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Implementing the Presumption of Employment of the Platform Work Directive

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Surface-Level Compliance vs. Meeting The Deeper Purpose

The Platform Work Directive has finally entered into force, and with it an obligation for Member States to establish an effective rebuttable presumption of employment for service providers in the

platform economy. The Directive itself does not clearly determine what the standard of protection that Member States must provide should be, or which kinds of presumptions would be compliant, and in line with its purposes. The aim of this blog post is to try and navigate, admittedly without without much of a roadmap from the EU, through the various possible ways to transpose Art. 5 par. 2 of the Directive. To that end, a series of questions need to be asked and answered.

What would constitute an effective presumption? How can we avoid creating ineffective ones? At which level of estimated effectiveness do we cross the threshold between non-compliance and compliance? Has the Directive done what it originally set out to do, regarding the misclassification of persons performing platform work? If not, can national legislators pick up the slack, and how?

When dealing with all these questions, a pattern emerges: the vagueness of the Directive's relevant provisions injects uncertainty into the process of understanding the impact of this Directive. And while this post poses more questions than it offers answers, we believe it can propose a few useful ideas for further discussions.

Where we stand, and how we got here

On December 1st, 2024, following protracted negotiations, the long-awaited **Platform Work Directive**[1]entered into force, setting out two main objectives: a) improving the working conditions of persons performing platform work in an employment relationship and b) protecting the personal data of all persons performing platform work, irrespective of the nature of their relationship[2]. Pursuant to the first objective, the Directive aims to introduce '*measures to facilitate the determination of the correct employment status of persons performing platform work*'[3]. This comes as no surprise. From the very beginning, the issue of employee misclassification in the platform economy has been the area that, more than any other, has captured the attention of national courts, labour lawyers and researchers worldwide[4]. The main legal instrument in service of this goal was to be the **legal presumption of employment** for persons performing platform work.

However, while tackling the misclassification problem, mainly with the help of a legal presumption of employment, was, at the time of the Directive's conception, supposed to be at the heart of the Directive and of EU policy on platform work in general, its status as the cornerstone of platform workers' protection seems to have been lost in the dark labyrinth of the negotiations (the Trilogue between the EU's legislative bodies and the lobbying by digital platform companies)[5]. If we follow the proverbial thread, from the Commission's original proposal for a Directive back in December 2021 to the Directive's final adopted text, we cannot help but notice that the EU-wide legal presumption of employment for platform workers, which had been there in every draft version of the Directive (albeit in different forms), has been replaced by the obligation of Member States to establish a national presumption of employment that corresponds to their **national concepts of employment**. In the Directive's exact wording (Art. 5 par. 1- 2), '*1. The contractual relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be in an employment relationship where* ***facts indicating direction and control, in accordance with national law, collective agreements or practice in force in the Member States*** *and with consideration to the case-law of the Court of Justice, are found. Where the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove 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 States, with consideration to the case-law of the Court of Justice. 2. For the purposes of paragraph 1,*

Member States shall establish an effective rebuttable legal presumption of an employment relationship *that constitutes a procedural facilitation for the benefit of persons performing platform work. Moreover, Member States shall ensure that the legal presumption does not have the effect of increasing the burden of requirements on persons performing platform work or their representatives in proceedings to determine their correct employment status*'. (emphasis added)

This finalised text marks quite the departure from the Commission's original ambition of establishing a '*comprehensive framework to tackle employment status misclassification*'[6]. An ambition that was apparently shared, at least for the better part of the legislative procedure, by all three legislative bodies of the EU, which, despite suggesting different versions of the rebuttable legal presumption, confirmed its significance and kept it firmly within the Directive's text. Indeed, upon entering the Trilogue in July 2023, the Commission, per its Proposal, a) suggested the establishment of a presumption which included five criteria, two of which needed to be satisfied in order to activate the presumption, b) the Council slightly altered the Commission's proposed presumption, by breaking down one of the Proposal's criteria into three and demanding that three out of the now seven criteria must be met, and c) the European Parliament proposed an unconditional legal presumption, according to which all persons preforming platform work would be considered to be employees by default, without the need to meet certain criteria[7].

