



FACULTY OF LAW

LUND UNIVERSITY

Konrad Viktor Bieber

Presuming the Impossible?
The legal significance of the employment presumption for platform workers despite the lack of uniformity in the definition of worker in the EU

JAEM01 Master Thesis

European Business Law

15 higher education credits

Supervisor: Xavier Groussot

Term of graduation: Spring 2026

Table of contents

Summary	3
Preface.....	4
Abbreviations	5
1 Introduction.....	6
1.1 Background.....	6
1.2 State of the art and research gap	7
1.3 Research question & limitations.....	8
1.4 Methodology & Structure.....	9
2 The EU concept of worker.....	11
2.1 Case law on workers in the EU	11
2.2 The lack of uniformity in the definition of the term worker	12
3 Current classification of platform workers under EU law	15
3.1 Definition of platform work and platform worker	15
3.2 Classification of platform workers	16
3.2.1 Real and genuine activities.....	16
3.2.2 remuneration	17
3.2.3 subordination.....	17
3.2.3.1 Yodel	17
3.2.3.2 Elite Taxi	19
3.2.3.3 Inferences from these rulings	20
4 The presumption of employment in the PWD.....	21
4.1 Negotiation process	21
4.2 Presumption of employment.....	23
4.3 Enforcement Framework around the presumption of employment	25
4.4 Rebuttal of presumption	26
5 Comparison of employment presumption in the PWD with already existing presumptions	27
5.1 Belgium	27
5.2 Portugal.....	29
5.3 Spain	31
5.4 Californian ABC test	33
5.5 Inferences for the Member States.....	35
6 Conclusion	39
Bibliography.....	41

Summary

This thesis examines whether the legal presumption of employment introduced in Directive (EU) 2024/2831 on improving working conditions in platform work will be of legal significance in countering the misclassification of people performing platform work in the European Union.

The thesis first analyses the EU concept of worker and shows that the notion of worker is not uniform within the EU. It then examines the difficulties of applying traditional classification criteria, especially subordination, to platform work, while giving an overview of the current state of EU law on the classification of people performing platform work. In doing so, it demonstrates that neither EU legislation nor the case law of the Court of Justice has yet sufficiently clarified how people performing platform work should be classified. The thesis then analyses the Platform Work Directive, its hybrid notion of platform worker, and the legal presumption of employment in Article 5(1).

The presumption may improve legal certainty and facilitate reclassification, but it does not fully harmonise the concept of platform worker or resolve all classification problems. By comparing the presumption in the Platform Work Directive with already existing presumptions in Belgium, Portugal, Spain and California, the thesis argues that its legal significance will depend heavily on how Member States transpose it into national law. Its practical effect will therefore depend on whether Member States create an effective framework around it. Such a framework should include the possibility for public authorities to apply the presumption and, where appropriate, to assess groups of workers rather than relying solely on individual litigation. The criminalisation of bogus self-employment may also strengthen the effectiveness of the presumption.

Methodologically, the thesis applies a doctrinal legal approach. It analyses the legal rules governing the status of people performing platform work under EU law and compares the Platform Work Directive with already existing employment presumptions in order to assess its possible legal effects.

The thesis concludes that the legal presumption of employment in the Platform Work Directive is a good starting point against misclassification, but not a complete solution. To have real legal significance, Member States must transpose it effectively into national law and establish a functional framework around it.

Preface

Studying at the Faculty of Law at Lund University has been a valuable and enriching experience. I would like to thank all my teachers and fellow students for their support and for their contribution to my academic development.

I would particularly like to thank my supervisor, Professor Xavier Groussot, for his guidance and support throughout the writing process.

Abbreviations

CJEU	Court of Justice of the European Union
Commission	European Commission
Council	Council of the European Union
EU	European Union
Parliament	European Parliament
PPPW	People performing platform work
PWD	Platform Work Directive
TFEU	Treaty on the Functioning of the European Union
US	United States of America

1 Introduction

1.1 Background

The digitalisation of the workplace is leading to a shift away from the traditional model of the employee who is permanently based at a company and performs work according to detailed instructions.¹ Platform work falls within this category of modern work and has received considerable attention recently.² It can take various forms of contractual relationships and therefore raises a wide range of labour law issues.³ These questions require attention because platform work has become an important factor in the economy of the European Union (EU) and continues to grow.⁴

This is also reflected in the available figures. While the European Commission (Commission) estimated in 2021 that approximately 28.3 million people in the EU were working through digital platforms, it projected this figure to grow to 43 million by 2025.⁵ The Commission also estimated that 5.5 million of those people are subject to a certain degree of control, while 90 % of people working through platforms are classified self-employed.⁶ That means that many of the 5.5 million people are at risk of being misclassified as self-employed.

This problem arises from the fact that platform work is a form of atypical work.⁷ In platform work, the criteria of direction and control are not as clearly fulfilled as in traditional employment relationships.⁸ For this reason, the classification of people performing platform work (PPPW) is not as straightfor-

* In preparing this thesis, DeepL was used as a translation aid for legal materials and secondary sources not available in English or German. The author remains responsible for the interpretation of all translated materials.

¹ Raimund Waltermann, 'Abhängige Beschäftigung in der digitalisierten Arbeitswelt' (2021) NZA 297, 298.

² Katja Chandna-Hoppe, 'Who is a Platform Worker? Plattformarbeit im deutschen und englischen Recht sowie in der EU-Richtlinie zur Plattformarbeit' (2025) ZEuP 9, 10.

³ Ivana Vukorepa, 'Cross-Border Platform Work: Riddles for Free Movement of Workers and Social Security Coordination' (2020) 70 Zbornik PFZ 481, 483–84.

⁴ Council of the European Union, 'EU Rules on Platform Work' <https://www.consilium.europa.eu/en/policies/platform-work-eu/> accessed 23 May 2026; Sandra Fredman, Darcy du Toit, Alessio Bertolini, Jonas Valente and Mark Graham, 'Fair Work for Platform Workers: Lessons from the EU Directive and Beyond' (2025) 54 *Industrial Law Journal* 425, 426.

⁵ European Commission, *Impact Assessment Report Accompanying the Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work* SWD(2021) 396 final, 7.

⁶ *ibid* 8.

⁷ Vukorepa (n 3) 481.

⁸ Silvia Rainone and Christina Hiebl, 'Judicial Creativity in the Platform Economy: Normative Insights for Broadening the Scope of Labour Law' in Kurt Vandaele and Silvia Rainone (eds), *The Elgar Companion to Regulating Platform Work: Insights from the Food Delivery Sector* (Edward Elgar 2025) 171, 171.

ward as it is for people working in traditional jobs. As a result, there is considerable legal uncertainty, because many rights under EU and national labour law depend on whether a person performing services is legally classified as a worker or employee, or as a self-employed person.⁹

The EU is seeking to address this issue through the adoption of Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work,¹⁰ better known as the Platform Work Directive (PWD). This Directive introduces a legal presumption of an employment relationship for PPPW in Chapter II, but does not fully harmonise the underlying concept of platform worker or employment relationship.¹¹ Article 29(1) PWD gives Member States until 2 December 2026 to transpose the Directive into national law.

The transposition of the PWD makes this issue of classifying PPPW particularly timely, because it remains unclear whether the legal presumption of employment will reduce the legal uncertainty surrounding the employment status of PPPW.

1.2 State of the art and research gap

The literature on platform work is already extensive. It has examined platform work as a form of precarious or non-standard work, the risk of misclassification, and the role of national courts in reclassifying platform workers.¹² *Hiebl's* comparative work, for example, maps a large body of national case law on the classification of platform workers and illustrates that courts across Europe have reached different outcomes.¹³

The general concept of worker has also been widely analysed, especially in relation to the case law of the Court of Justice (CJEU) and the interaction between EU and national labour law categories.¹⁴ *Martinsen, López Zurita and Šadl* place this debate within the broader problem of legal uncertainty for

⁹ Dorte Sindbjerg Martinsen, Lucía López Zurita and Urška Šadl, 'To Be or Not to Be a Worker: Legal Uncertainty and Precarious Employment in the European Union' (2026) *Journal of Common Market Studies* 1, 2.

¹⁰ Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L 2024/2831.

¹¹ Martinsen, López Zurita and Šadl (n 9) 7.

¹² Alice Welsh, 'Schrödinger's Worker: When is a Worker Not a Worker?' in Alice Welsh, *The Market Citizenship Illusion: Free Movement Rights for Atypical Workers* (Hart 2025); Vukorepa (n 3).

¹³ Christina Hiebl, 'Case Law on the Classification of Platform Workers: Cross-European Comparative Analysis and Tentative Conclusions' (SSRN, updated February 2024).

¹⁴ Nicola Kountouris, 'The Concept of "Worker" in European Labour Law: Fragmentation, Autonomy and Scope' (2018) 47 *Industrial Law Journal* 192; Emanuele Menegatti, 'The Evolving Concept of "Worker" in EU Law' (2019) 12 *Italian Labour Law e-Journal* 71.

workers, arguing that access to labour rights and social protection remains tied to worker status, which is primarily defined at the national level.¹⁵

The PWD, the legal presumption of an employment relationship, and the original proposal of the Commission for the presumption have also attracted attention.¹⁶ Aloisi, Potocka-Sionek and Ratti have discussed the ways in which the PWD promotes the protection of workers' rights well beyond the scope of traditional labour legislation.¹⁷ Wray sought to provide the Member States with a guide on how to implement the employment presumption, but focused primarily on how to classify as many PPPW as workers as possible and did not address the lack of uniformity in the definition of worker in the EU.¹⁸

However, the specific doctrinal question addressed by this thesis remains insufficiently answered. This thesis focuses on whether the legal presumption of employment in Directive (EU) 2024/2831 will be of legal significance in countering misclassification of people performing platform work in the EU, and which elements Member States can adopt from other already existing legal presumptions of employment.

1.3 Research question & limitations

The aim of this thesis is to assess whether Chapter II of the PWD will have legal significance in countering misclassification of PPPW. Answering this question is important because the Member States must transpose this presumption into national law. By examining the issues surrounding the EU's term of worker in general, the specific problem in the classification of platform workers, and the effect that other legal presumptions employment have already had, this thesis aims to provide Member States with a clearer understanding of what they should consider when transposing the legal presumption into national law.

The main research question guiding this thesis is “*Will the legal presumption of employment in Directive (EU) 2024/2831 be of legal significance in countering misclassification of people performing platform work in the EU?*”

The following sub-research questions will be examined to support this research:

¹⁵ Martinsen, López Zurita and Šadl (n 9).

¹⁶ Despoina Georgiou, ‘Regulating Platform Work in the European Union: Initiatives, Challenges and the Ways Ahead’ in Kurt Vandaele and Silvia Rainone (eds), *The Elgar Companion to Regulating Platform Work: Insights from the Food Delivery Sector* (Edward Elgar 2025) 190; Rainone and Hießl (n 8) 171.

