

Delivery Platforms Europe Remarks on ST 5133/24

The Belgian proposal on the Platform Work Directive remains a significant departure from the General Approach, and even from the Commission's 2021 initial proposal. This text will threaten the flexibility enjoyed by thousands of genuinely self-employed individuals and will lead to unnecessary legal and administrative processes. Provisions on algorithmic management are very challenging to implement and enforce.

Criteria

The combination of 'indicators' rather than criteria and a low threshold required to trigger the presumption will result in the presumption being incorrectly applied to those legally self-employed under national law. Courts and administrative bodies will be burdened with unnecessary procedures as a result. This can be avoided by reverting to 'criteria', clarifying the criteria and increasing the threshold of criteria required to trigger the presumption.

1. Indicators instead of criteria

The proposal continues to refer to indicators rather than criteria. The Rapporteur in the press conference announcing an agreement [stated](#) that 'indicators' are preferred to 'criteria' as criteria are linked to providing evidence. According to the Rapporteur, 'hints' should be enough to meet indicators. This risks creating significant legal uncertainty and undermining the idea that an examination of the facts would be required before a presumption could be applied, something which was key in the general approach and is a key principle of labour inspections.

2. Criteria wording

The wording of criteria remains very broad and unclear. Criteria (b), "*the digital labour platform supervises the performance of work*", is incredibly broad and vague, and is open to be interpreted to be met in a wide range of instances, thereby potentially capturing huge number of individuals working through platforms. Some supervision is necessary in any commercial agreement regardless of how it is organised.

3. Threshold to trigger the presumption

The threshold of criteria to meet to trigger the presumption is very low (2/5) and deviates from the Council's mandate (3/7). If we consider that criteria (b) may easily be met by huge numbers of individuals due to its broad nature, the threshold for triggering the presumption is effectively reduced to 1/4. This low threshold will inevitably capture a large number of genuinely self-employed workers who would have to undergo unnecessary and costly administrative and court proceedings to demonstrate their independence.

Additional measures relating to presumption and rebuttal

The requirement for labour authorities to conduct inspections where misclassification has been determined in national law remains in the text (Article 7.1 (c)), which will place significant and unfounded burdens on labour authorities, which should be free to take enforcement decisions that suit the national context. Moreover, there is no clarification that the application of the presumption can be suspended, which will cause further legal uncertainty.

Chapter 3 and algorithmic management provisions

The provisions on algorithmic management are inconsistent with GDPR and the AI Act and

have been subject to very little scrutiny. The text proposed by the Spanish Presidency in December includes changes to these provisions which have not been examined at all and should be thoroughly assessed.

1. Scope of systems included

The definition of automated-decision making risks capturing any electronic system in use by companies. In addition, wording proposed by the Spanish Presidency in December further broadens the scope of systems included. For example, Article 10(1a) requires providing information also *“when such systems support or take decisions not affecting persons performing platform work in a significant manner”* and Article 8(3) *“...Article shall also apply to digital labour platforms where they use automated systems supporting or taking decisions that affect persons performing platform work in any manner.”* Similar, overly broad language regarding *‘any decision’* and *‘any manner’* can also be found in Articles 12 and 13, expanding their scope to be practically limitless and thus very impractical both in terms of compliance and in terms of supervision and enforcement.

2. Prohibitions on processing of personal data:

Platforms should be in a position to process personal data where obligated to by law or where it is in the public interest. The prohibitions on processing of personal data, while well intentioned, will have negative consequences on platforms ability to cooperate with law enforcement and risk complicating compliance with existing national and Union laws.