Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform works (COM (2021) 762 *final*)

FINAL DOCUMENT APPROVED BY THE COMMITTEE

The Public and Private Sector Employment Committee of Italy's Chamber of Deputies,

having examined, pursuant to Rule of Procedure 127.1, the Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work;

Noting that:

The object of the proposed directive is to improve the legal, economic and social status of EU citizens who work through digital platforms ("platform workers") by ensuring that their employment status is correctly determined, by promoting transparency, fairness and accountability in algorithmic management, and by improving the transparency of work through platforms, including cross-border platforms, while also creating conditions within the EU that are favourable to their sustainable growth within the Union;

The proposed directive sets out minimum requirements and leaves untouched the prerogative of Member States to introduce or retain legislation that is more favourable to platform workers;

The minimum rights introduced by the proposed directive apply to all platform workers in the EU who have, or who, based on an assessment of facts, may be deemed to have, an employment contract or employment relationship as defined by the law, collective agreements or practices in force in the Member States, irrespective of the product sector or of whether they work online or in a certain location;

With respect to the processing of personal data in the context of algorithmic management, the rights set out in the proposed directive shall apply also to persons performing platform work in the Union who do not have an employment contract or employment relationship;

Principle 5 of the European Pillar of Social Rights states that, irrespective of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training;

The proposed directive is part of a wide-ranging package of measures that also include a set of draft guidelines - on which the Commission has opened a public consultation - on how European Union competition law should be applied to collective agreements entered into by solo self-employed workers, including platform workers. More generally, it is part of a broader regulatory framework encompassing current legislative activities such as, for example, the Digital Services Act, the Digital Markets Act, as well as the proposed Artificial Intelligence Act;

Observing that:

The legislation surrounding the increasingly important phenomenon of the "platform economy", also known as the "collaborative economy" or "gig economy", is in need of rationalisation, also because the phenomenon is just one aspect of a large-scale and complex digital transition that makes it imperative to rethink traditional regulatory and interpretive paradigms that date from a time when systems of production were radically different;

The digital transition presents opportunities and risks that need to be managed. Technological innovation improves productivity and helps meet the growing demand for flexibility, but it also entails real risks for employment and work performance conditions;

Although extant and proposed EU legislative acts offer some general guarantees, the phenomenon of platform work raises issues that have to be addressed through additional targeted, balanced, adequate and coherent measures that take due account of the systemic impact of each regulatory initiative;

It would be appropriate to address the issues raised by the emergence of this new aspect of the labour market by re-defining certain long-established models, adapting them to the new circumstances and drafting rules extending all necessary forms of protections to workers without prejudicing innovative business organisation and development, especially in the world of SMEs and business start-ups;

Whereas

The reference to "digital labour platforms organising platform work performed by individuals", set out in Article 2 as a criterion underlying the proposal's scope of application, reflects the difficulty to establish a unified definition of a complex technical-organisational phenomenon whereby a technological platform may have any one of several different functions, some of which affect and may even call into question the legal contractual designation of the relationship between the parties, and may make it necessary to attach more importance to the material fact of the work performed than to the formal definition of the nature of the relationship;

For the sake of fairness, transparency and accountability in algorithmic management, the proposal introduces new rights for persons performing platform work, but the rights are configured as merely individual legal positions, thus showing the need to place appropriate emphasis on the collective dimension of self-protection of the persons concerned, also to avoid a situation in which legal action, notably through the courts, can only be pursued at an individual level;

The indicators of subordination identified by the proposed directive mostly refer to different and not always exclusive forms of control exercised by a digital platform over a worker's activity. Making workers' protection solely dependent on the exercise of control, however, involves the risk of losing sight of the evolution of business models and working methods entailed by the dynamics of the digital market. Further, the indicators fail to draw clear and unambiguous distinctions between

different legal situations and are therefore not very useful in terms of legal classifications, with predictable consequences on litigation in the courts;

The proposed directive focuses on the legal status of the worker and ultimately leaves it to law courts to rule on the nature of the employment relationship. The consequent risk is that issues will be treated at the level of the individual rather than at a collective level, which should be preferred given the weak position of platform workers. Moreover, the protections that are envisaged in the directive are not fully consistent with the 2020 European Framework Agreement on Digitisation, subscribed to by all social partners, which sets much store by the principles of information sharing, consultation and joint assessments, which enable worker representatives to identify adequate safeguards in different circumstances;

The proposed directive also defines digital platforms in a way that is not fully aligned with the regulatory framework that the EU is currently developing in the fields of artificial intelligence, digital services and digital markets;

The proposed regulation on artificial intelligence (AI) also explicitly indicates self-employed and platform workers (regardless of their employment status) as being among the intended addressees of the new rules on the control of AI systems used in a work context, and contains provisions that might overlap with those contained in Chapter III of the proposal under examination;