¹⁷ Antonio Aloisi, Nastazja Potocka-Sionek and Luca Ratti, ‘Straddling Two Horses: Digital or Social Regulation? Behind, Within and Beyond the EU Platform Work Directive’ (2025) 62 *Common Market Law Review* 1407.

¹⁸ Ben Wray, *The Platform Work Directive: Trade Union Guide to Transposition* (European Trade Union Confederation 2026).

1. *“What is the EU concept of a “worker”, and how does the Court of Justice interpret its scope and limits?”*
2. *“To what extent do people performing platform work meet the EU criteria of “worker”, and what challenges do their working arrangements pose for classification under EU law?”*
3. *“How does the presumption of employment in Directive (EU) 2024/2831 work, and does it change the status quo of the classification people performing platform work?”*
4. *“How does the presumption of employment compare to other already existing presumptions of employment?”*

However, this thesis does not attempt to provide a comprehensive comparative analysis of platform work across all Member States. The focus lies on how the legal presumption of an employment relationship works in those Member States that already have such a presumption enshrined in national law, in order to assess the potential impact of Chapter II of the PWD.

Furthermore, a detailed explanation of how the courts of each Member State have addressed this issue so far will not be provided. This thesis will only include limited examples of national court rulings to illustrate how they have ruled in comparison to the CJEU.

This thesis also does not attempt to provide a full analysis of the new PWD, but rather focuses on Chapters I and II to address the employment status and the presumption. Thereby, it generally examines what Member States should consider when transposing the presumption into national law and does not provide a detailed analysis of how specific Member States should transpose the presumption.

1.4 Methodology & Structure

This thesis applies a doctrinal legal method. The purpose is to analyse, interpret and systematise the relevant legal rules governing the status of PPPW under EU law, with particular focus on the PWD. The analysis is based primarily on EU legal materials, including the Directive itself, its recitals, the Commission’s original proposal and working documents, and relevant CJEU case law on the concept of worker and employment relationships.

The thesis examines the wording, purpose and legal context of the Directive in order to determine the legal significance of the employment presumption. It pays particular attention to the relationship between the employment presumption in the PWD and already existing ones, to evaluate their common features and differences. For this reason, national laws on presumptions of an employment relationship and related cases will also be discussed.

The thesis uses academic literature to identify the existing debate on platform work, worker classification, legal uncertainty in this field and the PWD. It does not rely on empirical research, interviews or quantitative data. Its focus is legal and doctrinal. It seeks to clarify what the Directive does as a matter of law, what it leaves unresolved, and how its employment presumption should be understood within the broader EU labour law framework.

The thesis is structured as follows. Chapter 2 sets out the concept of worker under EU law and explains why the definition of the term worker is not uniform within the EU. Building on this, Chapter 3 illustrates the classification and definition of PPPW and platform workers in the EU and explains why this concept is based on the general concept of worker under EU law. Chapter 4 then analyses the legal presumption of employment in the PWD and its legal significance. Chapter 5 contains a critical assessment of this presumption and compares it with other already existing presumptions of employment. Chapter 6 concludes with an evaluation of whether the presumption of employment meaningfully counters the misclassification of PPPW.

2 The EU concept of worker

In order to explain the employment status of platform workers in the EU, it is necessary first to clarify the EU concept of a worker and the way in which the CJEU interprets its scope and limits.

The free movement of workers in the internal market of the EU is ensured in Articles 45-48 Treaty of the Functioning of the European Union (TFEU).¹⁹ Article 45(1) and (2) TFEU state:

“1. Freedom of movement for workers shall be secured within the Union.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.”

2.1 Case law on workers in the EU

Even though these provisions secure numerous rights for workers in the EU, they do not define who qualifies as a worker. This is why the term has largely been defined through the case law of the CJEU and its predecessors. The most famous and important ruling in this regard was given in *Lawrie-Blum*,²⁰ where the Court decided that the essential feature of an employment relationship is that a person performs services of some economic value for and under the direction of another person, in return for which that person receives remuneration. This formed the baseline for the Court’s following rulings, in which it further developed the definition.

The Court clarified in their following rulings more about the term worker and refined it. It ruled in *Levin* that part-time workers earning below a national minimum income may still qualify as workers, provided that their work is genuine.²¹ It also established the “effective and genuine” test and excluded activities that are purely marginal and ancillary.²² Following this, in *Ninni-Orasche* the Court confirmed that even short-term employment can confer worker status, regardless of the person’s motive, as long as the work is genuine.²³ In *Kempf* the Court held that even if a person must rely on social assistance to supplement a very low wage, that person remains a worker, provided

¹⁹ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47.

²⁰ Case 66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg* ECLI:EU:C:1986:284, para 17.

²¹ Case 53/81 *D M Levin v Staatssecretaris van Justitie* ECLI:EU:C:1982:105, para 17.

²² *ibid.*

²³ Case C-413/01 *Franca Ninni-Orasche v Bundesminister für Wissenschaft, Verkehr und Kunst* ECLI:EU:C:2003:600, paras 25–26.

that the work itself is genuine.²⁴ Another important ruling was given in *Allonby*, where the Court reiterated that the term worker under what is now Article 157 TFEU, regarding equal pay, is an autonomous concept of EU law and cannot be interpreted solely by national law and does not include genuinely independent self-employed persons.²⁵ The key point of that case is that one must be in a relationship characterized by subordination to invoke worker rights, such as equal pay.

An important ruling that helps distinguish between self-employed persons and workers is *FNV Kunsten*, in which the Court introduced the concept of false self-employment at EU level.²⁶ It held that a service provider may lose their status as self-employed “*if he does not determine independently his own conduct on the market, but is entirely dependent on his principal, because he does not bear any of the financial or commercial risks arising out of the latter’s activity*”.²⁷ It further ruled that the classification of a “self-employed” person under national law, who acts under the direction of a client, does not preclude that person from being classified as an employee within the meaning of EU law if that person’s independence is merely notional.²⁸ The Court held that a person’s status as a worker is not affected “*as long as that persons acts under the direction of his employer as regards, in particular, his freedom to choose the time, place and content of his work, does not share in the employer’s commercial risks, and, for the duration of that relationship, forms an integral part of that employer’s undertaking*”.²⁹

2.2 The lack of uniformity in the definition of the term worker

Although the Court has established a basic framework in these rulings, the definition of the term worker is still not uniform within the EU.³⁰ Consequently, the Court has repeatedly held that “*there is no single definition of worker in Community law: it varies according to the area in which the definition is to be applied.*”³¹

²⁴ Case 139/85 *R H Kempf v Staatssecretaris van Justitie* ECLI:EU:C:1986:223, para 14.

²⁵ Case C-256/01 *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional Ltd and Secretary of State for Education and Employment* ECLI:EU:C:2004:18, paras 68 and 79.

²⁶ Pablo Sanz de Miguel, Tania Bazzani and Juan Arasanz, *The Definition of Worker in the Platform Economy: Exploring Workers’ Risks and Regulatory Solutions* (European Economic and Social Committee 2021) 66; Case C-413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* ECLI:EU:C:2014:2411, para 31.

²⁷ *FNV Kunsten Informatie en Media v Staat der Nederlanden* (n 26) para 33.

²⁸ *ibid* para 35.

²⁹ *ibid* para 36.

³⁰ Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials* (8th edn, OUP 2024) ch 22, 3(A).

³¹ Case C-85/96 *María Martínez Sala v Freistaat Bayern* ECLI:EU:C:1998:217, para 31; *Allonby* (n 25) para 63.

An example of this statement is the Directive on Transparent and Predictable Working Conditions, where a “hybrid” notion of worker has been introduced.³² In Article 1(2) of this Directive it is stated that it applies “*to every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice.*” It therefore refers both to national and EU notions of workers. Such a hybrid notion of worker with reference to the case law of the CJEU is also laid down several other Directives.³³ One of those Directives is the new PWD, which will be discussed in Chapter 3.

This is significant because some Member States have a different notion of worker than the EU.³⁴ This may lead to different classifications of persons performing services, depending on whether they are classified by EU legislation or national legislations. For this reason, it is possible that some people performing services are classified as workers under Article 45 TFEU but do not fall under the scope of a labour Directive such as the Directive on Transparent and Predictable Working Conditions because national law does not classify them as workers or employees.

This must especially be taken into account when atypical work is concerned. Atypical work often involves short duration or irregularity of contracts, which are potential indicators of “marginal or ancillary work”.³⁵ The Court has shown in *Raulin*,³⁶ that it leaves it up to the national courts, in such cases, to decide whether the person is considered to be a worker.

It can be inferred from these results that, where secondary legislation does not explicitly delegate the definition of worker to the Member States, the Court has assigned an EU meaning to the different concepts of workers in that secondary legislation.³⁷ In this way, it is ensured that when workers are covered by secondary legislation, they are also considered EU workers and their status

³² Catherine Barnard and Steve Peers (eds), *European Union Law* (4th edn, OUP 2023) ch 20, 2.1.

³³ 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 [2019] OJ L186/105, art 1(2); Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers [2019] OJ L188/79, art 2; Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 strengthening the application of the principle of equal pay for equal work or work of equal value through pay transparency and enforcement mechanisms [2023] OJ L132/21, art 2(2).

³⁴ Charlotte O’Brien, Eleanor Spaventa and Joyce De Coninck, *The Concept of Worker under Article 45 TFEU and Certain Non-Standard Forms of Employment: Comparative Report* (European Commission 2016) 34.

³⁵ Martinsen, López Zurita and Šadl (n 9) 6; Welsh (n 12) 59.

³⁶ Case C-357/89 *V J M Raulin v Minister van Onderwijs en Wetenschappen* ECLI:EU:C:1992:87, paras 14–15.

³⁷ Martinsen, López Zurita and Šadl (n 9) 7.

remains defined by the Court instead of the national legal order.³⁸ The Commission's statement fits within this line of reasoning:³⁹

*“While EU Member States are responsible for deciding who is to be considered a worker in their national legal order, at EU level the Court of Justice (CJEU) has defined the concept of worker for the purpose of applying EU law ... [and has] confirmed that this definition shall also be used to determine who is to be considered as a worker when applying certain EU Directives in the social field.”*⁴⁰

However, when EU legislation explicitly defers the definition of worker to the national legal orders – as can be seen in the Directive on Transparent and Predictable Working Conditions, where a hybrid notion of worker is involved – the Court is much more deferential and refrains from giving an independent EU meaning to the concept of worker.⁴¹ The Court justifies this by stating that the legislation in this area is aimed solely at partial harmonisation.⁴²

To sum this up, it can be stated that even though the Court has established a basic framework for a definition of the term worker, which heavily depends on subordination, the notion of worker is not uniform within the EU. Differences may therefore arise between Member States whether people performing the same service are considered workers, and also as to which labour Directives apply to them.

³⁸ Kountouris (n 14) 205.

³⁹ *ibid* 196.

⁴⁰ European Commission, ‘A European Agenda for the Collaborative Economy’ (Communication) COM(2016) 356 final, 12.

⁴¹ Martinsen, López Zurita and Šadl (n 9) 7.

