
**Interinstitutional files:
2021/0414 (COD)**

Brussels, 02 February 2024

WK 1709/2024 INIT

LIMITE

SOC

EMPL

MI

DATAPROTECT

CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work

Delegations will find in annex the joint exploratory text established by the members of the technical level of the Parliament's and Council's negotiation teams on the above proposal in view of the trilogue scheduled for 8 February 2024.

Changes compared with document 5816/24 are marked with **bold** and deletions by [...]. Change of numbering and place of text are not taken into account in these markings.

The joint exploratory text is limited to the operative part of Chapter II and to Article 27 paragraph 1 of the Directive and one related recital. There is not yet any joint text on the related remaining recitals and all other points of divergence between the provisional agreement (16187/23 ADD1) and the revised mandate. An agreement on these points will also need to be found in the trilogue scheduled for 8 February.

CHAPTER II

EMPLOYMENT STATUS

Article 4

Correct determination of the employment status

1. Member States shall have appropriate and effective procedures in place to verify and ensure the correct determination of the employment status of persons performing platform work, with a view to ascertaining the existence of an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice, including through the application of the presumption of an employment relationship in accordance with Article 5(2).
2. The determination 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 or decision-making systems in the organisation of platform work, irrespective of how the relationship is classified in any contractual arrangement that may have been agreed between the parties involved.
3. Where the existence of an employment relationship is established, the party or parties assuming the obligations of the employer shall be clearly identified in accordance with national legal systems.

Article 5

Legal presumption

1. The contractual relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be an employment relationship when **facts indicating control and direction, according to 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. **To that effect, Member States shall establish an effective rebuttable legal presumption of employment that constitutes a procedural facilitation to the benefit of persons performing platform work, and Member States shall ensure that that legal presumption does not have the effect of increasing the burden of requirements on persons performing platform work, or their representatives, in proceedings ascertaining their employment status.**
3. The legal presumption shall apply in all relevant administrative or judicial proceedings where the correct determination of the employment status of the person performing platform work is at stake.

The legal presumption shall not apply to proceedings which **solely** concern tax, criminal or social security matters. However, Member States may apply the legal presumption in those 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 paragraph 3 first subparagraph for ascertaining the correct employment status of the person performing platform work.
5. [...] **Where** a competent national authority considers that a person performing platform work might be wrongly classified, it shall **initiate** appropriate actions **and proceedings**, [...] in accordance with national law and practice, in order to ascertain the [...] employment status of that person.
6. With regard to contractual relationships entered into before and still ongoing on the date set out in Article 30(1), the legal presumption referred to in this Article shall only apply to the period starting from that date.

Article 6

Framework of supporting measures

1. 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, for digital labour platforms, persons performing platform work and the social partners to understand and implement the legal presumption including on the procedures for rebutting it;
 - (b) develop guidance and establish appropriate procedures in line with national law and practice for competent national authorities, including on the collaboration between different competent national authorities, to proactively identify, target and pursue digital labour platforms which do not comply with rules on correct determination of the employment status;
 - (c) provide for effective controls and inspections conducted by national authorities, in line with national law or practice, and in particular provide [...], for **appropriate** controls and inspections on specific digital labour platforms where **the existence of an employment relationship** has been **ascertained by a [...]**competent national authority, while ensuring that such controls and inspections are proportionate and non-discriminatory.
 - (d) provide for appropriate training for competent national authorities and provide for the availability of technical expertise in the field of algorithmic management, to enable those authorities to carry out the tasks referred to under point (b).

Article 27

Non-regression and more favourable provisions

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 correct determination of the employment status of persons performing platform work **as well as existing prerogatives of their representatives**.

Recital

- (31a) **Control and direction can take different forms *in concreto*, 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 sanctions 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 the information required to assert before a competent authority the actual nature of their contractual relationship and the rights derived therefrom and, the management of persons performing platform work through automated monitoring and decision-making systems is characterised by an opaque flow of information from the digital labour platform. These features of platform work perpetuate the phenomenon of misclassification as false self-employment, thus hindering the correct determination of the employment status and the access to decent living and working conditions for platform workers. Member States should therefore lay down measures providing for an effective procedural facilitation for persons performing platform work when ascertaining the correct determination of their employment status. In this light, the presumption of an employment relationship in favour of the persons performing platform work is an effective instrument which greatly contributes to the improvement of living and working conditions of platform workers.**
-