Collective bargaining at various levels should establish the procedures for the utilisation of AI systems in all aspects of the management of employment relationships, even when related solely to the company's internal use, so that the principle of human control is assured and the fundamental rights of workers are not harmed;

Article 19 of the proposed directive provides that a country's data protection supervisory authority shall be responsible for monitoring the application of the relevant provisions and will be required to cooperate with national labour supervisory authorities and trade unions. The data protection supervisory authority is therefore expected to coordinate supervisory activities, enforce the rights enshrined in the proposed directive and exercise its power to impose administrative fines where necessary;

Taking cognisance of the Report on the proposal forwarded by the Government pursuant to Article 6.5 of Law 234 of 24 December 2012;

Taking cognisance of the information and assessments obtained in the course of several hearings with institutional bodies, social partners, stakeholder organisations and experts;

Taking note of the favourable opinion and the remarks on the document issued by the European Union Policies Committee at its sitting of 18 May 2022;

Being aware not only of the need under Rule of Procedure 127.1 to submit this final document without delay to the President of the Council of Ministers but also of the need under Articles 7 and 9 of Law no. 234 of 2012 to forward it to the European Commission, the European Parliament and the Council within the framework of the political dialogue,

does hereby express a

FAVOURABLE ASSESSMENT

With the following remarks:

a) The ongoing digital transition and the technical and organisational consequences deriving from it make it necessary to pay attention to the necessity of personal protection and contractual transparency whenever a digital platform is deployed as a means for "the organisation of work performed by individuals" (Article 2, para.1, 1-c), even when the work is only an internal part of a company's production processes and is therefore provided without any "request of a recipient of the service" coming from an outside party (customer, client, consumer);

b) A digitally advanced environment has room for the practice of professional activities that are so heterogeneous as to always be stretching to breaking point the genetic correlation between the type of contract and the level of protection it affords (maximum protection for employees and minimum protection for the self-employed). For this reason, a more thorough investigation needs to be made into the possibility of determining a common set of minimum levels of protection that refer to the specific features of the work being performed rather than to the formal contractual classification, which, moreover is often based on sets of legal presumptions that are not fully consistent with the current system of law, nor even with the categorisation techniques that are usually applied by the courts exercising their function of nomofilachy;

c) In any case, the protections afforded to the genuinely self-employed need to be strengthened, in line with the intentions already expressed by the EU institutions with respect to the creation of a system of social guarantees, as well as with the provisions of the European Social Partners Framework Agreement on Digitisation. The aim is to ensure greater transparency and stability of contractual terms and conditions so that the activities of the platform worker are not subject to the unilateral decisions of platform owners and managers, while providing for adequate forms of compensation and indemnification in the event of the abuse of a dominant position;

d) To avert perverse but well known labour law effects associated with the individualistic approach inherent in the contractual relationship between the parties, a broad-based and open participation and dialogue between the social partners should be fostered as much as possible, taking account of the changed nature of the technological and organisational context. To this end, the role of collective bargaining needs to be strengthened, first of all by including an express reference to the trade unions involved in negotiations and making it explicit that it is those trade unions which are entitled to engage in collective bargaining;

e) Specifically, the role of trade union representatives at company level and the rules of collective participation will need to be recognised and openly and dynamically developed when defining the measures required to adapt the way work is organised to digital transformation, so as to accord workers the necessary protections and stimulate improvements in working conditions, worker professionalism and business competitiveness. Similarly, some aspects of competition law will have to be re-considered so that platform workers may avail themselves of collective self-protection

remedies, including with the support of any stakeholder organisations that may be specifically involved;

f) The subordinate employment indicators used in Article 4 need to be better specified. As they stand, they do not exhaustively distinguish between different legally relevant positions, even though the latter entail radically different effects. Furthermore, a tension exists between the relative importance of the (hetero-) organisational dimension contemplated in Article 2 and the control of the performance of work foregrounded in Article 4, a tension which replicates the substantial uncertainty regarding employment classification that is already present in national and case law. Conversely, the legal professionals tasked with verifying that the proper conditions obtain should have at their disposal sufficiently clear and precise elements and criteria to narrow the compass of interpretation and thus limit the number of legal disputes;

g) Clarity is needed about how the proposed directive will be aligned with other measures already in force regulating the digital market, such as Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services, Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union or other regulatory measures in the process of approval, such as the Digital Services Act, the Digital Market Act, and the proposed regulation on AI;

h) An effective protection of platform workers will also require a closer linkage between the supervisory duties assigned by the proposed directive to the Data Protection Authority and the specific responsibilities of the Ministry of Labour and the labour inspectorate, so as to ensure a more effective coordination of said duties as well as the correct application of the new rules.