legal certainty and aiming to achieve a level playing field between digital labour platforms and offline providers of services and supporting the sustainable growth of digital labour platforms in the Union.*

***Recital (16):** This Directive aims to improve the working conditions of platform workers and to protect the personal data of persons performing platform work. Both objectives are pursued simultaneously and, while mutually reinforcing and inseparably linked, one is not secondary to the other. As regards Article 153(1), point (b), TFEU, this Directive sets out rules aiming to support the determination of the correct employment status of persons*

performing platform work and to improve working conditions and transparency with regard to platform work, including in cross-border situations, as well as to protect workers in the context of algorithmic management. As regards Article 16 TFEU, this Directive establishes rules to improve the protection of persons performing platform work with regard to the processing of their personal data by increasing the transparency, fairness, human oversight, safety and accountability of relevant algorithmic management procedures in platform work.

Recital (17): *This Directive should apply to persons performing platform work in the Union who have or who, on the basis of an assessment of the facts, are deemed to have an employment contract or 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. The provisions on algorithmic management which are related to the processing of personal data should also apply to persons performing platform work who do not have an employment contract or employment relationship.*

Recital (18): *This Directive should establish mandatory rules that apply to all digital labour platforms, irrespective of their place of establishment or of the law otherwise applicable, provided that the platform work organised through that digital labour platform is performed in the Union.*

1.1.1. Subject matter

Article 1(1) sets the dual objective of the Directive, which is to improve working conditions for platform workers and the protection of personal data for all persons performing platform work. These objectives are reflected in the legal bases of the Directive, i.e. Articles 153(1)(b), 153(2)(b) and 16(2) TFEU and are, as underlined by Recital 17, 'mutually reinforcing and inseparably linked'.

The three indents in Article 1(1) reflect the structure of the Directive and its specific measures. As described in Recital 14, the measures listed in letter (b) do not only pursue the objective of personal data protection of persons performing platform work, but also the protection of workers and the improvement of working conditions.

The Directive must be interpreted together with the relevant provisions of the Charter of Fundamental Rights of the European Union. Further, the European Pillar of Social Rights is a relevant instrument as pointed out in Recital 3 of the Directive.

Discussion

One **Member State expert** asked whether Articles 1 and 2 needed to be transposed into national law. The Commission services explained that while these Articles in principle do not have to be transposed as such, they need to be taken into account by Member States for the interpretation of the Directive's other provisions when transposing them into national law.

Trade unions stressed that the improvement of working conditions is at the heart of the Directive. Upon request of trade unions, the Commission services clarified that the 'measures' mentioned in letter (a) could concern the introduction of new measures or the adaptation of existing legislation.

Employers' organisations emphasised the importance of taking into account the diversity of Member States' domestic contexts. They called to avoid gold plating and unnecessary regulatory burden in the transposition of the Directive into national law. Employers' organisations also underlined the importance of the Guidelines on the

application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons.

1.1.2. Scope

Articles 1(2) and Article 1(3) set out the scope of the Directive. They stipulate that the Directive covers all platform work performed (on-location or online) in the EU, irrespective of the place of establishment of the platform or of the law otherwise applicable to the contractual relationship between the platform and the PPPW and, implicitly, irrespective of the location of the client.

The first sub-paragraph of Article 1(2) concerns platform workers, i.e. those PPPW with an employment relationship or who, on the basis of an assessment of the facts, are deemed to have an employment contract or 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.([2]) The minimum rights set out in Chapter II, Articles 12-14 and Article 16 of the Directive only apply to platform workers.

The second sub-paragraph of Article 1(2) concerns all persons performing platform work (PPPW), including those who do not have an employment relationship. The rules to improve the protection of personal data in the context of algorithmic management set out in Articles 7-11, as well as Article 17 and Chapter V apply to all PPPW.

Article 1(3) and Recital 18 clarify that the Directive's mandatory rules apply to all digital labour platforms (DLP) that organise platform work performed in the EU, irrespective of the place of establishment of the platform and including where the applicable contractual documents specify that the law of another country than the one in which the work is performed applies. This provision is in line with the protection set out in Article 8 of the Rome I Regulation and should be transposed into national law to benefit all PPPW in the EU.

Discussion

In response to a question by a **Member State expert**, the **Commission services** clarified that the PPPW mentioned in Article 1(2), second sub-paragraph, could include other categories of persons than workers or self-employed, such as specific types of one-person companies or other statuses existing under national law.

Trade unions underlined that the factual situation of the person should be the leading element to determine the application of the Directive's provisions to the different sub-categories of PPPW. In this regard, trade unions emphasised the importance for Member States to take into account the reference "with consideration to the case-law of the Court of Justice" in the assessment of the existence of an employment relationship. They called on the Commission to ensure proper monitoring of Member States' implementation of the Directive in this regard.

A **Member State expert** asked for confirmation regarding the territorial scope of the Directive, particularly whether the Directive would cover individuals working fully online in the EU for platforms established outside the EU. The **Commission services** confirmed

([2]) The wording 'with consideration to the case-law of the Court of Justice' should be interpreted in line with the interim conclusion set out in the Report of the Expert Group on the Transposition of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union, pp. 15-17: European Commission: Directorate-General for Employment, Social Affairs and Inclusion, *Transposition of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union – Report expert group*, Publications Office, 2021, https://data.europa.eu/doi/10.2767/874745.

this understanding and added that the Directive does not cover DLP established in the EU where they organise platform work performed outside the EU.

A **Member State expert** asked for further clarifications on the interaction between Article 1(3) and the Rome I Regulation. The **Commission services** explained that, under Article 8 of the Rome I Regulation, an individual employment contract shall be governed by the law chosen by the parties. However, such a choice of law may not have the result of depriving the employee of the protection afforded to him by provisions (such as the 'mandatory rules' mentioned in Recital 18 of the Directive) that cannot be derogated from by agreement under the law, that, in the absence of choice, would have been applicable (i.e. in principle the law of the country in which, or failing that, from which the employee habitually carries out his work in performance of the contract). While the provisions of the Rome I Regulation apply to employees, Article 1(3) constitutes a rule of private international law that, once transposed into national legislation, extends the above considerations to PPPW who do not have an employment relationship.

Another **Member State expert** supported this understanding but saw difficulties in the practical application of the Directive's enforcement provisions (Chapter V) in cases of online platform work performed in the EU for platforms established outside the EU. The **Commission services** pointed out that, according to Article 13 of the Digital Services Act ('DSA'),([3]) 'providers of intermediary services' have the obligation to have a legal representative in the EU. Moreover, Article 27 of the General Data Protection Regulation ('GDPR')([4]) also obliges controllers or processors of personal data not established in the EU to designate a representative in the EU.

1.2. Definitions (Article 2)

Article 2

1. For the purposes of this Directive, the following definitions apply:

(a) 'digital labour platform' means a natural or legal person providing a service which meets all of the following requirements:

(i) it is provided, at least in part, at a distance by electronic means, such as by means of a website or a mobile application;

(ii) it is provided at the request of a recipient of the service;

(iii) it involves, as a necessary and essential component, the organisation of work performed by individuals in return for payment, irrespective of whether that work is performed online or in a certain location;

(iv) it involves the use of automated monitoring systems or automated decision-making systems;

([3]) Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance), PE/30/2022/REV/1, *OJ L 277, 27.10.2022, p. 1–102.*

([4]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), *OJ L 119, 4.5.2016, p. 1–88.*

(b) 'platform work' means work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform or an intermediary, and the individual, irrespective of whether there is a contractual relationship between the individual or an intermediary and the recipient of the service;

(c) 'person performing platform work' means an individual performing platform work, irrespective of the nature of the contractual relationship or the designation of that relationship by the parties involved;

(d) 'platform worker' means any person performing platform work who has or is deemed to have an employment contract or 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;

(e) 'intermediary' means a natural or legal person that, for the purpose of making platform work available to or through a digital labour platform:

> *(i) establishes a contractual relationship with that digital labour platform and a contractual relationship with the person performing platform work; or*
>
> *(ii) is in a subcontracting chain between that digital labour platform and the person performing platform work;*

(f) 'workers' representatives' means representatives of platform workers, such as trade unions and representatives who are freely elected by the platform workers in accordance with national law and practice;

(g) 'representatives of persons performing platform work' means workers' representatives and, insofar as provided for in national law and practice, representatives of persons performing platform work other than platform workers;

(h) 'automated monitoring systems' means systems which are used for or which support monitoring, supervising or evaluating, by electronic means, the work performance of persons performing platform work or the activities carried out within the work environment, including by collecting personal data;

(i) 'automated decision-making systems' means systems which are used to take or support, by electronic means, decisions that significantly affect persons performing platform work, including the working conditions of platform workers, in particular decisions affecting their recruitment, their access to and the organisation of work assignments, their earnings, including the pricing of individual assignments, their safety and health, their working time, their access to training, their promotion or its equivalent, and their contractual status including the restriction, suspension or termination of their account.

2. The definition of 'digital labour platform' laid down in point (a) of paragraph 1 does not include providers of a service whose primary purpose is to exploit or share assets or by means of which individuals who are not professionals can resell goods.

***Recital 19:** Digital labour platforms differ from other online platforms in that they use automated monitoring systems or automated decision-making systems to organise work performed by individuals at the request, one-off or repeated, of the recipient of a service provided by the platform. Automated monitoring systems and automated decision-making systems process personal data of persons performing platform work and take or support decisions that affect, inter alia, working conditions. Those features make digital labour*

platforms a distinct form of organising the service provision by professionals compared to more traditional forms of organising service provision, such as traditional forms of ride hailing or transport service dispatch. Furthermore, the increased complexity in the structural organisation of digital labour platforms goes hand in hand with their fast-paced evolution, often creating systems with a variable geometry in the organisation of work. For instance, there could be cases where digital labour platforms provide a service whose recipient is the digital labour platform itself or a distinct business entity within the same group of undertakings, or organise work in such a way that it blurs the traditional patterns which are typically recognisable in the systems of provision of services. This might also be the case for microwork or crowdwork platforms, which are a type of online digital labour platform that provide businesses and other clients with access to a large and flexible workforce for the completion of small tasks that can be performed remotely using a computer and internet connection, such as tagging. Tasks are split up and distributed to a large number of individuals (the crowd) who can complete them asynchronously.

Recital 20: *Organising work performed by individuals should involve at a minimum a significant role in matching the demand for the service with the supply of work by an individual who has a contractual relationship with the digital labour platform or an intermediary, regardless of its formal designation by the parties or of its nature, and who is available to perform a specific task. Organising such work can include other activities, such as processing payments. Online platforms which do not organise the work performed by individuals, but merely provide the means by which service providers can reach the end-user, without any further involvement of the platform, for instance by advertising offers or requests for services or aggregating and displaying available service providers in a specific area, should not be considered to be digital labour platforms. The definition of digital labour platforms should not include providers of a service whose primary purpose is to exploit or share assets, such as short-term rental of accommodation, or by means of which individuals who are not professionals can resell goods, nor those who organise the activities of volunteers. The definition should be limited to providers of a service for which the organisation of work performed by the individual, such as transport of persons or goods or cleaning, constitutes a necessary and essential component, and not merely a minor and purely ancillary component.*

Recital 21: *Arrangements and processes of workers' representation vary between Member States, reflecting their respective histories, institutions, and economic and political situations. Among the enabling conditions for a well-functioning social dialogue are the existence of strong, independent trade unions and employers' organisations, with access to relevant information necessary to participate in social dialogue, and respect for the fundamental rights of the freedom of association and of collective bargaining.*

Recital 22: *According to the International Labour Organization (ILO) Workers' Representatives Convention No 135 (1971), currently ratified by 24 Member States, worker representatives can be persons who are recognised as such under national law or practice, whether they are trade union representatives, namely representatives designated or elected by trade unions or by members of such unions, or elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. That Convention states that, where both trade union representatives and elected representatives exist in the same undertaking, such representation is not to be used to undermine the positions of the trade unions concerned or of their representatives, and that cooperation between the elected representatives and the trade unions concerned or their representatives is to be encouraged.*

Recital 23: *The Member States have ratified the ILO Right to Organise and Collective Bargaining Convention No 98 (1949), which provides that acts which are designed to*

promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, are to be deemed to constitute acts of interference, against which ILO Member States need to protect workers' organisations. It is important for such acts to be addressed in order to ensure that, when defining or implementing practical arrangements for information and consultation pursuant to this Directive, employers and the workers' representatives work in a spirit of cooperation with due regard to their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the workers.

Recital 24: *In some cases, persons performing platform work do not have a direct contractual relationship with the digital labour platform, but are in a relationship with an intermediary through which they perform platform work. This way of organising platform work often results in a vast array of different and complex multi-party relationships, including subcontracting chains, as well as in blurred responsibilities between the digital labour platform and the intermediaries. Persons performing platform work through intermediaries are exposed to the same risks related to the misclassification of their employment status and the use of automated monitoring systems or automated decision-making systems as persons performing platform work directly for the digital labour platform. Member States should therefore establish appropriate measures in order to ensure that, under this Directive, persons performing platform work working through intermediaries enjoy the same level of protection as persons performing platform work who have a direct contractual relationship with the digital labour platform. Member States should establish appropriate mechanisms, including, where appropriate, through joint and several liability systems.*

Article 2 of the Directive provides definitions to ensure a consistent interpretation of the provisions across Member States. These definitions are set for the purposes of the Directive only and do not replace definitions set at national level for other purposes.

1.2.1. Digital labour platform

Article 2(1)(a) defines 'digital labour platform' as a natural or legal person providing a service. For a service provider to qualify as DLP, its service must meet all the requirements listed in points (i) to (iv). The service provider that qualifies as DLP for a specific service may be a provider of other services that do not fulfil all the requirements.

For requirement (i), the terms 'at a distance', 'by electronic means' and 'at the request of a recipient of the service' are to be interpreted by analogy to their definition in Article 1(1)(b)(ii) of Directive (EU) 2015/1535([5]). The reference to 'at least in part' serves to clarify that services involving on-location platform work are covered.

Recital 19 clarifies that the required request of a recipient of the service set out in requirement (ii) can be one-off or repeated. While, in principle, platform work involves a triangular relationship between a service provider, a PPPW and a recipient of the service, recital 19 specifies that there could be cases where DLPs provide a service whose recipient is the DLP itself or a distinct business entity within the same group of undertakings, for instance in the area of microwork or crowdwork.

([5]) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) (Text with EEA relevance), *OJ L 241, 17.9.2015, p. 1–15.*

For requirement (iii) to be met, the service must involve the organisation of work performed by individuals in return for payment. The reference to 'in return for payment' refers to the work performed by individuals, as Recital 20 explains that the definition of DLP should not include providers of a service who organise the activities of volunteers. Requirement (iii) also confirms that it is irrelevant whether the work is performed online or in a certain location.

Recital 20 clarifies that the organisation of work should involve at a minimum a significant role in matching the demand for the service with the supply of work, and can include other activities, such as processing payments. While the organisation of work should cover situations whereby the DLP provides a restricted list of available individuals to match the service recipient's request, Recital 20 also indicates situations that should not be considered as organisation of work, for instance where an online platform merely provides a tool for end-users to reach service providers.

The organisation of work must be a necessary and essential component of the service. In this regard, Recital 20 points out that the definition of DLP should not include providers of a service for which the organisation of work performed by an individual constitutes merely a minor and purely ancillary component.

In line with requirement (iii) and Recital 20, Article 2(2) clarifies that the definition of DLP does not include providers of a service whose primary purpose is to exploit or share assets or by means of which individuals who are not professionals can resell goods.

Requirement (iv) sets out the condition that the service must involve the use of automated monitoring systems or automated decision-making systems, with Recital 19 adding that these systems are used to organise work.

Discussion

Several **Member State experts** asked the Commission services for guidance about the application of the Directive to specific sectors and undertakings.

Trade unions argued that Article 2(2) does not provide for any default exemptions from the definition of DLP for services offered by a provider that, as a separate business activity, offers a different service (e.g. cleaning services offered by companies offering short-term rental accommodation).

A **Member State expert, trade unions and employers' organisations** underlined the need for the Directive to cater for the constant evolution of business models. The **Commission services** agreed that there always needs to be a case-by-case assessment whether all four requirements in Article 2(1)(a) are fulfilled by a service. Certain services which are currently not covered by the definition of DLP may fall under its scope in the future. By the same token, certain services that are covered by the definition may fall outside its scope in the future due to a change in the related business model.

The **Commission services** emphasised that the goal of the transposition process is to achieve a shared understanding of the Directive's provisions, but that it is not possible to provide guidance on the application of the Directive to specific companies in Member States. However, as a matter of principle, no sector is excluded from the Directive and the requirements of the definition in Article 2(1)(a) need to be applied cumulatively to the service, not to its provider. In view of the explanations in the last sentence of Recital 20, the Commission services also argued that the reference to the 'primary purpose' of the service in Article 2(2) should be read as a clarification of the reference to 'as a necessary and essential component' in relation to the organisation of work set out in Article 2(1)(a), requirement (iii).

In this regard, **employers' organisations** raised concerns that the reference in Recital 20 that the organisation of work should not be merely a minor or purely ancillary component of the service may bear the risk that companies qualify as DLPs under the Directive, only because part of their activity bears the characteristics of a service provided by a DLP. Employers' organisations provided the theoretical example of a company outsourcing an internal IT helpdesk service. In response, the **Commission services** stated that each specific situation should be analysed in function of the requirements listed in Article 2(1)(a). As to the theoretical example raised, the Commission services indicated that an internal IT helpdesk may be ancillary to the main activity of a company. However, in case that company decides to use an IT service from another company, that other company could qualify as a DLP organising the work to provide the IT service.

A **Member State expert** asked whether a DLP can be a temporary work agency, while **employers' organisations representing the temporary agency work sector** emphasised the need to ensure a fair level playing field between platforms and temporary work agencies and that the application of the Directive to temporary work agencies that are DLPs should not limit the possibilities for the digital transformation of the temporary agency work sector. As to the interplay between the Directive and Directive 2008/104/EC, which provides the definition of temporary work agency, the **Commission services** mentioned that, as described in Recital 26, a temporary work agency is an employer and could in principle also qualify as a DLP if it meets the definition in Article 2(1)(a) of the Directive.

In reaction to a question by **trade unions**, the **Commission services** confirmed that requirement (ii) would also be met in cases where the recipient of the service does not choose the individual performing the work, but the choice is made by the DLP. In response to a **Member State expert**, the **Commission services** also clarified that the work performed by the PPPW is an integral part of the service requested by the recipient of the service.

Regarding the reference 'in return for payment' in requirement (iii), a **Member State expert** asked to confirm that the payment of the PPPW does not necessarily need to be processed through the platform for the requirement to be met. The **Commission services** confirmed that Article 2(1)(a) does not contain a limitation to services whereby the platform processes the payment in return for the work.

Moreover, a **Member State expert** highlighted the relevance of Recital 8 as regards the notion of 'organisation of work' by automated systems. The **Commission services** underlined the central role of Recitals 19 and 20 in providing guidance for the interpretation of Article 2(1)(a), in particular on the notion of 'organisation of work'.

Upon inquiry by a **Member State expert**, the **Commission services** explained that requirement (iv) on the use of automated monitoring systems or automated decision-making systems was met if the service involves either the use of automated monitoring systems or the use of automated decision-making systems or the use of both.

1.2.2. Platform work

Article 2(1)(b) defines the term 'platform work'. The definition requires that the work is organised through a DLP and performed in the EU. The definition further requires the existence of a contractual relationship between the DLP or the intermediary and the individual, while no contractual relationship between the individual or an intermediary and the recipient of the service is required. While platform work may involve a contract between the client and the PPPW, this does not have to be the case.

Discussion

In response to a question by a **Member State expert**, the **Commission services** explained that the definition covers platform work performed fully online by an individual in the Union, even if the DLP and its digital infrastructure are located outside the EU.

1.2.3. Person performing platform work

The term 'person performing platform work' is defined in Article 2(1)(c) of the Directive and applies to any individual performing platform work. The nature of the contractual relationship, or the designation of the relationship between that individual and the DLP is irrelevant in this regard. The definition covers self-employed persons working on platforms and persons with third statuses that might exist at national level.

Discussion

Trade unions asked the Commission services to confirm that the Directive should apply to situations of undeclared platform work, including in cases where no formal contractual relationship exists between the online platform and the individual. They emphasised that the definition in Article 2(1)(c) covers an individual performing platform work, 'irrespective of the contractual designation of the relationship between that individual and the DLP by the parties involved'. They drew an analogy to other labour law Directives that also apply to employment relationships that are not based on a formal (written) employment contract. Several **Member State experts** supported this reasoning, referring to the definition of platform worker in Article 2(1)(d), which applies to a person who 'has or is deemed to have an employment contract or an employment relationship' and to the ILO Employment Relationship Recommendation No 198.

The **Commission services** explained that the definition in Article 2(1)(c) refers to 'platform work', as defined in Article 2(1)(b). The definition of 'platform work' requires a 'contractual relationship between the DLP or an intermediary, and the individual'. This contractual relationship can either be established through an oral or a written agreement. In instances when subletting of tasks is lawful under national law or practice, the sublessor may act as an 'intermediary' as defined in Article 2(1)(e) and the subtenant as 'person performing platform work'. However, where the DLP establishes a contractual relationship with an individual in its capacity as 'person performing platform work', but not as 'intermediary' and the subletting of an account by that individual is performed without the knowledge or authorisation of the platform, the subtenant of the account can in principle not be considered as performing 'platform work' as defined by the Directive. Member States are however encouraged to take enforcement action to protect individuals performing work through unauthorised subletting, which aligns with the overall objectives of the Directive to ensure fair working conditions in the platform economy.

Regarding the definition of 'platform worker' in Article 2(1)(d), the **Commission services** clarified that platform workers are a subgroup of PPPW, which inherently presupposes the existence of a contractual relationship with a DLP or an intermediary. The wording "is deemed to have" therefore reflects the (rebuttable) legal presumption of the existence of an employment relationship applying to that contractual relationship.

1.2.4. Platform worker

Article 2(1)(d) defines the term 'platform worker', which is a subgroup of PPPW as 'any person performing platform work who has or is deemed to have an employment contract or 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'. It refers to the same group of people as those referred to in Article 1(2), first sub-paragraph.

1.2.5. Intermediary

Article 2(1)(e) specifies that not every contractual partner of a DLP or of PPPW qualifies as an intermediary. An intermediary is defined as a natural or legal person whose contract with a DLP has the explicit purpose of making platform work available to or through the DLP. This excludes service providers engaged in ancillary activities, such as accounting, advertising, or supplying vehicles or equipment, which are not directly related to the provision of platform work. Instead, intermediaries are typically entities that supply or manage the workforce performing platform work.

The definition encompasses scenarios where:

(a) a single intermediary exists between the DLP and the PPPW; or

(b) multiple intermediaries form a subcontracting chain.

In both cases, any subcontractor making platform work available through or to a DLP is considered an intermediary. This aims to address potential gaps in protection within subcontracting chains.

The definition requires careful consideration of entities such as *umbrella companies* or those engaged in *portage salarial* (a form of employment intermediation). These entities may, in certain cases, qualify as intermediaries if their role involves making platform work available.

Discussion

A **Member State expert** inquired whether intermediaries, in addition to legal persons, could also include natural persons, and whether specific qualifications or requirements would apply to such individuals. The **Commission services** clarified that the Directive's definition of intermediaries is intentionally broad to prevent DLPs from evading compliance by engaging third parties. The provision does not impose restrictions on the legal form of intermediaries. Lastly, intermediaries do not need to comply with the definition of DLP.

A **Member State expert** highlighted that its national legislation only permits temporary work agencies to act as intermediaries, thereby excluding natural persons from this role. They queried whether it remains compulsory to transpose the definition as regards "natural persons" under these circumstances. In response, the **Commission services** emphasised the Directive's broad definition of intermediaries with its inclusion of natural persons to prevent circumvention. Member States with national laws limiting intermediaries to certain legal entities must ensure that their framework does not create loopholes allowing DLPs to bypass responsibilities.

Trade unions sought clarification on whether the definition of intermediaries includes scenarios where a PPPW sublets their account or designates a substitute, and if, under such circumstances, the original account holder might be classified as an intermediary. The **Commission services** indicated that, in principle, subletting arrangements could fall within the intermediary definition if they satisfy the criteria outlined in Article 2(1)(e). This definition highlights that establishing a contractual relationship with a DLP and the PPPW, or embedding within a subcontracting chain between them, should be with the objective of making platform work available to or through a DLP.

1.2.6. Workers' representatives

The definition of 'workers' representatives' largely relies on national law and practice, which vary widely, as recalled in Recital 21, and gives two examples: trade unions and

elected representatives. Other forms of designating worker representatives are not excluded. Recital 22 recalls the ILO Convention on Workers' Representatives, which refers to two types of workers' representatives (trade union and elected) and the situation in which both are present at the workplace. Recital 23 recalls the ILO Convention on the Right to Organise and Collective Bargaining, which condemns so-called 'yellow unions'.

Discussion

Trade unions asked for a confirmation that the wording 'freely elected by the platform workers' applies to representatives, not to trade unions. The **Commission services** confirmed it applies to representatives.

Member State experts asked if representatives must have the right to enter into collective agreements or be of a certain size in order to be deemed as representatives. The **Commission services** pointed out that the references to national law and practices are meant to allow for national specificities. Representatives' capacity to negotiate is subject to national law and practice. Workers' representatives do not need to be the most representative trade union, i.e. the size of the representative organisation does not matter.

One Member State expert asked if, by 'freely elected' representatives, the Directive refers to those at company level. The **Commission services** shared their view that works councils could be such 'freely elected' representatives.

