Italian drafting suggestions to the

Proposal for a directive on improving working conditions in platform work

Changes compared with document 8584/22 are set out in **bold underlined**. Deletions are marked with **[…]**.

Italy thanks the CZ Presidency for the hard work in clarifying the directive, as in the explanatory note sent late July. We wish to thank the French presidency as well for its efforts on improving chapters I and II. However, as other delegations, we have some concerns regarding the weakening of the Commissions' proposal. Therefore, for some parts we suggest reverting to the original wording.

Article 1

Subject matter and scope

1. **[…]**

2. […]

3. […]

Justifications for suggested change:

We deem appropriate to go back over article 1 of the Commission proposal. In our view it seems more suitable to pursue the goals of the directive. At the same time, we wish the Presidency can work to its improvement and we can be flexible with possible changes which will take into account the specificity of platform work and the need to guarantee, throughout this directive, minimum protections to persons performing platform work (definition which include the category of platform workers, as Commission explained, and as we wish to clarify further on).

Article 2

Definitions

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

(1) 'digital labour platform' means any natural or legal person providing a **labour** service **that is** […]:

(a) […] provided, at least in part, at a distance through electronic means, such as a website or a mobile application;

(b) […]

(c) […] involves […] the organisation**, supervision or intermediation** of work performed by individuals, irrespective of whether that work is performed online or in a certain location;

(2) 'platform work' means any 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 **and the individual or another party**, irrespective of whether a contractual relationship exists between **that** individual **or that party** and the recipient of the service;

(3) 'person performing platform work' means any individual performing platform work, irrespective of the **nature of the** contractual **relationship or its** designation **[…]** by the parties involved;

(4) 'platform worker' means any **individual** performing platform work who has, **or who based on an assessment of 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;

(5) 'representatives' means the **[…]** organisations or representatives **of persons performing platform work** provided for by national law or practices, or both;

(6) 'micro, small or medium-sized enterprises' means micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC[1].

2. The definition of digital labour platforms laid down in paragraph 1, point (1), shall not include providers of a service whose primary purpose is to exploit or share assets **or to resell goods or services […].**

3. The definition of person performing platform work laid down in paragraph 1, point (3), includes the category of platform worker.

[1] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (C(2003) 1422) (OJ L 124, 20.5.2003, p. 36).

Justifications for suggested changes:

In paragraph 1 point (1), as already proposed, the prevailing perspective should be in our view that of those who offer the service, not of those who receive it. It must always be taken into account that it is a relationship between platforms and workers, regardless the involvement of third parties.

Having regard to paragraph 2, we do not consider it appropriate to exclude a priori *a service because of its non-profit making nature. In our view, it is needed to focus on the employment relationship more than on the nature of the employer.*

We wish to add a new paragraph 3 because we deem useful to specify that with the wording "person performing platform work" we refer to both workers and self-employed, in order to avoid any misleading or ambiguity for every provision of the directive and any difficulties in the transposition. This addition would improve the clarity of definitions.

Article 3

(1) Correct determination of the employment status

1. Member States shall have appropriate 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, and ensuring that they enjoy the rights deriving from Union law applicable to workers.

2. The determination of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work**, with reference to article 4 (2),** taking into account the use of algorithms 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. Where the existence of an employment relationship is established based on facts, the party assuming the obligations of the employer shall be clearly identified in accordance with national legal systems.

Justifications for suggested change:

It could be useful to introduce a link to the criteria laid down in art.4 (2) as well, that are crucial for the determination of the existence of an employment relationship, in order to simplify and take into account the effective application of the provision.

Article 4

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 the digital labour platform restricts the […] autonomy to organise one's work, including through sanctions, and** controls its **execution. […]**

[…]

2. **[…] The employment relationship** within the meaning of paragraph 1 shall […] fulfill[…] at least two of the following:

(a) **[…]** determining, or setting upper limits for the level of remuneration, **its frequency and terms of payment**;

(b) requiring the person performing platform work to respect specific **[…]** rules with regard to appearance, conduct towards the recipient of the service or performance of the work;

(c) **supervising the performance of work or verifying the quality of the results of the work including by electronic means;**

(d) **[…]** restricting **[…]** the discretion to choose one's working hours or periods of absence, **to choose one's tools and equipment,** to accept or to refuse tasks or to use subcontractors or substitutes;

(e) **[…]** restricting the possibility to build a client base or to perform work for any third party.

