

## **Introduction to expert report on legal feasibility of the ETUC proposal on platform work**

In October 2020, ETUC adopted a resolution “on the protection of the rights of non-standard workers and workers in platform companies (including the self-employed)”. ETUC calls for a European initiative which provides for a presumption of employment relationship where the burden of proof should be borne by the platform companies, who should abide to their labour and fiscal obligations, including the sectorial agreements negotiated in collective bargaining by social partners.

This report provides sound legal support to the feasibility of the ETUC demands. The experts have identified a legal avenue which seeks to improve the situation of workers in platform companies:

to put an end to the use by platforms of bogus self-employment contracts by prescribing a presumption of employment relationship and the liability of platforms as companies.

The authors have provided national and European example to introduce the mechanism for a strong presumption of employment status to a potential directive regulating platform work. At national level, the most outstanding case for an employment presumption of workers in platform companies can be the Spanish Royal-Decree Law 9/2021, which extends the application of the labour code to workers in delivery platforms. At European level, cases of employment presumption are analysed from the Directive 2009/52/EC on sanctions and measures against employers of illegally staying third-country nationals and the Directive 2019/1152 on transparent and predictable working conditions.

The authors complete the employment presumption with the need to shifting the burden of the proof on the platform. ETUC recalls that in the context of sex discrimination, the European Court of Justice has been introducing a reversal of the burden of proof through its case law and that this was incorporated later in the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. More recently, article 18 of the Transparent and Predictable Working Conditions Directive also introduces a reversal of the burden of proof in the competence of labour law (unfair dismissals).

The authors also tackle the need to qualify the legal status of the platform as companies, for which an avenue is proposed following the definition of a report of the European Parliament of 2020. To recognize platforms companies as employers when the presumption of employment relationship applies, ETUC proposes the definition of the employing entity as the party that impose labour law obligations and largely determines the terms and conditions.

Whereas the clarification of the employment status of workers in platform companies would resolve many other current problems of workers in platform companies (like the de facto coverage by the social protection and the prevention and assessment of risks), specific guarantees appertaining to platform work should be granted to workers when it comes to working time, and information and consultation rights related to the algorithm management. These aspects are also tackled by the report.

ETUC would like to remind that the views and opinions expressed in this report are those of the authors and do not necessarily reflect the official policy or position of our organisation. The report concentrates largely on the extension of some labour law guarantees and social protection to genuine self-employed workers, thus examining how the ETUC resolution can provide for genuine self-employed workers operating through platform companies.

ETUC defends the need for a level playing field between employees and the self-employed to prevent the employer from using the latter as cheap labour in opposition to the employee. This also implies taking action in relation to minimum wages and minimum tariffs, in such a way that these are not below the existing minimum wages or sectoral collective agreements, including the cost of social protection, taxes and other costs (such as holidays and professional costs) that the self-employed person will have to finance him/herself.

In the accompanying document of the European Commission to the first stage consultation, it stated that "existing EU-level instruments only partially impact the challenges posed by platform work", notably the employment status, underlining the need for EU action. At the moment of this publication, ETUC and the European employers' organisations are consulted under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work.

The avenues identified by the researchers are food for thought for the ETUC to prepare its answer for the second phase consultation.

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