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

Delegations will find in the annex a steering note from the Presidency, in view of the Social Questions Working Party on 19 October.

Presidency steering note

on the legal presumption in view of the Social Question Working Party on 19 October 2023

In the negotiations with the European Parliament on the proposal for a Directive on improving working conditions in platform work the European Parliament delegation has presented a non-paper, in which it presents its position on new version of Articles 4 and 5 of the legal presumption in a different manner. This paper has been circulated to delegations as WK 12693/23. A table comparing the EP non-paper with the related text of the Council's General Approach is to be found in annex to this note¹. With this paper, it is for the first time set out clearly what the requests of the European Parliament are. As an agreement will only be possible if the two co-legislators show flexibility towards the position of the other, it is necessary that the Council side reflects about which elements of the Parliament position it can accommodate.

This reflection requires examining the different elements of the legal presumption one by one. The Presidency has identified the elements below as main elements of the legal presumption (LP), which are worth to be looked at. It has added its own preliminary assessment. Delegations are asked to give their views on any of the points below in order to assess where some flexibility can be offered to the Parliament and where no concessions can be made.

¹ Unless indicated otherwise, references to rows refer to this table.

Element	Council	EP	PCY Comments
1. Capacity to launch a proceeding	Not explicit	The EP wants that the person performing platform work and trade unions can launch a proceeding for which the presumption shall always apply (row 102b)	Possible to be flexible, but only conditional upon national law and practice
2. Obligation for competent national authorities to launch/to apply the legal presumption	Discretion to apply the legal presumption, if manifest that no reclassification will take place.	Competent national authorities must launch a proceeding and apply the presumption, if any element of control and direction (out of 8 listed) indicating wrong classification (row102b)	Possible to be flexible, but state that a proceeding needs to be launched, if the competent national authorities considers that an employment relationship might exist [element of doubt/question].
3. Derogation for Social Security, fiscal and criminal proceedings.	Needed in order to take diversity of national systems into account	No derogation	National systems deal with the relationship between labour law and other fields of law in different ways. Cross-sector information is however useful and an obligation to coordinate and communicate might be acceptable to delegations
4. Triggering the Legal Presumption	Only if a threshold of Union level criteria is fulfilled	If there is any element indicating control and direction (rows 89-96)	MS might consider accepting that the LP is applied always, once a proceeding has been launched, provided the access to these proceedings is limited to person performing platform work (also represented by workers representatives acc. to national law) on their own initiative and competent national authorities on their discretion. This concession would simplify the application of the LP and allow for obtaining important concessions of the EP for safeguarding national

Element	Council	EP	PCY Comments
			systems. Genuine self-employed would likely not be affected as they will not be subject to a proceeding.
5. Effect of the Legal Presumption	No material effect	No automatic reclassification (row 102b)	This can be recognised in the text.
6. Procedural effect of the legal presumption	Burden of proof for the digital labour platform (digital labour platform), no Burden of the proof for the person performing platform work.	Burden of proof for the digital labour platform and the person performing platform work. (row 102h)	Risk of circumvention of the LP, if no shift of Burden of the proof in all cases, but risk of unproportioned burden to individuals. Better to leave it to MS, how to address the risk of circumvention and evt. to put the Burden of the proof on person performing platform work.
7. Deadline for rebuttal	Left to national procedural law	Deadline to be set for rebutting (row 102d)	Likely already contained in national procedural law.
8. Consequence of absence of rebuttal in the deadline	None under the directive, left to national law	Person performing platform work is reclassified as worker (row 102h)	Link to the question of Burden of the proof on the person performing platform work. Better to be left to national law.
9. Criteria for the material decision on reclassification	National law, CA, practice with consideration for the ECJ	National law, CA, practice with consideration for the ECJ <u>and</u> full absence of control and direction (see 8 elements in rows 92-96) (row 102h)	In principle, only reference to national law, although as control is an element national courts take into account, there could be a reference, but without any details, thus not to the list of elements
10. Dichotomy of contractual relationships	No rules, full respect of MS systems	Only worker or genuine self-employed (rows 89, 102h)	Not acceptable, the result of the reclassification shall be the correct employment status according to national law

Element	Council	EP	PCY Comments
11.Suspensive effect	Decision left to MS	Absence of suspensive effect (row 102j)	Not acceptable, interference in national procedural law.