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European Platform
tackling undeclared work

# Addressing platform workers' employment misclassification: legal frameworks, enforcement strategies and the new Platform Work Directive

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# Executive summary

Digital labour platforms have gained prominence due to increased digitalisation and the emergence of new business practices. In 2021, over 28.3 million people in the EU were estimated to source work through digital labour platforms. Of the 28.3 million, 5.5 million were estimated to be subject to a certain degree of control from the platform they work through. In that sense, the European Commission stated that 'given that around 90% of people working through platforms are estimated to be formally self-employed, it is likely that most of those 5.5 million people are misclassified' (European Commission, 2021b).

Recognising these challenges, in 2024 the EU adopted Directive (EU) 2024/2831 on improving working conditions in platform work (hereinafter 'Platform Work Directive')[1] to facilitate the correct determination of the employment status, improve transparency in platform work, and promote transparency, fairness, oversight, safety and accountability in algorithm management. The Directive specifically targets bogus self-employment, aiming to mitigate its prevalence by introducing new legal provisions. The Directive establishes a rebuttable legal presumption of an employment relationship, shifting the burden of proof onto platforms to demonstrate that a person performing platform work is not in an employment relationship.

This study reviews the provisions in the Platform Work Directive addressing bogus self-employment, and, particularly, the legal presumption of employment. It examines the concept of 'worker' in national case-law and in the case-law of Court of Justice of the European Union. Additionally, the study explores how legal presumptions are applied across different Member States, the role of labour inspectorates and courts, and the practical consequences of misclassification for workers and platforms. Finally, the study identifies tools and good practices that are currently applied to support effective enforcement and improve the implementation of legal presumptions.

The study is based on desk research and a questionnaire completed by the members of the European platform tackling undeclared work (the Platform). To get insights into the existing legal presumptions of employment, an in-depth questionnaire was sent to **Belgium, Italy,** the **Netherlands Portugal**, and **Spain**. To identify the tools and strategies that can support enforcement authorities assessing the worker or self-employed status for the enforcement authorities, a questionnaire was distributed to all EU Member States.

**The Platform Work Directive: The new provisions addressing bogus self-employment**

To address bogus self-employment, the Platform Work Directive requires Member States to implement appropriate and effective procedures to verify and ensure the determination of the correct employment status of persons performing platform work (Article 4(1)). The Platform Work Directive also introduces a legal presumption of 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 is 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 (Article 5(1)).

The formulation chosen by the Platform Work Directive in its Article 4(1) and Article 5(1) requires that the employment contract is defined by Member States or social partners 'with consideration to the case-law of the Court of Justice'.[2] This suggests that the Court of Justice may apply the legal presumption of employment in cases

[1] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work.
[2] This formulation was first used in Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union.

where Member States have a too narrow definition of an employment relationship. Indeed, the most recent case-law of the Court of Justice points towards a broad interpretation of the concept of 'direction and 'control'.

**The concept of 'direction and control' and 'organisation' in national case law**

When addressing persons performing platform work cases, court rulings in the different Member States remain tied to each country's legal concept of 'worker'. However, given that the platforms are multinational and operate similarly across countries, courts in different Member States are inspiring each other towards a form of harmonisation. Additionally, there has been a significant shift in the approach to the 'test' of employment. The focus has shifted from explicit instructions, specific timetables, the formal possibility of substituting or rejecting tasks to indicators showing integration in the platform such as i) the standardisation of services provided by the platform; (ii) the platform selecting specific workers for tasks; (iii) the use of ratings or performance scores; (iv) the platform managing client payments; (v) workers appearing as part of the company (e.g., wearing logos or being featured on the website); (vi) workers performing services central to the platform's core business; and (vii) the platform itself being the main means of production, minimising the relevance of workers providing tools or accessories such as bicycles, motorcycles, or cars.

**Current regulatory frameworks applicable to platform workers**

Belgium, Portugal, and Spain have established legal presumptions of employment for platform work, each with varying scopes and mechanisms. While Belgium and Portugal apply broad presumptions across sectors, Spain's approach is narrower but reinforced through criminal sanctions and specialised inspections. Meanwhile, the Netherlands has not established a specific legal presumption of employment for platform workers. However, a general presumption exists in the Dutch Civil Code, and applies where a service provider has performed work for another party for at least three consecutive months, weekly or for at least twenty hours per month. Italy does not explicitly have a presumption of employment in platform work. However, its legislation allows for the application of the 'discipline of the employment relationship' to self-employed collaborators if their work is organised by a platform, a concept known as 'hetero-organisation'. This provision creates a pathway for extending employment protections to platform workers when platforms exert significant control over the organisation and execution of tasks without reclassification. This approach reflects Italy's acknowledgment of the potential for worker exploitation using the self-employed contract, aligning with broader efforts to enhance labour protections.

**Tools and strategies supporting effective enforcement**

To effectively support enforcement authorities in assessing whether a person performing platform work is an employee or a self-employed person, various tools and good practices have been identified across different European countries. These include information-sharing between agencies and jurisdictions, non-binding guidelines, awareness-raising campaigns, and training tailored to the complexities of platform work. Measures to encourage voluntary compliance by companies are also proposed, such as self-assessment mechanisms and awareness campaigns to foster clarity and adherence. A particularly effective tool could be a user-friendly, digital self-assessment tool accessible via a web portal, providing workers with clear guidance on correct classification while exerting pressure on employers to comply.

# Introduction

Digital labour platforms represent a rapidly evolving method for connecting individuals or businesses seeking specific services with individuals able to perform them in exchange for payment using algorithmic management to direct, coordinate or monitor the work (European Commission, 2021b). These platforms, accessible through websites or apps, are transforming the nature of work in the European Union and beyond. Services provided through these platforms range from on-location tasks, such as driving, delivery, and home cleaning, to online activities like accounting or graphic design. A prominent example of on-location tasks are home repair and maintenance, where households submit service requests (e.g., plumbing or decorating) via a platform, and suppliers, often self-employed persons or small businesses, respond to complete the tasks.

These platforms have gained prominence due to increased digitalisation and the emergence of new business practices. In 2021, over 28.3 million people in the EU were estimated to source work through digital labour platforms, and it was expected that this figure would reach approximately 43 million by 2025 (European Commission, 2021b). Of the 28.3 million, 5.5 million were estimated to be subject to a certain degree of control from the platform they work through. In that sense, the Commission stated that 'given that around 90% of people working through platforms are estimated to be formally self-employed, it is likely that most of those 5.5 million people are misclassified' (European Commission, 2021b).

Recognising these challenges, in 2024 the EU adopted Directive (EU) 2024/2831 on improving working conditions in platform work[3] to address employment misclassification, enhance transparency, and regulate algorithmic decision-making. The Directive mandates Member States to establish national rules ensuring workers are presumed to have an employment relationship if platforms exert significant control over their work. It also limits the processing of personal data, prohibits algorithm-driven dismissals without human oversight, and requires platforms to disclose information about automated systems affecting working conditions. Member States have until 2 December 2026 to align their national legislation with the Directive, marking a critical step toward fairer working conditions in platform work.

This study examines the concept of 'worker' in platform settings and the role of case-law from Member States and the Court of Justice of the European Union in defining and shaping the 'employment status'. It also assesses the rules addressing bogus self-employment, particularly the legal presumption of employment introduced in the Platform Work Directive to be set out by the Member States. This includes examining the application, and impact on Member States and enforcement authorities, while identifying the implications for existing legal frameworks. Additionally, the study explores how legal presumptions are applied across different Member States, the role of labour inspectorates and courts, and the practical consequences of misclassification for workers and platforms. Finally, the study identifies tools and good practices that are currently applied to support effective enforcement and improve the implementation of legal presumptions. Potential cross-border issues arising from non-harmonised legislation across Member States are also considered.

The study is divided as follows:

- Chapter 1 reviews the new provisions addressing bogus self-employment in the Platform Work Directive, including the rebuttable legal presumption of employment and transparency in automated decision-making.

[3] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work.

- Chapter 2 examines case-law where automated monitoring or decision-making systems led to consider platforms as employers because of the control, direction and organisation of the work provided, based on facts.
- Chapter 3 reviews existing legal presumptions of employment targeting platform work in Member States and the possible impact/effects of the Directive on such existing presumptions.
- Finally, Chapter 4 identifies tools and strategies, such as guidelines and awareness campaigns, which can be used to improve enforcement and compliance.

The study is based on desk research and a questionnaire completed by the members of the European platform tackling undeclared work (the Platform). Specifically, for Chapter 3, an in-depth questionnaire was sent to countries with already existing legal presumptions of employment relevant for platform workers, namely **Belgium, Italy, Portugal**, **Spain,** and the **Netherlands**.

For Chapter 4, a questionnaire was distributed to all EU Member States.[4] The questionnaire was completed in January 2025, and the responses have been summarised to inform the study.

# 1.0 The Platform Work Directive: The new provisions addressing bogus self-employment and their potential implications on Member States

Misclassification, as highlighted in judicial decisions, often refers to bogus self-employment, a situation where a worker is classified as self-employed despite meeting the legal criteria of an 'employee'. This misclassification allows employers to bypass labour protections and social security obligations. Recognising this issue, the Platform Work Directive specifically targets bogus self-employment, aiming to mitigate its prevalence by introducing new legal provisions. The Directive establishes a rebuttable legal presumption of the existence of an employment relationship, shifting the burden of proof onto platforms to demonstrate that a person performing platform work is not in an employment relationship.

The Directive is divided into three main parts. The first part introduces measures to facilitate the determination of the correct employment status of persons performing platform work. The second part promotes transparency, fairness, human oversight, safety and accountability in algorithmic management in platform work. The third part aims to improve transparency with regard to platform work, including in cross-border situations.

This study focuses exclusively on the first part of the Directive, which deals with the phenomenon of bogus self-employment. It now turns to an analysis of the scope of the Directive and the obligations imposed on Member States, with a particular focus on the presumption of employment established by the Directive. This analysis will provide an understanding of how the legislation seeks to ensure proper status classification and protect the employment rights of workers of digital labour platforms by establishing measures that facilitate the determination of the correct employment status of persons performing platform work.

[4] The questionnaire received responses from the national experts from the following countries: Bulgaria, Czechia, Denmark, Finland, Greece, Lithuania, Poland, and Slovakia. The responses reflect the views of the experts and may not represent the official position of the Member States. Nor they represent the position of the European Platform tackling undeclared work.

## 1.1 Scope of application of the Platform Work Directive

According to Article 1, paragraph 1(a), the purpose of the Platform Work Directive is to introduce measures to facilitate the determination of the correct employment status of persons performing platform work. Therefore, the scope of application of the Platform Work Directive is 'platform work' (Article 2(1)(a)). The focus is on the 'type' of service, the 'digital labour platform' being a service provider who, in its relationship with the person performing platform work - whether employee or genuinely self-employed - is subject to a number of obligations including those stemming from the presumption of employment.