One **Member State expert** asked if legal counsellors could be deemed as workers' representatives. The **Commission services** suggested to check the wording of the definition, i.e. that workers' representatives must be freely elected (e.g. via voting) by platform workers (with emphasis on the plural in *workers*).

1.2.7. Representatives of persons performing platform work

The definition of 'representatives of PPPW' includes the notion of 'workers' representatives' (such as trade unions and representatives who are freely elected by the platform workers in accordance with national law and practice), but also representatives of PPPW other than platform workers where national law and practice provides for such representation. In those Member States where representatives of PPPW other than platform workers are not explicitly or implicitly recognised as such, they do not enjoy the rights under this Directive.

Discussion

Trade unions objected to the understanding that the definition includes representatives of PPPW other than platform workers only if national law and practice provide for such representation, arguing that the recognition of the right to join a union is not a matter of national law since that right is recognised in ILO Conventions. **Several Member State experts** intervened to share their understanding that it is for the Member States to decide if they want to provide rights of representation to representatives of PPPW other than platform workers. The **Commission services** clarified that the rights conferred by the Directive to workers' representatives and representatives of PPPW do not touch upon or limit the right to join a union, granted in ILO Conventions. The limitation on the representation of self-employed PPPW is stated in the definition itself with the wording '*insofar as provided for in national law and practice'*. Trade unions insisted that such a rigid interpretation could encourage Member States to limit the rights of the self-employed, adding that, in practice, self-employed can already join a union, and trade unions participate in judicial procedures on behalf of PPPW who are not workers. The **Commission services** pointed out that national practices are mentioned in the definition. However, where the national law or practice does not provide for this possibility, the

Directive does not require Member States to create new forms of representation. It also recalled that the Directive is a minimum standards directive, allowing Member States to afford higher levels of protection.

One **Member State expert** asked if trade unions can also represent PPPW who are not workers, or if trade unions should only have the rights provided for in national legislation. The **Commission services** shared their view that, if envisaged and possible under national law and practice, trade unions can represent non-worker PPPW on all matters on which the Directive provides a role for representatives of PPPW. Trade unions disagreed with this interpretation, while the rest of the group agreed with it.

1.2.8. Automated monitoring systems

Article 2(1)(h) defines the term 'automated monitoring systems' (AMS), as systems which are used for or which support the functions of monitoring, supervision or evaluation, by electronic means, the work performance of persons performing platform work or the activities carried out within the work environment, including by collecting personal data.

The definition has a broad scope. It encompasses automated systems that only support monitoring, supervision or evaluation functions carried out by human beings and also covers automated systems that are used for or that support the monitoring, supervision or evaluation of activities in the work environment that are not directly related to the performance of work.

Discussion

In response to questions from some **Member State experts**, the **Commission services** confirmed the broad and autonomous nature of the definition of 'automated monitoring systems (AMS)', including automated systems that 'support' monitoring, supervision or evaluation functions carried out by human beings. **Trade unions** added that data collection and gathering are part of data processing, that the concept of evaluation should be interpreted broadly, and that AMS may process data other than personal data. Concerns were raised by **employers' organisations** regarding the potential impact of this broad definition, in particular on SMEs. Some **Member State experts** also sought clarity on the threshold at which a system should be considered to be 'supporting' monitoring.

The **Commission services** recalled that the Directive would apply to service providers that meet the definition of a 'digital labour platform'. In addition, they clarified that automated systems or tools such as GPS trackers and electronic working time recorders would be considered AMS if their intended or actual use is to perform or support monitoring, supervision or evaluation, by electronic means, of the work performance of PPPW or of their activities in the work environment.

1.2.9. Automated decision-making systems

Article 2(1)(i) defines the term 'automated decision-making systems' (ADMS) as systems which are used to take or support, by electronic means, decisions that significantly affect persons performing platform work. These can include decisions affecting persons performing platform work in areas beyond their working conditions or work performance.

Similarly to the definition of AMS, the definition of ADMS encompasses systems that 'support' the decisions made by a human being, thereby going beyond the scope of Article 22 GDPR which covers decisions based solely on automated processing.

Unlike the definition of AMS, the definition of ADMS contains an undefined 'significance threshold' applicable to the impact on PPPW of the decisions supported or made by the system. The significance of decisions should also be assessed with regard to the cumulative impact of a set of decisions or the absence of decision(s).

Discussion

Employers' organisations raised concerns about the potentially broad scope of the definition of ADMS resulting from the inclusion of automated systems that merely 'support' human decisions. They referred to the already broad interpretation given by the Court of Justice of the European Union to the notion of 'decisions based solely on automated processing' in Article 22 GDPR.([6]) Asked by one **Member State expert** about the meaning of 'by electronic means', the **Commission services** referred to the definition of 'by electronic means' in Article 1(1)(b)(ii) of Directive (EU) 2015/1535.([7])

A key point of discussion for **Member State experts** was the threshold at which an automated system 'significantly' affects PPPW. The **Commission services** acknowledged the lack of a precise definition for this term, but referred to existing guidance of the European Data Protection Board on Article 22 GDPR([8]) and to the specific examples included within the ADMS definition that should be considered, by their nature, as significantly impacting PPPW. They also highlighted the extensions of the scope beyond ADMS to automated systems affecting PPPW in any way in Articles 7, 9 and 12 of the Directive. When asked by a **Member State expert** for examples of significant effects in the area of health and safety, the **Commission services** suggested that these could include systems that pressure PPPW to accept workloads that could pose a safety risk or that could negatively impact their mental health.

1.3. Intermediaries (Article 3)

Article 3

Member States shall take appropriate measures to ensure that, where a digital labour platform makes use of intermediaries, persons performing platform work who have a contractual relationship with an intermediary enjoy the same level of protection pursuant to this Directive as those who have a direct contractual relationship with a digital labour platform. To that end, Member States shall take measures, in accordance with national law and practice, to establish appropriate mechanisms, which shall include, where appropriate, joint and several liability systems.

Recital (24): *In some cases, persons performing platform work do not have a direct contractual relationship with the digital labour platform, but are in a relationship with an intermediary through which they perform platform work. This way of organising platform work often results in a vast array of different and complex multi-party relationships, including subcontracting chains, as well as in blurred responsibilities between the digital labour platform and the intermediaries. Persons performing platform work through*

([6]) Judgment of the Court of Justice of 29 January 2024, *OQ v Land Hessen, C-634/21*, ECLI:EU:C:2024:913.

([7]) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) (Text with EEA relevance), *OJ L 241, 17.9.2015, p. 1–15.*

([8]) Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp251rev.01), pp. 20-22, accessible here.

intermediaries are exposed to the same risks related to the misclassification of their employment status and the use of automated monitoring systems or automated decision-making systems as persons performing platform work directly for the digital labour platform. Member States should therefore establish appropriate measures in order to ensure that, under this Directive, persons performing platform work working through intermediaries enjoy the same level of protection as persons performing platform work who have a direct contractual relationship with the digital labour platform. Member States should establish appropriate mechanisms, including, where appropriate, through joint and several liability systems.

Article 3 addresses the protection of PPPW who perform work through intermediaries, ensuring they receive the same (not only equivalent) level of protection as those who have a direct contractual relationship with a DLP, so that the use of intermediaries does not enable DLPs to circumvent obligations under the Directive. This provision responds to the different and complex multi-party relationships, including subcontracting chains, that characterise the use of intermediaries in platform work.

The primary objective of Article 3 is to eliminate different levels of protection for PPPW based on their contractual arrangements. Recital 24 highlights that PPPW engaged through intermediaries face similar risks to those directly contracted by DLPs, including misclassification of employment status and exposure to automated monitoring systems or automated decision-making systems (AMDMS). Article 3 aims to close this gap by ensuring that the use of intermediaries does not undermine the Directive's protections.

The phrase "pursuant to this Directive" indicates that the protections in question are those established by the Directive itself. The Directive's core aim is to improve working conditions and protect the rights of PPPW, regardless of the contractual structure through which they engage with DLPs. From this, it can be concluded that "the same level of protection pursuant to this Directive" encompasses all obligations imposed on DLPs under the Directive. Article 3 demands pro-active action by Member States to clarify in their transposition measures if the different obligations under the Directive fall on the DLP or on the intermediary, or on both. The question of appropriate measures and mechanisms should be considered not *in abstracto*, but *in concreto* with regard to the different provisions of the Directive. The measures taken shall include joint and several liability systems, where appropriate. In particular in cases where an intermediary needs to receive specific information from the DLP to comply with its information obligations, or if a PPPW only has a contract with an intermediary, not with the DLP, it might be an excessive burden for the PPPW to exercise the rights under this provision vis-à-vis the DLP. Consequently, in such cases, a joint responsibility of the DLP and the intermediary should be considered, so that the PPPW can also turn to the intermediary to claim their rights.

Discussion

A **Member State expert** sought clarification on the phrase "where appropriate". The **Commission services** mentioned that joint and several liability systems are not mandatory in all cases, but should be implemented when suitable. The reference to "national law and practice" allows flexibility to tailor measures to national systems, with Member States assessing during transposition when joint and several liability is an appropriate mechanism to ensure equal protection for PPPW working through intermediaries. In case joint and several liability systems are not appropriate, Member States should nevertheless introduce measures to ensure equal protection.

Several **Member State experts** raised questions about the notion of "same level of protection". The **Commission services** emphasised that this requires active measures to ensure PPPW working through intermediaries receive equal, not merely equivalent, protection compared to those who have a direct contractual relationship with a DLP.

A **Member State expert** inquired whether the legal presumption applies in cases involving an intermediary. The **Commission services** confirmed that all non-worker PPPW seeking to be reclassified as workers (or their representatives, or a national competent authority) should benefit from the legal presumption, whether in a contractual relationship with a DLP or an intermediary. However, the aim of the Directive is not to reclassify persons that are already in an employment relationship.

Trade unions sought clarification on how responsibilities are distributed between intermediaries and DLPs, suggesting that an intermediary's involvement implies that it acts as an employer. The **Commission services** clarified that Article 3 is intended to guarantee equal protection for PPPW working through intermediaries, with the party or parties responsible for the obligations of the employer according to national legal systems (Article 4(3) of the Directive). An intermediary is not automatically the employer. Particularly for self-employed PPPW, there may be no employer at all. Article 3 leaves the allocation of responsibilities to Member States, provided that equal protection is ensured.

When asked on whom the obligations under Articles 7 to 11 should fall in case an intermediary is involved, the **Commission services** outlined that such obligations should lie on the entity running and managing the AMDMS, since they would be the 'controller' within the meaning of Article 4(7) GDPR. In cases where the intermediary is the 'processor' within the meaning of Article 4(8) GDPR, or a 'joint controller' (Article 26 GDPR) together with the DLP, the responsibilities of controllers and processors as laid down in Articles 24 to 31 GDPR should be respected. It was further underlined that Member States should consider a joint responsibility of the DLP and the intermediary if the PPPW only has a contract with the latter, so that the PPPW can also turn to the intermediary to claim their rights. It would be an excessive burden for the PPPW to exercise these rights vis-à-vis the DLP with which the PPPW has no contract. The Commission services outlined that the obligations under Articles 12 and 13 of the Directive, which are based on Article 153 TFEU, should lie on the employer. However, a duty of cooperation between DLP and intermediary may be required in order to make the rights under these provisions effective.

Trade unions further expressed concerns about intermediaries' ability to fulfil safety and health obligations under Article 12 when they lack control over algorithms or working conditions, typically managed by DLPs. The **Commission services** underlined that intermediaries that are employers bear those responsibilities based on Article 153 TFEU, but may require cooperation with DLPs if the latter control algorithms or occupational conditions.

Trade unions further highlighted challenges with intermediaries' obligations under Article 13 to inform and consult workers' representatives on the introduction of or substantial changes in the use of AMDMS, particularly when DLPs control relevant information. They argued that placing this duty on intermediaries could be ineffective if they lack access to the necessary data. The **Commission services** acknowledged these concerns, noting that Article 13 must be effective with regard to both DLPs and intermediaries. While the obligation under Article 13 should remain on the employer, a duty of cooperation between intermediaries and DLPs may be necessary during transposition to ensure meaningful information and consultation.

WEC-Europe emphasised the need for a level playing field between DLPs and the temporary agency work industry. It noted that 'intermediaries' is a broad term encompassing both simple matching services and regulated temporary work agencies. The **Commission services** confirmed that temporary work agencies can indeed qualify as intermediaries under the Directive. Existing regulations for temporary agency work would in that case apply in parallel.

Trade unions asked whether, where direction and control is shared between an intermediary and a DLP, the PPPW could present the relevant facts in a single procedure. The Commission services considered that the legal presumption could apply in cases involving both parties, referencing Article 4(3). **Trade unions** also inquired whether Article 17 applies to intermediaries working with self-employed PPPW. The **Commission services** confirmed that Article 17 extends to all intermediaries, regardless of whether the PPPW are workers or not, unlike Article 16, which applies only to employers of platform workers.

A **Member State expert** inquired if limitations to joint and several liability as those in the Posting of Workers Enforcement Directive (2014/67/EU) apply in the context of this Directive. The **Commission services** clarified that the Directive does not impose specific limits on joint and several liability and that Article 3 applies to all intermediaries in a subcontracting chain, regardless of the number of subcontractors.

2. Chapter II on Employment status

2.1. Determination of correct employment status (Article 4)

Article 4

1. Member States shall have appropriate and effective procedures in place to verify and ensure the determination of the correct 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, including through the application of the legal presumption of an employment relationship pursuant to Article 5.

2. The ascertainment of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, including the use of automated monitoring systems or automated decision-making systems in the organisation of platform work, irrespective of how the relationship is designated in any contractual arrangement that may have been agreed between the parties involved.

3. Where the existence of an employment relationship is established, the party or parties responsible for the obligations of the employer shall be clearly identified in accordance with national legal systems.

***Recital (25):** To combat false self-employment in platform work and to facilitate the determination of the correct employment status of persons performing platform work, Member States should have appropriate procedures in place to prevent and address the misclassification of the employment status of persons performing platform work. The aim of those procedures should be to ascertain the existence of an employment relationship as defined by national law, collective agreements or practice, with consideration to the case-law of the Court of Justice, and thereby to ensure that platform workers fully enjoy the same employment rights as other workers in accordance with relevant Union law, national law and collective agreements. When the existence of an employment relationship is established on the basis of the facts, the party or parties responsible for the execution of the obligations of the employer should be clearly identified and should comply with the corresponding employers' obligations under Union law, national law and collective agreements applicable in the sector of activity.*

Recital (26): *Where a party is found to be an employer and fulfils the conditions of being a temporary-work agency in accordance with Directive 2008/104/EC, the obligations under that Directive apply.*

Recital (27): *The principle of primacy of facts, meaning that the ascertainment of the existence of an employment relationship should be guided primarily by the facts relating to the actual performance of work, including the remuneration for the work, and not by the parties' description of the relationship, in accordance with the ILO Employment Relationship Recommendation No 198 (2006), is particularly relevant in the case of platform work where contractual conditions are often unilaterally determined by one party.*

Recital (28): *The abuse of the status of self-employed persons, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. False self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship. A false declaration of self-employment is often made to avoid certain legal or fiscal obligations or to create a competitive advantage compared to law-abiding undertakings. In a number of judgments, the Court of Justice has ruled that the classification of a self-employed person under national law does not prevent that person from being classified as a worker within the meaning of Union law if that person's independence is merely notional, thereby disguising an employment relationship.*

Recital (29): *Ensuring the determination of the correct employment status of persons performing platform work should not prevent the improvement of conditions of genuine self-employed persons performing platform work. The Commission communication of 30 September 2022, which contains 'Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons' and indicates that, according to the Commission, collective agreements between solo self-employed persons and digital labour platforms relating to working conditions fall outside the scope of Article 101 TFEU, can, to that end, serve as useful guidance. It is crucial, however, that the introduction of those collective agreements does not undermine the objectives pursued by this Directive, in particular the correct classification of persons performing platform work with regard to their employment status.*

Article 4 of the Directive sets out key principles and measures to be applied in Member States' procedural law concerning the determination of the correct employment status of PPPW.

Article 4(1) requires Member States to have appropriate and effective procedures in place to verify and ensure the correct employment status of PPPW, with a view to ascertaining the existence of an employment relationship as defined by national law, collective agreements or practice, with consideration to the case-law of the Court of Justice. In this regard, Recital 28 recalls a number of judgments of the Court of Justice in which it ruled that the classification of a self-employed person under national law should not prevent that person from being classified as a worker within the meaning of Union law.

While Article 4(1) covers both administrative and judicial procedures, Member States should at least have a judicial procedure in place. The legal presumption should apply in all these procedures (see infra Article 5). Recital 25 clarifies that the aim of the procedures should be to ensure that platform workers enjoy the same employment rights as other workers in accordance with relevant Union law, national law and collective agreements.

Article 4(2) enshrines the principle of the primacy of facts([9]), that should be expressly reflected in Member States' transposing measures. It establishes that in the assessment of the employment status, the facts surrounding the performance of work (including the use of automated systems) should prevail over the formal designation of the contractual relationship by the parties involved.

Article 4(3) requires Member States to ensure that the court or administrative authority ascertaining the existence of an employment relationship clearly indicates the party or parties responsible for the obligations of the employer. Recital 25 also specifies that the responsible employer(s) should comply with the corresponding employer obligations under Union law, national law and collective agreements applicable in the sector or activity. This provision is particularly relevant in the case of complex multi-party relationships, e.g. involving intermediaries. In this regard, Recital 26 clarifies that the requirements of the Directive and Directive 2008/104/EC on temporary agency work([10]) can apply simultaneously if a DLP (or an intermediary) is found to be an employer and the recipient of the service is a 'user undertaking'.

Recital 29 highlights that the Directive should not prevent the improvement of the conditions of genuine solo self-employed persons through collective agreements with DLPs and refers to the Commission's 'Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons'.([11]) However, the introduction of such agreements should not prevent these persons from seeking the correct classification of their employment status.

Discussion

On Article 4(1) that sets out the requirement for Member States to have 'appropriate and effective procedures', several **Member State experts** and **employers' organisations** asked the Commission services to clarify in which procedures the legal presumption had to be applied. Several **Member State experts** also asked whether new administrative procedures or authorities had to be introduced or appointed. **Trade unions** requested the Commission services to confirm that judicial procedures are not the sole way to comply with the provision and to ease the burden on the PPPW seeking reclassification.

The **Commission services** outlined that the Directive does not require the establishment or appointment of new authorities or administrative procedures, though Member States could do so. Member States must however ensure that all relevant judicial and administrative procedures are appropriate and effective considering the requirements set out by the Directive. These requirements include the application of the legal presumption pursuant to Article 5 in all relevant administrative or judicial proceedings where the determination of the correct employment status is at issue (refer to section on Article 5(3) infra for analysis on applicability of legal presumption beyond confines of labour law proceedings). The **Commission services** also recalled that the application of the legal presumption can be initiated by individuals, representatives or by national competent authorities. In the latter case, the possible interaction between administrative and judicial procedures to verify, determine and ascertain the correct employment status will depend on national procedural law.

([9]) Recital 27 recalls that the principle of the primacy of facts is inspired by Clause 9 of the International Labour Organization's Employment Relationship Recommendation 2006 (No.198): Recommendation R198 - Employment Relationship Recommendation, 2006 (No. 198).

([10]) Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, *OJ L 327, 5.12.2008, p. 9–14.*

([11]) Communication from the commission Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons, C/2022/6846, *OJ C 374, 30.9.2022, p. 2–13.*

Specifically regarding judicial procedures, **trade unions** expressed concerns that in many Member States, these procedures are limited to addressing individual cases. This would require many PPPW in similar situations to each initiate a separate proceeding, potentially overburdening the judicial authorities and rendering the judicial process ineffective. According to **trade unions**, it would therefore be important for Member States to foresee administrative procedures allowing collective action of PPPW. **Employers' organisations** cautioned that the required assessment of the facts relating to the actual performance of work would need to be made by the competent authority for each individual case, in order to avoid that genuinely self-employed persons would be affected. The **Commission services** indicated that Article 19 of the Directive requires Member States to ensure that representatives of PPPW are able to engage in any administrative or judicial procedure on behalf or in support of one or several PPPW.

On the principle of the primacy of facts, **one Member State expert** inquired about the wording 'guided *primarily* by the facts relating to the actual performance of work' in Article 4(2) and its interaction with the wording in Article 5(1), that solely focuses on 'facts indicating direction and control'. The **Commission services** highlighted that Article 4(2) regards the ascertainment of the existence of an employment relationship and that for that purpose the consideration of the facts must always prevail over the will of the parties. Article 5(1) specifically concerns the (rebuttable) legal presumption that applies where facts indicating direction and control are found.

Several **Member State experts** asked whether and how Article 4(3) concerning the clear identification of the employer(s) has to be transposed, also given existing practice in national law. One **Member State expert** underlined the importance of already identifying the presumed employer(s) before a decision is made, as the presumed employer(s) should have the possibility to rebut the presumption, including by arguing that other entities are the employer(s). The **Commission services** recalled that business models in platform work are often complex, due to an increasing tendency to use intermediaries and due to the direction and control exercised through automated systems, as described in Recitals 8, 24 and 30. The objective of Article 4(3) is therefore to ensure that once the existence of an employment relationship is ascertained by a decision of a competent authority, the party/parties bearing the relevant legal obligations under Union law, national law and collective agreements should be identified. For example, there could be a situation whereby the DLP regulates access to work assignments and is found to be responsible for ensuring compliance with the applicable minimum wage, whereas there is found to be a shared responsibility with an intermediary for ensuring compliance with health and safety rules. If the objective of Article 4(3) is already sufficiently ensured by national procedural law, there is no need for introducing additional transposing measures.

2.2. Legal presumption (Article 5)

Article 5

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 where facts indicating direction and control, in accordance with national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found. Where the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove 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 States, with consideration to the case-law of the Court of Justice.

2. For the purposes of paragraph 1, Member States shall establish an effective rebuttable legal presumption of an employment relationship that constitutes a procedural facilitation for the benefit of persons performing platform work. Moreover, Member States shall ensure that the legal presumption does not have the effect of increasing the burden of requirements on persons performing platform work or their representatives in proceedings to determine their correct employment status.

3. The legal presumption provided for in this Article shall apply in all relevant administrative or judicial proceedings where the determination of the correct employment status of person performing platform work is at issue.

The legal presumption shall not apply to proceedings which concern tax, criminal or social security matters. However, Member States may apply the legal presumption in such proceedings as a matter of national law.

4. Persons performing platform work and, in accordance with national law and practice, their representatives shall have the right to initiate the proceedings referred to in the first subparagraph of paragraph 3 to determine the correct employment status of the person performing platform work.

5. Where a national competent authority considers that a person performing platform work might be wrongly classified, it shall initiate appropriate actions or proceedings, in accordance with national law and practice, in order to determine the correct employment status of that person.

6. With regard to contractual relationships entered into before and ongoing on 2 December 2026, the legal presumption provided for in this Article shall apply only to the period starting from that date.

***Recital (30):** Direction and control can take different forms in concrete cases, considering that the platform economy model is constantly evolving. For instance, the digital labour platform might exert direction and control not only by direct means, but also by applying punitive measures or other forms of adverse treatment or pressure. In the context of platform work, it is often difficult for the persons performing platform work to have appropriate access to the tools and information required to assert before a competent authority the actual nature of their contractual relationship and the rights derived therefrom. In addition, the management of persons performing platform work through automated monitoring systems or automated decision-making systems is characterised by a lack of transparency on the part of the digital labour platform. Those features of platform work perpetuate the phenomenon of misclassification as false self-employment, thus hindering the determination of the correct employment status of persons performing platform work and the access to decent living and working conditions by platform workers. Member States should therefore lay down measures providing for effective procedural facilitation for persons performing platform work when determining their correct employment status. In that context, a legal presumption of an employment relationship in favour of persons performing platform work is an effective instrument which greatly contributes to the improvement of living and working conditions of platform workers. Therefore, a contractual relationship should be legally presumed to be 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, where facts indicating direction and control are found.*

***Recital (31):** An effective legal presumption requires that national law effectively make it easy for the persons performing platform work to benefit from the presumption. The requirements under the legal presumption should not be burdensome and should ease the difficulties of persons performing platform work in providing evidence indicating the existence of an employment relationship in a situation in which there is a power imbalance*

vis-à-vis the digital labour platform. The purpose of the legal presumption is to effectively address and correct the power imbalance between the persons performing platform work and the digital labour platform. The modalities of the legal presumption should be laid down by the Member States, provided that those modalities ensure the establishment of an effective rebuttable legal presumption of employment that constitutes a procedural facilitation for the benefit of persons performing platform work, and that they do not have the effect of increasing the burden of requirements on persons performing platform work or their representatives in proceedings to determine the correct employment status of such persons. The application of the legal presumption should not automatically lead to the reclassification of persons performing platform work. Where the digital labour platform seeks to rebut the legal presumption, it should be for the digital labour platform to prove 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 States, with consideration to the case-law of the Court of Justice.