⁴² *ibid*.

3 Current classification of platform workers under EU law

This leads to the question to what extent platform workers meet the EU criteria of “worker” and what challenges their working arrangements pose for classification under EU law.

3.1 Definition of platform work and platform worker

Before examining the definition of a platform worker, it is first necessary to define platform work. The new PWD defines platform work in Article 2(1)(b) as follows:

“‘platform work’ means work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform or an intermediary, and the individual, irrespective of whether there is a contractual relationship between the individual or an intermediary and the recipient of the service”.

Because it is characterised by a triangular relationship between the digital platform, the PPPW, and the client, platform work is seen as an atypical form of work.⁴³

The Directive then distinguishes between platform workers and PPPW. A person performing platform work is defined in Article 2(1)(c) PWD as follows:

“‘person performing platform work’ means an individual performing platform work, irrespective of the nature of the contractual relationship or the designation of that relationship by the parties involved”.

The term platform worker is defined under Article 2(1)(d) of the PWD as follows:

“‘platform worker’ means any person performing platform work who has or is deemed to have an employment contract or 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”.

⁴³ Vukorepa (n 3) 481.

The fact that the Directive differentiates between these two terms is important. It thereby clarifies that not every PPPW is as a platform worker.

However, this definition does not add any new substantive criteria to the term platform worker. It creates a hybrid notion of worker and defers the definition to the national legislators, while merely stating that the case law of the CJEU needs to be considered. As pointed out in Chapter 2.2, when EU legislation explicitly defers the definition of worker to national law, the Court is much more deferential and refrains from giving an independent EU meaning to the concept of worker. Accordingly, the concept of a platform worker is not uniformly defined, either before or after the implementation of the PWD into national law.

3.2 Classification of platform workers

The classification of PPPW as platform workers basically depends on the same characteristics as for any other worker. The fact that the putative employer is a platform is of minor relevance for this classification. That means that the criteria set out in the rulings mentioned in Chapter 2 – even though they were not specifically about platform workers – need to be considered by national courts and authorities when classifying the employment status of a PPPW.⁴⁴

Because EU law only provides a hybrid notion of platform worker in Article 2(1)(d) of the PWD, it does not fully harmonise the classification of PPPW as workers or employees. This means that their employment status remains primarily determined by national law, and national discretion is only limited by the case law of the CJEU. The following section provides an overview of the main criteria that are relevant when classifying a PPPW.

Since every person who provides platform services meets the first criterion of the *Lawrie-Blum* formula – namely, performing services over a certain period of time – only the other criteria that are used to determine whether someone should be classified as a worker need to be examined.

3.2.1 Real and genuine activities

The first criterion is the pursuit of real and genuine activities. As established in *Levin* activities that are purely marginal and ancillary are excluded.⁴⁵ In the context of platform work, this criterion could apply to very sporadic forms of crowdwork.⁴⁶ However, the Court has progressively expanded the notion of worker to include those working few hours and for a marginal income.⁴⁷ Due

⁴⁴ Annika Rosin, ‘Towards a European Employment Status: The EU Proposal for a Directive on Improving Working Conditions in Platform Work’ (2022) 51 *Industrial Law Journal* 478, 485.

⁴⁵ *Levin* (n 21) para 17.

⁴⁶ Hießl (n 13) 87.

⁴⁷ Martinsen, López Zurita and Šadl (n 9) 7.

to the lack of case law and the fact that the Court has never specified precisely what constitutes as purely marginal,⁴⁸ it can only be estimated here that the Court would leave it up to the Member States to decide this, as it has done in *Raulin*.⁴⁹ Nevertheless, Member States need to consider that the Court held in *Trojani* that, regarding whether a performed service is real and genuine, the “national court must in particular ascertain whether the services actually performed ... are capable of being regarded as forming part of the normal labour market.”⁵⁰

3.2.2 remuneration

As for remuneration, the Court mainly assesses whether the payment is received in return for the performed service.⁵¹ The fact that payments to platform workers are typically performance-based and not based on a fixed hourly wage does not preclude their classification as remuneration, nor does any potential cap on the amount of such payments.⁵² Even if the pay is low or unstable, it is still remuneration, as shown in *Levin* and *Kempf*.⁵³

3.2.3 subordination

Consequently, the main factor in classifying PPPW is still subordination or more specifically direction and control. For example, a driver who offers their services on multiple ride-hailing platforms, sets their own prices, and determines their own rates would be classified as self-employed, whereas a driver who offers their services exclusively on a single platform, has their working hours assigned to them, and has their rates set by the platform would be classified as a worker. The problem is that many cases involving platform work cannot be categorised so easily, as the criteria often overlap or differ only in minor details.

Furthermore, the CJEU has not yet taken a clear stance on how to interpret the nature of the working arrangements of PPPW specifically.⁵⁴

3.2.3.1 *Yodel*

Nevertheless, *Yodel*⁵⁵ might provide some orientation. In this case, the Court confirmed that the existence of a relationship of subordination between the service provider and the putative employer would constitute an employment

⁴⁸ Hießl (n 13) 87.

⁴⁹ *Raulin* (n 36) paras 14–15.

⁵⁰ Case C-456/02 *Michel Trojani v Centre public d’aide sociale de Bruxelles (CPAS)* ECLI:EU:C:2004:488, para 24.

⁵¹ Hießl (n 13) 87.

⁵² *ibid*; Case C-10/05 *Cynthia Mattern and Hajrudin Cikotic v Ministre du Travail et de l’Emploi* ECLI:EU:C:2006:220, para 22; Joined Cases C-22/08 and C-23/08 *Athanasios Vatsouras and Josif Koupatantze v Arbeitsgemeinschaft (ARGE) Nürnberg 900* ECLI:EU:C:2009:344, para 27.

⁵³ See ch 2.1.

⁵⁴ Aloisi, Potocka-Sionek and Ratti (n 17) 1418.

⁵⁵ Case C-692/19 *B v Yodel Delivery Network Ltd* ECLI:EU:C:2020:288.

relationship and also ruled that the independence of the person must not appear to be fictitious.⁵⁶ It appears that the CJEU is formulating both options as alternatives and that national courts can rule in favour of an employment relationship based on either of them.⁵⁷ The CJEU confirmed that a combination of four criteria of independence can result in a person not being classified as an employee.⁵⁸

The first criterion is discretion to use subcontractors or substitutes to perform the service which the service provider has undertaken to provide.⁵⁹ The Court stated: “*Thus, the putative employer can exercise only limited control over the choice of subcontractor or substitute by that person, on the basis of a purely objective criterion, and cannot give precedence to any personal choices and preferences.*”⁶⁰ Unlike national courts in similar decisions, the CJEU did not address arguments that relativise the relevance of such a substitution clause if it does not make it possible or does not actually allow the service to be performed by a substitute.⁶¹

The second criterion in *Yodel* was that the service provider had discretion to accept the various tasks offered by his putative employer or unilaterally set the maximum number of those tasks.⁶² The CJEU pointed out in this case that the service provider had an “*absolute right not to accept the tasks assigned to him*”.⁶³ On the one hand, this criterion has also often been decisive for national courts when refusing classification as an employee for PPPW, but on the other hand, national courts often referred to hidden sanctions or incentives to refute genuine discretion.⁶⁴ The CJEU, however, did not address these aspects in detail.

The third criterion was that the service provider had discretion to provide his services to any third party, including direct competitors of the putative employer.⁶⁵ In *Yodel*, there was genuine discretion, which thus constitutes a strong argument against classifying the individual as a worker or employee.

The last criterion was that the service provider had discretion to fix his own hours of ‘work’ within certain parameters and to tailor his time to suit his personal convenience rather than solely the interests of the putative employer.⁶⁶ Here, the CJEU accepted that the discretion was limited in this case, as the service provider had to provide the service during specific time slots,

⁵⁶ *ibid* para 43.

⁵⁷ Hießl (n 13) 88.

⁵⁸ *Yodel* (n 55) para 45.

⁵⁹ *ibid*.

⁶⁰ *ibid* para 39.

⁶¹ Hießl (n 13) 88.

⁶² *Yodel* (n 55) para 45.

⁶³ *ibid* para 40.

⁶⁴ Hießl (n 13) 88.

⁶⁵ *Yodel* (n 55) para 45.

⁶⁶ *ibid*.

but considered this to be of minor importance and ruled that “*such a requirement is inherent to the very nature of that service*”.⁶⁷ However, some decisions in the Member States have already regarded a limitation of that discretion as arising from requirements to reserve shifts in advance, systems that incentivise the choice of certain time slots, the algorithmic determination of priorities among workers based on their ratings, or other forms of penalising workers who do not choose their work hours in line with the interests of the platform.⁶⁸

3.2.3.2 *Elite Taxi*

The ruling in *Elite Taxi*⁶⁹ should also be read in conjunction with *Yodel*.⁷⁰ In this case, the Court ruled that the platform Uber must be classified as a service in the field of transport within the meaning of Article 58(1) TFEU.⁷¹ It held:

*“Uber exercises decisive influence over the conditions under which that service is provided by those drivers. ... Uber determines at least the maximum fare by means of the eponymous application ... [and] it exercises a certain control over the quality of the vehicles, the drivers and their conduct, which can, in some circumstances, result in their exclusion.”*⁷²

Even though the Court did not decide whether Uber drivers should be classified as employees, this statement highlights features of the working relationship between Uber and its drivers that are relevant from a labour law perspective.⁷³

The Advocate General went into more detail and explained:

*“While this control is not exercised in the context of a traditional employer-employee relationship, one should not be fooled by appearances. Indirect control such as that exercised by Uber, based on financial incentives and decentralised passenger-led ratings, with a scale effect, makes it possible to manage in a way that is just as – if not more – effective than management based on formal orders given by an employer to his employees and direct control over the carrying out of such orders.”*⁷⁴

⁶⁷ *ibid* para 42.

⁶⁸ Hießl (n 13) 88.

⁶⁹ Case C-434/15 *Asociación Profesional Elite Taxi v Uber Systems Spain SL* ECLI:EU:C:2017:981.

⁷⁰ Aloisi, Potocka-Sionek and Ratti (n 17) 1419; Rosin (n 44) 483.

⁷¹ *Elite Taxi* (n 69) para 48.

⁷² *ibid* para 39.

⁷³ Rosin (n 44) 483.

⁷⁴ Opinion of AG Szpunar in Case C-434/15 *Asociación Profesional Elite Taxi v Uber Systems Spain SL* ECLI:EU:C:2017:364, para 52.