While the proposed presumptions were not without their faults[8], we are now facing a situation where each and every one of the 27 Member States is free to formulate their own presumption, as long as they abide by the pretty **vague standards set by the Directive**: a) that the presumption needs to be one of employment and not of self-employment (a point that seems redundant, until one looks at cases such as that of Greece – more on that below), and b) that the presumption seemingly needs to take into account control and direction, that is, two concepts that are already being used in every single Member State to diagnose the existence of an employment relationship[9]. The Directive clearly wishes for national concepts of employment to remain untouched[10] by making the all-too-familiar reference to national law, collective agreements, and practices of Member States. In addition, the Platform Work Directive does not create a concept of 'employee' or 'worker' specifically for the purposes of its application[11]. This signifies that, when it comes to the determination of the legal status of platform workers, **harmonisation** among Member States is to be pursued **solely at the procedural rather than at the substantive level**[12]. The question remains: what exactly are Member States obliged to do under Art. 5 par. 2 of the Directive, which calls for the establishment of the presumption, without giving any useful instructions as to its contents, but instead stating, essentially, that the minimum standard of protection is that 'if it looks like a duck and quacks like a duck, it is probably a duck'?

Four different scenarios for the transposition of Art. 5 par. 2 of the Directive into national systems

What is clear from the Directive's stipulations is that Member States need to have in place a rebuttable legal presumption of employment for persons performing platform work by the time the transposition deadline expires[13]. What can be argued is that said presumption needs to be linked to the concepts of direction and control, i.e. what many national systems would call 'personal' or 'legal' 'dependence'. What is not at all clear is how national legislators should go about guaranteeing the results that the Directive demands of them, since, as is evident from the wording of the relevant provisions, it is difficult to pinpoint what exactly the sought-after results of Art. 5 par. 2 are.

Before we delve into the specifics, a preliminary question must be answered: can a legal presumption of employment be **at all effective** (and therefore compliant with the Directive), when it **relies upon the service provider initiating legal proceedings and proving a set of facts before it can be triggered**? While conditional presumptions which are activated only after certain 'foundational facts' have been proven are not unknown in most legal orders, they could be considered a troubling choice in the context of work relations in general and platform work in particular: workers are understandingly hesitant to bring forward a claim for their reclassification, fearing both repercussions by their employer (especially the potential termination of their contract) and the financial cost of initiating the proceedings and seeing them through. Does the Directive require, or at least suffer, the weaker party having to take the first step and to prove certain facts on top of that?

While it can be argued that the original aim of the Directive was to facilitate a mass-reclassification of millions of service providers and to establish a 'day-one right' for future persons performing platform work, it is difficult to detect that same goal in the wording of the finalised version of Art. 5. We should also take into account that, a) an unconditional presumption would be, by its very nature, uniform in all Member States, and hence there would be no reason for the Directive to let Member States formulate their own presumption, if all national presumptions were to end up identical anyway, and b) had the Directive demanded that an unconditional presumption be established, it would have stipulated so directly, the most likely *prima facie* interpretation is that **conditional presumptions are not automatically at odds with the Directive**. That is not to say that such presumptions are automatically compliant with the Directive, either. It all comes down to their **effectiveness** as procedural facilitations, as we shall see below.

