

Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work

Written comments from the Hungarian delegation on the criteria triggering the legal presumption in Article 4 (ST 8584/22)

I. General remarks

- It should be highlighted that one of the **main goals of this directive** is to **eliminate the legal uncertainty surrounding the status of platform workers**, so the criteria should not generate even greater uncertainty and thus a multitude of administrative and/or judicial proceedings.
- The current wording of Article 4 (2) of the draft directive contains a **very simplified, too general and broadly formulated set of criteria** serving as the legal basis for the classification of the employment status of persons performing platform-based activity. (estimated for 28 million persons across the EU in the Impact Assessment).
- A set of criteria **do not meet the requirement of normative clarity and need to be clarified what type of control should lead to employment classification**.

For example:

- „setting the level of remuneration” in point a) of Article 4 (2),
 - „monitoring of performance” in Article 4 (2) point c)
- are also **typical in civil law relationships**, they are **not specifically defining characteristics for an employment relationship and even less for the platform work**.

We strongly recommend the clarification of the exact content of these points and tailor them to the specificities of platform based activities under the scope of the proposal.

- In Article 4 Paragraph (2) point (d) there are currently **three unrelated criteria** fused in one point. Therefore there are **8 criteria** listed in Article 4 (2) **instead of 5 [(a)-(e)]**, and the **existence of two of them does not establish a sufficient and proper legal presumption**.

Limiting the right to the *acceptance and rejection of tasks*, restricting the *conditions for choosing working hours*, and *for using a subcontractor* are **three completely different aspects of the legal relationship**, and they **need to be included in separate points**.

- We are *also proposing an additional criterion*, which reflects the main characteristics of the employment relationship such as the employer's obligation to *directly and concretely define* the tasks, and the employee's obligation is to *perform the tasks regularly, continuously and repeatedly in person*.

Thus, a total of **8 criteria would be included** in paragraph (2) of Article 4, of which, according to our proposal, **the majority (at least 5 of 8) should be met** in order to establish a legal presumption for employment relationship according to the directive.

Additional changes in Article 4 (3) aim to develop the clarity of the text avoiding controversial legal interpretations and thus undermining the harmonised implementation of the directive in the future.

II. Drafting suggestions

Changes compared to doc. ST 8584/22 are highlighted in yellow.

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 effectively restricts that person's freedom, including through sanctions, to organise his or her work and controls its execution performance, within the meaning of paragraph 2. [...]**
2. **Effectively restricting the freedom to organise one's work and unilaterally controlling its performance execution** within the meaning of paragraph 1 shall be understood as **de facto** fulfilling at least ~~two~~ **the majority** of the following:
 - (a) [...] determining, or setting upper limits for the level of remuneration;
 - (aa) determining directly and specifically the tasks to be performed continuously, regularly, and repeatedly within platform work.**
 - (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) **continuously** supervising the performance of work **in detail** 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,
 - (da)** restricting to accept or to refuse tasks ~~or~~,
 - (db) requiring the person performing platform work to perform the tasks in person** and restricting to use subcontractors or substitutes;
 - (e) [...]and restricting the possibility to build a client base or to perform work for any third party.
3. **The legal presumption shall be applied in relevant administrative or legal proceedings subject to the qualification of the employment status of the person performing platform work.**

Article 16

Access to evidence

1. Member States shall ensure that in proceedings concerning a claim regarding correct determination of the employment status of persons performing platform work, national courts or competent authorities are able to order the digital labour platform to disclose any relevant evidence which lies in their control **in accordance with national law and/or practice.**

Justification: The provisions of Article 16 regarding the publication of relevant evidence and the disclosure of evidence containing confidential information are not fully consistent with the basic principles of civil litigation which is subject to legislative national competence. Therefore Hungary proposes adding a clear reference to national law and practice.