However, the Advocate General also stated that this does not mean “*that Uber’s drivers must necessarily be regarded as its employees.*”⁷⁵ Nevertheless, this case provides some guidance on the CJEU’s perspective on PPPW. If this case is read together with *Yodel*, it can be inferred that the determination of the conditions under which the service is provided, the setting of a maximum charge for the service, and the exercise of control over the quality of equipment or worker performance and conduct, indicate employment status.⁷⁶

3.2.3.3 *Inferences from these rulings*

Thus, the CJEU provides – in addition to the existence of a subordinate relationship – a further way of determining whether a PPPW qualifies as an employee. Although the ruling in *FNV Kunsten* was not about platform workers specifically, it must always be taken into account when classifying a PPPW because it sets out the criteria for determining when a person is still considered a worker, despite being declared self-employed. This is a situation that often appears in the area of platform work.⁷⁷ That is why the Court also referred to that ruling in *Yodel*.⁷⁸

However, the CJEU has not yet elaborated in detail on the criteria for determining when PPPW are considered workers. The national courts of the Member States, on the other hand, have already issued several rulings on how independence might nevertheless be deemed fictitious.⁷⁹ It therefore seems that the CJEU in the rulings mentioned above, appears to be more focused on traditional criteria of subordination than the national approaches that have reclassified PPPW as workers or, more precisely, employees in numerous cases.⁸⁰ It is therefore open to question whether the CJEU will align itself in future cases with national case law or will specify its already established criteria in some other way.

⁷⁵ *ibid* para 54.

⁷⁶ Aloisi, Potocka-Sionek and Ratti (n 17) 1419.

⁷⁷ Georgiou (n 16) 190–91.

⁷⁸ *Yodel* (n 55) paras 30–31.

⁷⁹ Hießl (n 13) 89.

⁸⁰ *ibid* 90.

4 The presumption of employment in the PWD

The EU legislature has recognised that there are still significant issues surrounding platform workers and aims to address them through the PWD.

The legal basis of the PWD is Article 153(2)(b) TFEU, in conjunction with Article 153(1)(b) TFEU, and Article 16(2) TFEU.⁸¹ Therefore, the aims of the PWD are to improve the working conditions of platform workers and to protect the personal data of persons performing platform work.⁸² As seen in the previous Chapter, the PWD contains a hybrid notion of worker. Such a hybrid notion of worker is also found in several other EU labour law Directives that have Article 153(2)(b) TFEU, in conjunction with Article 153(1)(b) TFEU as their legal basis and are aimed on improving working conditions.⁸³ These Directives also refer to the case law of the CJEU when determining to which workers it applies.

The entire Chapter II of the PWD is devoted to the employment status of PPPW, and its central provision is the rebuttable presumption of an employment relationship for those people. This is seen as the key to improving their working conditions.

4.1 Negotiation process

To understand the reasons why the rebuttable presumption of employment in the PWD was adopted in its final form, the process leading to its adoption must be reviewed.

The legislative process began even before the Commission's original proposal in December 2021. Already in 2016, the Commission encouraged Member States to assess whether their national employment rules were adequate for digital and collaborative business models.⁸⁴ In 2017, the European Parliament (Parliament) called on the Commission to address the legal uncertainty surrounding work through digital platforms.⁸⁵ Over time, it became clearer that platform work could not be dealt with merely through existing EU rules on services, because the core problem concerned employment status, working conditions and algorithmic management.⁸⁶

⁸¹ Directive (EU) 2024/2831 (n 10), preamble.

⁸² *ibid* recital 16.

⁸³ See above n 33.

⁸⁴ European Commission, 'A European Agenda for the Collaborative Economy' (n 40).

⁸⁵ European Parliament, 'European agenda for the collaborative economy', (Resolution) 2017/2003(INI) [2018] OJ C331/125.

⁸⁶ Aloisi, Potocka-Sionek and Ratti (n 17) 1412.

Then, in December 2021, the Commission published its original proposal for the PWD, with the main aims of ensuring correct employment status, regulating algorithmic management, and improving enforcement, including in cross-border platform work.⁸⁷

The most important element for employment status was the Commission's proposed five-factor presumption of employment. Under Article 4(2) of this model, a platform would be legally presumed to an employer if it controlled the performance of work by satisfying at least two of five criteria. The criteria were setting remuneration, setting rules on appearance or conduct, supervising performance electronically, restricting freedom to organise work, and limiting the possibility of building an independent client base. The aim was to facilitate the judicial assessment and to provide certainty to digital labour platforms.⁸⁸

However, this approach was politically controversial, because Member States feared that fixed EU-level criteria would interfere too strongly with national competence over employment status.⁸⁹ The proposal took a new approach by giving the Member States specific instructions on how to determine the employment status of workers, since the personal scope of national labour laws has historically been determined by them.⁹⁰ This means that if the Proposal had been adopted, the competences of the Member States would have been considerably restricted.⁹¹

Therefore, the Directive underwent significant changes and in February 2023, the Parliament proposed another draft that included the replacement of the five-factor test with a more general rebuttable presumption of employment.⁹² Under this approach, the presumption would not depend on satisfying a fixed number of statutory control criteria. The Parliament also sought stronger enforcement, broader redress mechanisms, expanded rights concerning algorithmic management, and specific rules on intermediaries and subcontracting.⁹³ In effect, the Parliament wanted a stronger presumption that would make it harder for platforms to avoid employment obligations through contractual design or algorithmic organisation.

⁸⁷ European Commission, 'Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work' COM(2021) 762 final, 2021/0414(COD).

⁸⁸ Aloisi, Potocka-Sionek and Ratti (n 17) 1412–1413.

⁸⁹ Guilherme Migliora, 'Platform Work and Algorithmic Management: Protecting Workers Irrespective of Their Employment Status' (2026) 60 Computer Law & Security Review 106267, 5.

⁹⁰ Rosin (n 44) 480.

⁹¹ *ibid.*

⁹² European Parliament, Committee on Employment and Social Affairs, 'Report on the Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work' A9-0301/2022, 21 December 2022.

⁹³ Aloisi, Potocka-Sionek and Ratti (n 17) 1413.

The presumption of employment proved to be the most contentious issue in the subsequent political negotiations because Member States were divided between those supporting the Commission's tighter criteria for the legal presumption and those favouring wider national flexibility.⁹⁴

The Council of the European Union (Council) was sceptical of the general presumption and rejected the Parliament's approach and instead proposed its own alternative, including a more detailed seven-factor presumption where at least three criteria would have to be met.⁹⁵ In the end, a compromise text was agreed by the Parliament and the Council.⁹⁶

This is why the final version of the PWD represents a compromise and a significant watering down of the original ambitions. It no longer contains the Commission's fixed five-factor test or the Parliament's broad automatic presumption. The main reason behind this is that the Member States were reluctant to give away their national competence over employment status.

4.2 Presumption of employment

The presumption in the final text is laid down in the first part of Article 5(1) PWD. It states:

“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.”

Meanwhile, Article 4(2) PWD clarifies that the classification is based on the “actual performance of work”, “irrespective of how the relationship is designated in any contractual arrangement that may have been agreed between the parties involved”.

So, compared to the final version, the Commission's original proposal for the employment presumption was much clearer, as it allowed the existence of the presumption to be determined based on five specific criteria, rather than requiring compliance with the interpretable terms direction and control. On the

⁹⁴ Martinsen, López Zurita and Šadl (n 9) 12.

⁹⁵ Council of the European Union, ‘Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work – General Approach’ (ST 10107/23 INIT, 7 June 2023).

⁹⁶ Aloisi, Potocka-Sionek and Ratti (n 17) 1413.

other hand, the presumption in the final text gives Member States greater leeway to reflect specific characteristics of their respective national definitions of a worker/employee when formulating the presumption.⁹⁷

However, even a presumption as in the final text aims to create legal certainty among the different stakeholders involved in the labour market, especially the PPPW, the platforms, and also the state.⁹⁸ However, it should also be noted that Article 1(1)(a) PWD sets as an aim only to facilitate the correct employment status and not to ensure the correct determination of it, as the Commission's original proposal did.⁹⁹

Nevertheless, the presumption is limited. It does not mean that PPPW are automatically classified as workers or employees. It merely presupposes the existence of "facts indicating direction and control", which requires a case-by-case assessment; and even if the classification criteria become standardised, a group-by-group assessment would be necessary.¹⁰⁰ Since the Directive has not yet been transposed into national law and there is no case law on the matter, it is unclear what the facts indicating direction and control should look like. However, legislators should not set these requirements too high, as otherwise the presumption would be meaningless, and it would effectively amount to an examination of employee status before the presumption can even apply.

Furthermore, Article 5(1) PWD does not introduce any specific employment test tailored to PPPW. As outlined above, while Article 2(1)(d) PWD defines platform workers, it does not standardise the classification of an employment relationship. The presumption is also not meant to address the uncertainties surrounding the definition of an employee.¹⁰¹ Therefore, the Directive introduces nothing new regarding the test of whether PPPW classify as workers or employees. By referring to "direction and control", the PWD does not go beyond the central requirement of an employment relationship in the CJEU case law, namely subordination.¹⁰² There is neither a new definition of direction and control, nor is it specified over what or whom the direction should be exercised, which allows a broad interpretation.¹⁰³

For these reasons, it can be inferred that the criteria discussed in Chapter 3 for classifying PPPW as employees or workers continue to apply.

⁹⁷ Chandna-Hoppe (n 2) 33.

⁹⁸ Miriam Kullmann, "Platformisation" of Work: An EU Perspective on Introducing a Legal Presumption' (2022) 13 European Labour Law Journal 66, 70.

⁹⁹ Aloisi, Potocka-Sionek and Ratti (n 17) 1416.

¹⁰⁰ *ibid* 1417.

¹⁰¹ Chandna-Hoppe (n 2) 32.

¹⁰² Aloisi, Potocka-Sionek and Ratti (n 17) 1417.

¹⁰³ *ibid*.

4.3 Enforcement Framework around the presumption of employment

The employment presumption in the PWD is not meant to operate in isolation. Article 5(1) PWD creates the presumption but Articles 5 and 6 PWD show that the Directive also tries to create an enforcement framework around it.

Article 5(2) PWD is central because it explains the legal function of the presumption. It requires Member States to establish an effective rebuttable legal presumption of employment for PPPW and also states that the presumption must not increase the burden of requirements on workers or their representatives in proceedings concerning correct employment status. Therefore, it prevents Member States from implementing the presumption in a way that merely reproduces the existing burden of proof on workers.¹⁰⁴ The presumption must actually facilitate the worker's procedural position. This matters because platforms usually have better access to the relevant facts, especially algorithmic information.¹⁰⁵

Article 5(3) PWD determines that the presumption applies in all relevant administrative or judicial proceedings, but excludes tax, criminal or social security matters from this presumption, unless Member States decide to cover these areas as well. However, Member States retain discretion if they want to cover these fields in the presumption.¹⁰⁶ Article 5(4) PWD gives PPPW and Article 5(5) PWD gives national authorities the right to initiate proceedings to determine the correct employment status. Article 5(6) PWD limits the temporal effect of the presumption by providing that, for contractual relationships entered into before and still ongoing on 2 December 2026, the presumption applies only from that date onwards.

Article 6 PWD sets out the framework of supporting measures that Member States must create to make the employment presumption effective in practice.¹⁰⁷ It requires Member States to provide guidance for digital labour platforms, PPPW and social partners, thereby promoting legal certainty. It also requires national authorities to have effective control and inspection mechanisms, particularly in relation to platforms where an employment relationship has already been established, as well as adequate training and expertise.