Having determined that conditional presumptions can probably be considered (at least *in abstracto*) a valid way to transpose Art. 5 of the Directive, we must now turn to the specifics of the transposition. In light of the lack of concrete protection standards and considering that we can only fit so many arguments in a short post such as this, we can only propose certain directions regarding the transposition of the Directive's presumption into national legal orders. To that end, we find it helpful to distinguish amongst **four general scenarios** that could occur, depending on where national legislation currently sits in any given Member State regarding platform labour. These scenarios are as follows:

1. A Member State has **no legal presumption of employment** in place that covers platform workers (as is the case in most Member States[14]). That could either mean that there are no presumptions of employment in their national law whatsoever, or that any presumptions that might exist do not apply to platform work.
2. A Member State already has in place **a legal presumption of employment** that covers persons performing platform work (be it a general presumption for everyone performing personal work, or a more specific one for certain sectors, or even a special presumption for platform work), that is **based on criteria linked to control and direction by an employing entity** (e.g. Belgium[15], Spain[16],Portugal[17]).
3. A Member State already has in place **a legal presumption of employment** that covers persons performing platform work, that is **not based on criteria linked to control and direction by an employing entity** (e.g. the Netherlands[18], Greece[19]).
4. A Member State already has in place **a legal presumption of self-employment** that covers persons performing platform work (Greece[20]).

Depending on which scenario applies to a particular Member State, the standard of protection

which that State guarantees persons falling within the scope of Art. 5 is different. This means that, depending on the country, different national measures may need to be taken in order to meet the Directive's minimum standards, whatever those may be. Having accepted that conditional presumptions appear to be, at least in principle, compliant with the Directive, we can now supply a few thoughts on how our four scenarios could (or should) play out:

1. If **no presumption** of employment exists, one needs to be established in order to meet the Directive's standards. Member States **cannot simply point to their national legislation and jurisprudence**, which make use of the criteria of control and direction to diagnose the existence of an employment relationship, as measures of equivalent effectiveness to the presumption, as the Directive **demands**that an **effective procedural facilitation in the form of a rebuttable legal presumption** be provided to persons performing platform work who claim to be employed by the platforms. The general rule which applies to civil cases across all Member States, according to which the party which brings forward the claim needs to prove all the facts that support it, will have to play second fiddle when it comes to the classification of workers in the platform economy, and apply only in cases where the presumption is not triggered. In this 'blank canvas' scenario, what remains to be determined is the content of the presumption, an issue that we will deal with below.
2. If a **presumption based on direction in control** is already in place, the critical question concerns the level of protection it bestows compared to the level the Directive sets. If the standard is met, the Member State will not need to take any action. If the standard is not met, the presumption would need to be reviewed, preferably while bearing in mind what we will discuss in the final section of this post. The major problem in this scenario, to which we already alluded, is that **the Directive does not really reveal what the standard of protection should be**. Consequently, barring national presumptions that would go as far as to increase the procedural burden of service providers[21], any presumption that simply makes sure to reference certain indicators linked to direction and control (similar to the original presumption in the Commission's Proposal, or the presumptions that apply in Belgium and Portugal, which follow a similar logic and structure) seems to have a decent chance to clear the bar, however unhelpful it may be in practice. We will return to this below, where the actual effectiveness of such presumptions will be put into question.
3. If a **presumption based on criteria other than direction and control** is already in place, two questions must be answered, the second conditional upon the answer given to the first. The first question is, again, whether the Directive's standard of protection is met. Given that the Directive on the one hand and national law on the other utilize entirely different criteria, they are **not comparable in terms of effectiveness** and, since the Directive seems to require the use of 'direction and control', the safest bet (as long as conditional presumptions go) would be to introduce a new presumption that is linked to those concepts, next to the existing one. The second question, which arises naturally having answered the first as we did, is how those two presumptions would interact with each other within the same legal order. Since the foundations of these presumptions do not coincide, nor can one 'fit' into the other entirely (e.g. one is based on the total duration of the relationship and the percentage of the income earned by one employer and the other on facts indicating control and direction), they are not in conflict, nor are they in a relation of general to specific. Therefore, there is no room to apply the *lex posterior* or the *lex specialis* Consequently, the two presumptions should **apply simultaneously**to the same legal relationship, opening up two different pathways to shifting the burden of proof to the alleged employing entity: if one presumption cannot be activated, maybe the other one can. After all, failing to trigger a presumption simply restores the burden of proof to its default state, and does

not harm the service provider's procedural position. In fact, this combination of presumptions might have the capacity to mitigate some of the issues that a presumption based solely on direction and control would cause (see the last section of this post), by raising the overall standard of protection.