The challenge of defining a 'digital labour platform' is significant. Since the first doctrinal works on digital platforms (De Stefano, 2016; Todolí, 2017), the great variety and heterogeneity of digital platforms has been pointed out. Examples of digital platforms include digital platforms for face-to-face work (Uber); digital platforms for online work (iStockphoto); *microworking* platforms (Amazon Mechanical Turk); *freelancing* platforms (Fiveer); digital content platforms (Youtube, Twitch); generic work platforms (Field Agent); specific (Glovo); based on competitions (99 designs),[5] etc. To these should be added digital platforms that advertise job offers (InfoJobs) or intermediation in the labour market (digital placement agencies).

In addition, there are other types of platforms that could be defined by the fact that the provision of services is not the core of the underlying business. Examples include platforms for renting goods (Airbnb, Parquo), for selling goods (Wallapop, Amazon); platforms for sharing transport costs (Bla Bla Car), etc.

Article 2(1)(a) of the Platform Work Directive defines a 'digital labour platform' as a natural or legal person providing a service which meets all of the following requirements:

i. it is provided, at least in part, at a distance by electronic means, such as by means of a website or a mobile application;

ii. it is provided at the request of a recipient of the service;

iii. it involves, as a necessary and essential component, the organisation of work performed by individuals in return for payment, irrespective of whether that work is performed online or in a certain location;

iv. it involves the use of automated monitoring systems or automated decision-making systems.

A variety of services provided by digital platforms can meet the requirements of the definition of 'digital labour platform', such as those provided by face-to-face digital labour platforms; online digital labour platforms; microworking platforms; freelancing platforms (Silberman, 2023: 2). All this regardless of whether they are provided by platforms dedicated to a specific sector of activity or whether they are provided by platforms where, generically, workers/self-employed workers belonging to any sector of activity can be found.

At the same time, the definition may exclude certain types of platforms. For example, given that the service provided by the platform is required to involve, as a necessary and essential component, the *organisation of work* carried out by individuals, this seems to exclude platforms whose main underlying activity is not the organisation of work. This may concern platforms for renting goods, for selling goods and for sharing transport costs. Platforms which only offer advertisements of job offers or work without intervening in the selection of the specific worker may also be excluded. Recital 20 of the Platform Work Directive states that digital platforms that do not organise work

[5] On these platforms a client offers an open job to a whole community of people on the platform. The persons performing platform work carry out the work and deliver it, and the client chooses which of all the jobs he or she prefers. This chosen job is the only one that receives payment for the work. (Todolí, 2017b; Araujo, 2013).

but only make it easier for service providers to find clients without further intervention, do not fall under the definition of digital labour platforms.

## 1.2 Relevant provisions addressing bogus self-employment

### 1.2.1 Mandatory provisions of the Platform Work Directive

To determine the correct employment status of persons performing platform work, the Directive lays down a number of obligations for Member States:

- **Appropriate and effective procedures (Article 4(1)): '**Member States shall have appropriate and effective procedures in place to verify and ensure the determination of the correct employment status of persons performing platform work, with a view to ascertaining the existence of 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, including through the application of the legal presumption of an employment relationship pursuant to Article 5'.

- **Primacy of facts (Article 4(2)):** 'The ascertainment of the existence of an employment relationship shall be guided *primarily* by the facts relating to the actual performance of work, including the use of automated monitoring systems or automated decision-making systems in the organisation of platform work, irrespective of how the relationship is designated in any contractual arrangement that may have been agreed between the parties involved'.

- **Identification of employer(s) (Article 4(3)): '**Where the existence of an employment relationship is established, the party or parties responsible for the obligations of the employer shall be clearly identified in accordance with national legal systems'.

- **Legal presumption of employment contract (Article 5(1)): '**The contractual relationship between a digital labour platform and a person performing platform work through that platform shall be legally presumed to be 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'.

- **Rebuttable legal presumption (Article 5(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'.

- **Applicability of the legal presumption to administrative and judicial proceedings (Article 5(3)): '**The legal presumption provided for in this Article shall apply in all relevant administrative or judicial proceedings where the determination of the correct employment status of person performing platform work is at issue. The legal presumption shall not apply to proceedings which concern tax, criminal or social security matters. However, Member States may apply the legal presumption in such proceedings as a matter of national law'.

- **Right of representatives to initiate reclassification proceedings through presumption of employment (Article 5(4)):** 'Persons performing platform work and, in accordance with national law and practice, their representatives shall have the right to initiate the proceedings referred to in the first subparagraph of paragraph 3 to determine the correct employment status of the person performing platform work'.
- **Obligation of initiating reclassification actions or proceedings by competent authorities (Article 5(5)):** 'Where a national competent authority considers that a person performing platform work might be wrongly classified, it shall initiate appropriate actions or proceedings, in accordance with national law and practice, in order to determine the correct employment status of that person'.
- **No retroactive effect of the presumption of employment status (Article 5(6)): '**With regard to contractual relationships entered into before and ongoing on 2 December 2026, the legal presumption provided for in this Article shall apply only to the period starting from that date'.

### 1.2.2 The impact of the Platform Work Directive on intermediaries or outsourced platform work

The case-law has highlighted the issue of multiparty relationships in platform work (Hiessl, 2023: 514-540). Multiparty relationships occur when more than two entities are relevantly involved in a contractual relationship. For example, this happens when, in addition to the platform and the worker, a certain degree of managerial authority is granted to the client. It also applies in cases where the client assigns a task to the platform, but the platform subcontracts the work to another company, which is responsible for paying and managing the worker. Several complications arise here. On the one hand, there is the difficulty of identifying the actual employer. It is possible that the control and direction of the work lies with the client or a contracting company rather than with the platform itself. On the other hand, the division of functions between the client, the platform and the contractors may make it difficult to prove the existence of an employment relationship. That is, the contractual relationship with each of these parties may not be sufficiently intense for it to be understood that any of them separately has direction and control over the employee, but that the sum of all the managerial powers together would imply the existence of subordination (Prassl, 2015).

In the case of passenger transport through digital platforms, it is observed that the routes are determined by the customer, who selects the destination and may even modify it while the passenger is already in the vehicle, including deciding to make additional stops. At the same time, the application retains control by being able to disconnect the driver if it considers that the required quality standards are not met, or if user ratings reflect poor performance. Additionally, the contracting party may be the one deciding which specific worker to hire and select, as well as determining the working time slots, refuelling locations, and other operational aspects. In other words, the power of direction and control is distributed among several actors. Each of them, individually, may not exercise sufficient control to consider the worker as subordinate. However, when all indicators are assessed cumulatively, it could be concluded that there is subordination.

Multiparty relationships are expected to increase in the future to reduce the legal liability of the platform owner. This has already happened in Spain following the adoption of the presumption of employment of riders in 2021 (Gispert, 2021). From the moment the so-called 'Rider Law' in Spain established that delivery riders must be classified as employees, the platforms, to comply with the legal mandate while simultaneously avoiding the responsibility of directly hiring and organising the work themselves, chose to subcontract this task to third-party companies. Consequently, it is these third-party companies that now formally employ the riders under an employment contract (multiparty relationships).

In this context, the Platform Work Directive defines and regulates intermediaries. According to Article 2(1)(e) Platform Work Directive, 'intermediary' means a natural or legal person that, for the purpose of making platform work available to or through a digital labour platform: (i) establishes a contractual relationship with that digital labour platform and a contractual relationship with the person performing platform work; or (ii) is in a subcontracting chain between that digital labour platform and the person performing platform work. Thus, for the home food delivery service, some digital labour platforms hire third-party companies to carry out the orders (through their own employees) that the end customer requests through their application (Gispert, 2021). With this outsourcing of service provision, the digital platform legally distances itself from the responsibilities of managing the workforce providing the service (Esteve et al., 2021).

Article 3 of the Platform Work Directive requests Member States to 'take appropriate measures to ensure that, where a digital labour platform makes use of intermediaries, persons performing platform work who have a contractual relationship with an intermediary enjoy the same level of protection pursuant to this Directive as those who have a direct contractual relationship with a digital labour platform'.

The aim of the Directive is to ensure that the protection of the Platform Work Directive also applies when a digital labour platform makes use of an intermediary.

### 1.2.3 Joint and several liability systems

The previous section discussed multiparty relationships where the powers of direction and control are vested in an intermediary, or possibly the client. However, there is also the possibility that such powers are shared between several actors. In such cases, identifying the true employer can be complex, as none of the actors individually exceeds the minimum threshold of direction and control to be considered an employer. Several questions arise in this case such as who does the presumption of employment apply to? How is the employer identified? And what level of responsibility the other actors have? As the answer to these questions are not clearly solved by the Platform Work Directive, the transposition could be a good opportunity to resolve them.

Article 3 of the Platform Work Directive provides a possible solution by establishing, where appropriate, joint and several liability systems between all actors involved.

### 1.2.4 Limits and effects on tax, criminal and social security proceedings as a matter of national law

The reclassification of a person performing platform work as an employee can have legal consequences beyond labour rights. In several Member States, being classified as an employee affects taxation, criminal liability, and social security obligations. In this regard Article 5(3) of the Platform Work Directive states that the legal presumption 'shall apply in all relevant administrative or judicial proceedings where the determination of the correct employment status of person performing platform work is at issue'. This implies that enforcement authorities, following their internal procedures, must apply the presumption of employment, with the platform having the burden of proof to demonstrate the non-existence of an employment contract. In turn, it is established that 'the legal presumption shall not apply to proceedings which concern tax, criminal or social security matters'. Thus, when the purpose of the proceedings, whether administrative or judicial, is solely to determine tax, criminal or social security matters, the Directive does not require the application of the legal presumption.

**Single procedure for determining employment status and related tax and social security dues**

In several Member States the procedure for determining employment status and the corresponding tax and social security classification is the same, either because both issues are determined together, or because the determination of employment status is linked to the classification for tax and social security, or criminal liability. In

other words the determination of employment status is a matter of labour law, so other authorities need to apply labour law to decide on the question (e.g. Spain, Belgium, Portugal).

In these cases, it appears that the presumption of the existence of an employment relationship will be applicable to all the proceedings that are inseparable from the classification. Recital 32 of the Platform Work Directive states that 'nothing in this Directive should prevent Member States, as a matter of national law, from applying the legal presumption in tax, criminal or social security proceedings or other administrative or judicial proceedings or from recognising the results of proceedings in which the legal presumption has been applied for the purposes of providing rights to reclassified workers under other areas of law'. Thus, if a Member State assigns specific tax, social security, or criminal liability consequences to employment classification, once the application of the presumption of employment indicates that the contract should be considered as an employment relationship, it will trigger the corresponding tax, social security, or criminal liability consequences according to national procedural law. For example, if the social security regime for an employee is A and for a self-employed person is B, once the presumption of employment is applied and the worker is classified as an employee, the applicable social security regime will automatically be A.

**As a matter of national law**

In any case, Article 5(3) of the Platform Work Directive expressly provides for the possibility to provide for the application of the legal presumption in judicial and administrative proceedings where *only* tax, criminal or social security matters are at stake.

