



Malta's Comments on the Proposal for a Directive of the European Parliament and of the Council on improving working conditions on platform work addressing the Questions found in Steering Note (WK 10803/2022) as well as on Chapter V and VI

Malta's replies on the questions found in Steering Note (WK 10803/2022)

I. Mechanism of the rebuttable presumption

Can delegations agree with the mechanism of the rebuttable presumptions as laid out above (within the Steering Note)?

Overall, Malta agrees with the Presidency's understanding of Articles 4 and 5. Malta is also in full agreement with the Presidency's understanding on both the first and the second bullet; that is, that:

- The Presidency interprets the presumption as having a full legal effect on the status of persons performing platform work (not being considered employed with a digital platform) to be presumed employed with a digital platform, if a digital platform puts into effect at least two of the five criteria. (that is, the first bullet point).
- The presumption finds application in any proceedings where the question of employment status is at stake.

Furthermore, while Malta in essence agrees with the Presidency's understanding on the third, fourth and fifth bullets, one must take into consideration that the rebuttal of the legal presumption could be subject to different interpretations; that is, when comparing the views of the competent authority who are vested with powers to preside over matters concerning labour law issues, with that of the respective Courts. Therefore, one must be cognisant that while the competent authority can have one interpretation and reasoning (that is, from a labour law point of view), this can be challenged later by the reasoning of the Court that acts in accordance not only with labour law but also with other Courts that consider/act in accordance to other different points of views (such as those with general jurisdiction or criminal). This is particularly so due to the operability of Article 4 (4) of the First Compromise Text.

On the other hand, taking into consideration Article 5(1) (a) and (b), Malta can agree with the understanding of the fourth bullet, namely, competent administrative or judiciary authorities must apply the presumption, which can be rebutted in the course of the same proceeding.

It is also established that the presumption is always rebuttable in the course of such proceedings. The rebuttal has to be based on the national criteria defining a worker, and it is up to the digital labour platform to prove that the contractual relationship in question is not an employment relationship.

II. Criteria triggering the presumption

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?

Malta feels that Approach B, that is, to have Union criteria to trigger the presumption, different from the criteria used for its rebuttal (as in the Commission's Proposal), is the most viable. This approach



will help establish harmonisation of minimum requirements as far as the triggering of the presumption is concerned.

However, the full effect of this approach is only possible:

- a) if each stage of the presumption mechanism is clearly defined, and the presumption mechanism is made operable whenever the issue concerning the employment status of a person carrying out platform work is disputed, or platform worker is disputed; and
- b) with the sanctioning of the suspensive effect of an appeal against a decision applying the presumption mechanism.

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 CION proposal adequate, PRES will appreciate concrete suggestions regarding their modification.

Malta feels that the criteria proposed in the Commission Proposal are adequate.

Malta's Comments on Chapter V and VI

Malta has no adverse comments to make on Chapter V (Remedies and Enforcement, Article 13-19) and on Chapter VI (Final Provisions, Articles 20-24).