4. If a **presumption of self-employment exists**, as is currently the case in Greece[22], national legislation is **in violation of the Directive**, since it does not provide for a procedural facilitation, but rather encumbers the person performing work. That holds true irrespective of how difficult it may be for the platform to trigger the presumption (and it can be argued that the Greek presumption is quite strict in that sense, especially if interpreted in light of the primacy of facts principle), as even a presumption of self-employment that is extremely hard to activate can still **only potentially work in the platform's favour,** and never in the favour of those performing the work. Since such a presumption is incompatible with the Directive, the national legislation establishing it will simply be rendered unenforceable when the deadline for the Directive's transposition expires, and scenarios 1-3 will apply, depending on whether there is already another presumption in place in that Member State and which criteria it utilises.

Things to consider when formulating an effective presumption

The previous paragraphs showcase one thing: it all boils down to how Member States should word the presumption of employment. This question can be broken down into two: first, what does the Directive allow for and second, how should legislators move within the constraints the Directive sets, however loose they may turn out to be.

Regarding the first question, one can either argue that the presumption need not be linked to any particular criteria, or that it must be linked to the criteria of direction and control, as the wording of Art. 5 par. 1 seems to imply. If the second option is given the green light, the question is if the presumption should limit itself to indicators of direction and control, or if it can incorporate other criteria next to these two.

We believe we cannot just ignore the reference to direction and control. But we must also understand what it stands for. Based on my understanding of the purposes of the Directive, on the draft versions of the provisions establishing the presumption, and taking into account the unwillingness to create a Union-wide presumption, the Directive appears to use these terms simply to refer to national concepts of employment, since every Member State uses these criteria. Bearing in mind that this is a minimum harmonisation Directive which allows Member States to apply or introduce laws that are more favourable to persons performing platform work[23], we may conclude that using indicators linked to direction and control is the **minimum standard of protection**. What these specific indicators could be, e.g. the platform dictating renumeration, working time, appearance, supervising the performance etc., is a matter for the Member States to take care of, making sure that the selection of indicators makes for an effective procedural facilitation.

Upon this 'ground floor' of indicators, national legislators are free to **add indicators linked to other concepts** that are **used to determine the employment status** of persons performing personal work[24], or even to more **'peripheral' concepts**[25], as nothing prohibits them from doing so, in the spirit of providing greater protection. After all, the Commission's Proposal did use such indicators in its proposed multi-factor presumption, despite itself mentioning 'controlling the performance of work' as the general criterion[26]. This reinforces the argument that all the Directive does is tell Member States that they should, at the very least, draw from their national

concepts of ‘employee’ to formulate their presumption. It goes without saying that any additional indicators would need to add to the protection afforded by the Directive and not in any way hinder its objectives.

There is **one exception** to the rule that the national presumption needs to be based on direction and control: the establishment of an **unconditional presumption**, such as the one the European Parliament proposed[27], which reverses the burden of proof from the outset, by stating that persons performing platform work are presumed to be employees and giving platforms the right to try and rebut this presumed legal status. The reason such a presumption is allowed, despite not referencing control and direction, is because it is more protective than what the minimum harmonisation Directive requires. While presumptions that use entirely different criteria are not easily comparable to presumptions that use indicators of direction and control and therefore do not allow us to readily determine if they meet the Directive’s standards (see the third scenario in the previous section), an unconditional presumption undoubtedly satisfies these standards and can thus be established instead of (and not only in addition to) a presumption based on control and direction. In fact, as suggested above, an unconditional presumption is the only sure-fire way to effective transposition, pursuant to the objectives of the Directive: all conditional presumptions are subject to further investigation on their effectiveness, which is one of the metrics for their compliance.