### 1.2.5 Potential implications for enforcement authorities

The legal presumption of employment may practically aid authorities involved in monitoring and enforcement to ensure compliance with labour law, as it allows them to start from the assumption that a person performing platform work is in an employment relationship (Kullmann, 2022: 72). The presumption of employment serves the dual purpose of increasing legal certainty and reducing the need for litigation, along with the associated costs (Aloisi et al., 2023: 11). When the presumption of employment is applied by enforcement authorities for classifying persons performing platform work as employees, the burden of proof to show that the contractual relationship in question is not an employment relationship falls on the digital labour platform (Article 5(1)). It is important to note that Article 5(2) of the Platform Work Directive states that 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. Article 5(2) in combination with Article 5(3), which provides for the application of the legal presumption 'in all relevant administrative or judicial proceedings where the determination of the correct employment status of person performing platform work is at issue', implies that the presumption shall facilitate - and not increase - the burden of proof in administrative proceedings for the purpose of determining the correct employment status initiated by the enforcement authorities.

**Automatic reclassification?**

When and how a bogus self-employed person is reclassified as employee differs from one Member State to another. For the purposes of the present study, there are two distinct models. In the first model, administrative authorities can, within the administrative proceeding, carry out the change of contract (e.g. Spain). If the company disagrees, it will have to challenge the administrative resolution that executes the change before the courts, which will ultimately decide on the legality of the administrative act of reclassification. In this model, the reclassification is produced and takes effect from the moment the administration decides in the administrative process. In the second model, the administrative authority, once it considers the reclassification necessary, must take the company to court and wait for the courts to determine whether the reclassification is correct (e.g. Portugal). In the latter case, the reclassification does not take effect until it is determined by the courts.

A relevant question for administrative authorities is whether the presumption of employment, once applied, entails the automatic reclassification of the worker at least within the administrative process in those models where the administrative authority has the competence for reclassification. Indeed, the automatic reclassification cannot be definitive in either of the two models given that the Platform Work Directive establishes the possibility of proving the non-existence of an employment contract on the part of the digital labour platform. Specifically, Recital 31 states that the application of the legal presumption should not automatically lead to the reclassification of persons performing platform work.

**Appropriate and effective procedures**

The presumption of employment is not the only tool available to enforcement authorities under the Directive to facilitate the correct classification of the status of persons performing platform work. Article 4(1) of the Platform Work Directive states that 'Member States shall have appropriate and effective procedures in place to verify and ensure the determination of the correct employment status of persons performing platform work, with a view to ascertaining the existence of 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, including through the application of the legal presumption of an employment relationship pursuant to Article 5'.

As the literature has pointed out, the emphasis of this article is on the *effectiveness of the procedure* for the persons performing platform work to be able to benefit from the presumption (Barnard & Adams-Prassl: 2024; 3). Indeed, to ensure that EU law is uniformly applied, Member States' monitoring and enforcement mechanisms must respect the principles of equivalence and effectiveness (Kullmann, 2022: 72). The Directive leaves much freedom to Member States to decide on the type of procedure. However, given the imbalance of bargaining power between the platform and the persons performing platform work expressly pointed out in Recital 31,[6] the Member States' duty is not only to establish a legal presumption, but also to put in place 'appropriate procedures' to verify and ensure the correct determination of employment status (Falsone, 2022: 105). For this reason, enforcement authorities and social partners have to play a leading role in the application of the legal presumption of an employment relationship.

**Primacy of facts**

Some platform employers have been making sustained efforts to blur the employment status of their workforce through the use of, at times entirely fictitious, contractual devices (for instance through the use of 'substitution clauses'[7]) and through the deployment of technological innovations aimed at defeating established employment status test) (Aloisi et al., 2023: 11). This makes it difficult for enforcement authorities to reclassify to an employment contract. Indeed, if what is agreed or the formal wording of the contract is decisive for the classification as an employee, the chances of proving the true nature of the employment contract by the administrative authority are nil. For this reason, it is highly relevant that Article 4(2) of the Platform Work Directive states that 'the ascertainment of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, including the use of automated monitoring systems or automated decision-making systems in the organisation of platform work, irrespective of how the relationship is designated in any contractual arrangement that may have been agreed between the parties involved'.

This is the translation of a principle already established in the ILO recommendation 2006 (No 198). The rule states that the determination of the correct classification should be based on the *principle of the primacy of the facts*. This means that platforms will not be able to rely merely on the wording of the contract and its depiction of the workers'

[6] Recital 31: 'The purpose of the legal presumption is to effectively address and correct the power imbalance between the persons performing platform work and the digital labour platform'.
[7] Substitution clauses' are contractual provisions that formally allow a worker to find a replacement to perform the contracted service under the terms of the agreement.

tasks and activities, nor the will of the parties, but on the reality of the relationships (Rainone & Aloisi, 2024: 3). This idea is hardly novel, as most jurisdictions worldwide follow this principle, whether in light of specific legal provisions or through case-law (ILO, 2016). Also, the Directive on transparent and predictable working conditions in the EU already referred to this principle in its Recital 8. In the Yodel case,[8] the Court of Justice highlighted specific contractual elements—such as substitution clauses and the ability to work for multiple companies—as indicators that could exclude an employment contract. However, the principle of primacy of facts will require both national courts and the Court of Justice in future cases to rely not on the mere existence of contractual clauses or theoretical freedoms claimed by platform workers but on concrete, demonstrable material realities presented by the platform to justify the exclusion of an employment relationship. Indeed, the platform will, for example, have to prove that, in the specific case, the persons performing platform work actually subcontracted the work, rather than having the contractual ability to do so. Additionally, the subcontracting should occur regularly enough to be pertinent to the case, not just sporadically.

### 1.2.6 The principle of equality vis-à-vis other workers outside of platform work

The European Union's *acquis communautaire* on the principle of equality in employment contracts represents a cornerstone of its social policy framework (Rubery, 2017). Rooted in primary law, such as the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights, it prohibits discrimination based on gender, race, religion, nationality, age, disability, sexual orientation among others. Secondary legislation, including Directives 2000/78/EC and 2006/54/EC, ensures the practical enforcement of equality in recruitment, remuneration, and working conditions. The Court of Justice has further refined these protections through extensive jurisprudence.[9] Together, these instruments aim to uphold fairness and equal opportunities within the labour market.

The question that arises is whether the presumption of employment established in the Platform Work Directive, and whose scope of application is limited to digital labour platforms as defined in Article 2(1)(a), could be applied to other types of enterprises than digital platforms based on the principle of equality. In other words, could the exclusive application of the presumption of employment only to platform workers be considered a violation of the principle of equality?

In fact, the problems of bogus self-employment are not exclusive to digital platforms (De Stefano, 2016; Todolí, 2017) and the application of the presumption in other sectors could facilitate the correct classification for self-employed but also for enforcement authorities. However, this issue seems complex following the Court of Justice interpretation of the principle of equality. Certainly, the EU system for the protection of the principle of equality is based on a number of specific personal characteristics for discrimination. In other words, the law does not require that everyone is treated the same, but it mandates that it is forbidden to discriminate without a valid reason based on factors like gender, race, nationality, religion, age, disability, or sexual orientation.[10] In this way, differentiating

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[8] CJEU in C-692/19, *B v Yodel Delivery Network Ltd*, 22 April 2020.

[9] See CJEU in C-43/75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena*, 8 April 1976; C-109/88, *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss*, 17 October 1989; C-96/80, *J.P. Jenkins v Kingsgate (Clothing Productions) Ltd*, 31 March 1981; C-450/93, *Eckhard Kalanke v Freie Hansestadt Bremen*, 17 October 1995; C-303/06, *Coleman v Attridge Law and Steve Law*, 17July 2008; C-127/92, *Dr. Pamela Mary Enderby v Frenchay Health Authority and Secretary of State for Health*, 27 October 1993; C-144/04, *Mangold*, 22 November 2005; C-555/07, *Kücükdeveci*, 19 January 2010.

[10] An illustrative example is the CJEU's judgment of April 15, 2021, in Case C-30/19, *Diskrimineringsombudsmannen v. Braathens Regional Aviation AB*. In this case, the Court emphasised that Directive 2000/43/EC prohibits any direct or indirect discrimination based on racial or ethnic origin in areas such as employment and occupation. The CJEU highlighted that EU law does not establish absolute equality but specifically prohibits discrimination on certain grounds. This interpretation reflects that the EU's legal approach focuses on prohibiting discrimination based on specific reasons rather than guaranteeing universal equality before the law.

between platform workers and non-platform workers is not a characteristic protected by EU anti-discrimination law. Therefore, the European legislator can establish different protections (including the presumption of employment) for some workers and not for others, as long as the reason for the different regulation is not, directly or indirectly, based on a ground prohibited by EU law.

# 2.0 The concept of 'direction and control' and 'organisation' in national and EU case-law

The presumption of employment and the mechanisms that guarantee the correct classification as 'employee' depend on the concept of 'worker' in each Member State 'with consideration to the case-law of the Court of Justice'. This frame is a hybrid between having an autonomous European concept of 'worker' and allowing each Member State to have its own concept. Thus, as was innovatively done in Directive 2019/1152 on transparent and predictable working conditions,[11] the Platform Work Directive allows Member States to define who is an employee, but at the same time uses a formulation that allows the Court of Justice a certain level of harmonisation through case-law (European Commission, 2021).

The following sections analyse the concept of 'direction and control' and 'organisation' which together determine the qualification as an 'employer' of a platform worker in accordance with the case-law of the different Member States where there are rulings on digital platforms. It also analyses the case-law on the concept of 'worker' of the Court of Justice.

## 2.1 The concept of 'worker' in platform work in national case-law

Since the emergence of platform work more than a decade ago, there has been enormous conflict over the classification of persons performing platform work as employees (Hießl, 2024). Features such as the formal freedom to choose when to work and for how long, the formal possibility of refusing tasks, the formal possibility of subcontracting work or providing services for competing companies, the provision of certain means of production such as bicycles, computers, and smartphones, are characteristics that may differentiate platform work from the standard employment contract. This has led platforms to defend the complete autonomy of workers to the point of considering them as self-employed persons or freelancers (Aloisi, A., & De Stefano, V. (2022)). Administrative authorities, trade unions and persons performing platform work have challenged this classification on the grounds that they were actually employees. So far, the judicial and administrative application of the concept of 'employee' has depended entirely on the concept of 'employee' existing in each Member State. The narrower the definition of employee, the less likely it is that a decision-maker will confirm that someone working in this kind of a relationship, that departs from the standard canons and criteria shaping that definition, is indeed in an employment relationship. Conversely, the broader the concept, the more likely it is that a judge will eventually confirm that an employment relationship exists (Aloisi et al., 2023: 17).

In general, the concepts of 'subordination' and 'control', on which the qualification as employee in the different Member States is based, as usually interpreted, do not fit well with some types of jobs offered through platforms

[11] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

(high-skilled online work). However, the courts have applied the following criteria to determine, in some cases, that platform workers are employees.