3. *see comments*

4. Member States shall take supporting measures to ensure the effective implementation of the legal presumption referred to in paragraph 1 while taking into account the impact on start-ups, avoiding capturing the genuine self-employed and supporting the sustainable growth of digital labour platforms. In particular they shall:

(a) ensure that information on the application of the legal presumption is made publicly available in a clear, comprehensive and easily accessible way;

(b) develop guidance for digital labour platforms, persons performing platform work and social partners to understand and implement the legal presumption including on the procedures for rebutting it in accordance with Article 5;

(c) **[…]** develop guidance for **competent national** authorities to proactively target and pursue non-compliant digital labour platforms;

(d) **[…]** strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of labour law, while ensuring that such controls and inspections are proportionate and non-discriminatory.

5. With regard to contractual relationships entered into before and still ongoing on the date set out in Article 21(1), the legal presumption referred to in paragraph 1 shall only apply to the period starting from that date.

Justifications for suggested changes:

In the seek of compromise, we propose to speak about "autonomy" to organise one's work instead of "freedom" to organise one's work that seems more appropriate from a techical point of view. Moreover, the proposed draft wishes to soften the 'double barrier' to trigger the legal presumption. In our opinion, paragraph 2 should define the characteristics of the employment relationship, instead of defining the concept of "control" and "restriction of freedom to organise one's work". This in order to add clarity and objectivity to the entire mechanism of legal presumption. Furthermore control (supervision) itself is one of the criteria used for the triggering of the legal presumption.

We also propose to add some elements to the list of criteria to avoid the potential inclusion of genuine self-employed.

We deem appropriate to reinforce the mechanism of legal presumption in the different steps and proceedings because we the believe it is worth to make a common effort to harmonization of the supporting measures to ensure its effective implementation.

In this regard, we believe more discussion is needed on the application of presumption. We can agree that competent administrative and legal authorities verifying compliance with or enforcing relevant legislation shall be able to rely on that presumption when at least two of the conditions set out in paragraph 2 are met, but we are still reflecting on an effective wording. On the one hand, room for manoeuvre should be left to the competent authorities; on the other hand, it is important not to weaken too much the provision and application of the presumption, also because rebuttal will always be possible. This means that a balance must be struck in order not to nullify the effectiveness of the presumption.

We trust that the Presidency will work along these lines and, in any case, IT reserves the right to make changes to the wording at a later stage.

Article 5

[…] Rebuttal of the legal presumption

Member States shall ensure the possibility for any of the parties to rebut the legal presumption referred to in Article 4 in legal or administrative proceedings or both.

Where the digital labour platform argues 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 State in question, with consideration to the case-law of the Court of Justice **and taking into account points (a) to (d) in article 4 (2)**, the burden of proof shall be on the digital labour platform. Such proceedings shall not have suspensive effect on the application of the legal presumption.

Where the person performing the platform work argues 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 State in question, with consideration to the case-law of the Court of Justice **and taking into account points (a) to (d) article 4 (2)**, the digital labour platform shall be required to assist the proper resolution of the proceedings, notably by providing all relevant information held by it.

[…]

Justifications for suggested changes:

We deem appropriate to go back over article 5 of the Commission's proposal. In our view, that wording seems more consistent with article 4. We wish also to add a 'soft' reference to the criteria of article 4, albeit in an ancillary manner to law, collective agreements or practice, to make a little further step towards a future harmonisation of minimum requirements throughout the EU.

Article 18

Protection from dismissal

1. Member States shall take the necessary measures to prohibit the dismissal or its equivalent and all preparations for dismissal or its equivalent of persons performing platform work, 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, or have been subject to measures 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 or the equivalent measures. The digital labour platform shall provide those grounds in writing**, within 15 days**.

3. Member States shall take the necessary measures to ensure that, when 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 or equivalent measures, it shall be for the digital labour platform to prove that the dismissal or equivalent measures were based on grounds other than those referred to in paragraph 1.

4. Paragraph 3 shall not prevent Member States from introducing rules of evidence which are more favourable to persons performing platform work.

5. 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.

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

Justifications for suggested change:

It is crucial to envisage a deadline for the platform to provide a feedback in order to ensure that information is delivered in due time for the exercise of the persons rights.

Article 19

Supervision and penalties

1. The supervisory authority or authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall also be responsible for monitoring the application of Article 6, Article 7(1) and (3) and Articles 8 and 10 of this Directive, in accordance with the relevant provisions in Chapters VI, VII and VIII of Regulation (EU) 2016/679. They shall be competent to impose administrative fines up to the amount referred to in Article 83(5) of that Regulation.

2. The authorities referred to in paragraph 1 and national labour and social protection 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 and decision-making systems on working conditions or on rights of 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**, taking into account national laws and practices.**

3. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to provisions of this Directive other than those referred to in paragraph 1 or of the relevant provisions already in force concerning the rights which are within the scope of this Directive. The penalties provided for shall be effective, proportionate and dissuasive.

Justifications for suggested change:

It is useful to envisage a reference to national laws and practices due to differences in national systems.