***Recital (32):** In line with the objective of this Directive of improving the working conditions of platform workers by facilitating the determination of their correct employment status and thereby ensuring that they enjoy the relevant rights deriving from Union law, national law and collective agreements, the legal presumption should apply in all relevant administrative or judicial proceedings in which the employment status of the person performing platform work is at issue. While this Directive does not impose any obligation on Member States to apply the legal presumption to tax, criminal or social security proceedings, it is crucial that the legal presumption is effectively applied in all Member States, pursuant to this Directive. In particular, nothing in this Directive should prevent Member States, as a matter of national law, from applying the legal presumption in tax, criminal or social security proceedings or other administrative or judicial proceedings or from recognising the results of proceedings in which the legal presumption has been applied for the purposes of providing rights to reclassified workers under other areas of law.*

***Recital (33):** In the interests of legal certainty, the legal presumption should not have any retroactive legal effects and should therefore apply only to the period starting from 2 December 2026, including for contractual relationships entered into before and still ongoing on that date. Claims relating to the possible existence of an employment relationship before that date and resulting rights and obligations until that date should therefore be assessed only on the basis of Union and national law applicable before that date, including Directive (EU) 2019/1152.*

***Recital (34):** The relationship between a person performing platform work and a digital labour platform may not meet the requirements of an employment relationship in accordance with the definition laid down by the law, collective agreements or practice in force of the relevant Member State, with consideration to the case-law of the Court of Justice. Member States should ensure that it is possible to rebut the legal presumption by proving, on the basis of that definition, that the relationship in question is not an employment relationship. Digital labour platforms have a complete overview of all factual elements determining the legal nature of the relationship, in particular the algorithms through which they manage their operations. Digital labour platforms should therefore have the burden of proof where they argue that the contractual relationship in question is not an employment relationship. A successful rebuttal of the legal presumption in judicial or administrative proceedings should not preclude the application of the legal presumption in subsequent judicial proceedings or appeals, in accordance with national procedural law.*

Article 5 establishes a legal presumption that PPPW through DLPs are presumed, but not ascertained, to be in an employment relationship when there are factual indications of control and direction by the platform, thereby shifting the burden of proof to the platform to demonstrate the absence of an employment relationship. Recital 30 underlines that the

presumption is an effective instrument which greatly contributes to the improvement of living and working conditions of platform workers.

2.2.1 Article 5(1) - legal framework and rebuttal

Under Article 5(1), the legal presumption applies where facts indicating direction and control, in accordance with national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found. Facts indicating direction and control could be those factual elements which make legal subordination **appear plausible or at least possible.** From this follows that the presumption does not apply to any PPPW but requires those facts indicating legal subordination to be presented by the PPPW, their representatives, or national authorities initiating a procedure on their own initiative. The required standard can be equated with *prima facie* evidence in the EU anti-discrimination acquis. The provision is to be read in conjunction with Recital 30, which highlights that given the constantly evolving nature of the platform economy, direction and control can take different forms in concrete cases. It further underlines that direction and control can also be exerted **indirectly** by the DLP, such as by applying punitive measures or other forms of adverse treatment or pressure.

Recital 30 further explains the context of the perpetuated phenomenon of misclassification as false self-employment in platform work with a lack of access of PPPW to the tools and information required to assert their employment status before a competent authority, and a lack of transparency caused by the management of PPPW through automated monitoring systems or automated decision-making systems.

The notion of direction and control is referred to in the jurisprudence of the Court of Justice as 'performing services for and under the direction of another person'.([12])

According to Recital 34, Member States shall ensure that the presumption is rebuttable by proving that the relationship is not an employment relationship in accordance with the definition laid down by the law, collective agreements or practice in force of the relevant Member State, with consideration to the case-law of the Court of Justice.

The second sentence of Article 5(1) refers to the shift in burden of proof which applies when the DLP seeks to rebut the legal presumption. Recital 34 provides a justification in this regard by explaining that DLPs have a complete overview of all factual elements determining the legal nature of the relationship, in particular the algorithms through which they manage their operations. It further explains that a successful rebuttal of the legal presumption in judicial or administrative proceedings should not preclude the application of the legal presumption in subsequent judicial proceedings or appeals, in accordance with national procedural law.

Discussion

In response to a question by a **Member State expert**, the **Commission services** clarified that Article 5 does not require Member States to establish criteria in their transposition measures. The Directive does not establish criteria, but states that the legal presumption shall apply when facts indicating direction and control are found. A **Member State expert** asked whether it would be possible to specify indicators for direction and control, which are to be taken into account together with facts, when transposing the legal presumption into national law. The **Commission services** replied that it is up to the Member States to

([12]) For an analysis of elements the CJEU has considered when interpreting if a person performs services for and under the direction of another person, see Risak/ Dullinger (2018), the concept of 'worker' in EU law and Hiessl, Case Law on the Classification of Platform Workers, pp. 87-90.

establish the facts indicating direction and control to trigger the application of the legal presumption, with consideration to the case law of the Court of Justice. The **Commission services** further underlined that this is framed by the requirements that the legal presumption is effective, rebuttable and provides a procedural facilitation to the PPPW.

On the request of **several Member State experts** for the Commission to provide more information on the interpretation of the notion of direction and control in the case law of the Court of Justice, the **Commission services** referred to Recital 28 of the Directive, which lists several relevant cases, and noted that an overview of case law of the Court of Justice on the notion of "worker" has been included in the Report of the Expert Group on the Transposition of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union.([13])

A **Member State expert** underlined the relevance of the specific situation of algorithmic management in platform work, and the importance of considering the role of these systems in identifying elements of subordination. The **Commission services** agreed that automated monitoring and decision-making systems increasingly replace functions that managers usually perform in businesses and underlined how these systems can exercise direction and control, including by applying punitive measures or other forms of adverse treatment or pressure.

An **employers' organisation** inquired about the application of the legal presumption in appeals, and whether the burden of proof remains on the DLP regarding the rebuttal of the legal presumption. The **Commission services** referred to Recital 34 of the Directive, which states that a successful rebuttal of the legal presumption in judicial or administrative proceedings should not preclude the application of the legal presumption in subsequent judicial proceedings or appeals. They further clarified that the burden of proof lies on the DLP in case they seek to rebut the legal presumption. In this context, a Member State expert inquired whether PPPW could rebut the legal presumption, and on whom the burden of proof would lie in such cases. The Commission services referred to Recital 34, which is to be understood that all parties, including the PPPW, should be able to rebut the presumption. The Directive is, however, silent on who would have the burden of proof when a PPPW aims to rebut the presumption, leaving this matter to national procedural law. On the question regarding the timing of the rebuttal, the Commission services underlined that this, while usually taking place in the same procedure as the main claim, would remain a matter of national procedural law.

Trade unions argued that effective procedures would require competent administrative authorities and suitable administrative proceedings in each Member State.

2.2.2 Article 5(2) - legal presumption

Article 5(2) establishes the obligation of Member States to introduce an effective rebuttable legal presumption of an employment relationship that constitutes a procedural facilitation for the benefit of PPPW. It further sets the requirement that the presumption shall not have the effect of increasing the burden of requirements on PPPW or their representatives in proceedings to determine their correct employment status. Recital 31 explains that the purpose of the legal presumption is to address and correct the power imbalance between the PPPW and the DLP. It provides further detail on the legal presumption, establishing that an effective legal presumption requires that national law effectively makes it easy for the PPPW to benefit from the presumption, and that

([13]) See footnote 2. Please see pages 8-17.

requirements under the legal presumption should not be burdensome and should ease the difficulties of PPPW in providing evidence indicating the existence of an employment relationship in a situation in which there is a power imbalance vis-à-vis the DLP.

Discussion

The **Commission services** outlined the concept of an effective legal presumption, citing the elements specified in the paragraph above. An effective legal presumption requires that national law should not put any unnecessary obstacles in the way of PPPW aiming to make use of the legal presumption, and that the standard of proof required to trigger the presumption must logically be lower than providing full proof of the constitutive elements of an employment relationship. While, according to Recital 31, the modalities of the legal presumption are to be outlined by the Member States, this discretion is limited by the requirements of effectiveness explained in this Chapter.

Trade unions stressed that the purpose of the legal presumption, as outlined in Recital 31, is to effectively address and correct the power imbalance between the PPPW and the DLP, and that it should ease the difficulties of PPPW in providing evidence indicating the existence of an employment relationship in a situation in which there is a power imbalance vis-à-vis the DLP. The **Commission services** agreed and underlined that the legal presumption shall provide a procedural facilitation for the benefit of PPPW that seek reclassification as workers, and does not require to provide full proof, but only prima facie evidence for direction and control. It stressed that Member States that already have a legal presumption providing criteria or thresholds in place would have to assess whether such criteria ease the burden of proof to the benefit of the PPPW as compared to a situation where no presumption exists. In this regard, a **Member State expert** asked whether several legal presumptions could co-exist, if accompanied by a coordination rule. The **Commission services** pointed out that the Directive does not preclude co-existing presumptions as long as they are not contradictory, but emphasised the importance of ensuring that the legal presumption applicable to PPPW effectively meets the requirements set out in Article 5. When transposing, Member States should therefore take these elements into account and consider whether the co-existence of several legal presumptions might not produce confusion and have the opposite effect of easing the burden of requirements for PPPWs.

A **Member State expert** underlined that, while the legal presumption should not be burdensome, criteria might help PPPW to judge whether indications of direction and control exist.

2.2.3 Article 5(3) - scope of application

Article 5(3) requires that the legal presumption applies in all relevant administrative or judicial proceedings where the determination of the correct employment status of PPPW is at issue. As regards proceedings which concern tax, criminal or social security matters, it is for Member States to decide whether to apply the legal presumption. However, where social security and tax authorities are competent under national law to decide the employment status and thus determine working conditions, they should indeed apply the legal presumption.

Recital 32 refers to the discretion of Member States, “as a matter of national law”, with regard to “recognising the results of proceedings in which the legal presumption has been applied for the purposes of providing rights to reclassified workers under other areas of law”, meaning other areas than labour law.

Discussion

If a person is reclassified as a worker in a labour law proceeding, that person should enjoy all *employment* rights as other workers, but not necessarily enjoy all rights of a worker in other fields of law, e.g. in tax law. The question of the impact of the reclassification in a procedure belonging to one domain of law in other domains of law remains a matter of national law.

Several **Member State experts** asked whether the legal presumption must apply in proceedings that are not labour law proceedings (e.g. in tax or criminal matters), both at initial and appeals stages. The **Commission services** clarified that the first sub-paragraph of Article 5(3) requires the legal presumption to apply in all relevant proceedings, including appeals, that decide the employment status of a PPPW, while the second sub-paragraph excludes proceedings which concern tax, criminal or social security matters Whereas the provision is not very clear, the Commission services expressed the view that, if proceedings are strictly confined to tax, social security or criminal matters, the legal presumption can only apply if Member States so decide as a matter of national law. It might be different if these proceedings have consequences beyond tax or social security matters (e.g. by determining the person's employment status also for other fields of law). The wording of Recital 32, in particular the last sentence, was recalled.

Furthermore, it was enquired if, in existing proceedings in tax, criminal or social security matters, where DLPs are not a party, the exercise of the rebuttal should be enabled in separate proceedings. The **Commission services,** supported by **trade unions,** questioned whether in such a scenario the reclassification has any consequences for the DLP, and suggested to assess if existing proceedings are appropriate or effective, and the legal presumption rebuttable. An effective, but not appropriate procedure could consist in a procedure that does not respect the different outlined procedural steps (presenting facts, opportunity for rebuttal by the DLP, etc.). On the topic of rebuttal, **employers' organisations** made the point that rebuttals should have a suspensive effect. The **Commission services** pointed to the silence of the Directive on this matter, which means suspensive effects are to be determined based on procedural laws in Member States.

Trade unions enquired as to whether Article 5(3) cannot lower the existing social protection of a worker, once their employment status has been recognised. The **Commission services** recalled that Recital 32 outlines that Member States have discretion to extend the effects of the correct determination of employment status beyond labour law for the purposes of providing rights to reclassified workers under other areas of law.

One Member State expert, based on the wording of Article 5(3) ('relevant administrative *or* judicial proceedings') asked whether the legal presumption could apply only in one such type of proceedings. The **Commission services** considered that the reading should be 'and', thus the legal presumption should apply in both types of proceedings, unless a Member State only has judicial proceedings in place.

2.2.4 Article 5(4) - right to initiate

This paragraph ensures that PPPW (or their representatives on their behalf) have a right to initiate (administrative or judicial) proceedings in which the legal presumption applies. Proceedings can also be initiated by enforcement authorities such as labour inspectorates. The legal presumption can also be invoked by authorities without the PPPW's involvement or consent. The reference to representatives should be read in conjunction with Article 19.

<u>Discussion</u>

The trade unions asked the Commission services to confirm that, where national law so provides, representatives can start proceedings on behalf of multiple PPPW. The **Commission services** consider it possible, as specified in Article 19.

2.2.5 Article 5(5) - obligation to initiate

Article 5(5) establishes an obligation for competent authorities to 'initiate appropriate actions or proceedings' if they consider that a PPPW might be wrongly classified. This does not apply to courts, as courts themselves cannot initiate proceedings. Such obligation is, however, limited by the discretion of the authority in assessing ('if they consider') whether the PPPW might be wrongly classified.

Discussion

In correlation with Article 6(c), one **Member State expert** asked if Member States can choose which authority applies the legal presumption, e.g. if it can be a labour inspectorate. The **Commission services** considered that labour inspectorates, in their role as national competent authorities with enforcement competences, have the obligation to initiate actions or proceedings in case they consider there was a misclassification, e.g. when they impose a fine on a DLP for bogus self-employment.

To a question on whether the "appropriate actions or proceedings" referred to in Article 5(5) are to be understood broadly, or limited to the application of the legal presumption, the **Commission services** replied that the objective of the obligation in Article 5(5) is to determine the correct employment status; the legal presumption must apply in those proceedings, as per Article 5(3).

A **Member State expert** raised the question of whether the procedure for the correct determination of employment status could be part of existing procedures or be a specific/separate procedure. For example, could the correct employment status be determined during a labour inspection on the matter of illegal work or bogus self-employment? In case there needs to be a specific/separate procedure, it was asked if it would have to pause the initial (inspection) procedure. The **Commission services** were of the view that the correct determination can be part of the same procedure as the verification of the employment status. On the question of separate proceedings that would suspend the initial ones, the **Commission services** referred to national procedural rules.

One **Member State expert** questioned whether it was compulsory for national competent authorities to initiate actions or proceedings if the PPPW opposes the proceedings, possibly because they consider themselves as self-employed. The **Commission services** noted the Directive does not require consent from the PPPW, meaning that competent authorities can initiate actions or proceedings without the involvement of the PPPW, if they consider that there has been a wrong classification.

2.2.6 Article 5(6) - non-retroactivity

Article 5(6) sets the principle of non-retroactivity: while the legal presumption applies to contractual relationships that are ongoing on 2 December 2026 (the date of transposition of the Directive), claims can only relate to the rights arising in the period starting from that date.

Recital 33 clarifies that claims relating to the possible existence of an employment relationship before 2 December 2026 and resulting rights and obligations until that date

should therefore be assessed only on the basis of Union and national law applicable before that date.

For reasons of predictability of legislation, this non-retroactivity clause was considered necessary.

Discussion

To a question of whether the date of 2 December 2026 refers to the applicability of the legal presumption or to the recognition of the established employment status, the **Commission services** clarified that Article 5(6) refers to claims relating to the possible existence of an employment relationship before 2 December 2026 and to resulting rights and obligations until that date, which should be assessed only on the basis of Union and national law applicable before 2 December 2026 and not by applying the legal presumption. While the legal presumption applies to contractual relationships that are ongoing on 2 December 2026, claims can only relate to the rights arising in the period starting from that date. To determine the start application date of the legal presumption in a given case, it is important to know when a PPPW started working for a DLP (before or after 2 December 2026) and when the PPPW introduced a claim relating to the possible existence of an employment relationship.

Trade unions enquired whether Member States could allow retroactivity as regards workers' rights under existing national rules. The Commission services reminded the wording of Recital 33, which states that resulting rights and obligations until 2 December 2026 should be assessed only on the basis of provisions applicable before that date, meaning before the legal presumption was transposed into national law. However, in line with Article 26, the Directive does not affect 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 case national laws or collective agreements allow for the extension of resulting rights to be applied before 2 December 2026, those provisions should apply as they would be more favourable to (reclassified) platform workers.

2.3. Framework of supporting measures (Article 6)

Article 6

Member States shall establish a framework of supporting measures in order to ensure the effective implementation of and compliance with the legal presumption. In particular, they shall:

(a) develop appropriate guidance, including in the form of concrete and practical recommendations, in order for digital labour platforms, persons performing platform work and the social partners to understand and implement the legal presumption, including the procedures regarding its rebuttal;

(b) develop guidance and establish appropriate procedures for national competent authorities in accordance with national law and practice, including on cooperation between national competent authorities, in order to proactively identify, target and pursue digital labour platforms which do not comply with rules applicable to the determination of the correct employment status of persons performing platform work;

(c) provide for effective controls and inspections conducted by national competent authorities, in accordance with national law or practice and, in particular, provide, where appropriate, for controls and inspections on specific digital labour platforms where the existence of an employment relationship between such a platform and a person performing platform work has been ascertained by a national competent authority, while ensuring that such controls and inspections are proportionate and non-discriminatory;

(d) provide for appropriate training for national competent authorities and provide for the availability of technical expertise in the field of algorithmic management, to enable such authorities to carry out the tasks referred to under point (b).

***Recital (35)**: The effective implementation of the legal presumption through a framework of supporting measures is essential to ensure legal certainty and transparency for all parties involved. Such measures should include disseminating comprehensive information to the public, developing guidance in the form of concrete and practical recommendations for digital labour platforms, persons performing platform work, the social partners and for national competent authorities and providing effective controls and inspections, in accordance with national law and practice, including, as appropriate, by establishing targets for such controls and inspections.*

***Recital (36)**: Such measures should support the ascertainment of the existence of 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, including, if appropriate, the confirmation of a classification of a person performing platform work as genuinely self-employed. To enable those authorities to carry out their tasks in enforcing the provisions of this Directive, with particular regard to the competence of Member States to decide on the staffing of national authorities, they need to be adequately staffed. This requires national competent authorities to be provided with adequate human resources that have the required skills and access to appropriate training, and with the availability of technical expertise in the field of algorithmic management. ILO Labour Inspection Convention No 81 (1947) provides indications on how to determine a sufficient number of labour inspectors for the effective discharge of their duties. A decision of a national competent authority resulting in a change of the employment status of a person performing platform work should be taken into account by national competent authorities when deciding on controls and inspections that they intend to carry out.*

***Recital (37)**: Member States' competent authorities should cooperate with each other, including through the exchange of information, as provided for under national law and practice, for the purpose of ensuring the determination of the correct employment status of persons performing platform work.*

Article 6 requires Member States to establish a framework of accompanying measures to 'ensure the effective implementation of and compliance with the legal presumption'. Recital 35 also refers to the aims of 'legal certainty and transparency for all parties involved'. These measures do not give rise to any individual rights but are obligations for Member States' authorities. It gives as examples: (a) guidance for DLP, PPPW and social partners 'to understand and implement the legal presumption'; (b) guidance and procedures for enforcement authorities to 'proactively identify, target and pursue DLP which do not comply with rules on the determination of the correct employment status'; (c) effective controls and inspections conducted by enforcement authorities, 'including, as appropriate, by establishing targets for such controls and inspections' (Recital 35), in particular on specific DLPs where the existence of an employment relationship has been ascertained; and (d) appropriate training and availability of technical expertise in the field of AM for enforcement authorities. Recital 36 also states that those authorities should be 'adequately staffed', while at the same time underlining the competence of Member States to decide on the staffing of national authorities. In this context, the recital recalls the ILO

Labour Inspection Convention No 81 (1947) which provides indications on how to determine a sufficient number of labour inspectors for the effective discharge of their duties.

Discussion

Several Member State experts, as well as **trade unions**, asked for clarification on the definition of "appropriate guidance" in letter (a) and for examples on "appropriate procedures" under letter (b). **Commission services** replied that letter (a) of Article 6 does not include other attributes besides "appropriate" guidance, and "concrete" and "practical" recommendations. The text of letter (a) is clear regarding who the addressees of such guidance are and what the aim is (i.e., the effective implementation of and compliance with the legal presumption, including its rebuttal), but the exact understanding of the meaning of "appropriate" is left to the decision and discretion of Member States. As regards "appropriate procedures", Recital 37 indicates that national competent authorities should cooperate with each other, including through the exchange of information (which would be considered an appropriate procedure). Procedures have to be developed and established in accordance with national law and practice, giving room to Member States to take into account all the specificities of national jurisdictions so that they are "appropriate".

Several Member State experts also enquired whether letters (a) and (b) need to be formally transposed into national law, or whether it would be enough to develop guidance and establish procedures, and notify the Commission services thereof.

The **Commission services** replied that Article 6 (including all its letters) is part of the normative body of the Directive and, therefore, requires transposition. It poses an obligation on Member States to establish a framework of supporting or accompanying measures, which requires action from Member States; the measures listed in letters (a) to (d) are part of what the framework could consist of (indicated by the words "in particular"). Member States were invited to consider in their transposition efforts if their national competent authorities have the competence to develop guidance and establish procedures, including if needed to update said guidance or to modify said procedures in case they are no longer considered "appropriate". A one-off action by national competent authorities might not be sufficient to ensure that the framework of supporting measures effectively implements and ensures the compliance with the legal presumption, and specific updates might be considered necessary. In the explanatory documents, Member States should indicate the guidance or procedure adopted (or to be adopted), as well as the delegation to their national competent authorities. The Commission services highlighted that there is flexibility in the implementation, as illustrated in the reference in Article 6(b) to alignment with national laws and practices.

An **employers' organisation** expressed their understanding that, in the spirit of the Directive, there is room for Member States to develop guidance and establish procedures in a way that is fit to their own labour market context. It also acknowledged the existence of diverse practices in Member States on how to organise these procedures, including the enforcement and the role of inspectorates, therefore expecting diversity in the national transposition of such measures.

A **Member State expert** asked about the legal and legislative nature of the supporting measures to be adopted. The **Commission services** shared their understanding that the framework of supporting measures in Article 6 does not require the adoption of legislative instruments at national level, but rather practical tools for competent authorities, specifically labour bodies, to implement the legal presumption, emphasising that guidance, recommendations, controls and trainings are inherently non-legislative.

Ultimately, whether the "framework of supporting measures" is developed under legislative or non-legislative instruments depends on national law and practice.

Several Member State experts asked whether the *procedures* mentioned in Article 6(b) are distinct from those in Articles 4 and 5, and whether new procedures need to be implemented by Member States. Additionally, questions were raised about which authorities are involved, and whether the choice of these authorities lies with the Member States. The **Commission services** clarified that Member States are not required to create new procedures, but can use existing ones, provided they are tailored to meet the specific requirements of Article 6(b). Articles 4 and 5 *procedures* and *proceedings*, respectively, should ensure the verification and correct determination of employment status; Article 6 procedures have a different scope, i.e. to proactively identify, target and pursue non-compliant DLPs. The choice of authorities –whether control, tax, or social security– is at the discretion of each Member State.

The trade unions expressed their understanding that the leeway given to Member States under Article 6 should be interpreted within the limits of proportionality and non-discrimination (letter c) and appropriateness (letters a and b), and in line with the need to establish a framework that ensures the effective implementation of and compliance with the legal presumption.

The **Commission services** pointed to the different attributes in letter (c), whereby controls and inspections should be "effective", and controls and inspections on specific DLPs be "proportionate" and "non-discriminatory", leaving any other qualitative attributes to the decision of Member States. To a question on whether "specific" DLPs could be interpreted as "similar" DLPs, it was pointed out that "specific" refers to a particular (identifiable, individual) DLP where individual cases of misclassification have previously been identified and confirmed by courts or administrative authorities. While the provision on specific DLP as such does not extend to similar DLPs, this is something Member States can consider when setting up "effective controls and inspections".

3. Chapter III on Algorithmic Management

Chapter III deals with DLPs' use of automated monitoring systems or automated decision-making systems (AMDMS). Its provisions are in sync with the GDPR, either complementing or particularising the GDPR. It contains both 'more specific rules' or 'additional measures', as explained in Recital 38. The Directive does not only cover platform workers, but also to PPPW who are not workers. The provisions based on Article 16 TFEU apply to all PPPW, however those based on Article 153 TFEU only to platform workers.

3.1. Limitations on the processing of personal data by means of automated monitoring systems or automated decision-making systems (Article 7)

Article 7

1. Digital labour platforms shall not, by means of automated monitoring systems or automated decision-making systems:

(a) process any personal data on the emotional or psychological state of a person performing platform work;

(b) process any personal data in relation to private conversations, including exchanges with other persons performing platform work and the representatives of persons performing platform work;

(c) collect any personal data of a person performing platform work while that person is not offering or performing platform work;

(d) process personal data to predict the exercise of fundamental rights, including the freedom of association, the right of collective bargaining and action or the right to information and consultation as laid down in the Charter;

(e) process any personal data to infer the racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, emotional or psychological state, trade union membership, sex life or sexual orientation;

(f) process any biometric data, as defined in Article 4, point (14), of Regulation (EU) 2016/679, of a person performing platform work to establish that person's identity by comparing that data to stored biometric data of natural persons in a database.

2. This Article shall apply to all persons performing platform work from the start of the recruitment or selection procedure.

3. In addition to automated monitoring systems and automated decision-making systems, this Article shall also apply where digital labour platforms use automated systems taking or supporting decisions that affect persons performing platform work in any manner.