Moving on to the second question, while the transposition process is a matter for national legislators to take care of, we could provide some food for thought, pointing out certain landmines that can be avoided as Member States transpose the Directive. And by ‘landmines’, we mean a couple of finer details that, if not paid proper attention to, could undermine the effectiveness of a national presumption of employment and therefore cast doubts on its compliance with the Directive.

An easy and, at first glance, safe solution for Member States would be to create a presumption similar to that of the Commission’s Proposal or the Council’s Mandate, which would codify a small number of ‘traditional’ indicators of subordination/dependence, and require that a number of them apply in order for it to be activated. This approach **should not be encouraged**, especially if the exact same indicators as the Commission or the Council proposed are going to be used.

First of all, such presumptions seem to be at odds with the nature and function of legal presumptions in general. Rebuttable legal presumptions are often introduced by legislators where certain facts, rights, or relationships are difficult to prove, for various reasons (the nature of the facts, informational asymmetry etc.). In such cases, the party that would normally have to prove these facts, is instead given the option to prove another fact or set of facts, which are easier to prove. If these facts (foundational facts) are proven, then the first fact (presumed fact) is presumed by the court to be true, unless the other party disproves it. The problem in our case is this: the indicators used to trigger the presumption are facts that, in many cases, could, on their own, or at least in conjunction with one or two more facts on the same list, arguably lead a court of law to **directly decide that an employment relationship exists**. When the foundational facts essentially coincide with the presumed fact, the presumption is of little use, since **the foundation is just as hard to prove as the presumed fact**. If I, as a person performing platform work, can prove that the platform is determining the level of my renumeration and restricts my freedom to organise my work, by not letting me choose when to work and whether to accept or refuse tasks and by not allowing me to use substitutes or subcontractors, then, in most cases, I will have already proven I am an employee of that platform. One could go as far as to claim that the presumption could be

deemed to not actually be a procedural facilitation, but rather a burden on the person performing platform work, since, if it did not exist, proving the exact same facts would lead directly to the recognition of employment status and not just to the shifting of the burden of proof. This argument (that the presumption could be a burden) is countered by the realisation that national courts can simply apply their usual doctrine without utilizing the presumption to reach the conclusion that an employment relationship exists. But this is not a realization we are happy to make, as it highlights the ineffectiveness of the presumption. And still, while such a presumption may not be a burden[28] (as, should courts simply not utilise it, the burden of proof would simply revert back to default), it definitely **would not be an effective facilitation** in most cases and thus **would not comply with the Directive**. A direct effect of this **lack of distance between presumption and certainty** is that the presumption **may not actually be rebuttable** in many cases, since proving its foundation would instantly prove the existence of an employment relationship.

So, what should Member States do?

One option, which could be considered quite bold, but would guarantee compliance with the Directive due to its unquestionable effectiveness, is to introduce an **unconditional rebuttable presumption** that would place the burden of proof directly onto the platform's shoulders. This presumption may or may not be accompanied by certain criteria that would need to apply for a successful rebuttal. While the European Parliament selected the first option, we favour the second option of not including a list of boxes that platforms could try to check, but instead letting them use all legal ways to prove that the service providers are genuinely self-employed.

Another course of action would be to introduce a presumption that requires certain criteria to be met before the burden of proof is shifted onto the platform, making sure that the facts that satisfy these criteria are **significantly easier to prove than the existence of an employment relationship itself**. This could be achieved by employing 'weaker' indicators of dependence, by requiring even fewer or perhaps only one of them to apply, as well as by adding criteria extrinsic to the 'old-school' indicators of dependence into the mix. After all, the reason that the most discussed issue regarding platform work is the rampant misclassification of platform workers, is that the usual indicators of direction and control are difficult to detect in such relationships, mostly due to the replacement of traditional managerial prerogatives by algorithmic management, and the emergence of new ways to control and monitor performance and assign tasks**. If the lack of 'traditional' indicators of subordination is widely accepted as one of the biggest factors for the misclassification problem, it makes little sense to rely on such indicators for the legal presumption**, which is supposed to make classification easier[29].