However, the PWD does not define in detail what “effective implementation” of the employment presumption must look like and leaves Member States considerable discretion in designing the concrete enforcement framework.¹⁰⁸ This means that the practical strength of the presumption will depend heavily

¹⁰⁴ Directive (EU) 2024/2831 (n 10), recital 31.

¹⁰⁵ *ibid*, recital 34.

¹⁰⁶ *ibid*, recital 32.

¹⁰⁷ *ibid*, recital 35-36.

¹⁰⁸ Aloisi, Potocka-Sionek and Ratti (n 17) 1422.

on national implementation, administrative capacity and enforcement practice, since the PWD is of limited assistance regarding the specifics of the legal presumption.¹⁰⁹

4.4 Rebuttal of presumption

The possibility of rebutting the presumption is laid down in the second part of Article 5(1) PWD. It states:

“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.”

So, in order to rebut the presumption, platforms must prove that the criteria for an employment relationship are not met, again taking into account the hybrid notion of worker. The national court should consider all relevant factors and confirm that there is no bogus self-employment.¹¹⁰ However, it remains unclear what the difference is between proving “the absence of an employment relationship” and proving the “absence of direction and control”, which would simply mean refuting the circumstances that led to the presumption of an employment relationship in the first place.¹¹¹ Combining the findings here with the previous ones, it can be said that after the presumption applies, the platform needs to prove that the relationship with the PPPW is not based on subordination and the independence of the PPPW is not fictitious. It can therefore be inferred that the requirements for “facts indicating direction and control” will not be set very high.

It is also worth mentioning that in this version of the Directive only the platform can rebut the presumption. That contradicts the Commission’s original proposal, which provided both the platform and platform workers with this option. Even though rebutting the presumption is primarily in the interest of the platform, the reasoning for such a legislative move towards the end of the negotiation process is difficult to understand.¹¹²

¹⁰⁹ Konstantinos Zografidis, ‘Implementing the Presumption of Employment of the Platform Work Directive’ (Global Workplace Law & Policy, 23 April 2025) <https://legal-blogs.wolterskluwer.com/global-workplace-law-and-policy/implementing-the-presumption-of-employment-of-the-platform-work-directive/> accessed 23 May 2026.

¹¹⁰ Rosin (n 44) 485.

¹¹¹ Aloisi, Potocka-Sionek and Ratti (n 17) 1420.

¹¹² *ibid.*

5 Comparison of employment presumption in the PWD with already existing presumptions

This leads to the question of whether the new presumption of employment will be of legal significance in countering the misclassification of people performing platform work in the EU. In order to answer that question, the presumption will be critically assessed by comparing it to other already existing presumptions of employment. This should reveal the effects the presumption could have and allow a review of its legal significance and what Member States should consider when transposing the presumption into national law.

5.1 Belgium

Belgium regulates the employment presumption for platform work for digital platforms in the Labour Relations Law or Programme Law (I) of 27 December 2006.¹¹³ Article 331 of Belgium's Labour Relations Law states the principle that parties may choose the legal nature of their relationship, but that the actual performance of the work prevails if it contradicts the contractual label.¹¹⁴

Article 333 of Belgium's Labour Relations Law contains a general test for subordination that is based on four criteria, namely the – if consistent with reality – expressed will of the parties, the freedom to organise working time, the freedom to organise the work, and the possibility of hierarchical control.¹¹⁵

Since 1 January 2023, Belgium has had a specific presumption of employment for platform work in Article 337/3 § 2 of Belgium's Labour Relations Law. This model is similar to the original proposal for the legal presumption in the PWD. Article 337/3 § 2 of Belgium's Labour Relations Law states that a working relationship with a digital platform is presumed to be an employment contract if at least three of eight criteria, or two of the last five criteria, are fulfilled. These criteria focus on whether the platform can exercise control by claiming exclusivity, using geolocation beyond what is necessary for the basic service, restricting how work is performed, limiting income level or price setting, imposing rules on appearance or conduct, using algorithmic ranking or monitoring, restricting working time or task refusal and limiting

¹¹³ Programmawet (I) van 27 december 2006, BS 28 December 2006.

¹¹⁴ European Labour Authority, *Addressing Platform Workers' Employment Misclassification: Legal Frameworks, Enforcement Strategies and the New Platform Work Directive* (European Labour Authority 2025) 19.

¹¹⁵ Hiebl (n 13) 7.

substitution, or preventing the worker from building an independent client base.¹¹⁶

The law also makes clear that algorithmic organisation of work must be considered when assessing the real nature of the relationship.¹¹⁷ The presumption is rebuttable and may be challenged by any legal means, including the general criteria for determining subordination.¹¹⁸

The Belgian model allows public authorities to assess reclassification administratively, although their decisions can be appealed before the competent court.¹¹⁹ However, under Belgian law, legal presumptions require a worker or labour inspectorate to present evidence that the criteria of the legal presumption are met in judicial proceedings before a judge can decide that the presumption is triggered and that it is up to the platform to rebut the presumption.¹²⁰ This presumption was triggered in the cases of *Deliveroo*¹²¹ and *Uber Eats*,¹²² but afterwards the platforms rebutted the presumption and a decision is now awaited in judicial proceedings – which can take up to five years – on whether to reclassify the PPPW as employed.¹²³

The Belgian model also provides that judicial decisions can have retroactive effect to some extent, while administrative reclassification applies only for the future.¹²⁴

Because of the defined criteria, the Belgian presumption of employment for platform workers seems to be more concrete than the presumption in the PWD. The statutory list of indicators in Belgian law improves predictability for PPPW as to whether they will be considered workers or employees or remain self-employed.

On the other hand, a list of fixed criteria can become too formalistic. Platforms will most likely try to adapt to the new criteria and redesign their business models to avoid satisfying enough criteria for the presumption to be triggered. It can be expected that this will also happen in Belgium, because when the law was passed, the major digital labour platforms operating in Belgium

¹¹⁶ European Labour Authority (n 114) 19–20.

¹¹⁷ *ibid* 20.

¹¹⁸ *ibid*.

¹¹⁹ *ibid* 18.

¹²⁰ Wray (n 18) 37.

¹²¹ Commission administrative de règlement de la relation de travail (CRT), Dossier n° 265-FR-2023/12/17, 12 April 2024.

¹²² Commission administrative de règlement de la relation de travail (CRT), Dossier n° 267-FR-2023/12/28, 22 April 2024.

¹²³ Wray (n 18) 37.

¹²⁴ European Labour Authority (n 114) 18.

declared that they did not meet the criteria.¹²⁵ If this is the case, then the conditions for people working through platforms will simply change, but it will not lead to a higher number of PPPW being classified as employees or workers. Additionally, the slow pace of the Belgian conditional presumption is making it ineffective.¹²⁶ This is especially seen in the fact that no case has yet been decided on whether to reclassify the PPPW as employed.

5.2 Portugal

Portugal's Labour Code¹²⁷ also contains a specific legal presumption of employment for platform work. Under Article 12.º-A(1) of Portugal's Labour Code, the presumption applies to platforms that organise paid work under their own business model and brand. According to the law, a platform is presumed to be the employer if "some" of the six criteria are fulfilled, including that the platform determines remuneration, exercises a power of direction, supervises work through electronic or algorithmic means, restricts worker autonomy, exercises disciplinary power such as account deactivation, or provides equipment. However, in a ruling regarding Uber Eats, the Court made clear that "some" means that at least two of the criteria are fulfilled.¹²⁸

The law also defines what constitutes a digital platform. The presumption applies to legal persons providing services remotely by electronic means, such as through a website or app, where the service is requested by users and necessarily involves the organisation of paid work performed by individuals. This applies regardless of whether the work is carried out online or at a specific physical location.¹²⁹

The Portuguese presumption can only be applied to contracts that were in force when the presumption came into effect.¹³⁰

The platforms then have the opportunity to either rebut this presumption by proving that the activity is effectively provided autonomously, without the worker being subject to control, management and disciplinary power, or to deflect the presumption to a different entity, whereby it is up to the Court to determine who the employer is.¹³¹ Nevertheless, even in the second case, the

¹²⁵ Ben Wray, 'Gig Economy Project – Is Belgium's Platform Work Law "a Dead Letter"?' Brave New Europe (11 May 2023) <https://braveneweuropa.com/gig-economy-project-is-belgiums-platform-work-law-a-dead-letter> accessed 23 May 2026.

¹²⁶ Wray (n 18) 37.

¹²⁷ Código do Trabalho (Portugal), approved by Lei n.º 7/2009, de 12 de fevereiro, Diário da República n.º 30/2009, Série I, 12 February 2009, as amended by Lei n.º 13/2023, de 3 de abril.

¹²⁸ Tribunal da Relação de Évora, Acórdão de 16 January 2025, Proc n.º 3848/23.4T8PTM.E1.

¹²⁹ European Labour Authority (n 114) 20.

¹³⁰ *ibid* 19.

¹³¹ Hiebl (n 13) 37.

platform is still jointly liable for employment claims, including social security contributions and fines for committing labour offenses.¹³²

Portugal's Labour Code also states that platform workers receive Labour Code protections where compatible with the nature of the activity performed, including rules on occupational accidents, termination of the contract, prohibition of unfair dismissal, minimum pay, holidays, working-time limits, equality and non-discrimination.¹³³

The Portuguese presumption of employment is – like the Belgian one – similar to the Commission's original proposal for the presumption of employment. The first four of the six criteria in Article 12.º-A(1) of Portugal's Labour Code are almost identical to the first four in the Commission's original proposal.¹³⁴

However, in Portugal it is not possible for a whole group of workers to be decided upon by a judge at once, which is why many cases regarding the presumption of employment have gone before courts.¹³⁵ Even though the couriers had exactly the same working contracts and conditions, the outcomes in these cases for riders were mixed.¹³⁶ This led to the *Glovo* case before the Portuguese Supreme Court, where the Court held that the platform Glovo had not rebutted the presumption of employment in respect of the delivery couriers working through it and that five out of the six criteria were met.¹³⁷

However, due to the one-by-one assessment before courts in Portugal, establishing the presumption for every rider takes time and many PPPW remain bogus self-employed.¹³⁸

The Portuguese presumption of employment is more explicit about algorithmic management, account deactivation, remuneration-setting and platform organisation than the one in the PWD. It also deals better with subcontracting, as courts can identify a subcontractor, but the platform remains jointly liable for employment claims, social-security contributions and labour-offence fines.

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ Wray (n 18) 38.

¹³⁵ *ibid.*

¹³⁶ *ibid.*

¹³⁷ Supremo Tribunal de Justiça, Acórdão de 28 May 2025, Proc n.º 29923/23.7T8LSB.L1.S1, Relator Mário Belo Morgado.

¹³⁸ Wray (n 18) 38.