***Recital (39)**: Articles 5, 6 and 9 of Regulation (EU) 2016/679 require that personal data be processed in a lawful, fair and transparent manner. This implies certain restrictions on the manner in which digital labour platforms are able to process personal data by means of automated monitoring systems or automated decision-making systems. Nonetheless, in the particular case of platform work, the consent of persons performing platform work to the processing of their personal data cannot be assumed to be freely given. Persons performing platform work often do not have a genuine free choice or are not able to refuse or withdraw consent without detriment to their contractual relationship, given the power imbalance between the person performing platform work and the digital labour platform. Therefore, digital labour platforms should not process the personal data of persons performing platform work on the basis that a person performing platform work has given consent to the processing of his or her personal data.*

***Recital (40)**: Digital labour platforms should not, by means of automated monitoring systems or any automated system used to take or support decisions affecting persons performing platform work, process any personal data on the emotional or psychological state of persons performing platform work, process any personal data in relation to their private conversations, collect any personal data while persons performing platform work are not offering or performing platform work, process any personal data to predict the exercise of fundamental rights, including the freedom of association, the right of collective bargaining and action or the right to information and consultation, as defined in the Charter, or process personal data to infer the person's racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, emotional or psychological state, trade union membership, sex life or sexual orientation.*

***Recital (41)**: Digital labour platforms should not process biometric data of persons performing platform work for the purpose of identification, namely establishing a person's identity by comparing his or her biometric data to stored biometric data of a number of individuals in a database (one-to-many identification). This does not affect the possibility for digital labour platforms to conduct biometric verification, namely verifying a person's identity by comparing his or her biometric data to data previously provided by that same person (one-to-one verification or authentication) where such processing of personal data is lawful under Regulation (EU) 2016/679 or other relevant Union and national law.*

***Recital (42)**: Biometrics-based data are personal data which result from specific technical processing relating to the physical, physiological or behavioural features, signals or characteristics of a natural person, such as facial expressions, movements, pulse frequency, voice, keystrokes or gait, which may or may not allow or confirm the identification of a natural person.*

Article 7(1) contains a number of bans on processing of personal data by means of AMDMS. Recital 39 seems to indicate that Article 7 contains 'more specific rules' to Articles 5, 6 and 9 GDPR. Non-personal data, such as fully anonymised data, can be processed. Equally, other means of processing (including manually by a human being) remain possible if permitted under GDPR.

- Letter (a) prohibits DLPs to automatically monitor the emotional or psychological state of the PPPW or to take or support decisions on their basis.
- Letter (b) prohibits DLPs to use their access to PPPW's digital devices to access private conversations, including with fellow PPPW or their representatives. To be noted that this provision does not apply in the context of Article 20: if a DLP sets up communication channels for PPPW on its own technical infrastructure, it will have to process personal data in relation to exchanges with other PPPW and representatives; it will, however, not be allowed to access or monitor those communications, therefore those channels will not qualify as a AMDMS.
- Letter (c) prohibits DLPs to collect any personal data while the PPPW is not offering or performing platform work, meaning while PPPW are not logged into the app (e.g. geolocation data of PPPW to automatically monitor whether they are attending work protests). To be noted, this prohibition only concerns collecting (new) data, not other forms of processing (existing) data.
- Letter (d) prohibits DLPs to process personal data to predict the exercise of fundamental rights. This is meant to prevent DLPs from using predictive AI to identify PPPW who are most likely to exercise their fundamental rights, such as the right to join a trade union or the right to strike.
- Letter (e) prohibits DLPs to process any personal data to infer special categories of personal data. Processing of special categories of data is prohibited under Article 9 GDPR, with several exceptions. The Directive bans the inference (i.e. deduction) of such data from other personal data. Examples include the inference of trade union membership or health data from geolocation data (e.g. frequent presence at trade union activities or at a hospital).
- Letter (f) prohibits biometric identification, but not biometric verification. Recital 41 makes that distinction clearer. Recital 42 clarifies that biometrics-based data are personal data, but not biometric data, meaning that biometrics-based data are covered by the prohibitions in points (a) to (e), but not point (f).

Article 7(2) explains that the prohibitions in paragraph 1 apply already in the recruitment or selection procedure, thus extending the personal scope beyond the strict definition of PPPW to applicants.

Article 7(3) extends the material scope of the prohibitions beyond the definitions of AMDMS. All automated systems that take or support decisions that have any kind of impact on PPPW are covered, i.e. not only the ones that take decisions with significant effect. See also Articles 9(1)(c) and 12(4) in this context.

Discussion:

Several Member State experts asked for clarifications as regards the articulation of the prohibitions in Article 7 with the GDPR. The **Commission services** explained that the Directive lays down specific rules addressing concerns related to the processing of personal data by means of AMDMS in the context of platform work. It does so by introducing more specific safeguards which provide for a higher level of protection of PPPWs' personal data. The GDPR already allows Member States to maintain or introduce more specific rules in the employment context, and the Directive does that for the platform economy, and even goes beyond, as it introduces such rules at Union level and extends their scope to include PPPW who are not workers.

Member State experts also asked whether, within the scope of Article 7, it is possible to rely on the GDPR regarding consent or the justification grounds of Article 9(2), and if exceptions under the GDPR (e.g. explicit consent or vital interests) still apply. The **Commission services** referred to Recital 39, which seems to clarify that Article 7(1) contains more specific rules to Articles 5, 6 and 9 GDPR. The last sentence of Recital 39 excludes consent as a valid legal basis for processing the personal data of PPPWs, including PPPWs who are not workers. This is in line with Article 7 and Recital 43 GDPR. However, given that recitals are not legally binding, and that there is no corresponding provision in the operative part of the Directive, it could be argued that this is a statement of principle. It therefore remains unclear if certain exceptions may be allowed.([14]) It is important to also recall that the prohibitions in Article 7 only apply when personal data are processed by using AMDMS (see chapeau of Article 7) or any automated systems that take or support decisions and that affect PPPWs 'in any manner' (see Article 7(3)), so not to data processing by DLPs in general.

Several Member State experts asked for examples on all six prohibitions, in particular the ones that also appear, although drafted differently, in the AI Act,([15]) namely letter a) vs. AI Act prohibition to develop and deploy AI emotion recognition systems, and letter f) vs. AI Act prohibition for AI systems for real-time remote biometric identification in publicly accessible spaces for the purposes of law enforcement. The **Commission services**

([14]) See paras 21 and 22 of the EDPB Guidelines 05/2020 on consent under Regulation 2016/679: *''21. An imbalance of power also occurs in the employment context. Given the dependency that results from the employer/employee relationship, it is unlikely that the data subject is able to deny his/her employer consent to data processing without experiencing the fear or real risk of detrimental effects as a result of a refusal. It is unlikely that an employee would be able to respond freely to a request for consent from his/her employer to, for example, activate monitoring systems such as camera observation in a workplace, or to fill out assessment forms, without feeling any pressure to consent. Therefore, the EDPB deems it problematic for employers to process personal data of current or future employees on the basis of consent as it is unlikely to be freely given. For the majority of such data processing at work, the lawful basis cannot and should not be the consent of the employees (Article 6(1)(a)) due to the nature of the relationship between employer and employee. 22. However, this does not mean that employers can never rely on consent as a lawful basis for processing. There may be situations when it is possible for the employer to demonstrate that consent actually is freely given. Given the imbalance of power between an employer and its staff members, employees can only give free consent in exceptional circumstances, when it will have no adverse consequences at all whether or not they give consent*'

([15]) Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance), OJ L, 2024/1689, 12.7.2024.

explained that the AI Act and the PWD are complementary pieces of legislation, that both contribute to safeguarding the rights of PPPWs: the AI Act sets standards for the safety of AI technology developed and deployed in the EU economy, including in the platform economy, and the PWD provides specific protections in relation to how the deployed systems, going beyond AI systems, are then used by DLPs in the platform work environment. In relation to the prohibitions to process personal data via AMDMS in the Directive and the AI practices prohibited by the AI Act, a factual comparison shows differences in scope and impact. Member States must transpose the Directive prohibitions into national law, in particular because they cover automated systems that go beyond AI systems and do not contain the limitations/exceptions of the AI Act prohibitions.

Employer organisations agreed that automated systems can be deemed broader than AI systems, but asked for clarity if all AI systems fall under the definition of AMDMS so that DLPs can prepare for implementation. The **Commission services** considered that, in terms of implementation and compliance, DLPs may often be subject to cumulative obligations stemming from both the Directive and the AI Act. In particular, many DLPs use AI-driven automated systems, which could qualify as AMDMS under the Directive and (high-risk) AI systems under the AI Act. However, not all AMDMS under the Directive qualify as AI systems under the AI Act. The Commission has issued guidelines on the definition of AI systems under the AI Act on 6 February 2025,([16]) focusing on the necessary 7 main elements of the definition and indicating possible examples of more basic systems that do not qualify as AI systems. **Trade unions** intervened to state that the AI Act and the Directive are not overlapping.

The letter e) limitation was the subject of lengthy discussions, as the inference of special categories of personal data from other personal data, together with some of the examples therein ('migration status' or 'state of health') required clarifications. The **Commission services** mentioned that the point of this prohibition is not to ban all processing of special categories of personal data (which is mostly regulated by Article 9 GDPR), but only the inference (i.e. deduction) of such data, which is considered sensitive, from other personal data. In the absence of a recital to guide the interpretation of this prohibition, one must look at the intention behind banning any processing of personal data to infer special categories of personal data, since processing such data puts a person in a vulnerable position. **One Member State expert** asked if processing is allowed in case the DLP is under a legal obligation to verify the PPPW's migration status. The **Commission services** understand that employers that need to check if workers have their visas, work permits etc. can do so via processing of personal data (direct checks), not by inferring them. **A Member State expert** mentioned that information about health (e.g. chronical disease) could be deducted from other personal data with the intention to improve working conditions. The **Commission services** pointed out that, if a DLP wants to improve working conditions for which it would need access to PPPW's health data, it could process it 'directly' in line with Article 9 GDPR without using automated systems.

On Article 7(3), a **Member State expert** enquired about the difference between AMDMS and automated systems taking or supporting decisions that affect PPPW 'in any manner', and whether these automated systems must be subjectively targeted towards using them for making or supporting decisions. The **Commission services** explained that all automated systems that take or support decisions that have any kind of impact on PPPW are covered, i.e. not only the ones that take decisions with significant effect. The Directive does not define automated systems, but it qualifies them as those that take or support decisions. In general, an automated system is one that does not require human intervention. Asked if all automated systems are electronic, the Commission services

([16]) https://digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-ai-system-definition-facilitate-first-ai-acts-rules-application.

mentioned that there are automated systems that are not electronic, however it would be difficult to imagine DLPs using non-electronic automatic systems.

3.2. Data protection impact assessment (Article 8)

Article 8:

1. The processing of personal data by a digital labour platform by means of automated monitoring systems or automated decision-making systems is a type of processing which is likely to result in a high risk to the rights and freedoms of natural persons within the meaning of Article 35(1) of Regulation (EU) 2016/679. When carrying out, pursuant to that provision, the assessment of the impact of the processing of personal data by automated monitoring systems or automated decision-making systems on the protection of personal data of persons performing platform work, including on the limitations of processing pursuant to Article 7 of this Directive, digital labour platforms, acting as controllers as defined in Article 4, point (7), of Regulation (EU) 2016/679, shall seek the views of persons performing platform work and their representatives.

2. Digital labour platforms shall provide the assessment as referred to in paragraph 1 to workers' representatives.

***Recital (43)**: The processing of personal data by automated monitoring systems or automated decision-making systems used by digital labour platforms is likely to result in a high risk to the rights and freedoms of persons performing platform work. Therefore, digital labour platforms should always carry out a data-protection impact assessment in accordance with the requirements laid down in Article 35 of Regulation (EU) 2016/679. Taking into account the effects that decisions taken by automated decision-making systems have on persons performing platform work, in particular platform workers, this Directive establishes more specific rules regarding the consultation of persons performing platform work and their representatives in the context of data-protection impact assessments.*

Article 8(1) mandates that DLPs conduct a Data Protection Impact Assessment (DPIA) in all instances when processing personal data via AMDMS. This requirement goes further than the obligations established under Article 35(1) GDPR, which imposes a DPIA only when the processing, particularly through new technologies, is likely to result in a high risk to the rights and freedoms of natural persons. Article 8 categorically identifies the processing of personal data by means of AMDMS in platform work as posing a high risk, necessitating a DPIA in every case. This is further underlined by Recital 43. DLPs must comply with the obligations set out in Article 35 GDPR, such as those detailed in paragraphs 2, 7, and 11, which pose specific requirements for conducting DPIAs.

Article 8 imposes a specific requirement on DLPs to consult with PPPW and their representatives during the DPIA process. This deviates from the broader discretion allowed under Article 35(9) GDPR, which permits data controllers to choose whom to consult. Recital 43 reinforces this obligation as a more specific rule.

Additionally, Article 8(2) obliges DLPs to share the finalised DPIA with workers' representatives, which is not required by the GDPR.

Discussion:

One **Member State expert** raised a question about the dissemination of DPIAs. This expert noted that, according to Article 8(1), views from PPPW and their representatives must be considered. However, Article 8(2) stipulates that the final DPIA should only be

sent to workers' representatives. This led to an inquiry as to whether platform workers themselves are excluded from receiving the DPIA directly. The **Commission services** confirmed this interpretation. They also clarified that Article 15 extends this right to representatives of all PPPW. The **Commission services** highlighted that the Directive sets minimum standards, implying Member States could choose to extend these rights further.

Another **Member State expert** sought clarity on the practical procedure of "seeking views," asking if a questionnaire could be used. The **Commission services** clarified that while this is not outlined in detail in the provision, DLPs must engage with PPPW and their representatives to obtain their input. In response, **trade unions** suggested that specific methods of seeking the views should emerge through negotiation between DLPs and representatives.

In response to the question of **a Member State expert** on whom the obligation to conduct a DPIA should lie in case of the involvement of intermediaries, the **Commission services** emphasised that the obligation for conducting the DPIA should lie on the data controller, and highlighted that DLP and intermediary could also be joint controllers in the meaning of Article 26 GDPR.

A **Member State expert** posed a question regarding the frequency with which a DPIA would be required. The **Commission services** clarified that, in accordance with Article 35(1) GDPR, a DPIA must be conducted prior to the commencement of data processing. Additionally, for any systems already in operation without a prior DPIA, the assessment must occur upon the entry into force of this Directive. The **Commission services** further elaborated that, as per Article 35(11) GDPR, controllers are required to carry out a review to assess if processing is performed in accordance with the DPIA at least when there is a change of the risk represented by processing operations.

Addressing inquiries on the phrase "shall seek the views" in Article 8 of the Directive, the **Commission services** explained that this requires DLPs, as data controllers under GDPR, to actively engage PPPW and their representatives during a DPIA process for AMDMS. However, while Article 8 mandates meaningful consultation, it does not require DLPs to adopt these opinions.

A **Member State expert** outlined their national context, questioning practical implementation, specifically how DLPs would identify representatives of PPPW. The **Commission services** indicated that this procedural matter would be determined by national legislation and practice.

Lastly, regarding Article 8(2)'s full applicability to representatives of non-worker PPPW according to Article 15, the **Commission services** confirmed that since Article 8(2) pertains to personal data protection, it comprehensively applies to representatives of PPPW.

3.3. Transparency with regard to automated monitoring systems and automated decision-making systems (Article 9)

Article 9

1. Member States shall require digital labour platforms to inform persons performing platform work, platform workers' representatives and, upon request, national competent authorities, of the use of automated monitoring systems or automated decision-making systems.

That information 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 data and action monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;

(iii) the aim of the monitoring and how the system is to carry out that monitoring;

(iv) the recipients or categories of recipient of the personal data processed by such systems and any transmission or transfer of such personal data, including within a group of undertakings;

(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 decision that are taken or supported by such systems;

(iii) the categories of data and 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 personal data or behaviour of the person performing platform work influence the decisions;

(iv) the grounds for decisions to restrict, suspend or terminate the account of the person performing platform work, to refuse the payment for work performed by them, as well as for decisions on their contractual status or any decision of equivalent or detrimental effect;

(c) all categories of decision taken or supported by automated systems that affect persons performing platform work in any manner.

2. Digital labour platforms shall provide the information referred to in paragraph 1 in the form of a written document, which may be in electronic form. The information shall be presented in a transparent, intelligible and easily accessible form, using clear and plain language.

3. Digital labour platforms shall provide persons performing platform work, in a concise form, with the information referred to in paragraph 1 with regard to the systems and their features that directly affect them, including, where applicable, their working conditions:

(a) at the latest on the first working day;

(b) prior to the introduction of changes affecting working conditions, the organisation of work or monitoring work performance; and

(c) at any time upon their request.

Upon the request of the persons performing platform work, digital labour platforms shall also provide them, in a comprehensive and detailed form, with the information referred to in paragraph 1 with regard to all relevant systems and their features.

4. Digital labour platforms shall provide workers' representatives, in a comprehensive and detailed form, with the information referred to in paragraph 1 with regard to all relevant systems and their features. They shall provide such information

(a) prior to the use of those systems,

(b) prior to the introduction of changes affecting working conditions, the organisation of work or monitoring work performance; and

(c) at any time upon their request.

Digital labour platforms shall provide national competent authorities, in a comprehensive and detailed form, with the information referred to in paragraph 1 at any time upon their request.

5. Digital labour platforms shall provide the information referred to in paragraph 1 to persons undergoing a recruitment or selection procedure. The information shall be provided in accordance with paragraph 2, shall be concise, shall concern only the automated monitoring systems or automated decision-making systems used in that procedure, and shall be provided before the start of the recruitment or selection procedure.

6. Persons performing platform work shall have the right to the portability of personal data generated through their performance of work in the context of a digital labour platform's automated monitoring systems or automated decision-making systems, including ratings and reviews, without adversely affecting the rights of the recipient of the service under Regulation (EU) 2016/679.

The digital labour platform shall provide persons performing platform work, free of charge, with tools to facilitate the effective exercise of their portability rights referred to in Article 20 of Regulation (EU) 2016/679 and in the first subparagraph of this paragraph. Where the person performing platform work so requests, the digital labour platform shall transmit such personal data directly to a third party.

***Recital (44)**: In addition to the requirements laid down in Regulation (EU) 2016/679, digital labour platforms should be subject to transparency and information obligations in relation to automated monitoring systems and automated systems which are used to take or support decisions that affect persons performing platform work, including the working conditions of platform workers, such as their recruitment, their access to and the organisation of work assignments, their earnings, their safety and health, their working time, their access to training, their promotion or its equivalent, and their contractual status, including the restriction, suspension or termination of their account. The type and form of information that is to be provided to persons performing platform work regarding such automated systems, as well as the timing of its provision, should be specified. Individual platform workers should receive that information in a concise, simple and understandable form, in so far as the systems and their features directly affect them and, where applicable, their working conditions, so that they are effectively informed. They should also have the right to request comprehensive and detailed information about all relevant systems. Comprehensive and detailed information regarding such automated systems should also be provided to representatives of persons performing platform work, as well as to national competent authorities upon their request, in order to enable them to exercise their functions.*

***Recital (45):** In addition to the right to the portability of personal data which the data subject has provided to a controller in accordance with Article 20 of Regulation (EU) 2016/679, persons performing platform work should have the right to receive, without hindrance and in a structured, commonly used and machine-readable format, any personal data generated through their performance of work in the context of a digital labour platform's automated monitoring systems or automated decision-making systems, including ratings and reviews, to transmit them or have them transmitted to a third party, including another digital labour platform. Digital labour platforms should provide persons*

performing platform work with tools to facilitate effective data portability that is free of charge in order to exercise their rights under this Directive and under Regulation (EU) 2016/679.

Recital (46): *In some cases, digital labour platforms do not formally terminate their relationship with a person performing platform work but restrict the account of the person performing platform work. Restricting the account is to be understood as any limitation imposed on that person's ability to perform platform work through the account, including restricting the access to the account or to work assignments.*

Article 9 details the type of information that DLPs must provide on their use of AMDMS, as well as its timing and form. It is a specification and addition to the transparency rules in Articles 12-15 GDPR. The last paragraph specifies data portability rights.

Transparency

Paragraph 1 lists the information that DLPs should provide to PPPWs, platform workers' representatives (and representatives of PPPWs, as per extension in Article 15) and, upon request, national competent authorities.

1) Letter (a) details the information on AMS:
   - Point (ii) clarifies that AMS by which clients evaluate work performance are covered.
   - Point (iv) concerns information on the persons or departments of the DLP that have access to the data and whether the data is transferred to any other entity, both within and outside the DLP. It is a specification of, and possibly addition to, Articles 13(1)(e) and (f), 14(1)(e) and (f) and 15(1)(c) GDPR. Chapter V of GDPR on transfers of personal data to third countries or international organisations applies when DLPs transfer those data outside of the EU/EEA or to international organisations.
2) Letter (b) covers the information on ADMS: it can be seen as a specification of Articles 13(2)(f), 14(2)(g) and 15(1)(h) GDPR, that require controllers to provide data subjects with information on '*the existence of automated decision-making, including profiling, […] and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject*'.
   - Point (iii) requires DLPs to explain the internal functioning of their ADMS. It is a key provision.
   - Point (iv) requires DLPs to provide in advance (and not just ex-post) the grounds on which severe decisions may be taken, so that the PPPWs can adapt their behaviour. It only applies if these decisions are taken or supported by ADMS. The concept of 'restricting the account' of the PPPW is explained in Recital 46.
3) Letter (c) has a similar purpose as Articles 7(3) and 12(4) to cover ADMS beyond the definition, i.e. any system that takes or supports decisions that have any kind of impact on PPPWs. This extension aims to avoid that DLPs claim that some of their ADMS do not take 'significant' decisions and thus not provide any information on them. The information right under letter (c) is more limited, as it only covers the 'categories of decision' and does not include the systems' internal functioning ('main parameters' etc.).

Paragraph 2 explains the manner in which information is to be provided. The wording 'written document, which may be in electronic form' refers to an electronic format which can be further processed, i.e. downloaded, saved, printed, sent etc. (PDF or similar).

Paragraph 3 concerns the timing of when information is to be provided to PPPWs. The three possibilities in letters (a) to (c) are not a choice for the DLP, but rather information must be provided at any of these moments. Letters (a) and (b) concern moments when DLPs must provide this information proactively, i.e. without being asked. The term 'prior to the introduction of changes' is not specified, but a reasonable period of time should be given for PPPWs to process and understand the information before the change enters into effect. The paragraph also contains two limitations on the type / amount of information to be provided upfront, in order to prevent that PPPW are overloaded with information: information must be concise and only concern the systems and their features that directly affect PPPWs. However, at any moment in time, PPPWs can also request comprehensive and detailed information on all relevant systems and their features (without those affecting them).

Paragraph 4 concerns the timing and type of information to be provided to representatives and to competent authorities.

Similar to Article 7(2), paragraph 5 extends the information rights to the recruitment or selection procedure: before signing up, applicants should be provided with concise information on the AMDMS used in this procedure.

Portability of personal data

As stated by Recital 45, paragraph 6 gives additional portability rights to those in Article 20 GDPR. That provision only ensures portability of personal data that the data subject '*has provided to a controller',* which includes *'observed data'* but does not include '*inferred data and derived data'* that are created by the controller (using the data observed or directly provided as input).([17]) Article 20 GDPR is limited to processing on the basis of consent or of a contract.

The wording '*personal data generated through their performance of work'* in the context of a DLP's AMS or AMDS is intended to be broader than data 'provided' by the data subject as it explicitly includes '*ratings and reviews'* by clients. It could be argued that it includes inferred or derived data, such as profiles or performance reviews generated by the DLP on the basis of the observed data. The portability of ratings and reviews of clients is subject to not affecting the data protection rights of the clients under GDPR, i.e. those data will probably have to be fully anonymised before transmitting. Also, personal data will have to be transmitted without prejudice to other PPPWs' data protection rights.

Contrary to Article 20(2) GDPR, the PPPW's right to have the personal data transmitted by the DLP '*directly to a third party'* is not subject to the condition of technical feasibility, as it is assumed that DLP should have those technical means. The 'third party' could be another DLP (as stated in Recital 45), but also a workers' organisation (such as a trade union) or a neutral third party (such as a data trust). Furthermore, DLPs have to provide PPPWs with free-of-charge tools to facilitate the exercise of portability rights both under Article 20 GDPR and this provision. This could be technical interfaces in the DLP's app or website where the personal data in question can be easily downloaded or transferred in a secure manner.

Discussion:

([17]) Guidelines on the right to data portability under Regulation 2016/679, WP242 rev.01, available at EDPB / WP29 Guidelines on data portability

One **Member State expert** asked about the relationship between Article 9 and the information requirements of Articles 12-15 GDPR. The **Commission services** referred to Recital 44, which states that the information duties in Article 9 are 'in addition to' the GDPR. However, it could be argued that Article 9 at times specifies or particularises the GDPR. For example, Article 9(1)(a)(iv) is a specification and possibly an addition to Articles 13(1)(e) and (f), 14(1)(e) and (f) and 15(1)(c) GDPR; Article 9(1)(b)(iii) is rather a specification of Articles 13(2)(f), 14(2)(g) and 15(1)(h) GDPR. Lastly, the Commission services consider that the exemptions in Articles 13(4) and 14(5) GDPR do not apply when it comes to transparency with regard to the use of AMDMS.

One **Member State expert** asked to what extent DLPs can invoke the protection of trade secrets, for example with regard to information about the categories of data and key parameters specified in Article 9(2)(b)(iii). In the absence of provisions covering such aspects, the Commission services referred to Recital 63 GDPR, which refers to the protection of *'trade secrets or intellectual property and in particular the copyright protecting the software'*. When a data controller considers whether to provide information, the result of those considerations should not be a refusal to provide all information. It also referenced the opinion of the Advocate General in case C-634/21 OQ v Land Hesse,([18]) who interpreted Recital 63 GDPR as ensuring that a minimum amount of information is to be provided in any event. Invoking the protection of trade secrets should not be a justification for a DLP's absolute refusal to provide information.

One **Member State expert** asked about the type and nature of the 'main parameters' of the ADMS that DLPs are required to inform about under Article 9(1)(b)(iii). The **Commission services** referred to similar wording in other EU legislation, such as the DSA (Article 27), and consider that 'main parameters' could be both of quantitative and qualitative nature. Some examples in the ride hailing sector could include: the distance from clients, past reviews, type and size of vehicle, driving behaviour. Not only the parameter itself should be considered, but also its influence on the outcomes of the ADMS (e.g. impact of driving speed on task allocation).

