LV/LS/ch
Brussels, 06 March 2024

To: Aurelien Pozzana, Director of Public Policy Western Europe & EU
To: Henri Arras, Head of Public Policy Baltics

Aurelien.pozzana@bolt.eu
henri.arras@bolt.eu
[Letter sent by e-mail]

Dear Mr Arras,
Dear Mr Pozzana,

Over the past two years, we have met on several occasions at events related to the advocacy for the Platform Work Directive.

As you do not recognise yourself as an employer, we have never had the opportunity to discuss and negotiate within the framework of social dialogue and collective bargaining, which we very much regret, as many of the problems addressed in the Directive would be best implemented by the negotiations between social partners.

This is not possible as you see yourself as a service where self-employed workers come into direct contact with their customers using your technology. I would like to assure you that if this is indeed the case, we are happy to see a European company thriving by offering modern and innovative services.

The Platform Work Directive is necessary because workers who did not feel like independent service providers enabled by the platform, won the absolute majority of reclassification cases brought to tribunals across Europe. Unfortunately, this has had little impact since the affected platforms refuse to change their business model. Member States and the EU institutions could no longer stand by in ignorance of the problem and 817 days ago brought the draft Directive.

Your calls to postpone its adoption until the next legislature in order not to rush the decision is tantamount to an attempt to gain time and delay the impact of the regulation.

During the institutional negotiations, we were on opposite sides.
ETUC argued for a general and automatic presumption of employment status that would not lead to automatic reclassification but would significantly improve the effectiveness of the regulation.
The bogus self-employed workers, who are the weakest party in the triangular relationship between them, platform and customer, would get their rights. Genuine self-employed would stay protected from unwanted subordination. Digital labour platforms that respect the rules would continue to compete on a level playing field. We wanted an automatic presumption for all workers because they do not have the

financial, human and psychological resources to fight long legal battles. We wanted an automatic presumption so that the status of all platform workers could be checked quickly.
For each Member State, it would undoubtedly be easier to ask a small number of platforms to prove that they work with genuinely self-employed rather than to deal with 5 million cases of re-classification in the coming years.

You opposed the "one size fits all" approach and the "overly broad" European criteria. You argued that your independent contractors want flexibility. **I want to make clear that no one wants to hinder flexible working conditions when it respects workers' rights and definitions.**

At the stage we are at now, the responsible actors must engage in an honest debate for deliberation. Faced with an impasse in the negotiations, the co-legislators have come up with a final proposal that can be seen as the lowest common denominator (deal of the 8th of February 2024).

The presumption is neither general nor automatic, and there is no "one size fits all" or 'overly broad' European criteria. **We therefore cease to understand your continuous opposition to this latest version of the text, which under no interpretation presents a risk for workers to be reclassified wrongly or against their will.**

The presumption of the employment relationship is a procedural tool that facilitates access to rights for workers who are misclassified. No genuinely self-employed worker could be forced to have an employment contract, as the activation of the presumption does not determine the outcome and the platform is in the driving seat to rebut the decision might they consider it a wrong one. **Only the legal definitions of workers will matter. Only the facts will matter.**

The Directive does not change the current rules and definitions, it brings tools to apply and enforce them better.
No platform respecting the rules should be afraid of this Directive.
Why would a genuinely self-employed worker ever trigger the presumption? If a platform company is forced to provide workers with employment contracts because of litigation and enforcement procedures, only those platforms that have not complied with the rules will be forced to do so. Who can oppose this basic principle? Workers will then have a choice: take an employment contract or work for another platform that truly respects self-employment.

Opposing the directive effectively means disrespecting the laws of the countries in which you operate. While we heard your claims about respect for national law and working with genuine self-employed, your opposition to the Directive at this stage indicates the opposite.
It indicates your concerns about losing reclassification trials. No platform company respecting existing national law can be afraid of losing reclassification trials. If you are

convinced to respect national definitions of employment relationship, let the Directive show it.

We hope it is our joint goal to have procedures in place that will be effective and without excessive burden to any party and that will significantly reduce the grey zone of bogus self-employment so that we can quickly move on to other important issues: improving working conditions, organising work through algorithms and collective bargaining between platforms that respect the rules and trade unions.

Counting on your sincere commitment to a social market economy where businesses and workers can prosper, we hope you will reconsider your approach, which is blocking EU policy-making and undermining EU democracy.

Kind regards,

Ludovic Voet
ETUC Confederal Secretary