However, the trigger is not fully clear because the law requires “organisation” by the platform but does not fully specify what this term means for the purposes of applying the presumption.¹³⁹ In this regard, the Portuguese presumption is similar to the one under the PWD, which does not fully clarify what “direction and control” means. Also, in Portugal, a judicial ruling is necessary in order to formally declare the reclassification of PPPW as employees. This is a slower approach than in Belgium and Spain, where public authorities have the power to administratively enforce reclassification if the platform company fails to comply after the administrative procedure.¹⁴⁰

5.3 Spain

Spain introduced a specific rebuttable presumption of employment for platform-based delivery workers through Royal Decree-Law 9/2021,¹⁴¹ later replaced by Law 12/2021,¹⁴² in what became known as the Rider Law. It added Additional Provision 23 to the Spanish Labour Statute,¹⁴³ under which individuals who provide paid delivery or distribution services through a digital platform are presumed to fall within labour law, where the digital platform exercises managerial, organisational or supervisory powers through algorithmic management of the service or working conditions. The new legislation thereby does not amend the concept of worker itself because it does not have any substantive effects, but only affects the burden of proof.¹⁴⁴ In Spain, public authorities have the power to administratively enforce reclassification if the platform fails to comply after the administrative procedure, which means that the effects of reclassification are immediate once the public authority issues the decision to reclassify the employment relationship.¹⁴⁵

The Rider law is based on the decision of the Spanish Supreme Court in its judgment of 25 September 2020,¹⁴⁶ where it ruled that algorithmic work management has to be considered as an exercise of the power of direction and control for the purposes of labour law classification as an employee.¹⁴⁷ In this

¹³⁹ European Labour Authority (n 114) 22.

¹⁴⁰ *ibid.*

¹⁴¹ Real Decreto-ley 9/2021, de 11 de mayo, por el que se modifica el texto refundido de la Ley del Estatuto de los Trabajadores, aprobado por el Real Decreto Legislativo 2/2015, de 23 de octubre, para garantizar los derechos laborales de las personas dedicadas al reparto en el ámbito de plataformas digitales, BOE núm 113, 12 May 2021, 56733.

¹⁴² Ley 12/2021, de 28 de septiembre, por la que se modifica el texto refundido de la Ley del Estatuto de los Trabajadores, aprobado por el Real Decreto Legislativo 2/2015, de 23 de octubre, para garantizar los derechos laborales de las personas dedicadas al reparto en el ámbito de plataformas digitales, BOE núm 233, 29 September 2021, 119341.

¹⁴³ Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores, BOE núm 255, 24 October 2015, disposición adicional vigesimotercera.

¹⁴⁴ Adrián Todolí-Signes, ‘Spanish Riders Law and the Right to Be Informed about the Algorithm’ (2021) 12 European Labour Law Journal 399, 400.

¹⁴⁵ European Labour Authority (n 114) 22.

¹⁴⁶ Tribunal Supremo (Sala de lo Social), STS 805/2020, 25 September 2020, rec 4746/2019, ECLI:ES:TS:2020:2924.

¹⁴⁷ Hiebl (n 13) 39.

ruling, the Spanish Supreme Court also held that the CJEU confirmed in *Yodel* that contractual conditions that indicate independent work are not decisive if the effective implementation shows that the worker's freedom is only fictitious.¹⁴⁸

So, the Spanish Rider Law raised this ruling to regulatory status.¹⁴⁹ This is also the reason why the presumption is limited to delivery platforms and does not cover other types of platform work, such as ride-hailing or online freelance work.¹⁵⁰

Spain has also strengthened enforcement through additional measures. Article 311(2) of the Spanish Criminal Code¹⁵¹ now criminalises the use of digital technologies, including platforms, to evade employer responsibilities by misclassifying workers as self-employed. The Labour Inspectorate has also created a specialised unit for platform-work inspections.¹⁵²

The three largest delivery platforms in Spain initially took different approaches to the new Rider Law. Just Eat switched to an employment model, Uber Eats began employing workers through subcontractors before transitioning to a hybrid model a year later that combines employee and independent contractor status, and Glovo defied the law entirely and refused to hire its riders as employees.¹⁵³ However, after they received fines for bogus self-employment and company executives were at risk of criminal sanctions under Article 311 of the Spanish Criminal Code, Glovo shifted to an employment model in July 2025 and Uber Eats announced that it would do the same in January 2026.¹⁵⁴

When evaluating this presumption, it must be stated that a major downside of the Spanish Rider law is that it only applies to delivery workers. This makes its effects limited.¹⁵⁵ Also, the presumption has only very exceptionally been mentioned in the many judgments following its entry into force, usually only at the end of a ruling as an additional confirmation of the court's findings based on previous case law.¹⁵⁶

¹⁴⁸ *ibid.*

¹⁴⁹ Todolí-Signes (n 144) 400.

¹⁵⁰ European Labour Authority (n 114) 21.

¹⁵¹ Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, BOE núm 281, 24 November 1995, art 311(2), as amended by Ley Orgánica 14/2022, de 22 de diciembre, BOE núm 307, 23 December 2022.

¹⁵² European Labour Authority (n 114) 21.

¹⁵³ Wray (n 18) 38–39.

¹⁵⁴ Emilio Sánchez Hidalgo, 'Uber Eats renuncia a sus repartidores autónomos para evitar la amenaza penal contra sus dirigentes' *El País* (15 January 2026) <https://elpais.com/economia/2026-01-15/uber-eats-renuncia-a-sus-repartidores-autonomos-para-evitar-la-amenaza-penal-contra-sus-dirigentes.html> accessed 23 May 2026.

¹⁵⁵ Todolí-Signes (n 144) 400.

¹⁵⁶ Hiebl (n 13) 79.

But this does not mean that the presumption is ineffective in general. After a period in 2018/2019 with mixed outcomes on the employment status of delivery riders in numerous judgments, there followed a period where the Spanish courts upheld the classification as employees in every single decision.¹⁵⁷ Interestingly, in several rulings, the courts expressly referred to the ABC test under Californian law,¹⁵⁸ which will be discussed in the next chapter.

Additionally, the wording of the general presumption leaves very little scope anything other than the employment of the riders.¹⁵⁹ The effectiveness is shown in the fact that the three largest delivery platforms shifted to an employment model. Additionally, it shows that the criminalisation of misclassifying workers as self-employed has a significant effect and can make companies rethink their approach. This leads to the conclusion that the Rider law had a significant effect in countering misclassification of delivery platform workers.

5.4 Californian ABC test

Another noteworthy presumption of employment is the one in California Labor Code § 2775(b)(1),¹⁶⁰ which comes from the California Supreme Court's *Dynamex* ruling,¹⁶¹ and is also known as ABC test. Even though this test is not from a Member State of the EU and applies generally to workers and not specifically to platform workers, it is still worth mentioning because California is where most digital platforms originate and because of the technical quality of the regulation, which seems to be very refined.¹⁶² Furthermore, the fact that Spanish courts have referred to the ABC test makes the law interesting from the perspective of EU law as well.

California Labor Code § 2775(b)(1) states that:

“a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

¹⁵⁷ *ibid* 85.

¹⁵⁸ *ibid*.

¹⁵⁹ Ben Wray, ‘Spain’s Elections Pit Gig Workers Against the Far Right’ *Wired* (20 July 2023) <https://www.wired.com/story/spain-elections-gig-workers-far-right/> accessed 23 May 2026.

¹⁶⁰ California Labor Code (California, US).

¹⁶¹ Supreme Tribunal of the State of California Ruling No. 222732 of April 30, 2018, *Dynamex operations v Charles Lee*.

¹⁶² European Labour Authority (n 114) 23.

(B) The person performs work that is outside the usual course of the hiring entity's business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.”

The ABC test goes further in its reversal of the burden of proof than the Member States because it applies as soon as services are provided in exchange for remuneration.¹⁶³

The ABC test also stands out in comparison with the ones in the Member States because of its criteria (B) and (C).¹⁶⁴ While criterion (A) essentially resembles notions of direction and control as they are commonly applied in European tests of employee status, the putative employer must cumulatively prove all three criteria to rebut the presumption of employment.¹⁶⁵ Therefore, a PPPW's status as an independent contractor can easily be refuted if it is clear that one of the criteria, especially criterion (B) or (C), is not met.

Criterion (B) prevents companies from denying employee status to those who perform work that corresponds to their core business. Considerations of this nature are not an integral part of the criteria used by European courts to determine employee status, and references to them in the context of an overall assessment are rare.¹⁶⁶

Criterion (C) focuses on the persons who provide the relevant labour and ensures that if they provide it exclusively for the platform, they are classified as employees. No Member State uses such a comparable criterion for establishing employee status.¹⁶⁷ Even though Germany and Spain have an employee-like status for service providers who predominantly work for one client, neither of them gives the person performing services access to the national minimum wage, as the employee status in California does.¹⁶⁸

However, it should be noted that the application of the ABC test to PPPW has been severely limited. While its applicability to ride-hailing platforms was confirmed by the California Superior Court in August 2020,¹⁶⁹ this was soon superseded by the adoption of Proposition 22, a ballot initiative that created

¹⁶³ Hiebl (n 13) 85.

¹⁶⁴ *ibid* 86.

¹⁶⁵ European Labour Authority (n 114) 23.

¹⁶⁶ Hiebl (n 13) 86.

¹⁶⁷ *ibid*.

¹⁶⁸ *ibid*.

¹⁶⁹ *People v Uber Technologies Inc* (Superior Court of California, County of San Francisco, No CGC-20-584402, 10 August 2020), affirmed in *People v Uber Technologies Inc* (2020) 56 Cal App 5th 266.

an exception for app-based rideshare and delivery drivers.¹⁷⁰ Although Proposition 22 was declared unconstitutional by the Alameda County Superior Court in 2021,¹⁷¹ that decision was reversed on appeal, and the California Supreme Court upheld Proposition 22 in *Castellanos v California* in July 2024.¹⁷² As a result, the ABC test does not apply to app-based rideshare and delivery drivers.

This test still applies to a very broad range of persons performing services because the putative employer needs to rebut all three criteria. This is why this test would also apply for a lot of PPPW in the EU. Additionally, the fact that the presumption applies as soon as services are provided in exchange for remuneration would give PPPW legal certainty about their employment status. It is therefore far more comprehensive than the legal presumption of employment under the PWD. In this respect, the Californian ABC test can serve as a good example of how to strengthen workers' rights.

Nevertheless, Member States should still not rely too heavily on this test. Especially regarding its limited application to PPPW after Proposition 22, there are doubts as to whether the ABC test is a good example of how Member States should transpose the employment presumption in the PWD into national law. In most Member States, employees obtain access to a much broader range of rights than in the United States of America (US), which makes it more challenging for these countries to adopt a similarly broad definition of an employee.¹⁷³ Also, the application of criterion (B) is difficult in the case of platforms that are expanding into different sectors of activity.¹⁷⁴

5.5 Inferences for the Member States

This leads to the question what the Member States can learn from these already existing presumptions of employment when transposing the PWD into national law.