One **Member State expert** asked whether, under Article 9(1)(b)(iv), a decision on contractual status means termination of the contract or any other action. In the Commission services' view, any consequential decision that is taken or supported by ADMS should be covered, including e.g. contractual changes to the law applicable, the amount of pay, the duration of the contract, etc.

Several **Member State experts** inquired about the difference in scope between *'the categories of decision'* in Article 9(1)(b)(ii) and 'all categories of decision' in 9(1)(c) and asked for examples. The **Commission services** recalled that Article 9(1)(c) expands the scope of the information obligation on ADMS to all categories of automated decision, also those that do not meet the significance threshold in the definition of ADMS, and gave the following examples of categories of decision not captured under Article 9(1)(b)(ii) but covered by Article 9(1)(c): an automated system that decides which client reviews to publish on a PPPW's profile – the decision would not significantly affect the PPPW, but could affect them nonetheless; when monitoring the route taken by a courier delivering a task, the automated system instantly notifies the client of specific events (e.g. of possible delays or stops); an automated system profiling PPPWs to group them in certain categories (e.g. that the DLP considers important for logistics).

One **Member State expert** asked whether an intermediary using AMDMS would be bound by the information obligations in Article 9, since the Article refers to DLPs only. **Trade unions** requested clarifications in case the intermediary does not control or run the application or algorithms. To ensure the effectiveness of Article 3, the **Commission**

([18]) CURIA - Documents

services understand that the information would need to be provided by the party owning or managing the automated system. In practical terms, PPPWs would typically have to use the app/website of the DLP, and information on the use of AMDMS could be provided on that app/website. In addition, in order to qualify as DLP under the definition in the Directive, the use of AMDMS is one of the conditions. Therefore, the parties running the relevant automated systems would have a duty of cooperation and joint obligations, including in cases where both the DLP and the intermediary run different relevant automated systems.

Trade unions asked if Article 9 obliges DLPs to spontaneously and unconditionally provide the listed information elements to platform workers' representatives, without the need for representatives to prove to the DLP that they have a member working for the platform, or to take into account the (alleged) employment status of the PPPW. The **Commission services** agreed that information should be provided spontaneously to platform workers' representatives (and to representatives of PPPWs, by extension via Article 15). On whether it should be provided unconditionally, the **Commission services** considered that the way representation is ensured and recognised depends on national law and practice, and highlighted that the obligation in Article 9 does not amount to making the information publicly available; given that Article 9 mostly deals with data protection matters, DLPs should in principle share the same information to both types of workers' representatives and representatives of non-worker PPPWs.

On Article 9(2), one **Member State expert** asked about the language in which the information needs to be provided. As the Directive is silent, the **Commission services** pointed to Member States' margin of appreciation. However, the requirements of transparency, intelligibility, and of clear and plain language seem to indicate that the language used should be at least that of the place in the Union where the platform work is being performed.

On Article 9(3) and (4), **trade unions** asked how the transparency rights of PPPWs who are already working for a given DLP and of representatives can be respected on the first day that the Directive applies. The **Commission services** considered that DLPs should proactively provide information on those automated systems and their features that directly affect PPPWs on that day at the latest; as to representatives, they referred to existing national practices by which representatives make themselves known to the employer or to the organisation that has contracts with PPPWs.

A **Member State expert** asked about the timeframe for DLPs to provide an answer when PPPWs request information in accordance with the last sentence of paragraph 3, and if Article 12(3) GDPR could be used in the absence of a deadline in the Directive. The **Commission services** confirmed that this should be the case; however, as the Directive is a minimum harmonisation instrument, Member States could provide for even stricter deadlines. Another **Member State expert** followed up with a question on whether that GDPR deadline should also apply to the requests mentioned in Article 9(4) and (5). The **Commission services** underlined that the Directive does not contain deadlines and explained that, in its previous answer, it had made the connection with the GDPR deadlines as regards requests of data subjects (i.e. PPPWs). That link is less clear as regards requests of representatives and national competent authorities. Member States can decide whether to align with the GDPR deadline.

On Article 9(6), **trade unions** pointed to the potentially sensitive nature of personal data, and asked whether it will be possible for PPPWs to ask portability for one type of data and refuse other data, and whether there should be an agreed format that is compatible between different DLPs. The **Commission services** stressed that it is a PPPW's choice whether or not to port the data; it would in principle be possible to select or specify categories of data, but not to ask the DLP to make a selection within a category (e.g. only

positive reviews). On the format, Recital 45 specifies that personal data must be provided in a structured, commonly used and machine-readable format.

One **Member State expert** asked about the meaning of 'tools to facilitate the effective exercise of their portability rights', and whether an interface guaranteeing an effective portability of personal data meets the requirements. The **Commission services** replied that the exact nature of the tools is not specified, and that the facilitation could indeed be provided by technical interfaces in the app or website of the DLP where the data can be easily downloaded or transferred.

Another **Member State expert** asked whether Article 9(6) implies an obligation of the third party to whom the data is transmitted to integrate such data into its own system. The **Commission services** replied that Article 9(6) only concerns the relations between the PPPW and the DLP which currently stores the data, and does not create any obligations for third parties, such as the recipients of the transmitted data.

On a question about porting ratings and reviews given by clients, the **Commission services** replied that the provision refers to the GDPR rights of the recipients of the service, i.e. the clients' data protection rights must be preserved. This could, indeed, be achieved by anonymising their data or by obtaining their consent.

3.4 Human oversight of automated monitoring systems and automated decision-making systems (Article 10)

Article 10:

1. Member States shall ensure that digital labour platforms oversee and, with the involvement of workers' representatives, regularly and in any event every two years, carry out an evaluation of the impact of individual decisions taken or supported by automated monitoring systems and automated decision-making systems on persons performing platform work, including, where applicable, on their working conditions and equal treatment at work.

2. Member States shall require digital labour platforms to ensure sufficient human resources for the effective oversight and evaluation of the impact of individual decisions taken or supported by automated monitoring systems or automated decision-making systems. The persons charged by the digital labour platform with the function of oversight and evaluation shall have the competence, training and authority necessary to exercise that function, including for overriding automated decisions. Those persons shall enjoy protection from dismissal or its equivalent, disciplinary measures and other adverse treatment where they exercise their functions.

3. Where the oversight or the evaluation referred to in paragraph 1 identifies a high risk of discrimination at work in the use of automated monitoring systems or automated decision-making systems or finds that individual decisions taken or supported by automated monitoring systems or automated decision-making systems have infringed the rights of a person performing platform work, the digital labour platform shall take the steps necessary, including, if appropriate, the modification of the automated monitoring system or the automated decision-making system or the discontinuation of its use, in order to avoid such decisions in the future.

4. Information on the evaluation pursuant to paragraph 1 shall be transmitted to platform workers' representatives. Digital labour platforms shall also make that information

available to persons performing platform work and the national competent authorities upon their request.

5. Any decision to restrict, suspend or terminate the contractual relationship or the account of a person performing platform work or any other decision of equivalent detriment shall be taken by a human being.

***Recital (46):** In some cases, digital labour platforms do not formally terminate their relationship with a person performing platform work but restrict the account of the person performing platform work. Restricting the account is to be understood as any limitation imposed on that person's ability to perform platform work through the account, including restricting the access to the account or to work assignments.*

***Recital (47):** Digital labour platforms make extensive use of automated monitoring systems and automated decision-making systems in managing persons performing platform work. Monitoring by electronic means can be intrusive and decisions taken or supported by such systems, such as those related to the offer or assignment of tasks, the earnings, their safety and health, their working time, their access to training, their promotion or status within the organisation and contractual status, directly affect the persons performing platform work, who might not have a direct contact with a human manager or supervisor. Digital labour platforms should therefore ensure human oversight and regularly, in any event every two years, carry out an evaluation of the impact of individual decisions taken or supported by automated monitoring systems or automated decision-making systems on persons performing platform work including, where applicable, their working conditions and equal treatment at work. Workers' representatives should be involved in the evaluation process. Digital labour platforms should ensure sufficient human resources for the purpose of such oversight and evaluation. The persons charged by the digital labour platform with the function of oversight should have the competence, training and authority necessary to exercise that function and in particular the right to override automated decisions. They should be protected from dismissal, disciplinary measures or other adverse treatment for exercising their functions. In addition, it is important that digital labour platforms tackle systematic shortcomings in the use of automated monitoring systems and automated decision-making systems. Therefore, where the oversight activities identify a high risk of discrimination at work, or the infringement of rights of persons performing platform work, digital labour platforms should take appropriate measures to address them, including the possibility to discontinue such systems.*

***Recital (48):** Regulation (EU) 2016/679 requires data controllers to implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests in cases where the latter is subject to decisions based solely on automated processing. That provision requires, as a minimum, the data subject's right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision. In addition to the requirements laid down in Regulation (EU) 2016/679, in the context of algorithmic management and considering the serious impact on persons performing platform work of decisions of restricting, suspending or terminating their contractual relationship or their account, or any decision of equivalent detriment, such decisions should always be taken by a human being.*

Article 10, supported by Recital 47, establishes a framework for human oversight and periodic evaluations to ensure fairness and protect workers' rights in the use of AMDMS, complementing the AI Act's provisions on human oversight.

Paragraph 1 requires DLPs to oversee (continuously and not only periodically) and conduct evaluations at least every two years, with workers' representatives involved, to assess the impact of individual decisions made or supported by AMDMS on PPPWs, including, where applicable, on their working conditions and equal treatment. The

evaluation should typically result in a written document. The reference to 'individual decisions' should be understood in the sense of Recital 49: 'a decision, the lack of a decision or a set of decisions'. Article 10 focuses solely on the impact of decisions made or supported by AMDMS on PPPW, not on evaluating the technical operation or design of the systems themselves.

According to paragraph 2, DLPs have to provide sufficient human resources for effective oversight and evaluation, ensuring that individuals responsible have the necessary competence, training, and authority, including the ability to override automated decisions. These individuals are protected from dismissal, disciplinary measures, or other adverse treatment for performing their oversight functions. This provision is to be read in reference to Articles 22 and 23 of the Directive, and aims to grant autonomy to the persons in charge of oversight, in order to encourage them to thoroughly scrutinise such decisions.

If evaluations or oversight identify a high risk of discrimination or infringement of PPPW's rights by AMDMS, according to paragraph 3, DLPs have to take corrective action, such as modifying or discontinuing the systems to prevent future issues. 'High risk' in this regard means either a high chance of materialising or the likelihood of serious harm if the risk materialises. Regarding the occurrence of 'infringement', a single infringement suffices. The source of the rights infringed is irrelevant, as is the field of law, extending beyond the Platform Work Directive. Corrective measures taken should have the purpose to avoid future discrimination and infringements of rights by automated decisions. The provision clarifies that this can include modifications of the system or discontinuing its use altogether.

Evaluation results must be shared with platform workers' representatives and made available to PPPWs and national authorities upon request (paragraph 4). This concerns at least a written summary of the periodical evaluation.

Paragraph 5 stipulates that decisions to restrict, suspend, or terminate the contractual relationship or the account of a PPPW, or any decision of equivalent detriment, must be made by a human, not an automated system. All the decisions concerned mean that the PPPW cannot work anymore to a full extent through the DLP and thus is likely to suffer a loss of income. Such decisions with a 'serious impact on PPPW' (Recital 48) therefore must be taken by a human being who can assess the reasons for that decision and the consequences it will have for the PPPW concerned. This prohibition only concerns fully automated decisions. ADMS can thus still be used to support such decisions. No examples are given for decisions 'of equivalent detriment', but an equally serious impact of loss of income is likely required. This provision goes beyond (i.e. 'in addition to' – see Recital 48) the prohibition in Article 22(1) GDPR which is subject to considerable exceptions. There are no exceptions regarding Article 10(5). Recital 46 on the meaning of 'restricting the account' applies also regarding this provision.

Discussion:

During the discussion, the **Commission services** clarified that, while Article 10(1) does not explicitly mandate evaluation of every single decision, it does call for an assessment of the impact of individual decisions taken or supported by AMDMS on PPPWs at broader level. Where automated processing does not allow the analysis of all decisions, representative sampling could be used to manage this process feasibly and proportionately, and to assess the systemic impact of decisions affecting individual PPPW.

On a question about the differentiation between oversight and evaluation, the **Commission services** explained that oversight involves continuous, proactive monitoring of AMDMS decisions, while evaluations are periodic, structured assessments occurring at least every two years, focusing on the individual decisions' impact on PPPWs. The

oversight requirement does not necessitate validating or approving all decisions ('human-in-the-loop') but rather monitoring their overall impact and intervening where necessary ('human-on-the-loop').

On platform workers' representatives' involvement, the **Commission services** highlighted that, although modalities are not specified, meaningful consultation of representatives, not necessarily their agreement, is adequate under the provision. Furthermore, while the Directive refers to platform workers' representatives, this could extend to all representatives of PPPW per Article 15, which refers to Article 10(4), however not to Article 10(1). It remains unclear whether this was deliberate or an oversight in the legislative text.

On the question from **several Member State experts** if the oversight could be entrusted to external experts, the **Commission services** confirmed that the persons in charge of human oversight do not need to be employees of the DLP; external persons with this mandate would also have to be protected from termination of contract.

Trade unions inquired whether human oversight could be performed remotely. A **Member State expert** asked about the meaning of 'competence, training and authority'. The **Commission services** explained that the Directive does not specify whether remote human oversight is possible, however the notion of '*competence'* should be understood as having a good understanding of the situation of the PPPW in question. In their understanding, 'competence' refers to the knowledge and skills to assess the impacts of individual decisions taken or supported by AMDMS on PPPW; 'training' involves some formal instruction or education to develop these skills, while 'authority' is the power and autonomy to assess outcomes of systems and to override automated decisions if necessary.

Replying to a **Member State expert's** question on the number of designated persons required, the **Commission services** explained that human resources need to be 'sufficient' to make oversight effective.

A **Member State expert** asked whether the protection of the person in Article 10(2) was comparable to the protection of a data protection officer as laid out in the GDPR. The **Commission services** noted a certain analogy with the role of the data protection officer (Article 38(2) and (3) GDPR), with the latter however being more detailed, containing explicit requirements for independence, access to resources, and a conflict-of-interest provision.

Trade unions inquired about the cross-national application of paragraph 3. Specifically, they asked whether DLPs active in different Member States should adjust systems in other Member States if a high risk is identified in one Member State. The **Commission services** noted that the Directive does not explicitly address this issue, but inferred that, if a DLP operates the same system across Member States and identifies a problem in one Member State that is not tied to specific legislation of this Member State, corrective actions should be considered for all applicable Member States.

A **Member State expert** asked about the level of detail to be provided under Article 10(4) and who the competent authorities under this provision would be. The **Commission services** specified that information from evaluations should be promptly shared with platform workers' representatives without request. Details should include at minimum a summary, since the text refers to '*information on the evaluation'*. In line with Article 24(1), data protection authorities are competent authorities as far as data protection matters are concerned, but Member States could consider to what extent other authorities, such as labour inspectorates, may also be competent, e.g. for information on working conditions.

Trade unions stated that, in conjunction with Article 15, Article 10(4) would also apply to representatives of self-employed PPPW, but only in relation to the protection of personal data, and inquired if this implies any difference as regards the information they would receive. The **Commission services** stated that, depending on the rights impacted by AMDMS, different types of information would have to be given to representatives of self-employed PPPWs and to platform workers' representatives.

Regarding Article 10(5), **a Member State expert** inquired about the meaning of *'equivalent detriment'*, with **Commission services** explaining this requires an equally serious impact, such as loss of income, giving as example the lowering of a PPPW's ranking or visibility on the app.

A **Member State expert** inquired about the interplay of Article 10(5) with Article 9(1)(b)(iv), under which DLP have to inform PPPW about 'the grounds for decisions to restrict, suspend or terminate the account of the person performing platform work, to refuse the payment for work performed by them, as well as for decisions on their contractual status or any decision of equivalent or detrimental effect'. The **Commission services** explained that Article 10(5) prohibits only fully automated decisions, which means that automated systems that support such decisions (later taken by humans), e.g. by making recommendations, can still be deployed. For such cases, grounds need to be given.

3.5 Human review (Article 11)

Article 11:

1. Member States shall ensure that persons performing platform work have the right to obtain an oral or written explanation from the digital labour platform for any decision taken or supported by an automated decision-making system without undue delay. The explanation shall be provided in a transparent and intelligible manner, using clear and plain language. Member States shall ensure that digital labour platforms provide persons performing platform work 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 competence, training and authority necessary to exercise that function.

Digital labour platforms shall provide the person performing platform work 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 account of the person performing platform work, any decision to refuse the payment for work performed by the person performing platform work, any decision on the contractual status of the person performing platform work, any decision with similar effects or any other decision affecting the essential aspects of the employment or other contractual relationships, without undue delay and at the latest on the date on which it takes effect.

2. Persons performing platform work and, in accordance with national law or practice, representatives of persons performing platform work acting on their behalf shall have the right to request the digital labour platform to review the decisions referred to in paragraph 1. The digital labour platform shall respond to such request by providing the person performing platform work with a sufficiently precise and adequately substantiated reply in the form of a written document, which may be in electronic form, without undue delay and in any event within two weeks of receipt of the request.

3. Where the decision referred to in paragraph 1 infringes the rights of a person performing platform work, the digital labour platform shall rectify that decision without delay and in any case within two weeks of the adoption of the decision. Where such rectification is not possible, the digital labour platform shall offer adequate compensation for the damage sustained. In any event, the digital labour platform shall take the steps necessary, including, if appropriate, the modification of the automated decision-making system or the discontinuation of its use, in order to avoid such decisions in the future.

4. This Article does not affect disciplinary and dismissal procedures laid down in national law, collective agreements and practice.

5. This Article shall not apply to persons performing platform work who are also business users as defined in Article 2, point (1), of Regulation (EU) 2019/1150.

***Recital (48):** Regulation (EU) 2016/679 requires data controllers to implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests in cases where the latter is subject to decisions based solely on automated processing. That provision requires, as a minimum, the data subject's right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision. In addition to the requirements laid down in Regulation (EU) 2016/679, in the context of algorithmic management and considering the serious impact on persons performing platform work of decisions of restricting, suspending or terminating their contractual relationship or their account, or any decision of equivalent detriment, such decisions should always be taken by a human being.*

***Recital (49):** In addition to the requirements of Regulation (EU) 2016/679 in the context of algorithmic management in platform work, persons performing platform work should have the right to obtain, without undue delay, an explanation from the digital labour platform for a decision, the lack of a decision or a set of decisions taken or supported by automated decision-making systems. For that purpose, the digital labour platform should provide persons performing platform work with the possibility to discuss and clarify the facts, circumstances and reasons for such decisions with a human contact person at the digital labour platform. In addition, certain decisions are likely to have particularly significant negative effects on persons performing platform work, in particular on their potential earnings. For decisions to restrict, suspend or terminate the account of a person performing platform work, to refuse the payment for work performed by that person, or affecting the essential aspects of the contractual relationship, the digital labour platform should provide the person performing platform work, at the earliest opportunity and at the latest on the date on which such decisions take effect, with a written statement of reasons for such decisions. Where the explanation or the reasons provided are not satisfactory or where persons performing platform work consider their rights to be infringed by a decision, they should also have the right to request the digital labour platform to review the decision and to obtain a substantiated reply without undue delay, and in any event within two weeks of receipt of the request. Where such decisions infringe those persons' rights, such as their labour rights, their right to non-discrimination or the right to protection of their personal data, the digital labour platform should rectify such decisions without undue delay or, where that is not possible, should provide adequate compensation for the damage sustained and take the steps necessary to avoid similar decisions in the future, including, if appropriate, the modification or the discontinuation of the use of the relevant automated decision-making system. With regard to human review of decisions, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.*

Article 11 concerns the review of individual automated decisions, whereas Article 10 is concerned with monitoring the impact of AMDMS at a broader level. Article 11(1) also aims at transparency of automated decisions. While Article 9 ensures ex-ante and abstract information, Article 11(1) prescribes explanations after a decision has been taken

in a specific, concrete case. The explanation should be meaningful, clarifying why a decision was taken in a particular way, clear and understandable. What needs to be explained are the facts, circumstances and reasons having led to the decision (main parameters, logic involved, etc.), applied to the specific case. While most explanations can be oral or written, those for particularly serious decisions must be in writing and provided without any request and at the latest on the day the decision takes effect (second sub-paragraph). The provision also includes the right to contact a human person to discuss automated decisions. The requirements for those contact persons are the same as for Article 10 ('competence, training and authority necessary to exercise that function').

Article 11(2) grants PPPWs the right to request a review of the automated decision, i.e. the right to contest the decision. This review should be conducted by a human being, who should consider the decision with human reasoning. Representatives of PPPWs can also request a review on behalf of a PPPW. The DLP must reply in writing within two weeks with substantiated arguments.

Article 11(3) grants PPPWs the right to rectification of unlawful decisions, in order to correct their effects. It applies when the automated decision has infringed the rights of PPPWs (which are not limited to only those in the Directive). If it is no longer possible to rectify the decision, then the PPPW has the right to adequate compensation for the damage sustained. Similar to Article 10, the provision also requires the DLP to take steps to avoid such decisions in the future.

In line with paragraph (4), Article 11 does not affect national disciplinary and dismissal procedures, i.e. legal safeguards remain unaffected by the Directive if they are more stringent.

Article 11(5) contains a conflict rule to clarify the interplay with the Platform to Business (P2B) Regulation (2019/1150), which contains provisions on explanation of important decisions and internal complaint-handling systems (Articles 4 and 11 respectively). If a DLP is also a provider of online intermediating services as defined in the P2B Regulation, and if a self-employed PPPW is a business user within the meaning of the P2B Regulation, the respective provisions of P2B Regulation prevail over Article 11.

Discussion:

Trade unions asked whether, in relation to intermediaries, Member States could implement a provision stating that PPPWs have the right to obtain a review vis-à-vis their employer or the DLP. The **Commission services** underlined that, in the case of intermediaries, the human review of decisions taken or supported by ADMS should normally be conducted by the entity that is managing the ADMS, whether the DLP or the intermediary. Only that entity could effectively review or change that decision.

A **Member State expert** asked what is meant by individual decisions under Article 11(1), and whether it refers to any kind of individual decision or a more general list of decisions taken or supported by ADMS. The **Commission services** confirmed that the wording of Article 11(1) indeed refers to any kind of individual decision. Importantly, Recital 49 explains the concept and refers to *'a decision, the lack of a decision or a set of decisions'*. However, there is a threshold of significant effect in the definition of ADMS which should be taken into account. For instance, while single decisions of task allocation may not have significant impact on individual PPPW, a pattern of decisions may have such effect. If a PPPW is connected to the app and does not get any task proposals for a long time while other PPPWs in the same area do, this may warrant an explanation from the DLP.

A **Member State expert** asked how broadly the obligation to ensure 'access' to a contact person under Article 11(1) should be understood. The **Commission services** took the view that the access to a contact person must be effective, i.e. enable the PPPW to

benefit from it effectively. There are no precise indications on availability or working hours, and this may depend on specific circumstances. However, the presence of a contact person should offer PPPWs a real and effective and not only fictitious possibility to discuss automated decisions.

A **Member State expert** asked for clarifications on the interaction between Articles 9(1)(b)(iv), 10(5) and 11(1), second sub-paragraph. The **Commission services** recalled that the definition of ADMS includes systems that support decisions. For instance, some DLPs have fraud detection systems which can result in the suspension of accounts. A system which automatically suspends the account when it detects fraud would take a fully automated decision, which is prohibited under Article 10(5). If the system detects fraud and suggests the suspension to a human operator who takes the final decision after sufficient examination of the facts, this would be a partly automated decision (allowed under Article 10(5)). In this case, the DLP bears the obligation under Article 9 to provide the possible grounds, and to provide a written statement of reasons under Article 11. While the grounds should be given in advance and *in abstracto* (e.g. that an account may be suspended or terminated if fraud is detected), the explanation *ex post* should be more concrete (e.g. what kind of fraud was suspected/identified, based on which evidence).

A **Member State expert** asked whether there is an obligation for DLPs to inform the PPPWs about who the contact person is, in order to make the right effective. The **Commission services** replied that the provision does not require the contact person to be known in advance. There could also be several contact persons, but it must be clear to the PPPW how to contact the contact person, e.g. an e-mail address, phone number.

A **Member State expert** asked whether the person taking the initial decision, the contact person from Article 11(1) and the person conducting the review from Article 11(2) have to be different persons. The **Commission services** expressed the view that this is not required by the Directive. The main purpose of the human review is to reappreciate the automated output (i.e. decision or recommendation) with human judgment and understanding. The question to be asked is: would a human manager have taken the same decision? The provision does not strictly require that another person than the one involved in the initial decision (if there was any) conducts the review, but there must be an effective reassessment of facts. Also, the substantiated reply must not merely confirm the decision but give a reasoning – understandable to humans – why the decision was well founded. The same **Member State expert** asked whether the person responsible for oversight referred to in Article 10(2) also carries out the tasks set out in Article 11. The **Commission services** did not see any reason why this could not be the case.

Member State experts asked whether the review process is exclusively internal, and which entity will declare or decide that there is an infringement of rights (Article 11(3)). The **Commission services** replied that there are two scenarios: 1) the DLP could recognise itself that there was an infringement of rights, in which case the procedure would remain internal; 2) if the DLP does not consider the decision as unlawful, the PPPW could revert to a court or dispute resolution mechanism, where available. If it is found that rights were infringed, the duty to rectify the decision or the PPPW's adequate compensation would also apply.

A **Member State expert** asked whether the provision in Article 11(3) applies to all the decisions mentioned in Article 11(1). The **Commission services** confirmed that it applies to any decision taken or supported by ADMS, covered by the first subparagraph of Article 11(1), i.e. not just the specific subset of highly significant decisions listed in the second subparagraph of Article 11(1).