As we suggested above, such conditional presumptions will always have to **prove their effectiveness in practice**. It is for the CJEU to decide whether a particular set of criteria selected by a certain Member State actually establishes an effective facilitation or not, by adopting a **purposive approach** when interpreting the vague provisions of the Directive and paying attention to not compromising their ***effet utile***.

Taking all the above into account, it is hardly surprising that the Directive itself seems to single out the effectiveness of the legal presumption one of the matters which will require '*particular attention*' when the implementation of the Directive is reviewed, three years after its coming into effect: according to Art. 30 of the Directive, '*[b]y 2 December 2029, the Commission shall, after consulting the Member States, the social partners at Union level and key stakeholders, and taking into account the impact on SMEs, including microenterprises, review the implementation of this*

Directive and propose, where appropriate, legislative amendments. In its review, the Commission shall pay particular attention to the impact of the use of intermediaries on the overall implementation of this Directive as well as to ***the effectiveness of the legal presumption***'. We have to point out that the effectiveness of the legal presumption is linked not only to its wording, which we discussed above, but also to whether Member States exercise the option to **adopt it in other procedures**, especially in matters of social security, per Art. 5 par. 3 of the Directive.

What we should also pay attention to is that, by not seizing the opportunity to create an EU-wide presumption of employment that would apply to all Member States, the Directive opens the way for **social dumping** by way of regulatory arbitrage, as it may allow platforms that organise purely online platform work to prioritise the selection of service providers who reside in Member States that adopted a less effective presumption (in cases they cannot make do with workers from developing countries with overall lower labour standards). However, there is always a chance that **the CJEU**, in trying to salvage the Directive's effectiveness, applies its newer approach of **not giving unlimited power to Member States to determine the scope of the concept of 'employee' for the purposes of the Directive, despite the referral to the national concept of 'employee'**, as it has done regarding the concept of 'worker' in the Transfer of Undertaking Directive and the Working Time Directive[30].

As the situation stands right now, Member States will have to work with what little they've been given. Since the Directive is of no particular help as to the specifics of the legal presumption, **it comes down to the willingness of national legislators** to provide a reasonably effective framework for the determination of the status of persons performing platform work, hopefully by not falling into the pitfalls we discussed.

Note: *This post was written during an Erasmus+ for Studies short-term research visit at Maynooth University, Ireland. I would like to thank David Mangan for facilitating the visit, and discussing the subject matter with me.*

References

[1] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, henceforth referred to simply as 'the Directive', available at https://eur-lex.europa.eu/eli/dir/2024/2831/oj/eng, last accessed March 22, 2025.

[2] Art. 1 par. 1 & 2 of the Directive, in combination with Art. 2 par. 2, c & d. Also see Recital No 16 of the Directive.

[3] Art. 1 par. 1, a, and Art. 4 of the Directive. Also see Recitals 16-17, 25-30.

[4] It is impossible to list the extremely rich catalogue of publications, surveys, court decisions etc. within the confines of this post.

[5] On the back and forth of the legislative procedure, see e.g. Boyce J., 'Big Tech Lobbying Killed the EU's Gig Worker Rules', available at https://www.worldpoliticsreview.com/eu-lobbying-gig-economy/, last accessed March 23, 2025; Liboreiro J., 'Dead deal walking: Why the EU law on platform workers is hanging by a thread',

available at https://www.euronews.com/my-europe/2024/01/18/dead-deal-walking-why-the-eu-law-on-platform-workers-is-hanging-by-a-thread,. Also see below.

[6] COM (2021) 762 final, p. 3, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021PC0762, last accessed March 22, 2025.

[7] For the proposed legal presumptions, see Cover Note 10758/23, pp. 81-84, with helpful comparative tables of the different draft versions of the Directive by the Commission, the EU Parliament and the Council, available at https://data.consilium.europa.eu/doc/document/ST-10758-2023-INIT/en/pdf.