- **Irrelevance of the will of the parties (primacy of facts).** The concepts of 'subordination and control' require judicial interpretation to be applied to different cases. When analysing various rulings or administrative decisions, it shows that the application of these concepts follows specific criteria for assessing cases of labour classification. The decisions give value to the reality of the facts of the contractual relationship of the parties and not to the name given to the contract, nor the will of the parties to classify a contract as 'non-labour'.[12]

- **'Irrelevance of the contractual/formal possibility for subcontracting or substitution'.** The classical characteristic of the employment contract, which implies that the work must be performed personally, has not prevented different courts from understanding that platform workers were employees despite the permission or authorisation granted in the contract to subcontract the work. These courts have analysed the reality of the facts and have understood that, even if there is a formal provision for subcontracting, this should not prevent the classification as an employee if this alternative has not actually occurred or has occurred sporadically.[13]

- **Work management.** All definitions of employee contain elements of direction, authority, control, supervision, monitoring or disciplinary power. The major disputes in the judicial arena stem precisely from whether the platform has a sufficient level of direction and control given that persons performing platform work typically enjoy a significant level of freedom to determine the hours of work, the place of work, refuse tasks or choose the way work is performed. In this regard, the courts have found that, at least in food delivery or urban transport platforms, the platforms provide sufficient instructions to establish subordination. Thus, they set out instructions regarding the vehicle used, the route, waiting times, the time needed to make the journey, the behaviour during the journey or the interaction with customers.[14] The courts understand that the platform provides its customers with a standardised service and that such homogeneity in the way all workers do the job is achieved through some form of direction and control. Specifically, the courts argue that the algorithm/the features of the app effectively impose a tight framework for work performance. Although formally granted broad freedom, it is ultimately constrained by the choices made by the platform in its design. It has also been understood that the unilateral imposition of terms and conditions on all the platform's workers - a membership contract that includes the form of payment - without the possibility of individual negotiation, implies subordination to the platform. Finally, the fact that the platform assigns the work to the individual worker chosen from among all the platform's workers by means of algorithmic assignment is seen as another element of direction.[15]

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[12] See Hoge Raad [Supreme Court] of 6/11/2020, ECLI:NL:HR:2020:1746 (X/Gemeente Amsterdam), the Netherlands; Tribunal de l'entreprise francophone de Bruxelles [Brussels Business Court] of 16/1/2019, Belgium, R.G. no A/18/02920 (Uber); Supreme Court of 19/2/2021, United Kingdom, [2021] UKSC 5 (Uber); Employment Appeal Tribunal of 14/11/2018, United Kingdom, UKEAT/0037/18/BA (Addison Lee).

[13] Commission Administrative de règlement de la relation de travail [Administrative Commission for the Regulation of Labour Relations] of 23/2/2018, Belgium, 116 – FR – 20180209, and of 9/3/2018, 113 – FR – 20180123 (Deliveroo); Bundesarbeitsgericht [Federal Labour Court] of 1/12/2020, Germany, 9 AZR 102/20 (Roamler); Cour d'appel civile du Canton de Vaud [Vaud Appeals Court] of 23/4/2020 Switzerland, HC / 2020 / 535 (Uber).

[14] Commission Administrative de règlement de la relation de travail [Administrative Commission for the Regulation of Labour Relations] of 23/2/2018, Belgium, 116 – FR – 20180209, and of 9/3/2018, 113 – FR – 20180123 (Deliveroo); Tribunal Supremo [Supreme Court] of 23/9/2020, Spain, 4746/2019 (Glovo); Corte di Cassazione [Supreme Court] of 24/1/2020, Italy, RG n. 11629/2019 (Foodora); Employment Appeal Tribunal of 14/11/2018, United Kingdom, UKEAT/0037/18/BA (Addison Lee).

[15] Corte di Cassazione [Supreme Court] of 24/1/2020, Italy, RG n. 11629/2019 (*Foodora*); Tribunal Supremo [Supreme Court] of 23/9/2020, Spain, 4746/2019 (*Glovo*); Cour d'appel civile du Canton de Vaud [Vaud Appeals Court] of 23/4/2020, Switzerland, HC / 2020 / 535 (*Uber*).

- **Control or supervision.** The absence of traditional supervision, typically involving company personnel or middle management overseeing the quality of the service provided by the employee, has been another point of contention in the courts. However, rulings have highlighted the value of rating systems (Todolí, 2021) or systems for scoring workers, either by means of customer evaluations,[16] or by means of algorithmic systems.[17] Thus, when the platform reduces the number of assignments or deactivates the platform worker's account due to an algorithmic scoring system (e.g., reducing the score for repeated refusals of accepting task or the choice of an inefficient route), the courts consider that control and supervision is being exercised.[18] Also, the same conclusion is reached if the algorithmic system issues warnings or varies the amount to be received by the worker depending on the behaviour observed by the platform.[19]

- **Organisational integration.** A self-employed person, regardless of the level of autonomy, to be genuinely self-employed must have their own production structure. This means that they must have a productive structure independent of the platform. In this sense, it is considered that a genuinely self-employed person must appear to be an independent undertaking, assume economic risk and have his or her own production structure. Indeed, the courts consider that the use of the platform's logo, brand or uniform is an indication of employment.[20] Even without carrying the logo, the courts consider the driver's visibility to the customer in the app[21] as an indication of employment. Additionally, the lack of financial or economic risk, primarily understood as investment in the company or participation in its gains and losses, is another employment indicator. Case-law has established that in platform work, the fact that workers do not participate in the platform's profits and losses is an indication of employment.[22]

- **Ownership of the materials and infrastructure.** A key issue for many courts when assessing organisational integration is the ownership of the materials and infrastructure required for the worker's activity. In this regard, platforms have argued that the means of production are provided by the workers (bicycle, smartphone, car, motorbike, computer, etc). However, the courts have considered that the platform and the digital infrastructure are the main means of production. Thus, the use of one's own bicycle or phone is not sufficient to understand that the worker is the owner of the means of production.[23] Neither the car, the phone or the computer to perform microtasks have been considered sufficient compared to the importance of the digital platform as key operating resources.[24]

- **Core business of the platform.** Courts explicitly cite the fact that the workers' activities constitute the core of the platform's business as a key factor in supporting their conclusions of misclassification. In this

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[16] Arbetsmiljöverket [Work Environment Authority] of 9/10/2020, Sweden, 2019/062973 (TaskRunner), and of 13/10/2020, 2020/000125 (Tiptapp).
[17] Tribunal de l'entreprise francophone de Bruxelles [Brussels Business Court] of 16/1/2019, Belgium, R.G. no A/18/02920 (Uber); Cour d'appel civile du Canton de Vaud [Vaud Appeals Court] of 23/4/2020, Switzerland, HC / 2020 / 535 (Uber); Supreme Court of 19/2/2021, United Kingdom, [2021] UKSC 5 (Uber).
[18] Tribunale di Palermo [Palermo Civil Court] of 20/11/2020, Italy, RG n. 7283/2020 (Glovo); Gerechtshof Amsterdam [Amsterdam Appeals Court] of 16/2/2021, the Netherlands, ECLI:NL:GHAMS:2021:392 (Deliveroo); Tribunal Supremo [Supreme Court] of 23/9/2020, Spain, 4746/2019 (Glovo).
[19] Commission Administrative de règlement de la relation de travail [Administrative Commission for the Regulation of Labour Relations] of 26/10/2020, Belgium, 187 – FR – 20200707 (Uber); Rechtbank Amsterdam [Amsterdam Civil Court] of 23/7/2018, the Netherlands, ECLI:NL:RBAMS:2018:5183 (Deliveroo).
[20] High Court of 20/12/2019, Ireland, IEHC 894 [2019 No. 31 R] (*Domino's Pizza*); Tribunal Supremo [Supreme Court] of 23/9/2020, Spain, 4746/2019 (Glovo).
[21] Commission Administrative de règlement de la relation de travail [Administrative Commission for the Regulation of Labour Relations] of 26/10/2020, Belgium, 187 – FR – 20200707 (Uber).
[22] Commission Administrative de règlement de la relation de travail [Administrative Commission for the Regulation of Labour Relations] of 23/2/2018, Belgium, 116 – FR – 20180209, and of 9/3/2018, 113 – FR – 20180123 (Deliveroo), and of 26/10/2020, 187 – FR – 20200707 (Uber); Tribunal Supremo [Supreme Court] of 23/9/2020, Spain, 4746/2019 (Glovo).
[23] Tribunal Supremo [Supreme Court] of 23/9/2020, Spain, 4746/2019 (Glovo).
[24] Asutrian Bundesverwaltungsgericht [Federal Administrative Court] of 11/8/2021, I413 2221763-1 and I413 2221763-1.

sense, it is understood that the platforms are not IT services but provide a specific service.[25] In this regard, it is argued that those persons who materially provide the service offered by the platform (e.g., food delivery or urban transport service) are employees of the company offering the service to the market.[26]

From the analysis of the various administrative decisions and court rulings in the different Member States, it is difficult to identify clear patterns or general trends. The case-law remains tied to each country's legal concept of 'worker'. However, it can be observed that, given that the platforms are multinational and operate similarly across countries, courts in different Member States are inspiring each other towards a form of harmonisation. Additionally, there has been a significant shift in the approach to the 'test' of employment. Less importance is given to the existence of explicit instructions, specific timetables, the formal possibility of substituting or rejecting tasks, and whether there is exclusivity. Instead, greater relevance is placed on integration in the platform through the following indicators:

- The service provided is standardised – which implies that the platform must standardise;
- The platform selects the specific workers who will provide the services;
- The existence of ratings or performance scores;
- The platform manages the payments of the clients;
- The worker appears to belong to the company (e.g., by wearing its logo or offering services on its web);
- The worker provides services related to the core business of the company or to the main activity offered by the platform; and
- The platform acts as a real means of production, with the provision of work tools or accessory means (bicycle, motorbike, car) being deemed relevant.

## 2.2 The concept of 'worker' in the jurisprudence of the Court of Justice

The formulation chosen by the Platform Work Directive in its Article 4(1) and Article 5(1) requires that the employment contract is defined by the Member States 'with consideration to case-law of the Court of Justice'.[27] The literature considers that the wording used by the Court of Justice is usually more 'generous' than that of many Member States (Aloisi et al., 2023: 17; Menegatti, 2023: 320). This suggests that the Court of Justice may apply the presumption of employment in cases where Member States have a too narrow definition of an employment relationship. Indeed, the most recent case-law of the Court of Justice points towards a broad interpretation of the concepts of 'direction and 'control' (Aloisi, 2023). This effect is developed by the Court of Justice, among other judgments, in case C-658/18, *UX vs Governo della Repubblica italiana*, concerning a *giudice di pace* (Justice of the Peace) in Italian law.[28] The Court of Justice concluded that, although the Directive on fixed-term work allows Member States to define the terms 'employment contract' or 'employment relationship' in accordance with their own national laws and practices, the power granted to the Member States to define these concepts is not unlimited. These terms may be defined in accordance with national law and practice, provided that the effectiveness of this

[25] Court of Justice in C-434/15, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL*.
[26] Tribunale di Palermo [Palermo Civil Court] of 20/11/2020, Italy, RG n. 7283/2020 (Glovo); Tribunal Supremo [Supreme Court] of 23/9/2020, Spain, 4746/2019 (Glovo); Gerechtshof Amsterdam [Amsterdam Appeals Court] of 16/2/2021, the Netherlands, ECLI:NL: GHAMS:2021:392 (Deliveroo); High Court of 20/12/2019, Ireland, IEHC 894 [2019 No. 31 R] (Domino's Pizza). This is in line with the California Court's Dinamex case establishing the ABC test.
[27] This formulation was first used in Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union.
[28] Court of Justice in Case C-432/17, *O'Brien v Ministry of Justice*.