The first finding that Member States can draw from these existing employment presumptions is that a presumption without fixed criteria may be more difficult to circumvent than a presumption triggered by a fixed list of criteria. The examples of Belgium and Portugal show that digital platforms may try to work around such fixed criteria and adapt their contractual relationships so that they do not fulfil these criteria. In Spain, on the other hand, a more general presumption had a positive effect and led to significant reclassifications.

¹⁷⁰ California Proposition 22, *Protect App-Based Drivers and Services Act* (approved 3 November 2020), codified at California Business and Professions Code §§ 7448–7467, especially § 7451.

¹⁷¹ *Castellanos v State of California* (Alameda County Superior Court, Case No RG21088725, 20 August 2021).

¹⁷² *Castellanos v State of California* (2023) 89 Cal App 5th 131; *Castellanos v State of California* (2024) 16 Cal 5th 588.

¹⁷³ Hiebl (n 13) 86.

¹⁷⁴ *ibid.*

For this reason, it can be inferred that the final version of the employment presumption will have a more significant legal effect in countering misclassifications than the one in the Commission's original proposal, which also contained fixed criteria for the presumption, would have had.

The example of the Spanish employment presumption also demonstrates that the criminalisation of bogus self-employment can strengthen the fight against misclassification. While the food delivery platform Glovo continued with bogus self-employment despite incurring hundreds of millions in government fines,¹⁷⁵ it shifted to an employment model shortly before its Chief Executive Officer had to appear before a judge as an investigated person in criminal proceedings.¹⁷⁶

However, that does not mean that the criminalisation of bogus self-employment always works to prevent misclassification. This is shown by the example of the digital food delivery platform Deliveroo in France shows, where bogus self-employment is also criminalised.¹⁷⁷ In this case, two former managing directors were even sentenced to 12-month suspended prison sentences alongside fines, due to bogus self-employment of Deliveroo's riders.¹⁷⁸ Nevertheless, Deliveroo did not generally change its employment model.¹⁷⁹ By contrast with Spain, France has, in Article L. 8221-6 of the French Labour Code,¹⁸⁰ a presumption of self-employment that usually applies to registered self-employed persons, including many drivers working for platforms.¹⁸¹ Member States can therefore infer from this that the criminalisation of bogus self-employment is likely to be effective where it is combined with an effective presumption of employment.

For the effectiveness of the legal presumption of employment, it is also crucial that it can be applied by public authorities. This is shown by the example in Portugal compared to Belgium and Spain. If a court ruling is required to apply the presumption, digital platforms tend to maintain the status of bogus self-employment for PPPWs, even though they know it is illegitimate. It is also questionable whether the presumption would then remain a "procedural

¹⁷⁵ Wray (n 18) 53.

¹⁷⁶ El Salto, 'Glovo anuncia que da marcha atrás en su modelo justo un día antes de que su fundador declare' <https://www.elsaltodiario.com/falsos-autonomos/glovo-oscar-pierre-anuncia-marcha-atras-modelo-dia-antes-fundador-declare> accessed 23 May 2026.

¹⁷⁷ Code du travail (France), arts L8221-5, L8221-6, L8224-1 and L8224-5.

¹⁷⁸ Ben Wray, 'Gig Economy Project – "The Offence of Concealed Work": Suspended Prison Sentences and Maximum Fine for Deliveroo France' Brave New Europe (19 April 2022) <https://braveneweuropa.com/the-offence-of-concealed-work-suspended-prison-sentences-and-maximum-fine-for-deliveroo-france> accessed 23 May 2026.

¹⁷⁹ Thomas Jules, 'Deliveroo à nouveau contraint à la requalification de ses livreurs en tant que salariés' Le Monde (6 June 2025) https://www.lemonde.fr/economie/article/2025/06/06/deliveroo-a-nouveau-contraint-a-la-requalification-de-ses-livreurs-en-tant-que-salaries_6610865_3234.html accessed 23 May 2026.

¹⁸⁰ Code du travail (France).

¹⁸¹ Hiebl (n 13) 16.

facilitation” for the benefit of PPPW under Article 5(2) PWD, if PPPW have to go to court to trigger the presumption and then again to defend themselves against the rebuttal in the same case.¹⁸²

The same applies to the possibility of having group assessments by the authorities when applying the presumption to groups of PPPW. The Portuguese example shows that where there are one-by-one assessments before courts, many PPPW remain bogus self-employed. Though, this point does not only affect PPPW but all potential employees and workers.

However, it must not be overlooked that not every Member State has the aim of creating a framework that classifies every PPPW as an employee. Otherwise, the political debate in the negotiation process, which is set out in Chapter 4.1, would not have taken that long. If they had this aim, the Member States would probably have agreed to the Parliament’s proposal with a more general rebuttable presumption of employment. France, for example, prefers a system that leaves more room for self-employment, which is why it was strongly sceptical of the presumption of employment and did not want to agree to it.¹⁸³ It is therefore highly unlikely that they will now transpose the Directive into national law with a presumption that is easier to trigger than the Directive’s minimum requirements..

For similar reasons, the Californian ABC test – despite its positive effects on reclassifying people performing services as workers – will most likely serve as a model to follow only in part. The ABC test would classify far more PPPW as workers than the employment presumption in the PWD. But, as already mentioned in Chapter 5.4, in most Member States employees obtain access to a much broader range of rights than in the US. Indeed, it should not be overlooked that the PWD merely includes an employment presumption that is to be transposed into national law. The classification of whether someone is an employee or worker remains the same as before.

However, when transposing the legal presumption of employment, Member States must ensure that the presumption fits within their national framework for how to classify a person performing services. The presumption is meant to tackle misclassifications of PPPW and to give them legal certainty about their employment status. The criteria for classification as a platform worker remain set out in Article 2(1)(d) PWD, that refers to national classification only with consideration to the case law of the CJEU.

To sum up, when Member States transpose the presumption of employment into national law, they should create an effective framework around it. This

¹⁸² Wray (n 18) 43.

¹⁸³ Théo Bourgery-Gonse, ‘Member States Deal Heavy Blow to Platform Work Deal’ *Euractiv* (22 December 2023) <https://www.euractiv.com/news/member-states-deal-heavy-blow-to-platform-work-deal/> accessed 23 May 2026.

effective framework should include the possibility for public authorities to apply the presumption and, where appropriate, to assess groups of PPPW rather than requiring purely individual litigation. The Member States should avoid setting a list of fixed criteria to determine what “direction and control” means, because such criteria can be easily circumvented by the platforms. Additionally, they should consider criminalising bogus self-employment, as it makes the presumption more effective. They should also consider the criteria of the Californian ABC test and examine whether they would be compatible with their general employment law framework.

6 Conclusion

The employment presumption in the new PWD constitutes an important development in the EU response to the misclassification of platform workers. At the same time, the analysis of its legal significance has demonstrated that the Directive itself leaves room for considerable legal uncertainty.

The PWD includes a definition of the term platform worker, which requires a PPPW to have an employment contract or to be in an employment relationship to be classified as a platform worker. Whether an employment relationship exists depends on the regulations in the Member States, with consideration to the case law of the CJEU. Therefore, the PWD does not set a uniform EU definition of the term platform worker. It merely establishes a hybrid notion of platform worker.

However, this hybrid notion reflects the lack of uniformity in the EU definition of the term worker. Thus, the hybrid notion of platform worker is consistent with other hybrid notions of worker in other EU labour law Directives based on Article 153(2)(b) TFEU, in conjunction with Article 153(1)(b) TFEU where the EU acts through minimum requirements in the field of working conditions.

This leads to the conclusion that the PWD gives a definition of platform worker but still does not fully clarify who is considered one. Additionally, despite establishing extensive case law on who qualifies as a worker, the CJEU has not yet applied much of that case law to PPPW. In *Yodel* the CJEU provided indications on the criteria for defining a platform worker but has not yet clarified these in detail. That means that the Member States are not yet entirely clear on how the definition of a platform worker will evolve in the future.

During the negotiation of the PWD, the main issue underlying this lack of uniformity became apparent. The Member states are unwilling to relinquish their national competence over the employment status of people performing services, since the personal scope of national labour laws has been historically determined by them.

This is why the Member States must consider, when transposing the Directive into national law, that the employment presumption is meant to strengthen workers' rights and improve legal certainty for PPPW and digital platforms as regards employment status. Accordingly, the legal presumption of employment is only a tool to tackle this legal uncertainty and not a complete solution. Legal uncertainty about worker status will only fully disappear if the EU tackles the classification of atypical work in general. However, the negotiation process of the PWD showed that the Member States are not ready to do this, as they do not want to give away their competence over employment status.

In order to transpose a functional employment presumption, the Member States can draw on the extensive experience gained from other already existing presumptions of employment and use it to determine how to transpose the presumption so that it works best under their national law. In the end, the legal significance of this presumption will depend heavily on the willingness of the Member States to adapt it to their national law and transpose it effectively. The presumption by itself will not solve all classification problems concerning PPPW, but with an effective legal framework around it, it will be of strong legal significance.

It will be seen in the future whether the CJEU develops its case law on the classification of platform workers and whether the Member States are willing to give away more competence over employment status. Both are highly important for the EU, not only to solve the issues surrounding the classification of platform workers, but also to address misclassification of atypical workers in general and improve the functioning of the EU.

Thus, to answer the question whether the legal presumption of employment in the PWD will be of legal significance in countering misclassification of people performing platform work in the EU, it must be said that it is – despite its presented weaknesses – a good starting point. However, the Member States must be willing to transpose it effectively into national law and to establish a functional framework around it. Then it will have legal significance, even though it does not solve the entire problem of classification.

Bibliography

1. Table of Cases

1.1 Court of Justice of the European Union

Case 66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg*
ECLI:EU:C:1986:284

Case 53/81 *D M Levin v Staatssecretaris van Justitie* ECLI:EU:C:1982:105

Case 139/85 *R H Kempf v Staatssecretaris van Justitie* ECLI:EU:C:1986:223

Case C-357/89 *V J M Raulin v Minister van Onderwijs en Wetenschappen*
ECLI:EU:C:1992:87

Case C-85/96 *María Martínez Sala v Freistaat Bayern* ECLI:EU:C:1998:217

Case C-256/01 *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional Ltd and Secretary of State for Education and Employment* ECLI:EU:C:2004:18

Case C-413/01 *Franca Ninni-Orasche v Bundesminister für Wissenschaft, Verkehr und Kunst* ECLI:EU:C:2003:600

Case C-456/02 *Michel Trojani v Centre public d'aide sociale de Bruxelles (CPAS)* ECLI:EU:C:2004:488

Case C-10/05 *Cynthia Mattern and Hajrudin Cikotic v Ministre du Travail et de l'Emploi* ECLI:EU:C:2006:220

Joined Cases C-22/08 and C-23/08 *Athanasios Vatsouras and Josif Koupatantze v Arbeitsgemeinschaft (ARGE) Nürnberg 900* ECLI:EU:C:2009:344

Case C-413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden*
ECLI:EU:C:2014:2411

Case C-434/15 *Asociación Profesional Elite Taxi v Uber Systems Spain SL*
ECLI:EU:C:2017:981

Opinion of AG Szpunar in Case C-434/15 *Asociación Profesional Elite Taxi v Uber Systems Spain SL* ECLI:EU:C:2017:364

Case C-692/19 *B v Yodel Delivery Network Ltd* ECLI:EU:C:2020:288

1.2 National and Foreign Cases

Belgium

Commission Administrative de règlement de la relation de travail (CRT),
Dossier n° 265-FR-2023/12/17, 12 April 2024.

