

Proposal for a Directive on improving working conditions in platform work
REPLY TO THE PRESIDENCY NOTE AND COMMENTS ON CHAPTERS I, II and V
BY THE SLOVENIAN DELEGATION

SI strongly supports the purpose of the proposal for the Directive, which is to improve the working conditions in platform work.

SI believes that the protection of **all persons performing platform work** should be strengthened in the Commission's proposal in a way that ensures a correct determination of employment status and the rights under Chapter III to every person performing platform work (*see also our suggestions on chapters III and IV of July 2022*).

1. REPLY TO THE PRESIDENCY NOTE WK 10803/2022 INIT

As regards the approaches to trigger the presumption **SI is in favour of option A**. *Presumption of worker status for all persons working for digital platforms*. However, this option should be further elaborated to protect genuine self-employed from misclassification.

SI estimates that **neither option B nor C has any added value**. Option C would not make a difference in Slovenia and those Member States where the legal presumption has already been in place. According to option B, the rebuttal of legal presumption is based on national criteria of a worker. In practice, this would mean that the person performing platform work will not be granted the worker status in the final phase of the mechanism although the criteria established by the directive would have been met. The definition of a worker differs between Member States, so the directive's contribution to creating a level playing field, which is supposed to be the advantage of option B, might be very limited.

SI largely agrees with the PSY's interpretation of the mechanism of the rebuttable presumption as set out in the PSY note, however we also feel it **is not fully aligned with the text of the proposal** as it stands now. In particular, we don't read the text as it would include the following:

- *"In any other proceedings (e.g. in tax, social, security or criminal law), authorities are not bound by the presumption".*
- *"Enforcement authorities that act out of their own initiative would not have to apply the presumption if it is manifest that it would be rebutted".*
- *"In practice, it would mean that, once the person performing platform work demonstrates that two of the criteria in Art. 4 are met..."*

SI would like to avoid the possibility of such interpretation and suggest reverting to the Commission's proposal in the relevant parts of the text. **Although SI favours option A, it has been clear to us that** -taking into account the positions of MS- **SI will very likely have to live with option B.**

In the context of option B, we suggest the amendments to Chapters I and II as indicated below.

2. DRAFTING SUGGESTIONS ON CHAPTERS I, II and V

Article 1

Subject matter and scope

1. *The purpose of this Directive is to improve the working conditions of persons performing platform work by ensuring correct determination of their employment status, by promoting transparency, fairness and accountability in algorithmic management in platform work and by improving transparency in platform work, including in cross-border situations, while supporting the conditions for the sustainable growth of digital labour platforms in the Union.*
2. **[SI supports BE proposal for paragraph 2.]**

Article 4

Legal presumption

1. *The contractual relationship between a digital labour platform that controls the performance of work and a person performing platform work through that platform shall be legally presumed to be an employment relationship. g*
2. *Controlling the performance of work within the meaning of paragraph 1 shall be understood as fulfilling at least two of the following:*
 - (a) *[...] determining, or setting upper limits for the level of remuneration;*
 - (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 periods, 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. *The legal presumption shall apply in all relevant administrative or legal proceedings.*

To that effect, Member States shall establish a framework of measures, in accordance with their national legal and judicial systems.

Article 5

[SI supports IT proposal for Art. 5.]

Article 19

Supervision and penalties

2. *The authorities referred to in paragraph 1 and competent national 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.