Directive and the general principles of EU law are respected. The fact that a professional activity may be classified as 'honorary' under national law is irrelevant. Otherwise, allowing Member States to exclude certain categories of persons from the protection afforded by the Directive on fixed-term work may jeopardise the effectiveness of these instruments and their uniform application in the Member States.

In the same vein, in Case C-216/15 *Betriebsrat der Ruhrlandklinik*[29], the Court held that 'Article 3(1)(a) of the Temporary Agency Work Directive, which provides that, for the purposes of the Directive, 'worker' means any person who, in the Member State concerned, is protected as a worker under national employment law, together with Article 3(2) of that Directive, cannot be interpreted as a waiver by the EU legislation of its power to determine the scope of that concept for the purposes of that directive. According to the Court, the EU legislation did not leave the unilateral definition of that concept to the Member States but specified its contours in Article 3(1)(a) of Directive 2008/104 and, additionally, defined the limits of the definition of 'temporary agency worker' in Article 3(1)(c) of that directive.

This doctrine established by the Court of Justice implies that Member States cannot have such narrow concepts of workers that would render the Directive ineffective. Additionally, they cannot exclude by national law certain groups of workers (e.g. artists, domestic workers) from its application for arbitrary reasons.[30] The Court of Justice definition of worker remains anchored to the concepts of subordination, direction and control. Therefore, the effectiveness of the presumption of employment for persons performing platform work will depend on the interpretation - classical or updated - of the concepts of 'direction and 'control'.

The concept of 'worker' in the EU is based on *three* fundamental and constant elements: the **provision of work, remuneration, and subordination**. Thus, the essential characteristic of an employment relationship is that a person provides services for and under the direction of another person, in return for which he or she receives remuneration.[31]

**Provision of work:** It is required that the service provided is effective and genuine, and not marginal or incidental.[32] Notwithstanding this, the Court of Justice has considered short duration,[33] discontinuity[34] or short working hours[35] alone to be irrelevant to exclude the employment contract. To assess whether an employment relationship meets these criteria, the national court must rely on objective criteria and consider all the circumstances[36] of the case in relation to the activities and the employment relationship involved. Neither the special nature of the employment relationship under national law nor its form affect the definition of worker.

**Remuneration:** The service provided must be remunerated, which excludes work performed without any form of compensation (e.g., out of goodwill, neighbourly help, or friendship). It should be noted that the remuneration requirement may include money, payment in kind[37] or in exchange for another service[38] and need not come directly from the employer[39] or have a minimum amount[40] even if it is less than the guaranteed minimum[41] or based

[29] Court of Justice in Case C-216/15, Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH.
[30] Court of Justice in Case C-432/17, *O'Brien v Ministry of Justice*.
[31] Court of Justice in Case C-232/09, *Dita Danosa v LKB Līzings SIA,* para 39.
[32] Court of Justice in Case 53/81, *Levin*, para 17.
[33] Court of Justice in Case C-413/01, *Ninni-Orasche*, para 32
[34] Court of Justice in Case C-357/89, *Raulin*, para 14.
[35] Court of Justice in Case C-46/12, *L.N.*, para 41.
[36] Court of Justice in Case C-413/01, *Ninni-Orasche*, para 27.
[37] Court of Justice in Case 196/87, *Steymann*, para 12.
[38] Court of Justice in Case C-294/06, Payir and Others, para 49.
[39] Court of Justice in Case C-229/14, *Balkaya*, para 51.
[40] Court of Justice in Case 344/87, *Bettray*, para 15.
[41] Court of Justice in Case C-316/13, *Fenoll*, para 33

collectively on a profit-sharing basis.[42] Any work performed for remuneration of any kind can constitute an economic activity, regardless of whether it is for profit.[43]

**Subordination:** The third criterion is the most relevant and decisive. The Court of Justice requires that the services be performed under the direction of another person. To define this relationship, objective criteria such as the employer's power of supervision and sanction, limitations on the choice of working hours and place of work,[44] following instructions and rules,[45] absence of entrepreneurial risk,[46] and the integration of the worker into the enterprise as an economic unit[47] must be considered. All factors and characteristics must be considered together to characterise the relationship between the parties.[48] Particularly interesting is case C-232/09, *Dita Danosa v LKB Līzings SIA*, where despite there being few elements of management and control by the company, the claimant is considered an employee for the purposes of the European rules.

Also, it is noteworthy that in its recent order in Case C-692/19, *Yodel Delivery Network Ltd*, the Court of Justice held that 'under Directive 2003/88, a person engaged as a self-employed contractor cannot be classified as a worker if they have **genuine** discretion over subcontracting, task acceptance, working hours, and providing services to third parties, as long as their independence is not fictitious and there is no subordination to the employer. However, the final assessment of employment status is left to the national courts, which must consider all relevant factors of the individual's economic activity'.[49]

Hence, courts and administrative authorities have established key legal criteria to determine the employment status of persons performing platform work. They emphasise the irrelevance of contractual wording, asserting that the factual nature of the working relationship prevails over formal agreements. Courts have also dismissed the formal possibility of subcontracting or substitution when it is rarely exercised in practice. A major point of contention is work management and control. In some cases, courts have found that platforms impose significant algorithmic control, dictating routes, waiting times, and customer interactions. This digital oversight functions as a form of supervision and disciplinary power, particularly through rating systems and task allocation algorithms. Many rulings highlight organisational integration, noting that workers perform core platform services, rely on platform infrastructure, and assume no financial risk. Although legal frameworks differ across Member States, the Court of Justice judgments support a broad interpretation of employment, reinforcing judicial trends towards worker reclassification of bogus-self-employment.

# 3.0 Current regulatory frameworks applicable to platform workers

Platform work has emerged as one of the fastest-growing forms of employment in Europe, prompting urgent regulatory action in recent years. The legal challenges inherent in platform work, particularly concerning the classification of workers, have compelled governments to act due to the profound impact these issues have on workers' access to rights and protections, including collective bargaining, social security, and occupational safety and health (OSH). The rapid expansion of the gig economy and the ambiguity surrounding worker status have necessitated robust legal presumptions to address these challenges and ensure fair and equitable treatment for

[42] Court of Justice in Case C-3/87, *Agegate*, para 36.
[43] Court of Justice in Case 66/85, *Lawrie-Blum*, para 20.
[44] Court of Justice in Case C-270/13, *Haralambidis*, paras 30-33.
[45] Court of Justice in Case 66/85, *Lawrie-Blum*, para 18
[46] Court of Justice in Case C-3/87, *Agegate,* para 36.
[47] Court of Justice in Case C-22/98, *Becu and Others*, para 26
[48] Court of Justice in Case C-232/09, Danosa, para 46.
[49] Court of Justice in Case C-692/19, *Yodel Delivery Network Ltd*, para 45.

platform workers. Several European countries have introduced legal presumptions to address the ambiguity of the employment status of platform workers. Legal presumptions regarding platform work vary across jurisdictions in their design, implementation, and implications, reflecting the diversity of approaches to platform work regulation within the European Union.

This Chapter analyses case studies from **Belgium, Italy, Portugal, Spain,** and the **Netherlands** to examine existing presumptions in platform work.[50] Additionally, it will explore other relevant regulations aimed at protecting persons performing platform work without reclassifying them, such as the measures implemented in Italy. Legal presumptions applicable to persons performing platform work will be analysed, whether they are specific to platform work or are general legal presumption that encompass platform work within their scope of application.

## 3.1 Legal presumptions of employment

Employment presumptions for digital platforms vary widely among Member States. In the **Netherlands,** the Dutch Civil Code establishes a **general rebuttable legal presumption of employment**, applicable to all workers, including platform workers. This presumption applies when a worker provides services for another party in exchange for remuneration for at least three consecutive months, weekly, or for a minimum of twenty hours per month. Unlike some other EU Member States, the Dutch presumption does not specifically target platform work but includes it within broader employment rules. However, this provision is not subject to public enforcement, requiring workers to take legal action themselves to obtain a court ruling. Comparing different national approaches, **Belgium, Portugal,** and **Spain** have developed **specific presumptions for platform work**. Spain's presumption is limited to delivery platforms, while Portugal and Belgium extended theirs to all digital platforms, albeit with different criteria. Belgium's model requires proof of at least three out of eight criteria (or two of the last five criteria of the list) to trigger the presumption, whereas Portugal mandates the presence of platform 'organisation' but does not define the term explicitly. **Italy** does not explicitly have a presumption of employment in platform work. However, Article 2(c)(1) of Legislative Decree No. 81/2015 provides an important regulatory framework. **Enforcement mechanisms** also differ. In **Spain** and **Belgium**, authorities can enforce reclassification administratively. In contrast, **Portugal** requires judicial intervention, leading to delays in implementation. These differences illustrate the diverse regulatory and enforcement landscapes governing platform work across Europe (see Table 1 below).

**Table 1. Diversity of approaches to legal presumptions**

| Criteria | Belgium | Italy | Netherlands | Portugal | Spain |
|---|---|---|---|---|---|
| Legal Presumption Type | Specific presumption for platform workers | No explicit presumption | General employment presumption (not specific to platforms) | Specific presumption for platform work | Specific presumption for platform work |
| Scope of Application | All digital platforms | Not specific to platform work, but covers 'hetero-organised' workers | All workers, including platform workers | All digital platforms | Only delivery platforms |

[50] An in-depth questionnaire was sent to the national experts from the countries with legal presumptions of employment relevant for persons performing platform work, namely Belgium, Italy, Portugal, Spain, Netherlands. The questionnaire was completed in November 2024, and the responses have been summarised to inform the present study. The responses reflect the views of the experts and may not represent the official position of the Member States.

| | | | | | |
|---|---|---|---|---|---|
| Requirements for Presumption | List of 8 criteria; at least 3 must be met or 2 of the last 5 | Work must be personal, continuous, and organised by the client | Work must be performed for over three months, weekly, or at least 20 hours per month | Requires platform 'organization' but does not define it | Algorithmic management by platform determines employment status |
| Enforcement Mechanism | Public authorities can enforce reclassification administratively (the decisions can be appealed before the competent court) | Enforcement depends on case-by-case judicial interpretation | Workers must address employers or go to court; no public enforcement | Case must be referred to the public prosecutor; reclassification requires judicial ruling | Public authorities can enforce reclassification administratively |
| Retroactive Effects | Yes, decision of the court applies retroactively (to some extent) BUT an administrative reclassification only applies to the future. | Yes, allows extension of employment protections without reclassification | Yes, applies retroactively to past work | No, applies only after the presumption came into effect | Yes, applies retroactively |

*Source:* Author's own elaboration based on the 2025 survey among the members of the European Platform tackling undeclared work.

