

Internal comparative presentation of the position of the



[European Commission -Dec 2021](#)

[European Parliament -Dec 2022](#)

[Council of the European Union - June 2023](#)




Definitions

Workers' Representatives

Commission	Parliament	Council
'representatives' means <i>the workers' organisations</i> or representatives <i>provided for by</i> national law or <i>practices</i> , or both;	' <i>workers</i> ' representatives' means representatives <i>of recognised trade unions in accordance with national law and practice or other persons who are freely elected or who are designated by the workers in an organisation to represent them in accordance with</i> national law or <i>practices</i> , or both;	-
ok		



Definitions

Intermediaries

Commission	Parliament	Council
<p>'platform work' = work organised through a platform and an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service;</p>	<p>'platform work' = work organised through a platform and an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service;</p>	<p>'platform work' = any work organised through a digital labour platform and an individual on the basis of a contractual relationship between the platform and the individual or an intermediary, irrespective of whether a contractual relationship exists between the individual or an intermediary and the recipient of the service</p>
		




Definitions

Automated monitoring systems

Commission	Parliament	Council
-	<p><i>'automated monitoring systems' means any automated systems used for or supporting monitoring, supervising or evaluating the work performance;</i></p> <p><i>'automated decision-making systems' means any automated systems used to take decisions or support decision-making;</i></p>	-
	ok	




Operation of the presumption of employment relationship for platform workers

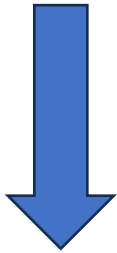
Legal Presumption

Commission	Parliament	Council
	<p>A person performing platform work is either an employee or a genuine self-employed.</p> <p><i>[...] and therefore digital labour platforms shall be presumed to be employers</i></p>	-
		

Operation of the presumption of employment relationship for platform workers

Criteria


Commission	Parliament	Council
Fulfilling 2 out of 5 criteria	No criteria	Fulfilling 3 out of 7
		



?? Automatic reclassification of all workers in the same category??

Operation of the presumption of employment relationship for platform workers

Legal Presumption (Art 4.1.a)

Commission	Parliament	Council
-	-	The rules laid shall not affect the discretion of courts and competent authorities to ascertain the existence of an employment relationship , as defined by the law, collective agreements or practice in force in the MS, with consideration to the case-law of the Court of Justice, regardless of the number of criteria fulfilled.
		


Operation of the presumption of employment relationship for platform workers

Application of the presumption (Art 4.1.a)

Commission	Parliament	Council
-	-	<p>The legal presumption shall not apply to tax, criminal and social security proceedings. However, Member States may apply the legal presumption in those proceedings as a matter of national law</p>
		



Operation of the presumption of employment relationship for platform workers

Application of the presumption (Art 4.1.a)

Commission	Parliament	Council
-	-	Member States may grant competent national administrative authorities a discretion not to apply the presumption , in cases where: a) those authorities are verifying compliance with or enforcing relevant legislation on their own initiative, and b) it is manifest that the person performing platform work is not a platform worker
		




Operation of the presumption of employment relationship for platform workers

Enforcement (Art 4)

Commission	Parliament	Council
develop guidance for enforcement authorities to proactively target and pursue non-compliant digital labour platforms	develop guidance, capacity building and training and establish procedures for national competent and enforcement authorities to proactively [...] including by imposing dissuasive penalties on non-compliant digital labour platforms;	-
Ok		


Operation of the presumption of employment relationship for platform workers

Enforcement (Art 4 db)

Commission	Parliament	Council
-	<i>[...] sufficient resources and training for labour inspectorates or the bodies responsible for the enforcement of labour law [...] including by carrying out routine or announced visits;</i>	-
		


Operation of the presumption of employment relationship for platform workers

Rebuttal Art 4a / 5

Commission	Parliament	Council
<p>Where the platform/person performing platform work argues that the contractual relationship is not an employment relationship as defined by the law, collective agreements or practice in force in the MS</p> <p>The burden of the proof on the side of the platform</p> <p>No suspensive effect</p>	<p>Member States shall ensure the possibility to rebut the presumption referred to in Article 4 by means of demonstrating that the person performing platform work is genuinely self-employed as both the following criteria are satisfied:</p>	<p>Where the platform/person performing platform work argues that the contractual relationship is not an employment relationship as defined by the law, collective agreements or practice in force in the MS</p> <p>Platform required to assist proceedings</p>
ok	ok	



Algorithm management

Use of automated monitoring and decision-making systems (Art 6.2.a)

Commission	Parliament	Council
-	[...] Decisions having an impact on health and safety and on the contractual relationship [...] shall not be taken by automated monitoring and decision-making systems and shall be taken in accordance with national law and collective agreements	-
		


Algorithm management

Use of automated monitoring and decision-making systems (Art 6.3)

Commission	Parliament	Council
-	<p><i>The information shall be presented in a transparent, intelligible and easily accessible form, using clear and plain language. For newly deployed automated systems information shall be provided prior to their use and before any changes affecting working conditions, the organisation of work or monitoring work performance.</i></p>	-
		

Algorithm management

Use of automated monitoring and decision-making systems (Art 6; Art 7; Art 8)

Commission	Parliament	Council
-	<ul style="list-style-type: none">- Human Oversight- Anti- discriminatory measures- Provisions for workers' representatives	- Health and Safety provisions
		ok




Collective bargaining

Information and Consultation

Commission	Parliament	Council
- Weak provisions	- Strong Provisions	- Super Weak provisions
		

Collective bargaining

Promoting collective bargaining in Platform work (Art 10a)

Commission	Parliament	Council
-	- New Chapter and Article 10a & 15a	-
		

Social protection

Access to social security

Commission	Parliament	Council
Private insurance schemes are not considered an indicator of an employment relationship (recital 23)	Existence of private schemes mention in connection to limitation of freedom of self-employed Recital 23 Deleted	Private insurance schemes are not considered an indicator of an employment relationship (recital 23)
	ok	