

Questions on the legal presumption and Chapters V and VI of the Directive on improving working conditions in platform.

Written comments from the Spanish delegation (ST 10646/22)

I. Mechanism of the rebuttable presumption

1) Can delegations agree with the mechanism of the rebuttable presumptions as laid out above?

The essential features of the presumption are considered to be adequate, so that the rebuttal mechanism described by the PRES CZ can be generally supported,

However, two issues need to be clarified with regard to the rebuttal mechanism:

On the one hand, the note implies that labour authorities, when acting ex officio, will have a margin of discretion to decide whether or not to initiate the procedure to classify the workers as employees, unlike what would occur in cases of actions at the request of a party, in which it seems to be ruled out that these authorities can assess whether the elements of an employment relationship are present and decide accordingly.

However, the action of the labour authority should be carried out under the following premises

- for the labour authorities, the presumption of employment should operate in the same way, both in their actions initiated ex officio and in those initiated at the request of a party
- in any event, the functions and autonomy that the supervisory authorities are legally recognised as having to verify and decide whether the elements of an employment relationship or, as the case may be, the requirements for applying the presumption of employment should be respected.

On the other hand and in relation to the rebuttal mechanism, it is important to establish, in the terms proposed by the Commission, that the rebuttal procedures shall not have suspensive effect on the application of the legal presumption (art. 5). It is considered that this will make the application of the presumption more effective at EU level, helping to harmonise their implementation.

II. Criteria triggering the presumption

1) What are the preferences of the delegations related to the above-mentioned approaches A to C? If a delegation is not in favour of any of these approaches, which other approach would it support?

This delegation is in favour of the establishment of common criteria to trigger the presumption at European level, given that they are already part of the Community acquis communautaire as they derive from the case law of the CJEU. As highlighted by the

Commission, option C is not acceptable and could lead to unfair competition and could subject MS to intense lobbying by platforms, For these reasons option B will ensure harmonisation of the application of the presumption and the LFP. Option A would de facto cover most of the situations in which people working on digital platforms are found, according to the experience of the Spanish labour authority, whose correct classification is as workers, but could exclude situations of true self-employed workers.

2) Do delegations consider the criteria proposed in the Commission proposal adequate or do they suggest any amendment? If they do not consider the wording of the criteria in the COM proposal adequate, PRES will appreciate concrete suggestions regarding their modification.

The criteria proposed by the Commission are considered appropriate and do not need to be amended. However, we would be open to proposals for improvement, provided that they ensure adequate protection for workers and are consistent with the *acquis communautaire*.

As an additional comment, and in order to reinforce the implementation of the presumption, we consider that **recital 23** should be amended, in the terms indicated in the annexed document, to avoid the fact that platforms voluntarily pay for social protection, accident insurance or other forms of insurance, training measures or similar benefits for self-employed persons, being disregarded as an indication of labour status in the courts

III. COMMENTS IN RELATION TO CHAPTER V AND VI OF THE PROPOSAL.

New drafting proposals for Articles 16, 18 and 19 are set out in the annexed document.