[8] For critiques on the suggested presumptions, see e.g. Aloisi A., Rainone S. & Countouris N., 'An unfinished task? Matching the Platform Work Directive with the EU and international "social acquis"', ILO Working Paper 101, 12/2023, pp. 13-16, https://doi.org/10.54394/ZSAX6857; Georgiou D., 'Analogies and differences between the European Commission's and the Parliament's approaches to the new Directive on platform work', 2023, available at https://medium.com/@reshaping_work/the-presumption-of-employment-revisited-46418d386643. These seems to be a consensus among authors that the Commission's original version was too rigid and did not raise protection standards significantly, whereas the Parliament's unconditional presumption was more in line with the desired results. I subscribe to these opinions as well, which is evident throughout this post.

[9] For a comparative study on criteria and indicators used to determine employment status, see Waas B. in Waas B. & Van Voss G. H. (eds.), *Restatement of Labour Law in Europe, Volume I – The Concept of Employee* (digital version), Hart Publishing, Oxford and Portland, Oregon, 2017, pp. xliv – xlvi.

[10] See e.g. Rainone S. & Aloisi A., 'The EU Platform Work Directive – What's new, what's missing, what's next?', ETUI Policy Brief, 2024, p. 3, available at https://www.etui.org/sites/default/files/2024-08/The%20EU%20Platform%20Work%20Directive-what%E2%80%99s%20new%2C%20what%E2%80%99s%20missing%2C%20what%E2%80%99s%20next_2024.pdf; Kullmann M., ''Platformisation' of work: An EU perspective on Introducing a legal presumption', *European Labour Law Journal* 2022, p. 77. Also see below, in the last section of this post.

[11] See, however, the last section of this post.

[12] In order to not come off as too harsh towards this choice, which was essentially forced, as the alternative would probably be for the Directive to never see the light of day, it should be noted that the concept of 'employee' displays a very high level of uniformity among all Member States.

[13] Member States need to have transposed the Directive by 2 December 2026 (Art. 29 par. 1).

[14] For a brief, if slightly outdated, overview of legal presumptions of employment in European Countries, see Waas B. in Waas B. & Van Voss G. H. (eds.), 2017, pp. lvi – lxi. For a more in-depth view, see the national contributions on the same volume.

[15] See Art. 337/3 §2 of the Programme Law (I) of 27 December 2006, available at

https://www.ejustice.just.fgov.be/cgi_loi/article.pl?language=fr&lg_txt=f&type=&sort=&numac_search=&cn_search=2006122730&caller=SUM&&view_numac=2006122730n (last accessed March 23, 2025), which has been modified by Law 2022-10-03/06 to include the special presumption for digital platforms. This presumption includes eight criteria, all linked to legal or economic dependence, and is activated if three out of eight or two out of the last five criteria apply.

[16] See Royal Decree Law 9/2021 of May 11 2021, a consolidated version of which is available at https://www.boe.es/eli/es/rdl/2021/05/11/9/con (last accessed March 23, 2025). This presumption only covers persons working for delivery platforms and uses the general criteria of organisation, direction and control, without being as strict as the Commission's proposed presumption.

[17] See Art. 12-A of the Labour Code, as it was modified by Law No 13/2023 of April 3 2011, available at https://diariodarepublica.pt/dr/detalhe/lei/13-2023-211340863 (last accessed March 23, 2025). This presumption includes six criteria, two of which need to be met. On the Portuguese presumption, see Ribeiro A. T., 'An employment presumption for platform work – the Portuguese experience', available at https://global-workplace-law-and-policy.kluwerlawonline.com/2024/03/18/an-employment-presumption-for-platform-work-the-portuguese-experience/.

