

From: [DE MANUEL Mirzha \(CAB-DOMBROVSKIS\)](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Platform Work Directive
Date: mardi 23 novembre 2021 16:50:15

Dear [REDACTED]

With pleasure. I copy my colleague [REDACTED] who can liaise with your colleagues to find a convenient slot for a VC.

Kind regards
Mirzha

From: [REDACTED]
Sent: Tuesday, November 23, 2021 2:23 PM
To: DE MANUEL Mirzha (CAB-DOMBROVSKIS) <Mirzha.DE-MANUEL@ec.europa.eu>
Cc: [REDACTED]
[REDACTED]
Subject: Platform Work Directive

Dear Mirzha,

I hope you're doing well.

I'm reaching out to you about the ongoing internal evaluation process in the Commission before the publication of the proposal for a Directive on Platform Work.

Since the EVP Cabinet will be involved in this, I would like to take the opportunity to draw your attention to some elements which are very important for the ETUC.

I would really appreciate if we could have the opportunity for a more in-depth discussion with you and/or your colleagues in charge on the oncoming days before the publication (and to this end, I put my colleagues in charge in cc).

Thank you very much, all the best

[REDACTED]

On December 8th, the European Commission will present its legislative initiative on improving the working conditions of platform workers.

ETUC calls on the Commission to propose an ambitious Directive based on Article 153(2) TFEU that provides for a rebuttable presumption of employment relationship where the burden of proof should be borne by the platform company. The presumption should therefore apply to the party that largely determines the terms and conditions of the working relationship.

To guide the activation of this presumption of employment relationship, criteria based on ECJ decisions or the California Assembly Bill 5 can be useful to get hints of possible exercise of employer's prerogative. However, creating burdensome procedures for this

activation, such as the requirement of more than one criterion to be met for the activation of the presumption, would be a move in the bad direction to protect workers in digital labour platforms.

Court rulings across Europe have resulted in the reclassification of workers through platforms as employees. It is very likely that these cases would have fallen outside the presumption of employment relationship if this were to be activated in a narrowed way.

Whereas meeting one criterion out of a list of conditions could guide the implementation at national level of the upcoming initiative, establishing burdensome criteria to activate the presumption of employment relationship would make the reversal of the burden of proof useless and would add one new layer of complexity into the system which would be detrimental to the most vulnerable in the labour relationship: workers.

It should be again reminded that a presumption of employment relationship with a reversal of the burden of proof will not affect the business model of platform companies operating with genuine self-employed workers. Digital labour platform companies will be entitled to rebut the existence of an employment relationship.

A narrowed approach in the presumption of employment relationship would allow platform companies to fall through the cracks and pre-empt the reversal of burden of proof which should be based on the facts of the working relationship. It would empty of its content this much-needed rebuttal mechanism.

The inoperability of the reversal of the burden of proof would mean the proposal of a (very limited) European presumption of employment relationship without rebut. It should be reminded that the report of the European Parliament “on fair working conditions, rights and social protection for platform workers – new forms of employment linked to digital development”, as well as the European Trade Union Confederation, called on for the establishment of a rebuttable presumption of employment relationship.

The shift in the burden of proof completes the employment presumption and provides for an effective protection of workers in platform companies, with specific reference to those in a vulnerable situation and who are less likely to undertake legal action to challenge their employment status. A rebuttable presumption of employment presumption does not mean that all workers will be considered as employees. The reversal of burden of the proof shifts the weight of the burden of proof from the most vulnerable in the labour relationship (the worker) to the most able to prove the opposite (the company).

ETUC therefore calls on the European Commission not to establish a mechanism to activate the rebuttable presumption of employment relationship based on burdensome criteria (like the existence of more than one criterion). This would not be respectful of Member States competences in the definition of a worker.