Member State experts asked whether the deadline to rectify the decision within two weeks after its adoption runs from the date of the decision or from the date on which the infringement of rights is established, and whether it would also apply where a court gets

involved. The **Commission services** replied that the obligation to rectify a decision can only arise from the moment the infringement of rights is identified. The rectification must happen without delay from that moment, so ideally immediately. The specific mention of '*within two weeks of the adoption of the decision*' emphasises the urgency and sets a maximum timeframe from the original decision date. However, this may not be possible in all cases, notably if the infringement is identified after that deadline, for example where a court is involved. However, a similar timeline for rectification should apply once the infringement is confirmed.

One **Member State expert** asked whether, if PPPW make a request for rectification or compensation after the two-week delay from the adoption of the decision, they would have directly a right to compensation for damages sustained without a two-week deadline for the DLP to correct the decision. The **Commission services** recalled that the deadline can only apply if the infringement is identified within this timeframe. Where the infringement is only identified after the deadline, the decision should still be rectified where possible and without delay. The right to compensation only applies if the decision cannot be rectified anymore.

Member State experts asked about the parameters of adequate compensation, whether the type of infringement should be considered, and who would determine its amount. The **Commission services** agreed that compensation should depend on the type of infringement and the area of law concerned. This provision refers to compensation for the damage sustained by the PPPW due to the unlawful automated decision. For instance, in case of a wrongful suspension of the account for a few days, the decision should be rectified. However, it may also have led to a loss of income, which should be compensated by the DLP. Ideally, the PPPW and the DLP can agree on the amount. If this is not the case, the PPPW may have to turn to a court (or a dispute resolution body, where available).

A **Member State expert** pointed out that national laws may not require reasons to be provided for the termination of an employment contract and asked whether Article 11(4) is to be understood as meaning that, in such a case, national rules on termination take precedence and therefore no reason for termination needs to be provided. The **Commission services** clarified that, while national disciplinary or dismissal procedures remain unaffected, the rights or safeguards in the Directive must apply. Article 11(4) was intended to preserve any more protective rules for workers, e.g. stricter deadlines, limited grounds for dismissals, severance pay or compensation in case of unfair dismissal.

A **Member State expert** asked two interrelated questions on Article 11(5) regarding the relationship with the P2B Regulation: is it correct that, for the PPPW offering services to a consumer, the P2B Regulation applies, while for the PPPW offering services to a business or professional, Article 11 of the Directive applies? The **Commission services** confirmed that, in principle, the P2B Regulation (and in particular its Articles 4 and 11) applies if the self-employed PPPW also falls under the definition of 'business user' in Article 2(1) P2B Regulation and the DLP under the definition of 'provider of online intermediation services' under Article 2(3) P2B Regulation. Otherwise, only the Directive applies.

Secondly, the **Member State expert** referred to specific CJEU rulings (C-434/15 of December 20, 2017 and C-320/16 of April 10, 2018) where the CJEU considered a DLP as a service within the transport sector and not a simple intermediation company, and asked what this implies as to the applicability of Article 11 or the P2B Regulation for DLPs that are not solely online intermediation services. The **Commission services** explained that this issue can only arise for self-employed PPPWs. The exclusion under Article 11(5) applies only where the conditions of the P2B Regulation's definitions are met (see above). This delineation must be made functionally and case by case. As regards the specific case of the judgments referred to, the CJEU found that the DLP in question did not provide an information society service but exercised decisive control over key aspects of

the underlying transport service, including pricing and access. On that basis, the service was classified as a transport service. If a DLP is primarily a 'service in the field of transport' based on the CJEU rulings, it does not primarily provide 'online intermediation services' as defined by the P2B Regulation. Following that logic, the P2B Regulation would not apply to the relationship between the DLP and its self-employed PPPW. Consequently, the PPPWs would also not qualify as 'business users' within the meaning of the P2B Regulation and the PPPWs would remain covered under Article 11 of the Directive.

3.6 Safety and Health (Article 12)

Article 12:

1. Without prejudice to Directive 89/391/EEC and related directives in the field of safety and health at work, with regard to platform workers, digital labour platforms shall:

(a) evaluate the risks of automated monitoring systems and automated decision-making systems to their safety and health, 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.

2. In relation to the requirements laid down in paragraph 1 of this Article, digital labour platforms shall ensure effective information and consultation and the participation of platform workers and/or their representatives in accordance with Articles 10 and 11 of Directive 89/391/EEC.

3. Digital labour platforms shall not use automated monitoring systems or automated decision-making systems in a manner that puts undue pressure on platform workers or otherwise puts at risk the safety and physical and mental health of platform workers.

4. In addition to automated decision-making systems, this Article shall also apply where digital labour platforms use automated systems taking or supporting decisions that affect platform workers in any manner.

5. In order to ensure the safety and health of platform workers, including from violence and harassment, Member States shall ensure that digital labour platforms take preventive measures, including providing for effective reporting channels.

Recital (50): *Council Directive 89/391/EEC[19] introduces measures to encourage improvements in the safety and health of workers at work, including the obligation for employers to assess the occupational health and safety risks and lays down general principles of prevention that employers are to implement. Automated monitoring systems and automated decision-making systems potentially have significant impact on the safety and on the physical and mental health of platform workers. Algorithmic direction, evaluation, and discipline intensify work effort by increasing monitoring, raising the pace required from workers, minimising gaps in workflow, and extending work activity beyond*

([19]) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

the conventional workplace and working hours. The limited learning at work and the limited influence over tasks due to the use of non-transparent algorithms, work intensification and insecurity derived from the use of automated monitoring systems or automated decision-making systems are likely to increase workforce's stress and anxiety. Therefore, digital labour platforms should evaluate those risks, assess whether the safeguards of the systems are appropriate to address those risks and take appropriate preventive and protective measures. They should avoid that the use of such systems results in undue pressure on workers or puts their health at risk. In order to strengthen the effectiveness of those provisions, the digital labour platform should make their risk evaluation and the assessment of the mitigating measures available to platform workers, their representatives and the competent authorities.

***Recital (51):** Persons performing platform work are exposed, in particular in on-location platform work, to a risk of violence and harassment, without having a physical workplace where they are able to address complaints. Harassment and sexual harassment are liable to have a negative impact on the health and safety of platform workers. Member States should therefore provide for preventive measures, including the setting up of effective reporting channels. Member States are also encouraged to support effective measures to combat violence and harassment in platform work and, in particular, include appropriate reporting channels for persons performing platform work who do not have an employment relationship.*

Article 12 establishes safety and health obligations for DLPs which are employers regarding their platform workers. It addresses risks from AMDMS, ensures platform workers' and their representatives' information, consultation and participation, and addresses specific issues like violence and harassment.

Under paragraph 1, which follows the approach of the OSH Framework Directive 89/391/EEC, DLPs must evaluate risks that AMDMS pose to workers' safety and health, assess the safeguards and take the necessary preventive and protective measures. Paragraph 2 clarifies that information, consultation and participation of platform workers 'and/or' their representatives takes place in the framework of the OSH Framework Directive. Paragraph 3 prohibits the use of AMDMS in ways that put undue pressure on platform workers 'or otherwise puts at risk' their safety, physical or mental health. This is particularly important for types of on-location platform work that involve dangerous activities, such as riding a bike or scooter. Paragraph 4 extends these obligations to any automated system taking or supporting decisions that affect platform workers in any manner, similarly to Articles 7(3) and 9(1)(c). Paragraph 5 requires Member States to ensure DLPs adopt preventive measures to ensure the safety and health of platform workers, including providing for effective reporting channels.

Discussion:

A **Member State expert** inquired if Article 12 imposes stricter standards than the OSH Framework Directive. The **Commission services** explained that the Platform Work Directive is *'without prejudice'*, which means that the general principles and procedural rules of the OSH Framework Directive apply also to platform work, pointing to Articles 6(3)(c) and 11 of the OSH Framework Directive as examples. The Platform Work Directive is however more specific regarding certain aspects, for instance when specifying the obligation for DLPs to take preventive measures by providing for effective reporting channels.

In relation to intermediaries, one **Member State expert** asked if the protection of platform workers extends to workers of subcontractors, and **trade unions** asked about the responsibility to comply with the obligations of Article 12 if the employer is an intermediary, but the DLP has ownership of the AMDMS. The **Commission services** considered that the obligations on OSH should fall on the entity assuming the role of

employer, and suggested that Member States consider introducing a duty of cooperation and joint obligations between intermediary and DLP.

The **Member State expert** further inquired on the protection of self-employed PPPWs. In response, the **Commission services** recalled the 2003 Council Recommendation on protection of the health and safety at work of self-employed([20]) and referenced Recital 51, which encourages Member States to introduce appropriate reporting channels for PPPWs who do not have an employment relationship.

The **Member State expert** further asked for examples of appropriate safeguards. The **Commission services** consider that safeguards should be relevant, effective and proportionate to mitigate the risks identified in the evaluation, e.g. route optimisation to avoid dangerous routes, task limits, more flexible deadlines, algorithmic audits or training offered to platform workers.

Trade unions recalled that, even if the Directive does not do so, other EU legislation prohibits putting undue pressure on self-employed persons, and further inquired if paragraphs 1 and 3 prohibit appropriate prevention measures from being set in place via additional AMS, such as a camera. The **Commission services** drew attention to the prohibitions of the processing of personal data via AMDMS in Article 7, specifically letters a) (emotional or psychological state) and e) (inferring state of health or emotional or psychological state). To evaluate the risks of AMDMS on safety and health, DLPs can process anonymised data, e.g. can conduct workers' surveys or check general trends in stress complaints; when introducing preventive and protective measures, DLPs cannot, via AMDMS, process platform workers' personal data in a way that is prohibited under Article 7. The different provisions of the Directive must be read together.

A **Member State expert** inquired if a conflict exists between these two provisions, since Article 12 could imply processing health-related data prohibited under Article 7. The **Commission services** referred to the possibility to conduct the evaluation or introduce preventive and protective measures in full compliance with Article 7(1). They added that health-related data processed by a human being is not prohibited by Article 7, however it must be compliant with the GDPR.

When asked about the scope of paragraph 4, the **Commission services** explained that the paragraph extends the material scope beyond the definition of ADMS which requires a threshold of significance.

A **Member State expert** asked if the responsibility to introduce reporting channels falls on the DLP or on Member States, and another **Member State expert** inquired about the requirements for reporting channels to be considered effective. The **Commission services** clarified that this obligation falls on the DLP, and that in order to be effective, reporting channels should allow platform workers to easily, securely and privately report safety and health risks (e.g. an in-app reporting tool, an online portal or a dedicated hotline). Upon a **Member State expert'**s request for examples on preventive measures other than reporting channels, the **Commission services** referred to weather-based restrictions and GPS systems outlining the safest paths, training programs (e.g., on road safety, on harassment), emergency support or physical safety equipment.

([20]) Council recommendation of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed worker, OJ L 53, 28.2.2003.

3.7. Information and consultation (Article 13)

Article 13:

1. This Directive is without prejudice to Directive 89/391/EEC as regards information and consultation and to Directives 2002/14/EC or 2009/38/EC of the European Parliament and of the Council.

2. Member States shall ensure that information and consultation, as defined in Article 2, points (f) and (g), of Directive 2002/14/EC, of workers' representatives by digital labour platforms also covers decisions likely to lead to the introduction of or to substantial changes in the use of automated monitoring systems or automated decision-making systems.

For the purposes of this paragraph, information and consultation of workers' representatives shall be carried out under the same arrangements concerning the exercise of information and consultation rights as those laid down in Directive 2002/14/EC.

3. The platform workers' representatives 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 250 workers in the Member State concerned, the expenses of the expert shall be borne by the digital labour platform, provided that they are proportionate. Member States may determine the frequency of requests for an expert, while ensuring the effectiveness of the assistance.

Recital (52): *Information and consultation of workers' representatives, which are regulated at Union level pursuant to Directive 2002/14/EC, are key to fostering effective social dialogue. As the introduction of or substantial changes in the use of automated monitoring systems and automated decision-making systems by digital labour platforms have direct impacts on the work organisation and individual working conditions of platform workers, additional measures are necessary to ensure that digital labour platforms inform and effectively consult platform workers' representatives before such decisions are taken, at the appropriate level. Given the technical complexity of algorithmic management systems, information should be given in due time to enable platform workers' representatives to prepare for consultation, with the assistance of an expert chosen by the platform workers or their representatives in a concerted manner where needed. The information and consultation measures provided for in Directive 2002/14/EC remain unaffected by this Directive.*

Article 13 concerns collective rights and complements the existing directives on information and consultation, in particular Directive 2002/14/EC (i.e. it applies 'in addition'). It only applies to DLPs which are employers and to platform workers.

DLPs must inform and consult platform workers' representatives on 'decisions likely to lead to the introduction of or to substantial changes in the use of AMDMS'. Information and consultation must come at a time when the decision has not yet been taken, i.e. when the DLP is considering introducing a new system or changing an existing system. The definitions of information and consultation can be found in Article 2, points (f) and (g) of Directive 2002/14/EC. Information and consultation must be carried out 'under the same arrangements concerning the exercise of information and consultation rights as those laid down in Directive 2002/14/EC.' This means that the following provisions of Directive 2002/14/EC apply mutatis mutandis:

- Article 4(1), (3) and (4) on the practical arrangements;
- Article 5 on the possibility of a social partner agreement on the arrangements;

- Article 6 on confidential information;
- Article 7 on the protection of workers' representatives.

Under paragraph 3, DLPs are obliged to accept the involvement of an expert to assist the workers' representatives if the matter at hand is complex and requires external expertise to examine it and to formulate an opinion. The choice of the expert is up to the representatives. If the DLP has more than 250 'workers' in the Member State concerned (not only platform workers, but also other staff), it must pay for the expert, as long as expenses are proportionate.

Discussion:

One **Member State expert** asked if the implementation of Directive 2002/14/EC already satisfies the requirements of Article 13, or whether it will be necessary to extend the scope of the provisions transposing Directive 2002/14/EC. The **Commission services** replied that it will be necessary to expand those provisions. The obligation to inform and consult on decisions likely to lead to the introduction of or to substantial changes in the use of AMDMS must be made explicit in the national transposition.

The **Member State expert** also asked how the concept of 'substantial changes' in the use of AMDMS should be understood. The **Commission services** replied that the qualifier 'substantial' is to ensure proportionality and avoid unnecessary burden for DLPs. Substantial changes would imply a significant impact on working conditions, work organisation or related matters.

Trade unions inquired whether the company thresholds in Article 3 of Directive 2002/14/EC apply in the context of the PWD. The **Commission services** replied that they do not. Such thresholds are not an 'arrangement concerning the exercise' of information and consultation rights as stipulated in Article 13(2) ('same arrangements'), but they concern the scope of information and consultation obligations.

Another **Member State expert** asked if the standard consultation period foreseen in national law should be extended to take into account the complexity of information and consultation on algorithmic management. The **Commission services** responded that the Directive does not specify details on timing and that Member States would have some latitude to implement the provision in an appropriate and effective way.

In relation to Article 13(3), two **Member State experts** and **employers' organisations** asked who would decide on the need for involving an expert and who would choose the expert. The **Commission services** replied that, in line with the wording of the provision, the assessment whether an expert is necessary belongs to the workers' representatives ('necessary for them'). The latter also choose the expert ('an expert of their choice'), without need for the DLP's agreement. The Commission services recalled that it is not for the national transposition measure to determine the 'necessity'.

Trade unions asked whether a request for expert assistance covers consultations that require several stages before completion. The **Commission services** recalled that the expert would be called upon to examine the matter under consultation, hence the expert should be able to attend all meetings and consult all pertinent documents to be able to formulate an opinion.

A **Member State expert** asked whether the obligation for companies with more than 250 workers to pay for the expert's services must be included in the transposing legislation. The **Commission services** confirmed this.

A **Member State expert** asked what parameters could be used to determine the proportionality of the expert's expenses. The **Commission services** explained that, while

the Directive does not give any indications on the proportionate remuneration of the expert, relevant factors could include the complexity of the subject matter, the number of documents to study, the common rates for experts in this field of competence, and the extent of the changes which the new or changed AMDMS would bring for the platform workers.

A **Member State expert** asked how far Member States can go in limiting the frequency of requests for an expert whose costs are to be borne by large DLPs. The **Commission services** responded that the provision on the frequency of requests was introduced to contribute to the proportionality of costs for DLPs. It remains an option for Member States and should in any event not limit the possibility of workers' representatives to involve experts whenever necessary, if it does not entail costs for the DLPs.

In this regard, **a Member State expert** expressed the view that it is impossible to establish ex ante the ideal and proportionate frequency, as it will depend on the specific situation. **Another Member State expert** asked if it would be possible for Member States to transpose the clause on frequency in an abstract way. The **Commission services** recalled that there is no obligation for Member States to introduce these kinds of limits and confirmed that Member States may choose to determine the frequency either numerically or qualitatively.

3.8. Provision of information to workers (Article 14)

Article 14:

Where there are no representatives of platform workers, Member States shall ensure that digital labour platforms directly inform the platform workers concerned of decisions likely to lead to the introduction of or to substantial changes in the use of automated monitoring systems or automated decision-making systems. The information shall be provided in the form of a written document which may be in electronic form. It shall be provided in a transparent, intelligible and easily accessible form, using clear and plain language.

Recital (53): *In the absence of workers' representatives, it should be possible for the workers to be directly informed by the digital labour platform of the introduction of or substantial changes in the use of automated monitoring systems and automated decision-making systems.*

Article 14 only applies to DLPs where there are no representatives of platform workers. The provision solely provides for a duty of information, not of consultation. As with the information to be provided under Article 13, the information to be provided under Article 14 concerns decisions which have not yet been taken, giving platform workers the time and possibility to react. The information needs to be provided in a transparent, intelligible and easily accessible form, using clear and plain language.

Discussion:

In response to a query from **trade unions**, the **Commission services** explained that the information to be provided under Article 14 concerned decisions that were still being planned, whereas the information to be provided under Article 9(3)(b) concerned decisions which had already been taken.

A **Member State expert** asked for clarifications on the terms 'transparent, intelligible and easily accessible form, using clear and plain language'. The **Commission services**

recalled that the same terms appeared in Article 9 of the Directive and Articles 7 and 12 of the GDPR. It referred to the Guidelines on Transparency under the GDPR([21]) as last revised and adopted on 11 April 2018 by the Article 29 Working Party on data protection, which contains guidance and concrete examples on the different terms.

3.9. Specific arrangements for representatives of persons performing platform work other than platform workers' representatives (Article 15)

Article 15:

Representatives of persons performing platform work other than workers' representatives shall be able to exercise the rights provided to workers' representatives under Article 8(2), Article 9(1) and (4), Article 10(4) and Article 11(2) only insofar as they are acting on behalf of persons performing platform work who are not platform workers, with regard to the protection of their personal data.

Article 15 allows the representatives of PPPW other than workers' representatives to exercise rights afforded to workers' representatives under certain articles, namely Articles 8(2), 9(1) and (4), 10(4), and 11(2), but strictly with regard to the protection of the personal data of those PPPW who are not classified as platform workers.

Specifically, Article 15 mandates that wherever 'workers' representatives' are mentioned in Articles 8(2), 9(1) and (4), 10(4), and 11(2), this should be interpreted to also include representatives of PPPW, thus broadening the scope in this regard.

Critical to the understanding of Article 15 is the definition of 'representatives of PPPW'.

Discussion:

During the discussion, one **Member State expert** pointed out the necessity of Article 15, as the cited provisions would not otherwise include representatives of PPPW other than workers' representatives. **Trade unions** highlighted that self-employed individuals under this chapter also have rights not relating to data protection, and queried how Article 15 should be interpreted in this regard, and with respect to International Labour Organization Conventions. The **Commission services** clarified that the referenced provisions are limited to workers' representatives. Hence, Article 15 is crucial to broaden the scope to all representatives of PPPW, albeit restricted to personal data protection, meaning those rights based on Article 16 TFEU, not on Article 153 TFEU. On the question of trade unions, the Commission services affirmed that representatives of non-worker PPPW, like self-employed individuals, are restricted to exercising rights related to data protection matters under Article 15.

In further deliberations on Article 15, one **Member State expert** inquired about the implications of the phrase "acting on behalf of," specifically whether a specific type of authorisation is required for representatives under this provision. The **Commission services** clarified that such representation necessitates a legitimate basis according to national law and practice, but no specific authorisation type is mandated for representatives to act on behalf of non-worker PPPW by the Directive.

([21]) https://ec.europa.eu/newsroom/article29/redirection/document/51025.

4. Chapter IV on Transparency with regard to platform work

4.1. Declaration of platform work (Article 16)

Article 16:

Member States shall require digital labour platforms to declare work performed by platform workers to the competent authorities of the Member State in which the work is performed, in accordance with the rules and procedures laid down in the law of the Member States concerned.

This Article is without prejudice to specific obligations under Union law pursuant to which work is to be declared to relevant bodies of the Member State in cross-border situations.

Recital (56): *In order to enable national competent authorities to ensure that digital labour platforms comply with labour legislation and regulations, in particular if they are established in a Member State other than the Member State in which the platform worker is performing work or in a third country, digital labour platforms should declare work performed by platform workers to the competent authorities of the Member State in which the work is performed. A systematic and transparent system for the provision of information, including at cross-border level, is also pivotal to preventing unfair competition among digital labour platforms. The obligation to declare work performed by platform workers pursuant to this Directive should not replace obligations relating to declarations or notifications established by other Union legal acts.*

Recital (57): *The European Labour Authority established by Regulation (EU) 2019/1149 of the European Parliament and of the Council contributes to ensuring fair labour mobility across the Union, in particular by facilitating the cooperation and the exchange of information between Member States with a view to the consistent, efficient and effective application and enforcement of relevant Union law, by coordinating and supporting concerted and joint inspections, by carrying out analyses and risk assessment on issues of cross-border labour mobility and by supporting Member States in tackling undeclared work. It therefore has an important role to play in addressing the challenges linked to the cross-border activities of many digital labour platforms as well as those linked to undeclared work in platform work.*

Article 16 obliges DLPs which are employers to declare work performed by platform workers to the competent authorities of the Member State in which the work is performed. This implies that such declarations have to be made in the Member State where the platform worker carries out their work, irrespective of whether the DLP and/or the client are situated in another Member State or in a third country (see also Recital 56).

This cannot concern the declaration for tax or social security purposes; such declarations are subject to specific obligations in the social security coordination Regulations (EU) 883/2004 and (EU) 987/2009, and the DAC7 Directive (EU) 2021/514.

The declaration would therefore have to be made to the authorities in charge of labour law or working conditions. This is confirmed by Recital 56, which adds another purpose: ‘to prevent unfair competition among DLP’, presumably between law-abiding DLPs and non-compliant DLPs (possibly from third countries).

Member States need to inform DLPs to which authority such declarations should be made.

Discussion:

Two **Member State experts** asked whether, in cases where employers already declare work to tax authorities, the same information would need to be declared to labour inspectorates; if so, would it be considered enough if tax authorities shared that declared information with labour inspectorates? The **Commission services** referred to the exact wording of Article 16, as per which platform work is to be declared 'to the competent authorities of the Member State in which the work is performed' and highlighted this wording to be particularly relevant for DLPs established in a different Member State or a third country from the one(s) where their platform workers perform work. Existing obligations on employers might not respond to the objectives and requirements of Article 16. As laid down in Recital 56, the declaration is to be done irrespective of whether the DLP and/or the client are situated in another Member State or in a third country, and the system for the provision of information needs to be 'systematic and transparent (…), including at cross-border level', which is essential 'to preventing unfair competition among digital labour platforms'.

Some Member State experts raised questions about the precise timing and process for declaring the work performed by platform workers, more concretely if DLPs should notify authorities about worker engagement before platform work begins or after, and what the appropriate timeframe is for such declaration. They also enquired about the scope, amount and frequency of the information to be declared under Article 16. The **Commission services** referred to Article 16 requiring the declaration of platform work to be done 'in accordance with the rules and procedures laid down in the law of the Member States concerned', highlighting that the Directive remains silent on the specific characteristics of how to declare platform work, leaving room to Member States to adapt this obligation to national specificities. However, on the timing of the declaration, the Commission services shared their view that the declaration should be made before the start of an employment contract, except in the case of platform workers who are reclassified.

A **Member State expert** signalled that, under the DAC7 Directive, Member States' tax authorities already receive reports or declarations from DLPs, and asked whether the declaration of platform work in Article 16 could be considered satisfied via this mechanism. The Commission services replied that the DAC7 Directive obliges platforms to collect and report certain information on the so-called 'sellers' who are active on such platforms, including their income; these sellers are usually self-employed persons. However, the DAC7 Directive does not introduce new reporting requirements for platforms as regards their employees.

Some **Member State experts** asked whether DLPs should also declare work performed by platform workers employed by an intermediary. The **Commission services** recalled that Article 4(3) of the Directive requires a clear identification of the party or parties responsible for the obligations of the employer in those cases where the existence of an employment relationship is established. A reading of Article 3 in conjunction with Article 4(3) thus indicates that the declaration under Article 16 must be made by the party bearing employer responsibility; this could indeed be the intermediary itself.

4.2. Access to relevant information on platform work (Article 17)

Article 17:

1. Member States shall ensure that digital labour platforms make the following information available to competent authorities and to representatives of persons performing platform work:

(a) the number of persons performing platform work through the digital labour platform concerned, disaggregated by level of activity, and their contractual or employment status;

(b) the general terms and conditions determined by the digital labour platform and applicable to those contractual relationships;

(c) the average duration of activity, the average weekly number of hours worked per person and the average income from activity of persons performing platform work on a regular basis through the digital labour platform concerned;

(d) the intermediaries with which the digital labour platform has a contractual relationship.

