

Brussels 18/09/2023

Open letter to co-legislators: Workers across sectors united behind the EP proposal to fight bogus self-employment.

ETUC and its federations: European Transport Workers' Federation, Uni Europa, IndustriAll and the European Federation of Food, Agriculture and Tourism Trade Unions call on policymakers to adopt a strong Directive on platform work that would end the exploitation of vulnerable workers and re-establish fair competition in a quickly developing platform economy.

In full respect of the shared interest of all actors in the platform economy, there is no automatic reclassification in the Parliamentary position. The EP position, however, includes a presumption of employment that once triggered by the national authority, a trade union or the person performing platform work, will protect the most vulnerable part of the triangular relationship between the platform, worker and customer.

A clear rebuttal procedure guided by criteria is further foreseen and will give the platform that disputes the presumption an opportunity to prove that workers are genuinely self-employed.

The discussion about the need to establish a minimum floor of rights for platform workers started in 2019 not only because of the boom of platform companies in the European labour market, but mostly because of many examples of exploitation of workers who have no control over their tariffs, who have no possibility to create their client base, or who have no freedom to refuse orders without penalisation. Those workers embody the definition of bogus self-employment and even according to the most modest estimation, done years ago, there are 5.5 million of them. The EU must react to restore their rights and bring them the decent working conditions and protections that they deserve.

Earlier this month, businesses from different sectors expressed their concerns over the lengthy and costly procedures platforms would have to endure to prove their 'innocence' in cases where they work with genuinely self-employed workers. It is unclear why any genuine self-employed person would initiate such a procedure, so businesses acting according to the rules have nothing to fear. If, however, a procedure is initiated for good reason, it is striking that the European Council would leave the burden on the shoulders of individuals who decided to defend their rights. In their letter, the businesses call on the negotiators to closely follow the Council's General Approach, particularly on three elements: the establishment of a robust set of EU-wide criteria, keeping the national systems of appeal in place rather than introducing the rebuttal process, and exempting platforms from being considered employers if they apply some criteria defined by law or collective bargaining. **This call is not a call to protect genuine self-employed from subordination, it is a call to protect digital labour platforms from the consequences when they mistreat them.**

If adopted, these measures risk watering down the Directive to the point that it will become completely ineffective. On the EU-wide criteria, as rightly pointed out by Hotrec¹, representative of the hospitality industry, in 2022: *'The application of the uniform criteria might bring uncertainty when compared to the criteria established at national level with regard to the self-employed status'*. **ETUC agrees with HORTEC that setting EU-wide criteria for subordination is a proxy of EU definition of workers and it will bring contradictions with national definitions of workers.**

Furthermore, the EU Council's general approach (and in some cases, also to the EU Commission draft proposal) is a clear breach of the entrepreneurial freedom of the genuine self-employed recognised by the Court of Justice of the European Union. Fixing the threshold to three out of five criteria de facto means that there is no consequence if the platform neglects two of them. Pro-platform governments might restrict entrepreneurial freedoms, even more, with the provisions of exemptions if criteria are matched by compliance with laws.

ETUC believes that the position of the European Commission is well-intended but will prove ineffective. Belgium introduced a very similar law (2023) in which the relationship between a person performing platform work and the platform is considered employment if three out of eight criteria are met. Not only has this approach led to no change for workers who continue to be bogus self-employed, but when contacted, the biggest delivery platforms claim that the law does not apply to them. Supporting the Council approach or the initial Commission proposal on the establishment of criteria means supporting the ineffectiveness of the EU Directive. When a law is ineffective, you change it, you don't replicate it.

ETUC is also strongly in favour of the rebuttal process, which protects workers by shifting the burden of the proof to the platform, which is not only the stronger party in the relationship but is also better placed to provide proof concerning the working relationship. Once again, businesses working with genuine self-employed people should not fear the EP's position.

ETUC counts several organisations representing self-employed workers among its members. These organisations confirm that the Directive based on the EP position will be beneficial to the genuine self-employed, as it will bring them the freedoms, for example of establishing working hours or setting rates, that the status should ensure.

The notion of automatic reclassification is a false threat that businesses and governments argue with but that simply does not exist in real life. The simple question in front of us is whether we leave each single bogus self-employed person with the choice to launch a costly and highly uncertain procedure or do we instead put in place compliance procedures where the strongest part of the relationship, the platform, shows the evidence and proves that it complies with the laws. The answer to such a question should be based on evidence and not on political games.

ETUC therefore stands firmly behind the proposal of MEP Gualmini and the majority of the European Parliament and calls for a strong Directive that will:

- Combat bogus self-employment in platform work thanks to the presumption of employment with the reversal of the burden of proof; it is time that platforms take the responsibilities that they have avoided for so long.

¹ <https://www.hotrec.eu/wp-content/uploads/2022/03/HOTREC-position-on-a-proposal-for-a-Directive-on-Improving-working-conditions-in-platform-work-0203-13h24.pdf>

- Promote collective bargaining and independent trade unions in shaping the platform economy while encouraging collective agreements that go beyond the requirements of the Directive in terms of workers' rights, benefits and protections.
- Introduce a minimum floor of rights for all platform workers with no opt-out options for Member States that would undermine the functioning and future policymaking in our Union.

The platform economy model is spreading quickly, generating exciting opportunities for our economies, however, this cannot be an excuse to step back and undermine a solid set of workers' rights that European workers enjoy.

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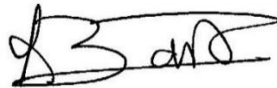
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