Commission Administrative de règlement de la relation de travail (CRT),
Dossier n° 267-FR-2023/12/28, 22 April 2024.

Portugal

Supremo Tribunal de Justiça, Acórdão de 28 May 2025, Proc n.º
29923/23.7T8LSB.L1.S1, Relator Mário Belo Morgado

Tribunal da Relação de Évora, Acórdão de 16 January 2025, Proc n.º
3848/23.4T8PTM.E1

Spain

Tribunal Supremo (Sala de lo Social), STS 805/2020, 25 September 2020, rec
4746/2019, ECLI:ES:TS:2020:2924

United States / California

Castellanos v State of California (Alameda County Superior Court, Case No
RG21088725, 20 August 2021)

Castellanos v State of California (2023) 89 Cal App 5th 131

Castellanos v State of California (2024) 16 Cal 5th 588.

Dynamex Operations West Inc v Superior Court (2018) 4 Cal 5th 903

People v Uber Technologies Inc (Superior Court of California, County of San
Francisco, No CGC-20-584402, 10 August 2020).

People v Uber Technologies Inc (2020) 56 Cal App 5th 266

2. Table of Legislation and Official Materials

2.1 EU Treaties and Legislation

Consolidated Version of the Treaty on the Functioning of the European Union
[2012] OJ C326/47

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 [2019] OJ L186/105

Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers [2019] OJ L188/79

Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 strengthening the application of the principle of equal pay for equal work or work of equal value through pay transparency and enforcement mechanisms [2023] OJ L132/21

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

2.2 EU Institutional Materials

European Commission, ‘A European Agenda for the Collaborative Economy’ (Communication) COM(2016) 356 final

European Commission, ‘Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work’ COM(2021) 762 final, 2021/0414(COD)

European Commission Staff Working Document, ‘Impact Assessment Report Accompanying the Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work’ SWD(2021) 396 final

Council of the European Union, ‘Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work – General Approach’ (ST 10107/23 INIT, 7 June 2023)

European Parliament, ‘European Agenda for the Collaborative Economy’ (Resolution) 2017/2003(INI) [2018] OJ C331/125

European Parliament, Committee on Employment and Social Affairs, ‘Report on the Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work’ A9-0301/2022, 21 December 2022

2.3 National and Foreign Legislation

Belgium

Programmawet (I) van 27 december 2006, BS 28 December 2006

California / United States of America

California Business and Professions Code

California Labor Code

California Proposition 22, *Protect App-Based Drivers and Services Act* (approved 3 November 2020), codified at California Business and Professions Code §§ 7448–7467

France

Code du travail

Portugal

Código do Trabalho (Portugal), approved by Lei n.º 7/2009, de 12 de fevereiro, Diário da República n.º 30/2009, Série I de 12 February 2009, as amended by Lei n.º 13/2023, de 3 de abril

Spain

Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, BOE núm 281, 24 November 1995, as amended by Ley Orgánica 14/2022, de 22 de diciembre, BOE núm 307, 23 December 2022.

Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores, BOE núm 255, 24 October 2015.

Real Decreto-ley 9/2021, de 11 de mayo, por el que se modifica el texto refundido de la Ley del Estatuto de los Trabajadores, aprobado por el Real Decreto Legislativo 2/2015, de 23 de octubre, para garantizar los derechos laborales de las personas dedicadas al reparto en el ámbito de plataformas digitales, BOE núm 113, 12 May 2021.

Ley 12/2021, de 28 de septiembre, por la que se modifica el texto refundido de la Ley del Estatuto de los Trabajadores, aprobado por el Real Decreto Legislativo 2/2015, de 23 de octubre, para garantizar los derechos laborales de las personas dedicadas al reparto en el ámbito de plataformas digitales, BOE núm 233, 29 September 2021.

3. Secondary Sources

3.1 Books and Chapters in Edited Collections

Barnard C and Peers S (eds), *European Union Law* (4th edn, OUP 2023)

Craig P and de Búrca G, *EU Law: Text, Cases, and Materials* (8th edn, OUP 2024)

Georgiou D, ‘Regulating Platform Work in the European Union: Initiatives, Challenges and the Ways Ahead’ in Kurt Vandaele and Silvia Rainone (eds), *The Elgar Companion to Regulating Platform Work: Insights from the Food Delivery Sector* (Edward Elgar 2025)

Rainone S and Hiebl C, ‘Judicial Creativity in the Platform Economy: Normative Insights for Broadening the Scope of Labour Law’ in Kurt Vandaele and Silvia Rainone (eds), *The Elgar Companion to Regulating Platform Work: Insights from the Food Delivery Sector* (Edward Elgar 2025)

Welsh A, ‘Schrödinger’s Worker: When is a Worker Not a Worker?’ in Alice Welsh, *The Market Citizenship Illusion: Free Movement Rights for Atypical Workers* (Hart 2025)

3.2 Journal Articles

Aloisi A, Potocka-Sionek N and Ratti L, ‘Straddling Two Horses: Digital or Social Regulation? Behind, Within and Beyond the EU Platform Work Directive’ (2025) 62 Common Market Law Review 1407

Chandna-Hoppe K, ‘Who is a Platform Worker? Plattformarbeit im deutschen und englischen Recht sowie in der EU-Richtlinie zur Plattformarbeit’ (2025) ZEuP 9

Fredman S, du Toit D, Bertolini A, Valente J and Graham M, ‘Fair Work for Platform Workers: Lessons from the EU Directive and Beyond’ (2025) 54 Industrial Law Journal 425

Kountouris N, ‘The Concept of “Worker” in European Labour Law: Fragmentation, Autonomy and Scope’ (2018) 47 Industrial Law Journal 192

Kullmann M, “‘Platformisation’ of Work: An EU Perspective on Introducing a Legal Presumption” (2022) 13 European Labour Law Journal 66

Martinsen DS, López Zurita L and Šadl U, ‘To Be or Not to Be a Worker: Legal Uncertainty and Precarious Employment in the European Union’ (2026) Journal of Common Market Studies 1

Menegatti E, ‘The Evolving Concept of “Worker” in EU Law’ (2019) 12 Italian Labour Law e-Journal 71

Migliora G, ‘Platform Work and Algorithmic Management: Protecting Workers Irrespective of Their Employment Status’ (2026) 60 Computer Law & Security Review 106267

Rosin A, ‘Towards a European Employment Status: The EU Proposal for a Directive on Improving Working Conditions in Platform Work’ (2022) 51 Industrial Law Journal 478

Todolí-Signes A, ‘Spanish Riders Law and the Right to Be Informed about the Algorithm’ (2021) 12 European Labour Law Journal 399

Vukorepa I, ‘Cross-Border Platform Work: Riddles for Free Movement of Workers and Social Security Coordination’ (2020) 70 Zbornik PFZ 481

Waltermann R, ‘Abhängige Beschäftigung in der digitalisierten Arbeitswelt’ (2021) NZA 297

3.3 Reports, Working Papers and Policy Papers

European Labour Authority, *Addressing Platform Workers’ Employment Misclassification: Legal Frameworks, Enforcement Strategies and the New Platform Work Directive* (European Labour Authority 2025)

Hiebl C, ‘Case Law on the Classification of Platform Workers: Cross-European Comparative Analysis and Tentative Conclusions’ (SSRN, updated February 2024) accessed 23 May 2026

O’Brien C, Spaventa E and De Coninck J, *The Concept of Worker under Article 45 TFEU and Certain Non-Standard Forms of Employment: Comparative Report* (European Commission 2016)

Sanz de Miguel P, Bazzani T and Arasanz J, *The Definition of Worker in the Platform Economy: Exploring Workers’ Risks and Regulatory Solutions* (European Economic and Social Committee 2021)

Wray B, *The Platform Work Directive: Trade Union Guide to Transposition* (European Trade Union Confederation 2026)

3.4 Online Sources and News Articles

Bourgery-Gonse T, ‘Member States Deal Heavy Blow to Platform Work Deal’ Euractiv (22 December 2023) <https://www.euractiv.com/news/member-states-deal-heavy-blow-to-platform-work-deal/> accessed 23 May 2026

Council of the European Union, ‘EU Rules on Platform Work’ <https://www.consilium.europa.eu/en/policies/platform-work-eu/> accessed 23 May 2026

El Salto, ‘Glovo anuncia que da marcha atrás en su modelo justo un día antes de que su fundador declare’ <https://www.elsaltodiario.com/falsos-autonomos/glovo-oscar-pierre-anuncia-marcha-atras-modelo-dia-antes-fundador-declare> accessed 23 May 2026

Jules T, ‘Deliveroo à nouveau contraint à la requalification de ses livreurs en tant que salariés’ Le Monde (6 June 2025) https://www.lemonde.fr/economie/article/2025/06/06/deliveroo-a-nouveau-contraint-a-la-requalification-de-ses-livreurs-en-tant-que-salaries_6610865_3234.html accessed 23 May 2026

Sánchez Hidalgo E, ‘Uber Eats renuncia a sus repartidores autónomos para evitar la amenaza penal contra sus dirigentes’ El País (15 January 2026) <https://elpais.com/economia/2026-01-15/uber-eats-renuncia-a-sus-repartidores-autonomos-para-evitar-la-amenaza-penal-contra-sus-dirigentes.html> accessed 23 May 2026

Wray B, ‘Gig Economy Project – “The Offence of Concealed Work”: Suspended Prison Sentences and Maximum Fine for Deliveroo France’ Brave New Europe (19 April 2022) <https://braveneweuropa.com/the-offence-of-concealed-work-suspended-prison-sentences-and-maximum-fine-for-deliveroo-france> accessed 23 May 2026

Wray B, ‘Gig Economy Project – Is Belgium’s Platform Work Law “a Dead Letter”?’ Brave New Europe (11 May 2023) <https://braveneweuropa.com/gig-economy-project-is-belgiums-platform-work-law-a-dead-letter> accessed 23 May 2026

Wray B, ‘Spain’s Elections Pit Gig Workers Against the Far Right’ Wired (20 July 2023) <https://www.wired.com/story/spain-elections-gig-workers-far-right/> accessed 23 May 2026

Zografidis K, 'Implementing the Presumption of Employment of the Platform Work Directive' Global Workplace Law & Policy (23 April 2025) <https://legalblogs.wolterskluwer.com/global-workplace-law-and-policy/implementing-the-presumption-of-employment-of-the-platform-work-directive/> accessed 23 May 2026