

To: Marlena Malag  
Minister for Family and Social Policy of Poland

[Letter sent by e-mail]

[Sekretariat.DPP@mriips.gov.pl](mailto:Sekretariat.DPP@mriips.gov.pl)

Dear Minister Malag,

ETUC appreciates your efforts and commitment in the discussions on the proposal for a mandate of the Council of the European Union proposed by the Czech Presidency of the European Union. We would like to address with you the shortcomings of the Council proposal and our call for an ambitious Directive on improving working conditions in platform work.

As whistleblower Mark MacGann said in the hearing organised on October 24<sup>th</sup> by the Committee on Employment and Social Affairs of the European Parliament, “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.

Workers cannot wait years and spend thousands of euros to access their rights. **We, therefore, call upon you to ensure that no activation or triggering by an individual worker is needed for the presumption of the employment relationship.**

ETUC has accessed the new proposal of the Czech Presidency which will be discussed at the Social Questions Working Party next week with the aim of being voted in December as the mandate towards the inter-institutional negotiations of the Council of the European Union. The proposal includes many elements aimed at weakening the Commission’s draft Directive. **ETUC would like to hereby ask you to pledge against its most problematic provisions:**

- A new cumulative condition has been added to the definition of digital labour platform, narrowing its scope, and therefore providing these companies the possibility to circumvent the law.
- The presumption of employment relationship and the eventual reclassification of workers as employees has been rendered more complicated since the presumption of employment relationship can be activated only when 3 out of 5 criteria are met. Also, assuming that the existence of two criteria of the list can be compatible with the status of genuine self-employed worker, indicates (inter alia) that these workers might not have the freedom to set their tariffs and should abide by strict managerial rules.
- Tax, criminal, and social security proceedings shall not apply the presumption of employment relationship, unless otherwise provided by the national legislation. This provision restricts the means of Member States to apply the

presumption of employment relationship and yet again consents the non-enforcement by Member States. It will hamper the creation of a level playing field for platform companies in the different Member States.

- The proposal also enables Member States not to apply the presumption "if it is manifest that the presumption would be successfully rebutted". Member States are consequently given discretion to decide whether to apply the presumption or not. More importantly, the following problematic sentence has been added: "When a digital labour platform fulfils any of the criteria referred to in paragraph 1 solely as a result of its compliance with a legal obligation under Union or national law, that criterion shall not be deemed fulfilled for the purpose of this Article". This sentence allows criteria which are applied by virtue of compliance with a national legal obligation, or under Union law, to not be deemed as activated. This provision introduces power of discretion to Member States to render the activation of the provision more difficult, when not virtually impossible. For example, if a country limits rights to perform work with subcontractors or requires binding rules for workers in platforms, two of five criteria would already disappear, making it harder to activate the presumption. It will also enable fragmented legislation and enforcement across the EU, therefore acting against the objectives of the proposed Directive.

**None of the above-mentioned proposals will resolve the problem of bogus self-employment.** This is particularly problematic since it should be reminded that the first specific objective pursued by the proposal of Directive is the establishment of a comprehensive framework to tackle employment status misclassification in platform work. Even worse, it can provide for the consolidation of a third status of worker by systematically neglecting access to employment rights to platform workers.

ETUC supports a Directive which will grant employees an employment contract and will protect the self-employed from the subordination of platforms, such as it is the case in most of traditional companies. Competitiveness should not come from downward pressure on labour rights. A business is only sustainable if labour rights are respected. Rules are needed to ensure that those digital labour platforms which do not operate with genuine self-employed workers do not evade their responsibility through imposing bogus self-employment. This is not only unfair to their workers, but also to the vast majority of businesses that play by the rules.

We hereby request you to effectively address the elements above-mentioned to enact a legislation which protects workers, the self-employed, and provides for fair competition and sustainable European social models.

Yours sincerely,

***Ludovic Voet***  
**ETUC Confederal Secretary**

***Piotr Ostrowski***  
**OPZZ Vice-President**

***Piotr Duda***  
**President of the National Commission of NSZZ "Solidarność"**