

To: Members of the Employment  
and Social Affairs Committee of  
the European Parliament  
[Letter sent by email]

Dear Member of the Employment and Social Affairs Committee of the European Parliament,

As we enter November, a month that will be decisive in the work of the European Parliament to define your mandate on the Directive, ETUC wants to thank you for your efforts to reach broad support in the combat of bogus self-employment and better protection of platform workers' rights.

For ETUC, it is essential that the mandate includes:

- A swift and correct classification of workers who have been subordinated
- Guarantee that genuine self-employed can continue working without subordination
- Protection of companies from unfair competition from digital labour platforms.

As whistleblower Mark MacGann said in the important hearing the EMPL Committee organised last Tuesday, "Central to the draft directive's provisions is the presumption of employment – a presumption that would aim to reset the balance between the powerful and the powerless by putting the burden on companies to show an employee is truly independent. This is the right balance. It is a balance that still allows for those who want flexibility to have it, while shifting the cost of that flexibility to the entity that benefits the most – the company".

The expectation that individual workers will start a proceeding against their digital labour platform to challenge their self-employment status ignores the vulnerability of these workers to undertake any legal action because of their lack of protection and the structural bargaining inequality between workers and employers. Additionally, there will be an effect of discouragement for workers in the exercise of their rights against a court in case the presumption is not recognised in the first instance or if it is latterly rebutted by the digital labour platform.

**Please see below 3 concrete reasons for not putting the burden of activating the presumption by an individual:**

1. In the Netherlands, workers individually and in groups launched their claims 7 years ago, with victories in courts since 2018, but no change in their working conditions
2. In Belgium, a lawsuit against a digital labour platform already cost 24 000 euros to the trade unions assisting the workers in claiming their rights
3. In France, more than 1000 reclassification cases are waiting before the courts for a ruling

Workers cannot wait years and spend thousands of euros to access their rights. **We, therefore, call upon you to ensure that the presumption of the employment relationship is not activated neither by (individual) workers nor by court proceedings. It is the responsibility of Member States to ensure the application of the provisions of the Directive.**

We also believe that the use of a set of criteria to activate the presumption of an employment relationship is a burdensome procedure for both workers and Member States and can make the potential rebuttal procedure useless. The use of criteria in the procedure for the presumption of the employment relationship unfortunately sets the responsibility on workers. We however support the use of criteria to guide a rebuttal (for those digital labour platforms wishing to do so) towards the competent administrative or judicial authorities.

We thank and support you in all your work to provide a Directive which will improve working conditions of workers in platform companies, and we remain at your disposal to discuss the priorities of the European trade union movement on the draft Directive.

Kind regards,

Ludovic Voet  
ETUC Confederal Secretary