### 3.1.1 Legal presumptions specific to platform workers

The presumption of employment for platform work in **Belgium** is regulated in the Labour Relations Law or Program Law (I) of 27 December 2006 (*Arbeidsrelatiewet – Programmawet (I) van 27 december 2006, B.S. 28 december 2006*). Several articles of the law are relevant:

Article 331 of this law provides that without being able to violate public order, morals and mandatory laws, the parties freely choose the nature of their employment relationship where the effective performance of the contract must correspond to the nature of the employment relationship. Priority must be given to the qualification evidenced by the actual exercise if it excludes the legal qualification chosen by the parties.

Article 333 determines *four general criteria* to determine whether there is a subordinated relation:

- The will of the parties as expressed in their agreement, insofar as the latter is implemented in accordance with the provisions of Article 331.
- The freedom of organisation of working time
- The freedom of organisation of work
- The possibility of exercising hierarchical control.

Article 334 determines that the government or the competent authority can draw up a list of specific criteria specific to one or more sectors, professions, or professional activities that he determines. This list supplements the criteria envisaged in Article 333.

Article 337/3 §2 determines eight specific criteria linked to the presumption of employment for platform work. This provision has been implemented since 1 January 2023. For the 'digital platforms principal' (digital platforms issuing orders), until proven otherwise, the working relationships are presumed to have been carried out within the

framework of an employment contract if the analysis of the working relationship shows that at least three of the eight following criteria or two of the last five following criteria are met:

1) The platform operator can claim exclusivity regarding its field of activity.

2) The platform operator may use a geolocation mechanism for purposes other than the proper functioning of its basic services.

3) The platform operator may restrict the freedom of the platform worker in the way the work is performed.

4) The platform operator may restrict the income level of a platform worker, by paying hourly rates and/or by restricting an individual's right to refuse job offers based on the rate offered and/or by not allowing the individual to determine the price of the service. Collective bargaining agreements are excluded from this clause.

5) To the exclusion of legal provisions, on health and safety, applicable to users, clients or employees themselves, the platform operator may require a platform worker to comply with mandatory rules on appearance, behaviour towards the recipient of the service or the performance of the work.

6) The platform operator may determine the prioritization of future offers of work and/or the amount offered for a contract and/or the determination of ranking by using the information collected and by monitoring the performance of the service by the platform workers, excluding the result of this performance, by electronic means.

7) The platform operator may restrict, possibly including by means of sanctions, the freedom to organise the work, in particular the freedom to choose one's own working hours or periods of absence, to accept or refuse tasks or to have recourse to subcontractors or substitutes, except when, in the latter case, the law expressly limits the possibility of having recourse to subcontractors.

8) The platform operator may restrict the possibility for the platform worker to build up a customer base outside the platform or to perform work for a third party.

Also, it is important to note that the qualification resulting from the actual exercise of the employment relationship referred to in Article 331 must consider the use of algorithms in the organisation of work.

Finally, the presumption may be rebutted by any means of law, including based on the general criteria set out in this law.

**Portugal**'s Labour Code establishes a legal presumption of employment for platform work, ensuring that individuals working through digital platforms are presumed to be employees unless proven otherwise (Article 12.º-A(1), Labour Code). It also defines what constitutes a digital platform, providing a legal framework for companies operating in this sector (Article 12.º-A(2), Labour Code). For the transport sector, the law specifies that the employment presumption also applies to transport services offered via digital platforms (Article 10.º(10), Law 45/2018). Furthermore, it confirms that the same presumption established for platform work extends explicitly to transport activities on digital platforms (Article 12.º-A(12), Labour Code). The presumption applies only to legal persons who provide or make available services at a distance, by electronic means, such as a website or computer application, at the request of users and which involve, as a necessary and essential component, the organisation of work provided by individuals in exchange for payment, regardless of whether that work is provided online or at a specific location, under the terms and conditions of their own business model and brand. That means that it will apply to any sector of activity in which the provision of work takes place via a digital platform.

In **Spain**, Royal Decree-Law 9/2021, commonly known as the 'Rider Law', introduced an Additional Provision (23) in the Labour Statute, strengthening the legal presumptions for platform work (Todolí, 2021). This law establishes

a rebuttable presumption that delivery workers operating through platforms are employees. The provision states: 'By application of the provisions of Article 8(1), it is presumed that the activities of individuals providing remunerated services involving the delivery or distribution of any consumer product or goods fall within the scope of this law. This applies to employers exercising managerial, organisational, and supervisory powers directly, indirectly, or implicitly through the algorithmic management of the service or working conditions via a digital platform'. One of the main criticisms of the Rider Law is its limited scope, as it applies exclusively to delivery platforms, excluding other types of platforms work such as ride-hailing or freelance gig work (Todolí, 2021). This focus on delivery platforms was based on the substantial body of court rulings confirming employment relationships in this sector (mainly Spanish Supreme Court Judgment of 25/9/2020), as well as the urgent need to address widespread misclassification of the employment status in food and goods delivery services. However, the exclusion of other sectors has raised concerns about inconsistent protections for platform workers in different industries. Additionally, enforcement challenges persist, particularly in cases where platforms restructure their operations or relocate to avoid compliance. Two platforms in the country continue to resist classification, requiring extensive inspections and legal proceedings to enforce reclassification. To enhance enforcement and close regulatory gaps, Spain has introduced significant legislative changes to its Criminal Code. Article 311(2) now criminalises the use of new technologies in labour market organisation, including digital platforms, when they deliberately evade business responsibilities by misclassifying employees as self-employed. This provision considers bogus self-employment a criminal offense, particularly when platforms ignore official warnings or sanctions to comply with labour laws. This reform represents a strong deterrent against non-compliance and signals Spain's commitment to ensuring that digital platforms adhere to fair employment practices. Furthermore, the Labour Inspectorate has created a specialised unit dedicated to platform work inspections, improving enforcement efforts. This dedicated team strengthens oversight and ensures closer monitoring of compliance within the platform economy. Despite the limitations of the Rider Law, these additional measures reinforce Spain's strategy to regulate platform work, making it one of the most advanced legal frameworks in Europe for tackling employment misclassification in the gig economy.

### 3.1.2 General legal presumptions

In the **Netherlands**, the Dutch Civil Code contains a rebuttable legal presumption in Article 610 of Book 7. The presumption states that: 'Anyone who performs work for the benefit of another person in return for remuneration by that other person for three consecutive months, weekly or for at least twenty hours per month, is presumed to perform this work as an employee'. The presumption applies to all workers, including platform workers. As seen, in this case, the requirement for applying the legal presumptions focuses only on remuneration and time. However, this article is not publicly enforced. Workers can address their employer or go to a civil court to ask for a formal court ruling. A notable application of this presumption is the case involving **Deliveroo riders**. On 24 March 2023, the Dutch Supreme Court upheld a decision by the Amsterdam Court of Appeal, ruling that Deliveroo riders qualify as employees. The Court emphasised that, despite riders having the freedom to choose their working hours and the option to be replaced, other factors indicated the existence of an employment relationship. These included the level of control Deliveroo exercised over the work and the economic dependency of the riders on the platform. Similarly, in September 2021, the Amsterdam District Court determined that **Uber drivers** are employees rather than freelancers. This ruling underscore the application of the legal presumption of employment to persons performing platform work, ensuring they receive rights and protections akin to traditional employees.

### 3.1.3 Requirements to apply the legal presumption

Case studies illustrate the diversity of regulations governing platform work across Europe. **Belgium, Portugal, and Spain** have implemented specific presumptions of employment applicable to digital labour platforms. However, notable differences exist between these approaches. In **Spain**, the presumption has a very narrow

scope, applying exclusively to delivery platforms. In contrast, **Portugal** and **Belgium** have a broader application, extending the presumption to all platform work. Between these two countries differences arise also. While in **Belgium** a list of eight criteria is established, of which at least three must be proven (or two of the last five) to exist in factual reality, in the case of **Portugal**, the legal presumption requires the existence of 'organisation' by the platform but does not specify what the term 'organisation' means for the purposes of applying the presumption.

The **Netherlands** does not establish presumptions specifically for digital platforms but rely on general presumptions of employment that are also applicable to platform work. The Netherlands applies a much broader presumption (compared to Belgium or Portugal) that covers nearly all kind of service provision/work, provided the work is performed for more than three months.

### 3.1.4 Administrative or judicial application

The case studies also reveal certain similarities. In all instances, the presumption of employment can be judicially challenged. Enforcement authorities, in all cases except the **Netherlands**, verify the facts and assess whether the conditions align with the legal presumption of employment. If so, they notify the company to reclassify the employment status.

However, the procedures differ among countries. In **Spain** and **Belgium**, public authorities have the power to administratively enforce reclassification if the platform company fails to comply after the administrative procedure. In **Portugal**, by contrast, the authority must report the case to the public prosecutor's office, which then initiates specific legal action before the labour court to seek recognition of the employment contract. This variation highlights distinct enforcement mechanisms across jurisdictions. This also means that in **Spain**, the effects of reclassification are immediate once the public authority issues the decision to reclassify the employment relationship. In **Portugal**, however, it is necessary to wait for a judicial ruling to formally declare the reclassification. This distinction underscores the differing timelines and procedural approaches among these countries in implementing employment reclassification.

### 3.1.5 Retroactive effects

Another important aspect to consider is whether the reclassification and the presumption of employment has retroactive effects. In all the countries studied, it is established that the reclassification can indeed have retroactive effects. This means that the reclassification as an employee can be applied to a period preceding the enforcement of the classification and the application of the legal presumption. However, in **Portugal**, the law that introduced the presumption of employment explicitly states that it cannot be applied to contracts that were in force before the presumption came into effect. In other words, the presumption of employment in Portugal applies only to events occurring after its entry into force. This limitation highlights a unique approach in Portugal compared to other jurisdictions.

### 3.1.6 Challenges in applying legal presumptions

The case studies highlight that the main challenges in applying existing presumptions in different countries primarily relate to evidentiary issues. Enforcement Authorities must demonstrate that the conditions for the application of the presumption are met in practice, which often proves complex. According to ETF, the European Transport Workers' Federation, some platform companies continue to resist the application of the presumption of employment. In Belgium they have redefined themselves as 'publicity' companies and argue that the law does not apply to them. In Spain, some platform companies have accrued millions in fines and continue to use bogus self-employment and outsourcing to provide their services. Additionally, difficulties arise when the platform is located

outside national territory, particularly outside the European Union. In such cases, cross-border issues become evident, making the international identification of platforms and the collection of necessary information difficult. Furthermore, challenges are noted regarding the applicable legislation for platform workers when the platform company, the worker, and the client receiving the service are in different territories.

## 3.2 Other regulatory frameworks

**Italy** does not explicitly have a presumption of employment in platform work. However, Article 2(c)(1), of Legislative Decree No. 81/2015 provides an important regulatory framework. This Article states that 'the provisions governing subordinate work shall also apply to collaborative relationships that take the form of exclusively personal, continuous work, the execution methods of which are organised by the client, including in terms of the timescales and the place of work. The provisions of this paragraph also apply when the methods of execution of the service are organised through digital platforms'. The Article allows for the application of the 'discipline of the employment relationship' to self-employed collaborators if their work is organised by a platform, a concept known as 'hetero-organization'. This provision creates a pathway for extending employment protections to platform workers when platforms exert significant control over the organisation and execution of tasks without reclassification. This approach reflects Italy's acknowledgment of the potential for worker exploitation using the self-employed contract, aligning with broader efforts to enhance labour protections.