2. Member States shall ensure that digital labour platforms provide information on work performed by persons performing platform work and their employment status to competent authorities.

3. The information referred to in paragraph 1 shall be provided for each Member State in which persons are performing platform work through the digital labour platform concerned. As regards point (c) of paragraph 1, the information shall be provided only upon request.

4. The information referred to in paragraph 1 shall be updated at least every six months, and, as regards point (b) of paragraph 1 each time the terms and conditions are modified in substance.

Notwithstanding the first subparagraph, with regard to digital labour platforms which are SMEs, including microenterprises, Member States may provide that the information referred to in paragraph 1 is to be updated at least once a year.

5. The competent authorities and representatives of persons performing platform work shall have the right to ask digital labour platforms for additional clarifications and details regarding any of the information provided, including details regarding the employment contract. The digital labour platforms shall respond to such request by providing a substantiated reply without undue delay.

***Recital (58):** Information on platform work performed by persons performing platform work through digital labour platforms, on the number of those persons, on their contractual or employment status and on the general terms and conditions applicable to those contractual relationships, is essential to supporting relevant authorities in determining the correct employment status of persons performing platform work and in ensuring compliance with legal obligations as well as representatives of persons performing platform work in the exercise of their representative functions. Those authorities and representatives should also have the right to ask digital labour platforms for additional clarifications and details regarding the information provided.*

***Recital (59):** There is evidence of the use of undeclared work in delivery platforms in several Member States. That practice is carried out through rented identities, where persons performing platform work who have the right to work register with the digital labour platform and rent their accounts to undocumented migrants or to minors. This entails a lack of protection of those persons, including illegally staying third-country nationals, whose situation often results in a limitation to access to justice for fear of retaliation or risk of deportation. Directive 2009/52/EC of the European Parliament and of the Council provides for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The transparency obligations and the*

rules on intermediaries laid down in this Directive strongly contribute, together with Directive 2009/52/EC, to address the issue of undeclared work in platform work. Furthermore, it is key that digital labour platforms ensure reliable verification of the identity of persons performing platform work.

Article 17 requires DLPs to make information about their activities available to competent authorities and representatives of persons performing platform work. The aim of the provision is to increase the transparency of platform work in the EU and, as explained by Recital 58, to support the determination of the correct employment status of persons performing platform work. Recital 59 describes the occurrence and the associated risks of undeclared work by undocumented migrants or minors in the delivery sector, by means of rented identities. In this regard, the transparency obligations enshrined in Article 17, together with Directive 2009/52/EC, the Directive's rules on intermediaries and reliable identity verification by DLPs should strongly contribute to addressing these illegal practices.

Article 17(1) lists the elements of information to be made available by DLPs to Member States' competent authorities and to representatives of persons performing platform work:

a) The overall number of persons performing platform work through the DLP concerned must be broken down by 'level of activity', e.g. by number of hours worked per month, week or day, in order to estimate the importance of the platform work for different groups of persons performing platform work. DLPs must also break down the overall number of persons performing platform work per contractual or employment status.
b) The general terms and conditions refer to the general rules governing the relationship between the DLP and a person performing platform work.
c) The average duration of activity, average weekly number of hours worked per person and average income from activity of persons performing platform work are meant to indicate how much persons performing platform work earn and work on a given DLP. These averages should only be calculated for persons performing platform work 'on a regular basis' in order not to include persons who are registered but perform no or almost no work.
d) DLPs should inform about the intermediaries they have a contractual relationship with (as defined by Article 2(1)(e)).

Article 17(3) stipulates that while the information under paragraph 1, letters (a), (b) and (d) is to be actively provided, the information under letter (c) is only to be provided upon request. Moreover, each information element must be provided to the competent authorities or representatives in each Member State in which persons are performing platform work through the DLP concerned.

Article 17(4) specifies that the information under paragraph 1 must be updated at least every 6 months, and for element (b) every time the terms and conditions are modified in substance. Member States may allow DLPs that are SMEs,([22]) including microenterprises, to update the information referred to in paragraph 1 only once a year.

In addition to the obligation in Article 16 to declare work by platform workers to the competent authorities of the Member State in which the work is performed, according to

([22]) As regards the definition of 'SME', Member States may apply the principles of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance) (notified under document number C(2003) 1422), OJ L 124, 20.5.2003, p. 36–41. According to Article 2(1), the category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

Article 17(2), DLPs must also provide information on work performed by persons performing platform work and their employment status to competent authorities.

As set out in Article 17(5), competent authorities and representatives of persons performing platform work (the latter only for the information listed in paragraph (1)) shall have the right to ask DLPs for additional clarifications and details, including details as regards the employment contract. DLPs must respond with a substantiated reply without undue delay.

Discussion:

Several Member State experts and **trade unions** asked how to transpose the notion of 'making available' the information in Article 17(1). The **Commission services** responded that, while the Directive does not specify the notion, it could be complied with by making the information publicly available (on the website of the DLP) or by submitting the information to the competent authorities and representatives of PPPW.

One Member State expert asked about the meaning of 'level of activity' in Article 17(1)(a) and the 'average duration of activity' in Article 17(1)(c). The **Commission services** explained that the 'level of activity' should give an indication of the intensity of work, which could be achieved by breaking down the number of hours the PPPW worked per month, week or day. The 'duration of activity' refers to an average of the amount of time PPPW are active on platforms. This should only include activity 'on a regular basis', meaning that PPPW who have no or barely any activity should be excluded from the count, so as not to distort the average. The Commission services also indicated that the Directive leaves margin for Member States to specify the ways in which the information should be broken down.

Employers' organisations expressed the view that Member States should be mindful of avoiding unnecessary regulatory burdens on companies when transposing Articles 16 and 17. **Trade unions** argued that due to their reliance on algorithmic management, DLPs should not face significant burdens in reporting and sharing the information.

In response to one Member State expert asking about the meaning of the term "general terms and conditions" in Article 17(1)(b), the **Commission services** clarified that this term refers to the rules and regulations, usually established by the DLP, which govern the relationship between the DLP and all PPPW (not including personal data).

One Member State expert raised the potential breach of contractual obligations where DLPs need to make information available on intermediaries with whom they have a contractual relationship, in line with Article 17(1)(d). The **Commission services** underlined that the objective of Article 17(1)(d) is not to provide personal data or individual details stemming from the contracts and that business secrets and competition between market operators should not be affected by the transparency requirement.

Trade unions pointed out a potential unintended consequence of applying the definition of SMEs in Commission Recommendation 2003/361/EC regarding the flexibility provided to Member States as per Article 17(4). Under the Recommendation, the qualification as SME depends on the number of employees, and a DLP misclassifying its 3000 PPPW as non-workers could be considered to qualify as SME. The **Commission services** agreed that for the reasons outlined by trade unions, the definition of SME used in Commission Recommendation 2003/361/EC might not always be a good reference in isolation. The Commission services highlighted that the second paragraph of Article 17(4) is not an obligation, but rather an option for Member States to provide limited flexibility, i.e. that they 'may provide that the information (…) is to be updated at least once every year' (instead of every six months). Moreover, the information obtained through Articles 16 and 17 should contribute to the correct classification of PPPW and, subsequently, of DLPs.

Reflecting on the question raised by **some Member State experts** and **trade unions** regarding the difference between the provisions of Article 16, Article 17(1) and Article 17(2), the **Commission services** indicated that Article 16 aims to ensure that the work performed by platform workers is properly declared, so that the competent authorities of the Member State where the work is performed can ensure compliance with labour law. Article 17 has the broader aim of improving transparency on platform work, by making available information, statistics and data to competent authorities and representatives. The elements listed in Article 17(1) help establish a general picture of the scale and impact of the platform economy in each Member State. Article 17(2) requires DLPs to provide information on the individual performance of work of PPPW. While the information in Article 17(1) is to be made available to both competent authorities and representatives, the information in Article 16 and Article 17(2) is to be actively provided to competent authorities only.

Upon inquiry from **a Member State expert**, the **Commission services** confirmed that the designation of one or more competent authorities is a matter of Member State discretion. In response to **another Member State expert**, the **Commission services** pointed out that the Directive does not set out an obligation for DLPs to identify or select the relevant representatives to whom DLPs should make the information in Article 17(1) available, but that it would rather be up to the representatives to make themselves known. In this regard, the requirement for DLPs to set up communication channels, in accordance with Article 20 of the Directive, will facilitate the contact between PPPW and their (future) representatives.

5. Chapter V on Remedies and enforcement

5.1. Right to redress (Article 18)

Article 18:

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 timely, effective and impartial dispute resolution and a right to redress, including adequate compensation for the damage sustained, in the case of infringements of their rights arising from this Directive.

Recital (60): *An extensive system of enforcement provisions for the social acquis in the Union has been developed, elements of which should be applied to this Directive in order to ensure that persons performing platform work have access to timely, effective and impartial dispute resolution and a right to redress, including adequate compensation for the damage sustained. Specifically, having regard to the fundamental nature of the right to effective legal protection, persons performing platform work should continue to enjoy such protection even after the end of the employment or other contractual relationship giving rise to an alleged breach of rights under this Directive.*

The practical impact of EU labour law hinges on robust and consistent enforcement mechanisms across Member States. Recital 60 recalls the extensive system of enforcement provisions developed in EU labour and anti-discrimination law.

Article 18, which sets out the right to dispute resolution and redress for all rights protected under this Directive, is similar to Article 16 of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union. The right to an effective remedy and to a fair trial is expressed by the Charter and does not require the existence of an

explicit provision in secondary legislation. As noted on page 69 of the Report of the Expert Group on the Transposition of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union, 'it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights derived from EU law, provided first that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and second, that, they do not render virtually impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness).'([23])

Article 18 requires that Member States shall ensure that PPPW, including those whose employment or other contractual relationship has ended, should have access to 'timely', 'effective' and 'impartial' dispute resolution procedures, through which alleged infringements of rights stemming from the Directive can be brought and resolved. With regard to the right to redress, it stipulates that any remedy for an established infringement must include 'adequate compensation for the damage sustained'.

Article 18 is without prejudice to Articles 79 and 82 of the GDPR, which apply in cases of alleged infringements of data protection matters under the Directive. This follows from the second sentence of Recital 64, which recalls that '[t]he procedural framework of Regulation (EU) 2016/679, in particular Chapters VI, VII and VIII thereof, should apply for the enforcement of the more specific and additional rules of this Directive, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and penalties […]'.

Discussion:

Several Member State experts inquired about the enforcement of the Directive's provisions against DLPs that are established in a third country. The **Commission services** pointed out that, as the Directive does not mandate the appointment of a legal representative in the EU, the matter may have to be addressed via transposing measures. In this regard, the Commission services explained that DLPs are in principle bound by the obligation of data controllers or processors to appoint a representative under Article 27 of the GDPR and are also likely to qualify as 'providers of intermediary services which offer services in the Union' which are bound to designate a legal representative in the Union under Article 13(1) DSA. Lastly, DLPs established in third countries may also work with EU-based intermediaries, which could then be held liable.

One Member State expert asked whether 'adequate compensation' is also to be granted in cases where non-material damage is sustained due to the violation of rights under the Directive. Another Member State expert inquired if 'adequate compensation' would only be due from a certain threshold of damage incurred. The **Commission services** stated that the obligation to provide for adequate compensation should not be limited to material damage, which would be consistent with the similar provision in Article 82(1) GDPR that applies to infringements of data protection rights stemming from the Directive. The level of compensation is, however, explicitly tied to the damage sustained by the person. The Commission services reiterated that the rights set out in Article 18 apply to all infringements of all rights under the Directive, without prejudice to Articles 79 and 82 of the GDPR that apply for data protection matters.

Upon request by **several Member State experts** in relation to the possibility to introduce time limitations to the right to introduce claims, the **Commission services** clarified that it is a common feature of national procedural law to have certain time limitations. The principles of effectiveness and equivalence must, however, be respected.

([23]) See footnote 2.

When asked by **another Member State expert** and **trade unions**, the **Commission services** explained that 'access to dispute resolution' refers to the procedures through which the alleged infringement can be brought and resolved. They can be administrative or judicial and could include out-of-court mediation. However, regardless of the existence of out-of-court procedures, a PPPW must always have the right to access a court proceeding.

5.2. Procedures on behalf or in support of persons performing platform work (Article 19)

Article 19:

Without prejudice to Article 80 of Regulation (EU) 2016/679, Member States shall ensure that representatives of persons performing platform work and legal entities which have, in accordance with national law or practice, a legitimate interest in defending the rights of persons performing platform work are able to engage in any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive. Member States shall ensure that such representatives and legal entities are able to act on behalf or in support of one or several persons performing platform work in the case of the infringement of any right or obligation arising from this Directive, in accordance with national law and practice.

Recital (61): *Representatives of persons performing platform work should be able, in accordance with national law and practice, to represent one or several persons performing platform work in any judicial or administrative proceedings to enforce any of the rights or obligations arising from this Directive. Bringing claims on behalf of or supporting several persons performing platform work is a way to facilitate proceedings that would not have been brought otherwise because of procedural and financial barriers or a fear of reprisals.*

Article 19 is inspired by similar provisions in the anti-discrimination acquis, such as Article 15 of the Pay Transparency Directive. ([24])

Member States are required to ensure that representatives of PPPW or any other legal entities which have a legitimate interest in defending the rights of PPPW are able to act in any judicial or administrative proceeding, either on behalf or in support of one or several PPPW concerning the rights or obligations under the Directive.

The existence of a 'legitimate interest' of the legal entities engaging in proceedings is to be assessed in accordance with national law and practice. The procedural modalities regarding the exercise of the right to (collective) representation are also to be determined in accordance with national law and practice.

Recital 61 explains the rationale behind the right to act on behalf or in support of PPPW, i.e. a way to facilitate proceedings that would not have been brought otherwise because of procedural and financial barriers or a fear of reprisals.

Article 19 is applicable without prejudice to Article 80 of the GDPR, which applies if the rights and obligations at issue are data protection matters under the Directive.

([24]) Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (Text with EEA relevance), PE/81/2022/REV/1, OJ L 132, 17.5.2023, p. 21–44, available online.

Discussion:

Several **Member State experts** raised questions concerning the legal standing of representatives of PPPW. A key query was whether the article's first sentence had an independent scope, allowing representatives to act in their own name, or if the entire article solely covered actions on behalf or in support of PPPW. Experts also asked if 'able to engage' in procedures included the right to initiate them. The **Commission services** replied that Article 19 should be read as a whole, akin to similar EU acquis provisions, and confirmed that, in light of Recital 61, it does encompass the initiation of claims by representatives.

Further discussions addressed the specific forms of representation and the role of consent. The **Commission services** clarified that Member States must provide for at least one of the options - acting 'on behalf' or 'in support' - but must allow for both individual and collective representation (interpreting 'one or several' PPPW inclusively). On the matter of PPPW's consent to representation, one **Member State expert** deemed it fundamental, linking it to the notion of 'legitimate interest', while the **Commission services** noted that such a requirement may vary across national procedural laws.

Member State experts also asked whether representatives of PPPW could defend single individuals, which the **Commission services** confirmed, and if national definitions of representatives needed full transposition (the Commission services indicated existing national definitions could largely persist, but Article 19 also allows legal entities with a "legitimate interest", to be assessed at national level, to engage).

On the interplay between labour rights and data protection rights, **trade unions** argued that Article 19 provided for an extension of representatives' rights, enabling them to represent PPPW in both labour and civil courts, particularly for data protection infringements. The **Commission services** expressed the view that representation under Article 19 depends on the underlying matter: the Directive's procedural framework applies to enforcing rights related to working conditions, while the GDPR's framework applies to data protection matters, including for new rights arising from the Directive. This "dual approach" raised concerns from **trade unions** and **a Member State expert** about potential hurdles in combined cases and a potential lack of the article's added value for PPPW who are not platform workers. The **Commission services** noted that trade unions could qualify as representatives under Article 80 GDPR.

Finally, **employers' organisations** and a **Member State expert** sought clarification on representation rights for self-employed PPPW in B2B relationships, especially in commercial courts. The **Commission services** reiterated that the GDPR's procedural framework applies to the enforcement of the data protection rights self-employed PPPW enjoy under the Directive. **Trade unions** suggested the 'legitimate interest' clause in Article 19 could allow them to represent self-employed individuals.

5.3. Communication channels for persons performing platform work (Article 20)

Article 20:

Member States shall take the measures necessary to ensure that digital labour platforms provide persons performing platform work, by means of the digital labour platforms' digital infrastructure or by similarly effective means, with the possibility to contact and communicate privately and securely with each other, and to contact or be contacted by representatives of persons performing platform work, while complying with Regulation

(EU) 2016/679. Member States shall require digital labour platforms to refrain from accessing or monitoring those contacts and communications.

Recital (62): *Platform work is characterised by the lack of a common workplace where persons performing platform work can get to know and communicate with each other and with their representatives, also with a view of defending their interests with regard to the digital labour platform. 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 privately and securely with each other and can be contacted by 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.*

Article 20 requires DLPs to provide PPPW with the possibility to contact and communicate privately and securely with each other, and to contact or be contacted by representatives of PPPW.

Recital 62 highlights the relevance of digital communication channels in the context of the platform economy, which is characterised by the lack of a common workplace, which may make it more difficult for PPPW to communicate with each other and with their representatives, also with a view to defending their interests.

The channels should either be provided through the DLP's digital infrastructure or through similarly effective means. In any case, the channels must comply with the GDPR and Member States shall require DLPs to refrain from accessing or monitoring the contacts and communications on the channels.

Where there are legal obligations to ensure content moderation, e.g. against harmful or violent content, the DLP could entrust a third party with this task, either on its own technical infrastructure or via similarly effective means.

Discussion:

When asked by **trade unions**, the **Commission services** pointed out that Recital 62 explains that the communication channels must be digital, and that simply providing a list of contacts would be insufficient and potentially problematic under EU data protection rules. While "similarly effective means" allow for outsourcing the channel's provision, DLPs remain responsible for ensuring that the third party enables private and secure communication, and compliance with the GDPR. In response to several **Member State experts**, the **Commission services** expressed the view that these requirements are likely difficult to meet by common groups on social networks. The channels should enable individual contact by representatives and among workers, meaning a mere group chat would not suffice. In response to a question from **trade unions**, the **Commission services** also noted that linguistic support like translation services is not mandated by the article, which focuses on providing the communication infrastructure.

A key concern raised by **trade unions** and **Member State experts** was balancing the DLP's duty to refrain from monitoring communications with potential national obligations to moderate content against harassment and violence. The **Commission services** suggested that content moderation, if necessary, should be entrusted to a third party, not DLP employees, to maintain security. To ensure that only active PPPW and their representatives access these channels, the Commission services expressed the view that Member States should provide that DLPs, which hold activity status information, have to cooperate with this third-party moderator. Regarding the question of when PPPW should be informed about these channels, the **Commission services** indicated that, while not

explicitly stated, providing information at the latest on the first working day seems appropriate.

Finally, regarding questions from several **Member State experts** on responsibilities and enforcement, the **Commission services** explained that, in cases involving intermediaries, the duty to set up channels could fall on either the DLP or the intermediary, depending on the application ownership. Member States are advised to establish obligations for DLPs and impose effective, dissuasive, and proportionate penalties for non-compliance with Article 20. Supervisory powers for this article would generally fall to labour authorities, unless a specific data protection breach occurs within the channels, which would then involve data protection authorities.

5.4. Access to evidence (Article 21)

Article 21:

1. Member States shall ensure that, in proceedings concerning the provisions of this Directive, national courts or competent authorities are able to order the digital labour platform to disclose any relevant evidence which lies in its 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 proceedings. They shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.

Recital (63): *In administrative or judicial proceedings regarding the rights and obligations laid down in this Directive, the elements regarding the organisation of work that make it possible to determine the correct employment status, and in particular whether the digital labour platform directs or controls certain elements of the performance of work, as well as other elements regarding the use of automated monitoring systems and automated decision-making systems, could be in the possession of the digital labour platform and not easily accessible to persons performing platform work and competent authorities. National courts or competent authorities should therefore be able to order the digital labour platform to disclose any relevant evidence which lies in their control, including confidential information, subject to effective measures to protect such information.*

Article 21 is inspired by Article 20 of the Pay Transparency Directive. Recital 63 explains that evidence for claims under this Directive (e.g. related to the existence of direction and control through algorithms) may be in possession of a DLP and difficult to access for PPPW or competent authorities.

Article 21(1) therefore requires Member States to ensure that both courts and administrative authorities have the power to order the DLP to release any relevant evidence which lies in its control.

According to Article 21(2), courts should also be able to order the disclosure of evidence containing confidential information, provided there are effective means to protect such information, i.e. ensuring that the confidential information is not disclosed beyond a limited number of persons necessarily involved.

Discussion:

One Member State expert highlighted that Article 21(2) concerning the disclosure of confidential information empowers only national courts, not competent authorities as suggested in Recital 63, to order such disclosure. The **Commission services** confirmed that the operative part prevails. **Trade unions** and some **Member State experts** expressed concern that this limitation might allow DLPs to unduly claim confidentiality, for instance over working time data. The **Commission services** clarified that while both courts and competent authorities can order the disclosure of any relevant evidence under Article 21(1), it is specifically national courts under Article 21(2) that can compel disclosure if a platform claims the information is confidential. However, Member States are not prevented from also enabling competent authorities to order such disclosure.

Regarding questions raised by Member State experts on the definition of terms, the **Commission services** stated that 'confidential information' is not defined in the Directive. It was suggested that the term would likely include 'trade secrets' as per the Trade Secrets Directive, but could also encompass other sensitive business information whose disclosure would harm the DLP. 'Relevant evidence' was explained as information necessary to clarify a specific issue in a proceeding, such as details on automated systems, with its relevance to be determined by the administrative authority or court. If a court orders the disclosure of confidential information, it must also ensure that effective measures are in place to protect that information. **Trade unions** encouraged the implementation of effective procedures, and the **Commission services** advised that any existing national legislation would need to meet the Directive's requirements.

5.5. Protection against adverse treatment or consequences (Article 22)

Article 22:

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 22 is inspired by Article 17 of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union and similar provisions in the EU anti-discrimination acquis. Article 22 should be read in combination with the provisions on the right to redress (Article 18) and effective, dissuasive and proportionate penalties (Article 24). The Commission services indicated their understanding that the wording 'including those who are their representatives' is meant to clarify that only representatives who are also PPPW themselves for that specific DLP are covered by this protection, not external representatives, such as particular trade union representatives who do not work for the DLP.

Discussion:

Several Member State experts requested clarifications about the difference between adverse treatment and adverse consequences. The **Commission services** shared their understanding that, whereas adverse treatment is an act undertaken by the DLP in reaction to a PPPW trying to enforce their rights under the Directive, adverse consequences may take more time to manifest themselves, especially in the case of use of AM, where establishing the causal link between the adverse treatment and the adverse consequence is less evident. Asked to provide examples, the Commission services

mentioned, for adverse treatment, the reduction of the number of tasks allocated to the PPPW by the DLP or the assignment of less attractive tasks, and, for adverse consequences, a loss of income. The following Article (Article 23) on the protection from dismissal contains a specific form of adverse treatment.

Several Member State experts asked for examples of the kind of protection envisaged by Article 22. The **Commission services** mentioned that the protection could consist in a legally enshrined prohibition of retaliation resulting from lodging a complaint on the rights contained in this Directive and the possibility for the victim to access justice on those grounds (judicial protection). Said protection can also come with procedural advantages, i.e. a shift in the burden of proof, as is mandated by Article 23(3). As far as "adverse consequences" are concerned, **one Member State expert** asked if the existence of a liability system allowing the PPPW to claim compensation for the harm caused by the DLP's conduct could be considered sufficient. The **Commission services** recalled that the provision allows Member States to decide what measures are necessary to ensure the required protection; in the given scenario, it should be ensured that the liability system is sufficient, despite the fact that it offers only *ex post* protection.

A **Member State expert** requested clarifications on the wording 'any proceedings initiated'. In the Commission services' reading, the term 'initiated' refers to the fact that the procedures do not need to be terminated (i.e. reach their final stage or their ultimate outcome) in order for the measures to ensure PPPW's protection to be applicable. If the measure is for the PPPW to access justice, for example, the judicial protection should not be dependent on the finalisation of the proceedings that the PPPW was engaged in to enforce their rights under the Directive.

Trade unions, supported by a few **Member State experts,** challenged the Commission services' explanation that the representatives protected under Article 22 also have to be PPPW for that specific DLP and that external representatives, therefore, do not fall within its scope. They gave the example of representatives that were PPPW, but stopped performing platform work, arguing that the referral to 'their representatives' would be redundant if representatives had to be PPPW themselves. Additionally, trade unions drew a parallel to the Minimum Wage Directive,([25]) whereby 'workers and workers' representatives, including those who are trade union members or representatives, should be in a position to exercise their right of defence'. The **Commission services** argued that, in the absence of a pertinent recital offering further guidance, a literal reading indicates that the protection guaranteed under Article 22 covers PPPW 'including those who are their representatives', meaning only representatives that are included in the group of PPPW. In addition, the parallel with the Minimum Wage Directive could not constitute grounds for a similar interpretation, given that Article 22 of this Directive contains the phrase 'persons performing platform work, including those who are their representatives', while Article 12(2) and Recital 35 of the Minimum Wage Directive refer to 'workers *and* workers' representatives, including those who are trade union members or representatives'. However, the Commission services stressed that the exclusion of external representatives is not mandatory given that the Directive provides for minimum harmonisation standards. **Several Member State experts** intervened in support of this literal reading, offering as a justification for any divergent interpretation with other EU labour law directives the fact that the personal scope of this Directive is not limited to (platform) workers.

([25]) Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, OJ L 275, 25.10.2022, pp. 33–47.