[18] See Art. 7:610a of the Civil Code, available at http://www.dutchcivillaw.com/civilcodebook077.htm (last accessed March 23, 2025), which provides that an employment relationship exists when a person performs work on behalf of another for at least three consecutive month, weekly or for no less that twenty hours per month. On the Dutch presumption, see e.g. Van Voss G. H. in Waas B. ??? Van Voss G. H. (eds.), 2017, p. 499.

[19] See Art. 1 of Law No 3846/2010, available at https://ypergasias.gov.gr/wp-content/uploads/2021/09/%CE%9D.-3846-2010-%CE%A6%CE%95%CE%9A-%CE%91-66.pdf, which provides that an employment relationship is presumed to exist when work is performed a) personally, b) exclusively or for the most part for the same employer, c) for at least nine consecutive months.

[20] See Art. 69 of Law No 4808/2021, available at https://ypergasias.gov.gr/wp-content/uploads/2021/09/%CE%BD.-4808-2021-%CE%A6%CE%95%CE%9A-%CE%91-101.pdf. According to this presumption, a person performing platform work is presumed to be self-employed if, based on their contract, cumulatively enjoy certain rights which are indicative of self-employment. These rights, which are used as criteria for the presumption, closely mirror the criteria used by the CJEU in the *Yodel Delivery Network* case (C-692/10, p. 45).

[21] See Art. 5 par. 2 of the Directive.

[22] Much has been written in Greek labour law literature on this presumption of self-employment, almost all of it negative. For instance, see Zerdelis D., *Labour Law*, 5th ed., Sakkoulas Publications, 2022, p. 76 (in Greek); Kazakos A., The digital employee, article 69 of Law 4808/2021 and the expansion of the legal concepts "dependent employment" and "directorial prerogative" – Critical dogmatic analysis – Judicial and legislative trends – The Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work – Suggestions de lege lata and de lege ferenda, *Epitheórisi Ergatikoú Dikaíou* 2023, p. 404-408 (in Greek); Koukiadis, *Labour Law – Personal work relations and the law of the flexibility of work*, 10th ed., 2024, pp. 429-430 (in Greek). The main points of criticism seem to be a) the fact that the

presumption provides zero procedural facilitations for persons performing platform work and blatantly works in favour of the platforms, going against the current in every single other country in the EU, b) the complete disregard for the principle of the primacy of facts, as the presumption requires that the rights given to the service provider stem from their contract, c) the fact that the presumption explicitly states that the platform exercising certain managerial powers on substitutes or subcontractors of the service provider does not affect the provider's status. While there is no space to elaborate, I largely agree with these points.

[23] See Recital No 68 of the Directive. Art. 26 par. 2 refers only to 'platform workers' instead of 'persons performing platform work'. This does not have any effect on Member States' discretion to introduce more favourable measures regarding classification, even though, before a person is classified as an employee, they are not yet a 'platform worker' per the Directive – Member States are always able to provide higher protection than the minimum standard set by minimum harmonisation Directives such as the Platform Work Directive.

[24] Such as indications of economic dependence in the broad sense, which would show that individuals are not operating as enterprises in the market.

[25] Such as the duration of the legal relationship, the percentage of the service provider's income that is earned by working via the platform etc..

[26] COM (2021) 762 final, p. 34, Art. 4 pars. 1 & 2.

[27] If a similar presumption is adopted, the phrase '*are either employees or self-employed'* should probably be omitted, as it seems to rule out the very real chance of service providers belonging to an intermediate category between employment and self-employment in certain Member States where such a category is recognised (e.g. Germany, Spain, Italy).

[28] I agree with Rainone & Aloisi, 2024, p. 4, in that it would be useful to ask the CJEU to interpret what constitutes a 'burden'.

[29] We have to note that the transparency requirements set out in Art. 9 of the Directive are expected to make ascertaining the existence of some indicators easier.

[30] On this issue, see e.g. Menegatti E., 'The Evolving Concept of "worker" in EU law', *Italian Labour Law e-Journal* 2019, pp. 77-79, where the relevant case-law of the CJEU is discussed, https://doi.org/10.6092/issn.1561-8048/9699.

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