

## Polish questions concerning Note from the Czech Presidency on the legal presumption

for WPSQ meeting on 5 September 2022

We would welcome further clarification by the Presidency on the issues below:

- *The presumption finds application only in those proceedings where the question of the employment status is at stake. In any other proceedings (e.g. in tax, social security or criminal law), authorities are not bound by the presumption.*

The first sentence means that in practice the presumption would only apply to individual proceedings on reclassification (determination of the employment status) and not to all proceedings in which the nature of the contractual relationship is of some relevance. Therefore, in proceedings concerning a specific benefit or entitlement, like social security benefits or the right to paid leave, when – according to national legislation - the existence of an employment relationship must be established in order to obtain it, the presumption would not apply and the relevant authorities should proceed based entirely on national legislation like there is no presumption. Is this the correct understanding of the first sentence?

The second sentence – do we understand correctly that it is left to the discretion of the MS to decide whether other authorities are bound by the decision of another authority as regards the presumption?

- *Competent administrative or judiciary authorities have to apply the presumption, which can be rebutted in the course of the same proceeding.*

We would like to ask for further clarification of "*the same proceeding*" - does it mean proceedings before the same authority or does it also include appeal procedures to a higher authority or a court, if it is possible under national law to challenge the decision of the authority concerned before a higher instance or a court?