5.6. Protection from dismissal (Article 23)

Article 23:

1. Member States shall take the measures necessary to prohibit the dismissal or termination of the contract of persons performing platform work, or equivalent action, and all preparations therefor, on the grounds that they have exercised the rights provided for in this Directive.

2. Persons performing platform work who consider that they have been dismissed, that their contract has been terminated or that they have been subject to any actions 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, the termination of the contract or any equivalent action. The digital labour platform shall provide those grounds in writing without undue delay.

3. Member States shall take the measures necessary to ensure that, when the persons performing platform work 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, termination of contract or equivalent action, it shall be for the digital labour platform to prove that the dismissal, termination of contract or equivalent action was based on grounds other than those referred to in paragraph 1.

4. 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.

5. Paragraph 3 shall not apply to criminal proceedings, unless otherwise provided by the Member State.

***Recital (66):** In order to ensure the effectiveness of the protection provided for in this Directive, it is essential to protect persons performing platform work who exercise their respective rights provided for by this Directive from dismissal or from the termination of their contract, and from any action with equivalent effect, including the suspension of their account.*

Article 23 is inspired by Article 18 of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union and Article 12 of the Work-Life Balance Directive.([26]) It can be seen as a specification of Article 22, i.e. a particularly severe case of 'adverse treatment'. The wording 'termination of contract' throughout the article is meant to refer to PPPW who are not workers and therefore cannot be dismissed. The wording 'equivalent action' / 'any actions with equivalent effect' refers to measures that have a very similar effect to dismissal or termination of contract, such as the suspension of the account (Recital 66) or simply not allocating any work to the PPPW anymore. Article 23(2) aims to enable PPPW to assess whether the action taken by the DLP was a retaliation and, if so, to facilitate the PPPW's gathering of evidence. '[D]uly substantiated grounds' should be understood as any reason that could explain the motivation behind the contested decision. The term 'without undue delay' may be defined by Member States who must, however, take into account the principles of effectiveness and equivalence. In order to address the power imbalances in the employment relationship and the fact that PPPW often lack access to the relevant internal data, Article 23(3) provides for a shift of the burden of proof, building on the premise that the standard

([26]) Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L 188, 12.7.2019, pp. 79–93.

of proof for *prima facie* evidence is lower than the ordinary standard of proof. As a standard exception in the non-discrimination EU acquis, Article 23(4) and (5) specify that the shift in the burden of proof does not automatically apply to criminal proceedings or other proceedings in which it is for the court or other competent authority or body to investigate the facts of the case.

Discussion:

Asked about the meaning of "actions with equivalent effect to dismissal or termination", the **Commission services** gave as examples blocking or suspending PPPWs' accounts on the grounds that the PPPW have exercised their rights under the Directive, or not allocating them any tasks. In this regard, Recital 66 was recalled.

Trade unions asked for a clarification of the wording 'and all preparation therefor'. The **Commission services** referred to the Report of the Expert Group on the Transposition of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union, where it is explained that 'preparations for dismissal' could, for instance, be 'searching for and finding a permanent replacement for the relevant employee' (case C-460/06, Paquay). As regards PPPW, allocation of fewer tasks or enhanced monitoring could be seen as relevant examples.

One **Member State expert** asked if an existing obligation in national legislation to justify the termination of the employment contract could be sufficient to protect against dismissal as far as platform workers are concerned. The **Commission services** clarified that Article 23(1) requires Member States to take the necessary measures to prohibit the dismissal/termination of contract/equivalent measure on the grounds that the PPPW have exercised their rights under the Directive. In their view, therefore, prohibition goes beyond justification; an obligation to justify the reasons for dismissal, already foreseen in paragraph 2, would not provide sufficient protection against dismissal. In addition, Article 23(2) requires the DLP to provide the grounds for dismissal/termination of contract/equivalent measure without undue delay, adding a procedural protection which needs to be transposed into national law. Another **Member State expert** followed up by referring to an existing list of specific criteria that justify the termination of a labour contract in national law, asking if that was sufficient to ensure transposition. The **Commission services** reiterated that the Article obliges Member States to prohibit the dismissal/termination of contract/equivalent measure, and invited the Member State to reflect if adding this reason would be sufficient.

A **Member State expert** enquired if Article 23(2) is a reminder of the obligation set out under Article 11(1) second subparagraph of the Directive. By comparing the two provisions, the **Commission services** noted that, while Article 11(1) specifies the right to obtain an explanation from the DLP for particularly serious decisions taken or supported by ADMS, Article 23(2) gives PPPW who have been dismissed or their contract terminated on the grounds of exercising their rights a possibility to request a written justification from the DLP. The main differences are in scope (while Article 11(1) is about ADMS decisions, Article 23(2) is about dismissal, termination of contract or equivalent actions), procedural means (Article 11(1) is activated automatically, while Article 23(2) is activated at the request of the PPPW) and timeframe ('without undue delay' appears in both provisions, but Article 11(1) is stricter – 'at the latest on the day on which the decision takes effect').

One **Member State expert** asked whether one-person companies need to be protected under the Directive, taking into account that, in a B2B relationship, commercial law should in principle apply. The **Commission services** replied that, when one-person companies qualify as PPPW, Article 23 applies as it also covers termination of contract on the grounds that they have exercised the rights provided for in the Directive.

5.7. Supervision and penalties (Article 24)

Article 24:

1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be responsible for monitoring and enforcing the application of Articles 7 to 11 of this Directive as far as data-protection matters are concerned, in accordance with the relevant provisions in Chapters VI, VII and VIII of Regulation (EU) 2016/679.

The upper limit for administrative fines referred to in Article 83(5) of that Regulation shall be applicable to infringements of Articles 7 to 11 of this Directive.

2. The authorities referred to in paragraph 1 and other 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 systems or automated decision-making systems on 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.

3. National competent authorities shall cooperate through exchange of relevant information and best practices on the implementation of the legal presumption, with the support of the Commission.

4. Where persons performing platform work perform platform work in a Member State other than that in which the digital labour platform is established, the competent authorities of those Member States shall exchange information for the purpose of enforcing this Directive.

5. Without prejudice to the application of Regulation (EU) 2016/679 as referred to in paragraph 1, Member States shall lay down the rules on penalties, applicable to infringements of national provisions adopted pursuant to provisions of this Directive or of the relevant provisions already in force concerning the rights which are within the scope of this Directive. The penalties shall be effective, dissuasive and proportionate to the nature, gravity and duration of the undertaking's infringement and to the number of workers affected.

6. In the case of infringements related to digital labour platforms' refusal to comply with a legal ruling determining the correct employment status of persons performing platform work, Member States shall provide for penalties, which may include financial penalties.

***Recital (37):** Member States' competent authorities should cooperate with each other, including through the exchange of information, as provided for under national law and practice, for the purpose of ensuring the determination of the correct employment status of persons performing platform work.*

***Recital (64):** Given that this Directive provides for more specific rules and additional rules in relation to Regulation (EU) 2016/679 in the context of platform work to ensure the protection of personal data of persons performing platform work, the supervisory authorities provided for pursuant to Article 51 of Regulation (EU) 2016/679 should be competent to monitor the application of those safeguards. The procedural framework of Regulation (EU) 2016/679, in particular Chapters VI, VII and VIII thereof, should apply for the enforcement of the more specific and additional rules of this Directive, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and*

penalties, including the competence to impose administrative fines up to the amounts referred to in Article 83(5) of that Regulation.

Recital (65): Automated monitoring systems and automated decision-making systems used in the context of platform work involve the processing of personal data of persons performing platform work and affect the working conditions and rights of platform workers, which raises issues of data-protection law as well as of other fields of law, such as labour law. Data-protection supervisory authorities and other competent authorities should therefore cooperate, including at cross-border level, in the enforcement of this Directive, including by exchanging relevant information with each other, without affecting the independence of data-protection supervisory authorities.

While Article 24 nominally only deals with supervision and penalties, Recital 64 clarifies that the procedural framework of the GDPR applies to the Directive provisions based on Article 16 TFEU, i.e. Articles 7 to 11 of this Directive. This is also indirectly understood in the wording of Article 24 ('in accordance with the relevant provisions in Chapters VI, VII and VIII') and in the references to Articles 79, 80 and 82 GDPR in Articles 18 and 19 of the Directive. Therefore, data protection supervisory authorities (DPAs) have competence for the data protection-related provisions of the Directive, in line with Article 16 TFEU which requires that compliance with data protection is 'subject to the control of independent authorities' (this is also mentioned in Recital 37). The wording 'as far as data protection matters are concerned' represents a recognition that certain elements of Articles 7 to 11 are not strictly matters of data protection, as they deal with working conditions. This may be the case, for instance, for the evaluation of the impact on working conditions and equal treatment in Article 10(1), the high risk of discrimination and the infringement of rights in Article 10(3), or the infringement of rights and the rectification of decisions in Article 11(3). For these subsidiary elements, labour authorities remain competent.

Article 24(2) recognises that there may be unclarity and overlaps regarding the respective competences of labour authorities and DPAs and therefore establishes a duty of cooperation 'within the remit of their respective competences, in particular where questions on the impact of AMS or ADMS on PPPW arise' (see also Recital 65). These authorities should therefore exchange information (including that obtained in inspections or investigations), whether upon request or at their own initiative.

Article 24(3) introduces a duty of cooperation between different competent authorities (not DPAs), through exchange of information and best practices, for the implementation of the legal presumption. Article 24(4) refers to cross-border cooperation, where the PPPW and the DLP are situated in different Member States. In the latter, the subject matter of the cooperation is not defined and could therefore refer to all relevant provisions in the Directive, including employment status (Chapter II), AM (Chapter III) and transparency (Chapter IV). The mode of cooperation is not defined either, as no reference is made to any existing EU information systems.

Article 24(5) and (6) concern the penalties applicable to infringements of the provisions other than the data protection-based provisions (i.e. the GDPR administrative fines). The concept of proportionality is further defined, by stating that proportionality is to be assessed in view of 'the nature, gravity and duration of the undertaking's infringement and to the number of workers affected'. The reference to 'undertaking' should be understood as referring to the DLP (or an intermediary) and the reference to 'workers' as referring to PPPW. In case a DLP does not comply with a first legal ruling (i.e. a legally binding decision by a court or administrative authority) on the employment status of PPPW, Member States must also provide for penalties, which may include financial penalties.

<u>Discussion:</u>

The articulation between the GDPR and the Directive was discussed at length. Several **Member State experts** asked how the GDPR concept of 'One-stop-shop' applies in case national competent authorities disagree about what constitutes data protection matters under the Directive. In response, the **Commission services** recalled Recital 64 for further guidance, as it clarifies that it is for the DPAs to supervise and monitor infringements of data protection provisions, hence the procedural framework of the GDPR applies to those parts of Articles 7 to 11 that concern data protection matters. The second sub-paragraph, although it does not make the limitation 'as far as data protection matters are concerned', should be read as a continuation of the first sub-paragraph, also in light of Recital 64 and Article 24(5) requiring Member States to set up penalties for infringements of provisions other than the data protection-based provisions (i.e. non-GDPR fines). In addition, recognising possible overlaps and unclarity, Article 24(2) establishes a duty of cooperation 'within the remit of their respective competences, in particular where questions on the impact of AMS or ADMS on PPPW arise'.

Trade unions asked whether Articles 9, 10 and 11 were data protection matters and whether they should be enforced by DPAs, arguing that the issues touched by the Articles do not only concern data privacy, and could be understood as data protection only in a broad sense. Trade unions added that probably the DPAs would not be the best placed to enforce these rights. Also, Article 24(1) refers to DPAs only 'as far as data protection matters are concerned'. However, for instance in Article 11(3), the 'rights of PPPW' refer to all rights, i.e. not necessarily related to data protection, but including rights in respect of contract law or labour law. Rather than the DPA, the labour authority or civil or commercial courts should deal with these matters. It should be up to Member States to decide which authorities should be most competent. **Employers** agreed that not all parts of Articles 9 to 11 are related to data protection. Some are more related to labour law, e.g. Article 10 as regards the impact on non-discrimination. In line with Article 24, it should be up to Member States to decide which authority is most relevant to hold the enforcement rights. The **Commission services** agreed that the provisions concern data protection matters in a broad sense, not strictly privacy. In accordance with Article 24, the DPAs are in charge for the enforcement of Articles 7 to 11 in relation to these matters. However, it is necessary to distinguish between the procedural rights that these provisions grant to PPPWs, which are based on data protection and should be for DPAs to enforce, and the underlying material questions of rights infringements which are not in the remit of the DPAs. For example, Article 11 (the right to have an explanation and access to a contact person): if the DLP does not grant that right, the DPA is competent. If the conflict is not about this procedural right, but the violation of working conditions, DPAs are not competent. The substance of the underlying rights may indeed be for other authorities to enforce. These are areas where DPAs will have to refer or cooperate with other authorities within the remit of their respective competences. There is thus a secondary role for other authorities, such as labour inspectorates. However, it would not be possible for Member States to give the enforcement role to labour inspectorates only.

In addition, **trade unions** encouraged Member States to ensure that DPAs are up-to-speed with labour law provisions, via appropriate trainings in line with Article 6(d) of the Directive. The **Commission services** pointed out that the Directive does not mandate trainings of DPAs' staff, given that Article 6 is related to the effective implementation of and compliance with the legal presumption, whereby the reference to national competent authorities in letter (d) does not include DPAs.

On a question regarding paragraph 3, the **Commission services** shared their understanding that it refers to cooperation between national competent authorities of different Member States through exchange of relevant information and best practices on the implementation of the legal presumption.

Several **Member State experts** exchanged views on the modalities to ensure competent authorities exchange information, some mentioning IMI, which would however require a change in the legal basis of the IMI Regulation.

Lastly, to a question on whether paragraphs 3 and 4 require transposition, the **Commission services** highlighted the need to establish a legal basis in national law enabling competent authorities to cooperate, to avoid refusals to share information for reasons of professional secrecy or confidentiality.

6. Chapter VI on Final provisions

6.1. Promotion of collective bargaining in platform work (Article 25)

Article 25:

Member States shall, without prejudice to the autonomy of the social partners and taking into account the diversity of national practices, take adequate measures to promote the role of the social partners and encourage the exercise of the right to collective bargaining in platform work, including measures with regard to the determination of the correct employment status of platform workers and to facilitate the exercise of their rights related to algorithmic management set out in Chapter III.

Article 25 aims to strengthen collective bargaining in the context of platform work. It obliges Member States to take adequate measures to promote the role of social partners and to encourage the exercise of the right to collective bargaining. This includes supporting the correct determination of employment status for platform workers and facilitating their rights related to algorithmic management (as outlined in Chapter III). The article emphasises respect for the autonomy of social partners and national practices and does not prescribe specific measures, which allows for flexibility in implementation by Member States.

Discussion:

Employers emphasised the importance of caution when promoting collective bargaining for the self-employed, underlining the need to respect their autonomy and freedom.

Trade unions suggested that the aims of the provision could be met through the development of national strategies to increase collective bargaining coverage, underlining that current levels are very low.

Several **Member State experts** sought clarification on the types of measures that would be considered adequate. The **Commission services** suggested a variety of measures, including financial or logistical support for capacity building, research or training for social partners, awareness raising campaigns, sanctions against DLPs that obstruct collective bargaining, or the introduction of national legislation to support collective bargaining, including for the self-employed.

On the question of several **Member State experts** whether the Article obliges Member States to introduce collective bargaining rights for self-employed PPPW, the **Commission services** reiterated that it does not. While the provision refers broadly to platform work and does not exclude the self-employed, it allows Member States flexibility regarding the specific measures to be taken, referring to the diversity of national practices.

Furthermore, the **Commission services** clarified that the required measures under Article 25 do not have to be enacted through separate legal norms. Measures can be integrated into broader policy instruments, such as national strategies or action plans, as long as they are adequate in promoting collective bargaining in platform work. When asked whether inspiration could be drawn from a similar provision in the Minimum Wage Directive, the **Commission services** acknowledged the structural similarity with Article 4 of that Directive, but noted that, while that Directive focuses on wage-setting, Article 25 targets the correct determination of employment status and the facilitation of rights related to algorithmic management. Consequently, while the nature of the measures may be similar, they must be tailored to the specific objectives of each Directive.

6.2. Non-regression and more favourable provisions (Article 26)

Article 26:

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to platform workers within Member States, including with regard to established procedures for the determination of the correct employment status of persons performing platform work as well as existing prerogatives of their representatives.

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 persons performing platform work by other legal acts of the Union.

***Recital (68):** This Directive lays down minimum requirements, thus leaving untouched the Member States' prerogative to introduce and maintain provisions which are more favourable to persons performing platform work Rights acquired under the existing legal framework should continue to apply, including as regards mechanisms to ascertain the existence of an employment relationship, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the general level of protection in the field covered by this Directive or existing prerogatives conferred on workers' representatives.*

Article 26(1) establishes that the Directive must not be interpreted as a justification for lowering the existing level of protection granted to platform workers within Member States. This includes maintaining established procedures for determining the correct employment status of PPPW, as well as the existing prerogatives of their representatives.

Article 26(2) reiterates that the Directive sets minimum requirements and does not prevent Member States from granting more favourable conditions, including via collective agreements, in line with Article 153(2) TFEU.

Article 26(3) states that the Directive is without prejudice to other rights of PPPW arising from other Union legal acts.

Discussion:

Trade unions emphasised that no reduction in protection should occur, particularly regarding existing procedures for determining employment status, and reiterated the need to introduce a presumption of employment where it does not yet exist.

One **Member State expert** asked whether Article 26(3) refers to specific legal acts particularly relevant to PPPW. The **Commission services** responded that this paragraph covers any other rights conferred on PPPW by Union legal acts, including the GDPR, the P2B Regulation, and the Directive on Transparent and Predictable Working Conditions, among others.

6.3. Dissemination of information (Article 27)

Article 27:

Member States shall ensure that the national measures transposing this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1, including information on the application of the legal presumption, are brought to the attention of persons performing platform work and digital labour platforms, including SMEs, as well as to the public. Member States shall ensure that that information is provided in a clear, intelligible and easily accessible way, including to persons with disabilities.

Article 27 concerns the obligation of Member States to ensure the active dissemination of information. The information should cover both the measures transposing the Directive and relevant existing legislation, with the goal of conveying an overview of the legal framework applicable to platform work, as far as the subject matter of the Directive is concerned. The Article specifies that PPPW, DLPs, including SMEs, and the public should be recipients of the information.

Discussion:

In response to a **Member State expert**, the **Commission services** clarified that, while the transposition of the Article is mandatory, Member States could transpose it by means of non-legislative acts, decisions or tools. While the competent national authority could create a website containing all relevant information, the Commission services expressed the view that it should then also consider taking active steps to ensure that the information on the website reaches the intended audience, in order to implement the provision effectively.

6.4. Collective agreements and specific rules on the processing of personal data (Article 28)

Article 28:

Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of the personal data of persons performing platform work under Articles 9, 10 and 11, pursuant to Article 26(1). Member States may allow the social partners to maintain, negotiate, conclude and enforce collective agreements, in accordance with national law or practice, which, while respecting the overall protection of platform workers, establish arrangements concerning platform work which differ from those referred to in Articles 12 and 13, and,

where they entrust the social partners with its implementation pursuant to Article 29(4), from those referred to in Article 17.

Recital (69): *The autonomy of the social partners is to be respected. Member States should be able to allow the social partners, under specific conditions, to maintain, negotiate, conclude and enforce collective agreements which differ from certain provisions of this Directive, while respecting the overall protection of platform workers.*

Article 28 consists of two parts, which are both optional for Member States to transpose. The first sentence enables Member States and social partners to specify the data protection related rights for PPPW set out in Articles 9, 10 and 11. The provision should be understood in a minimum harmonisation logic, in the same way as Article 88 GDPR as interpreted by the CJEU([27]). This means that it gives Member States and social partners the option to adopt more specific protections for all PPPW, as long as the baseline set out in Articles 9, 10 and 11 of the Directive is respected.

The second sentence gives Member States the option to allow social partners to include provisions in collective agreements that differ from specific provisions in the Directive, with the crucial safeguard that the 'overall protection' afforded to platform workers is preserved. The provision is limited to Articles 12 and 13 in relation to platform workers and can also concern Article 17 if social partners are entrusted with its implementation.

The clause has precedents in EU labour law, notably Article 5(3) of the Temporary Agency Work Directive and Article 14 of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union.([28])

Discussion:

A **Member State expert** considered that the GDPR already provided for ample safeguards and leeway for the protection of personal data. The **Commission services** confirmed that Article 28 allows Member States to introduce more specific protections than set out in Articles 9, 10 and 11 of the Directive. These Articles already contain more specific protections than those set out in the GDPR. The Commission services also recalled the general opening clause of the GDPR applicable to the processing of employees' personal data in the employment context (Article 88).

Another **Member State expert** asked whether there could be deviations from Articles 12, 13 and 17 to the disadvantage of PPPW. The **Commission services** clarified that the second sentence of Article 28 only concerns platform workers. Moreover, Member States have the choice to transpose Article 28 or not. This means that social partners can only establish differing arrangements via collective agreements, if Member States actively allow them to do so. Where they do, there are a number of safeguards to ensure that any possible differentiation in collective agreements does not come to the disadvantage of platform workers. First, social partners must conclude collective agreements, precluding unilateral action from DLPs. Second, a key safeguard is that any arrangement that differs from Articles 12, 13 and 17 may not jeopardise the overall protection of platform workers and must be compensated by advantages in terms of basic working and employment conditions which are intended to compensate for the difference in treatment they suffer([29]).

([27]) CJEU Judgment of 30 March 2023, *Hauptpersonalrat der Lehrerinnen und Lehrer beim Hessischen Kultusministerium v Minister des Hessischen Kultusministeriums, C-34/21,* ECLI:EU:C:2023:270.

([28]) As indicated in the Expert Group on the Transposition of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union, pp. 15-17, social partners have the discretion to conclude differing arrangements and compensatory measures, as long as such arrangements (1) do not frustrate the Directive's objectives, (2) respect EU law and its general provisions and (3) ensure the workers' overall protection.

([29]) As regards the notion of 'overall protection', the CJEU ruled in relation to Article 5(1) of the Temporary Agency Work Directive that 'where the social partners, by means of a collective agreement, authorise differences in treatment with

Lastly, as set out in Article 26(1), the Directive cannot be used to reduce the general level of protection already afforded to platform workers within Member States.

6.5. Transposition and implementation (Article 29)

Article 29:

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 December 2026. They shall immediately inform the Commission thereof.

When Member States adopt those measures, 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 measures 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 steps necessary to ensure that they can at all times guarantee the results sought under this Directive.

***Recital (72):** In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.*

Article 29 stipulates that Member States have until 2 December 2026 to put in place the necessary measures to comply with the Directive, as well as the obligation to immediately notify the Commission of those measures. Member States must also include a reference to the Directive when transposing it; the final sentence clarifies that the Member States themselves decide exactly how such reference is made.

Paragraph 2 repeats the obligation on the Member States to inform the Commission of the measures of national law which they adopt in order to transpose the Directive. Fundamentally, this obligation derives from the principle of sincere cooperation laid down in Article 4(3) TEU. Member States may not simply send a copy of, or link to, the national laws (bare notification), and then leave it for the Commission to find the pertinent provisions. Although providing a correlation table is not an obligation, Member States are

regard to basic working and employment conditions to the detriment of temporary agency workers, that collective agreement must, in order to respect the overall protection of the temporary agency workers concerned, afford them advantages in terms of basic working and employment conditions which are such as to compensate for the difference in treatment they suffer'. See CJEU judgment of 15 December 2022, *CM v TimePartner Personalmanagement GmbH*, C-311/21, ECLI:EU:C:2022:983. .

required to indicate, for each provision of the Directive, the national provision or provisions ensuring its transposition, as referred to above.

The obligation to involve the social partners (paragraph 3) is a recognition that the social partners in several Member States have a strong role in determining rights and obligations of workers and employers in some or all of the fields covered by the Directive.

Paragraph 4 reflects the principle established in Article 153(3) TFEU: "*A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2, […]. In this case, it shall ensure that, no later than the date on which a directive […] must be transposed or implemented, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive […].*" It follows that, if a Member State decides to make use of this option, it must be in a position to guarantee that the content of the Directive is fully implemented both in terms of personal scope and content.

For references to relevant CJEU case law, the Report of the Expert Group on the Transposition of Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union can be consulted.([30])

Discussion:

No discussion.

6.6. Review by the Commission (Article 30)

Article 30:

By 2 December 2029, the Commission shall, after consulting the Member States, the social partners at Union level and key stakeholders, and taking into account the impact on SMEs, including microenterprises, review the implementation of this Directive and propose, where appropriate, legislative amendments. In its review, the Commission shall pay particular attention to the impact of the use of intermediaries on the overall implementation of this Directive as well as to the effectiveness of the legal presumption.

Article 30 stipulates that the Commission shall review the implementation of the Directive three years after the expiry of the transposition deadline. It shall do so after consulting the Member States, social partners at Union level and key stakeholders, and taking into account the impact on micro-, small and medium-sized enterprises. Where appropriate, the Commission shall propose legislative amendments. In its review, the Commission will place a particular focus on the implementation of Articles 3, 4 and 5 of the Directive.

Discussion:

No discussion.

([30]) Available online. Please see pages 76-79.

6.7. Entry into force and addressees (Articles 31-32)

Article 31:

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 32:

This Directive is addressed to the Member States.

Articles 31 and 32 are standard provisions. The Directive was published in the Official Journal of the European Union on 11 November 2024 and entered into force 20 days later, i.e., on 2 December 2024.

According to Article 288 TFEU, '[a] Directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'. The latter is subject to the principles of equivalence and effectiveness derived from Article 4 TEU. It is for the domestic system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights derived from EU law, provided, first, that such rules are not less favourable than those governing similar domestic actions and, second, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by EU law.