### Box 1. Legal presumptions of employment in California

California's legislation on the concept of worker, approved by the AB5 Act, is particularly noteworthy for two reasons. Firstly, because California is the place where most digital platforms were born, being a state within the USA known for its technological innovation. Secondly, because of the technical quality of the regulation, which seems to be very refined.

The AB5 Act incorporates the ABC test from the California Supreme Court's *Dynamex ruling,*[51] which shifted the burden of proof to companies and specified the elements that companies must prove in order to exclude the employment status. The AB5 law establishes that in order for an individual freelancer not to be considered an employee, the employer must prove the following three elements:

**A) The person is free from the company's control and direction over the performance of the service both under the service contract with the individual worker and *de facto*.**

The company must demonstrate that the worker has real freedom to choose his working hours, his working day, his way of working, that there are no systems of surveillance and control over how the work is performed, that they do not receive training from the company or at the company's expense, that they do not coordinate or take turns with other workers of the company, that they are not authorised to take vacations or leave, that they are not given instructions on how to perform the work, etc. Legal and practical independence must be proven, requiring a written contract that establishes independence and evidence that the service is provided independently.

**B) The person provides services that are outside the usual course of the company's business.**

The company must establish that the worker performs work that is outside the usual course of its business. This refers to an objective and subjective criterion. *Objective criterion*: Contracted workers who provide services in a role comparable to that of an existing employee will likely be viewed as working in the usual course of the company's business. The California Supreme Court, in the aforementioned *Dynamex* decision, explains it with

[51] Supreme Tribunal of the State of California Ruling No. 222732 of April 30, 2018, *Dynamex operations v Charles Lee*.

two examples: on the one hand, the worker who sews clothes at home for a company that manufactures clothes, will be an employee – no matter how independent they may be – given that the main company is dedicated precisely to the business of manufacturing and selling clothes. A bakery that sells bread and cakes will not be able to consider the cake decorator as individually self-employed since those functions are recognizable as the usual functions of a company engaged in that business. Thus, in order to support the autonomy of the worker, the company will have to prove that the activities performed by the individual self-employed worker were outside the regular activity of the company. *Subjective criterion:* the company must demonstrate that the individual employee is perceived by the final clients receiving the services as an entity independent from the main company. Thus, if the individual employee can reasonably be seen as working within the activity of the main company, they must be considered as an employee (*Dynamex*).

**C) The person has an independent business structure.**

The contractor company must prove that the worker has an independent business structure, including ownership of the means of production, assumption of losses by the worker, that the worker pays for their own advertising and seeks their own clients, that they provide services at their own premises, assume the expenses and work for several clients, among others (Court of Appeals of Virginia, January 13, 1998, *Brothers Construction Company, Inc. v. Virginia Employment Commission*, Court of Appeals of Massachusetts, November 28, 2002, *Boston Bicycle Couriers, Inc. v. Deputy Director of the Division of Employment and Training & Another*). In addition, there are two elements of singular importance pointed out by the US jurisprudence applying the ABC test. Economic independence is crucial. If a worker's income is mainly from one client, they are not truly independent (Supreme Court of New Jersey, Hargrove, et al., v. Sleep's LLC, January 14, 2015). The business structure must exist before the commercial contract; creating it to contract with a company does not meet this criterion (*Dynamex*).

## 3.3 Effectiveness of legal presumptions of employment

Even in countries where a specific presumption of employment has been established, the issue of worker classification has not been fully resolved or the prevalence of misclassified self-employed workers eliminated. The legal presumption alone has not led to significant reductions in bogus self-employment in platform work.

Several challenges hinder the effective application of employment presumptions:

- **Procedural complexity:** Even where a presumption exists, it requires administrative or judicial proceedings to trigger its application. This requires affected workers or trade unions to initiate legal actions, which are time-consuming and resource-intensive.
- **Failure of compliance and judicial action by some platform companies:** There have been examples where platform companies have not fully adhered to legal requirements and have contested administrative/court decisions at all levels. This has posed challenges for enforcement authorities and the competent bodies responsible for employment classification.
- **Burden of proof and evidence collection:** Authorities, trade unions, or workers must gather substantial evidence to activate the presumption, making enforcement difficult.
- **Judicial validation requirements:** In some jurisdictions, enforcement authorities do not have direct powers to impose the presumption, requiring the administration to go to court to confirm reclassification decisions.

- **Cross-border issues:** Enforcement of labour laws for digital labour platforms presents significant challenges due to jurisdictional discrepancies. Many platforms operate in multiple countries, often registering their headquarters in a different jurisdiction than where the actual work takes place. This creates obstacles for enforcement authorities, who may struggle to access essential data on working conditions and employment relationships. Jurisdictional limitations further complicate the ability of national authorities to investigate and enforce compliance effectively. To address these issues, some Member States have proposed enhancing cooperation between national enforcement bodies, drawing inspiration from existing EU directives. Strengthening cross-border collaboration could improve regulatory oversight and facilitate the effective enforcement of labour laws in platform work.

## 3.4 Policy implications and recommendations

While employment presumption is a valuable legal tool to address misclassification in platform work, it is not sufficient on its own to ensure compliance and protect workers' rights. Additional measures are needed to strengthen enforcement and ensure that digital platforms adhere to labour laws effectively (Todolí, 2024).

One key approach is strengthening administrative sanctions by increasing penalties for non-compliance. Stricter financial consequences for platforms that fail to correctly classify workers as employees could serve as a strong deterrent against regulatory evasion. Higher fines, coupled with more frequent inspections, would reinforce compliance efforts and reduce instances of bogus self-employment. Another important measure is criminal liability for systematic non-compliance. **Spain** made repeated violations of employment classification laws a criminal offense. This step would target platforms that consistently misclassify workers despite prior sanctions, ensuring that legal consequences go beyond financial penalties and include serious legal repercussions. Improved coordination mechanisms among Member States are also essential for addressing enforcement challenges in cross-border platform work. Since many platforms operate in multiple countries, national enforcement authorities must work together more effectively. Establishing standardised procedures and facilitating data-sharing between authorities could enhance the ability to track and regulate platform work across jurisdictions. Finally, guidance and awareness campaigns play a crucial role in ensuring that both enforcement authorities and workers understand their rights and responsibilities. guidelines, training programmes for labour inspectors, and self-assessment tools for workers and employers could clarify when employment presumption applies. These initiatives would help streamline enforcement processes while empowering workers to challenge misclassification more effectively. By combining these measures—stricter sanctions, potential criminal liability, cross-border cooperation, and educational initiatives—Member States can create a more robust regulatory framework that ensures digital platforms respect employment laws and provide fair working conditions.

# 4.0 Tools and strategies supporting effective enforcement

This Chapter identifies tools and strategies supporting effective enforcement, including good practices, to enhance the practical application of these legal presumptions. It is based on the in-depth questionnaire sent to Belgium, Italy, Spain, Portugal and the Netherlands and on questionnaire distributed to all Member States of the Platform.[52] The responses are summarised below

[52] The questionnaire received responses from the national experts from the following countries: Bulgaria, Czechia, Denmark, Finland, Greece, Lithuania, Poland, and Slovakia. The responses reflect the views of the experts and may not represent the official position of the Member States. Nor they represent the position of the European Platform tackling undeclared work.

## 4.1 Tools and strategies assessing the worker or self-employed status for the enforcement authorities

To effectively support enforcement authorities in assessing whether a person performing platform work is an employee or a self-employed person, various tools and good practices have been identified across different European countries. These include non-binding guidelines, awareness-raising campaigns, training and a clear legal framework, tailored to address the complexities of platform work.

- **Non-Binding Guidelines**

Non-binding guidelines, circular or operational notes to inspectors offer a flexible yet structured approach to distinguish between employees and self-employed workers in platform work. According to experts from **Lithuania** and **Spain**, these guidelines help control institutions apply the law consistently and enhance enforcement capabilities, serving as a foundational tool for addressing employment classification issues. A **Belgian** representative emphasised their use for inspectors, allowing for flexibility in tackling individual cases and ensuring adaptability to diverse platform work scenarios, which are further strengthened by awareness campaigns. They proposed using standardised questionaries with questions to ask the platform or the platform workers, to determine the employment status. A **Greek** expert proposed guidelines to address the evolving nature of platform work, equipping competent authorities with the adaptability needed to manage new challenges effectively. Similarly, an expert from **Bulgaria** proposed clear and accessible guidelines are designed to improve decision-making processes for enforcement authorities, facilitating better compliance with employment regulations.

- **Awareness Campaigns**

Awareness campaigns play a vital role in informing both workers and employers about their rights and obligations, fostering collaboration and compliance within the platform economy. Trade unions can play a big role in ensuring the effectiveness of awareness campaigns. Experts from **Portugal** and **Greece** recommended using targeted campaigns to improve cooperation between workers and employers, ensuring better awareness of their rights and responsibilities. An **Italian** representative suggested a combination of campaigns with manuals to clarify the legal and operational aspects of platform work, fostering compliance and understanding.

- **Manuals and Training Sessions**

Manuals and training sessions equip enforcement authorities and inspectors with knowledge and practical resources to address platform work challenges. A **Portuguese** participant highlighted that tailored manuals and training provide in-depth explanations of legal frameworks, enabling inspectors to navigate the platform economy effectively. An expert from **Italy** suggested that it might be useful for inspection personnel to receive adequate training in the mechanisms and modalities inherent in algorithms or to be supported during inspections by experts and computer scientists to better understand the workings and effects of these algorithms. A **Finnish** representative emphasised the importance of standardised procedures through manuals and training, ensuring inspectors are well-prepared. Practical case studies and collaborative programs were also proposed to enhance their capacity.

- **Clear framework**

One useful strategy to support enforcement focuses on establishing clear and unambiguous laws, regulations, and criteria to provide a solid legal foundation for compliance. Transparent communication ensures that both employers and workers are fully informed about their rights and obligations, fostering a mutual understanding of the rules. The enforcement system should be designed to be highly visible and effective, creating a strong perception of the likelihood of being caught for non-compliant behaviour. Additionally, the framework should include deterrent enforcement instruments, such as robust authority powers, sufficient capacity, and significant fines, to discourage

violations and promote adherence to the established legal and regulatory standards (**Netherlands**). The exchange of experience and staff with institutions of other states was also proposed (**Slovakia**).

- **Sharing information**

The exchange of good practices among inspectors from various territorial offices is a valuable method to learn and apply the law. An **Italian** expert emphasised that it could be extremely useful to hold meetings with delegations of supervisory authorities from other EU Member States and to promote or participate in concerted and joint inspections in this area, supported by ELA. These tools are particularly effective for ensuring the continuous updating and consistency of inspection personnel's practices.

To sum up, across these countries, the implementation of targeted initiatives highlights the shared recognition of the unique challenges posed by platform work. Tools such as non-binding guidelines and tailored training sessions play a crucial role in addressing these challenges. Additionally, awareness campaigns serve as a unifying strategy to promote knowledge and compliance among all stakeholders.

The integration of these good practices reflects a commitment to creating a balanced and effective regulatory environment for platform work. By leveraging these tools, enforcement authorities can ensure that employment classifications are accurate and that both workers and platforms operate within the bounds of the law. This approach not only supports enforcement but also contributes to the broader goal of protecting workers' rights and fostering fair competition in the digital economy.

**Table 2. Tools and strategies assessing the employment status**

| Tool/strategy | National experts suggesting the tool and strategy |
|---|---|
| Non-Binding Guidelines | Lithuania, Belgium, Greece, Italy, Slovakia, Bulgaria, Finland |
| Awareness Campaigns | Lithuania, Belgium, Italy, Spain, Portugal, Greece. |
| Manuals and Training Sessions | Italy, Portugal, Finland, Greece, Czechia, Belgium, Slovakia |
| Clear Framework | Netherlands |
| Sharing information | Italy, Slovakia, Greece, Finland |

*Source:* Author's own elaboration based on the 2025 survey among the members of the European platform tackling undeclared work.

## 4.2 Tools for workers and employers to make it easier to determine the appropriate employment status

To assist workers and employers in determining the appropriate employment status in platform work, various European countries have proposed tools and inspiring practices tailored to address the unique challenges of this employment model. These tools range from self-assessment mechanisms to non-binding guidelines and awareness campaigns, aiming to provide clarity and foster compliance within the sector.

- **Self-Assessment Tools**

One way to ensure that platform companies and workers can correctly apply the appropriate legal category is through the implementation and development of user-friendly self-assessment tools (**Bulgaria, Portugal, Spain and Slovakia**). These tools, designed as web applications, allow platforms and workers to easily establish a series of facts or answer a set of questions provided by the application. While the results are non-binding, they serve as

informative and guiding classifications. This approach enables workers to demand the correct classification once identified, pressuring companies to change their criteria without the need for legal proceedings or administrative intervention. The representative from Lithuania highlighted such tools as critical for providing immediate and clear criteria to determine employment status. These mechanisms not only empower workers and employers but also support the consistent application of the law.

- **Non-Binding Guidelines**

Non-binding guidelines are another widely recognised tool, offering flexibility while ensuring clarity in the classification process (**Poland and Portugal**). These guidelines are designed to address individual cases with flexibility, ensuring that the diverse scenarios presented by platform work are adequately managed. An expert from **Lithuania** recommended utilising guidelines tailored to platform work to clarify the distinction between employment and self-employment in specific industries.

A participant from **Greece** also proposed incorporating non-binding guidelines for competent authorities, enabling them to address the evolving nature of platform work effectively. This flexible approach ensures that inspectors can adapt to new challenges and complexities within the sector.

- **Awareness Campaigns**

Awareness campaigns play a vital role in spreading information about the rights and obligations associated with platform work. A **Lithuanian** representative suggested such campaigns to enhance the understanding of platform work dynamics among both workers and employers. By addressing knowledge gaps, these initiatives foster a collaborative approach to employment classification. Several participants (**Greece, Belgium, Spain, Slovakia,** and **Poland)** advocated for improving the information available about the legislation applicable to platform workers.

A **Portuguese** expert emphasised the importance of awareness campaigns targeting both workers and employers. These initiatives aim to improve cooperation and understanding, ensuring that all parties are well-informed about their rights and responsibilities.

Similarly, a **Czech** representative highlighted the significance of public awareness campaigns to promote compliance with national regulations. These campaigns aim to address knowledge gaps, reduce potential risks, and create a more informed workforce and employer base.

A concrete example of awareness campaigns is the prevention and promotion initiatives organised by the Territorial Labor Inspectorates in Italy under Article 8 of Legislative Decree 124/2004. These campaigns, conducted by inspection personnel, focus on educating stakeholders about labour rights, social legislation, and occupational health and safety. They also provide updates on legislative developments and interpretations relevant to the labour market.

The initiatives target a diverse audience, including employers, trade associations, trade unions, professionals, and schoolchildren as future participants in the labour market. By raising awareness and fostering dialogue among these groups, the campaigns aim to enhance compliance with labour, social security, and welfare legislation while promoting a culture of safety and responsibility in the workplace.

- **Administrative commission**

In the **Belgian** legal system, an important feature from a comparative perspective is the existence of two distinct procedures available before the same body—the Administrative Commission for the Regulation of Labour Relations—used to determine the **legal nature of an employment relationship**. These procedures differ fundamentally in their legal effects, as one is binding, while the other is non-binding.

The binding procedure, regulated under Article 338/2, §4 of the Belgian Social Criminal Code, allows either party—employer or worker—to request a determination even prior to the commencement of the employment relationship. The procedure is adversarial in nature: the other party must be notified of the request and invited to participate. After reviewing the facts and applying relevant legislation and case law, the Commission issues a decision. This decision is binding on the public institutions represented on the Commission, as well as on the social insurance funds for self-employed persons. According to §5, either party may appeal the decision before the labour courts within one month from the notification by registered letter. If no appeal is lodged within this period, the decision becomes final.

Conversely, Article 338/1 establishes a non-binding opinion procedure, which is unilateral and non-adversarial. In this case, a party may request an opinion from the Commission without the involvement of the other party. The Commission issues a legal opinion based on the applicable framework, but this opinion does not bind the institutions represented on the Commission nor the relevant social insurance funds. However, if the Commission's opinion diverges from the contractual classification of the relationship, the requesting party must notify the other party within 30 days, either by registered mail or by any other means of notification established by Royal Decree.

This dual procedural system seeks to provide legal certainty and flexibility, offering both a voluntary consultation tool and a formal adjudicative mechanism to resolve disputes over employment classification—an issue of growing relevance in the context of atypical and platform-based work..

### Table 2. Tools and strategies to make it easier for workers and employers to determine the employment status

| Tool/strategy | National experts suggesting the tool and strategy |
|---|---|
| Self-Assessment Tools | Bulgaria, Portugal, Spain, Slovakia, Lithuania |
| Non-Binding Guidelines | Poland, Portugal, Lithuania, Greece |
| Awareness Campaigns | Lithuania, Greece, Belgium, Spain, Slovakia, Poland, Portugal, Czechia, Italy |
| Ask the Administrative Commission | Belgium |

*Source:* Author's own elaboration based on the 2025 survey among the members of the European platform tackling undeclared work.

In conclusion, effectively supporting enforcement authorities in assessing whether a person performing platform work is an employee or self-employed requires the implementation of various tools and good practices. Experiences across different Member States demonstrated that non-binding guidelines, awareness-raising campaigns, targeted training, and a clear legal framework are essential in addressing the complexities of platform work. Strengthening these mechanisms will enhance legal certainty, improve enforcement, and ensure that platform workers receive appropriate protections in line with their employment status.

# Conclusions

This study examined the scope and potential impact of the presumption of employment introduced by the recently approved Platform Work Directive on Member States, as well as other measures included in the Directive aimed at tackling employment misclassification, particularly bogus self-employment. Additionally, the study explored how legal presumptions are applied across different Member States, the role of labour inspectorates and courts, and the practical consequences of misclassification for workers and platforms. The study also identified tools and good practices that are currently applied to support effective enforcement and improve the implementation of legal presumptions.

- The Platform Work Directive establishes **robust mechanisms to determine the correct employment status** of persons performing platform work. These include the legal presumption of an employment relationship when facts indicating 'direction and control' are present. The purpose of the presumption is to provide legal certainty and procedurally facilitate the classification of persons performing platform work as employees, provided they fall within the concept of 'worker' 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 of the European Union. According to the Court of Justice, the essential element in classifying a worker as an employee is the employer's 'direction and control'.

- When addressing persons performing platform work cases, some Member States have established **new criteria for the determination of employment status** demonstrating 'direction and control'. As many platforms are multinational and operate similarly across countries, courts in different Member States are increasingly relying on similar reasoning and legal arguments. Additionally, case-law shows a notable shift in the approach to the 'employment test'. Less emphasis is placed on traditional factors such as explicit instructions, fixed schedules, formal substitution possibilities, the ability to reject tasks, or exclusivity. Instead, greater importance is given to integration into the platform, as evidenced by: (i) the standardisation of services provided by the platform; (ii) the platform selecting specific workers for tasks; (iii) the use of ratings or performance scores; (iv) the platform managing client payments; (v) workers appearing as part of the company (e.g., wearing logos or being featured on the website); (vi) workers performing services central to the platform's core business; and (vii) the platform itself being the main means of production, minimising the relevance of workers providing tools or accessories such as bicycles, motorcycles, or cars.

- **Employment presumptions for digital labour platforms vary widely among Member States**. Belgium, Portugal, and Spain have legal presumptions for platform work, each with varying scopes and mechanisms. While Belgium and Portugal apply broad presumptions across sectors, Spain's approach is narrower but reinforced through criminal sanctions and specialised inspections. Meanwhile, the Netherlands has a general presumption of employment applicable where a service provider has performed work for another party for at least three consecutive months, weekly or for at least twenty hours per month. Italy's legislation allows for the application of employment protections to self-employed collaborators if their work is organised by a platform, creating a pathway for extending protections to platform workers.

- These new approaches to understanding 'direction and control' can be highly relevant for enforcement authorities. This highlights the **need to train inspectors** in assessing algorithmic management, ensuring they can determine whether such algorithmic management demonstrates control, subordination, and direction from a genuine employer, in line with the requirements of Article 6(d) of the Platform Work Directive. This provides a more nuanced framework for assessing employment relationships in platform work and aids in identifying cases of misclassification, thereby enhancing compliance with labour regulations.

- However, the **enforcement of legal presumption of employment in platform work is hindered by procedural complexity, evidentiary burdens, judicial validation requirements, and cross-border challenges**. These obstacles limit the practical application of the presumption, even where it exists. National authorities often lack direct powers, and jurisdictional discrepancies complicate regulatory oversight. To address these limitations, enhancing cooperation among national enforcement bodies—drawing on existing EU directives—has been proposed as a way to strengthen effective labour law enforcement.

- In addition to the legal presumption, **other mechanisms can support enforcement authorities in ensuring compliance**. These include information-sharing between agencies and jurisdictions, non-binding guidelines, awareness-raising campaigns, and training tailored to the complexities of platform work. Measures to encourage voluntary compliance by companies are also proposed, such as self-assessment mechanisms and awareness campaigns to foster clarity and adherence. A particularly effective tool could be a user-friendly, digital self-assessment tool accessible via a web portal, providing workers with clear guidance on correct classification while exerting pressure on employers to comply.

- In summary, the Platform Work Directive represents a **transformative step toward addressing the complexities of platform work and reducing bogus self-employment across the EU**. By introducing a legal presumption of employment, empowering enforcement authorities, and providing tools for compliance, it creates a comprehensive framework that balances worker protection with regulatory flexibility. However, its success will hinge on Member States' commitment to robust transposition, with an easy and direct application of the legal presumption and strong public enforcement mechanisms. This Directive not only offers an opportunity to redefine employment relationships in the digital age but also sets a precedent for fostering fairness and equity in the evolving world of work.

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