



**Mr Dragos Pislaru**

Chair

Committee on Employment and Social Affairs

European Parliament

Rue Wiertz 60

B – 1047 Brussels

24 October 2022

Dear Mr Pislaru,

With this letter, BusinessEurope would like to express its strong concerns with regard to the European Parliament's approach to the proposal for a directive on improving the working conditions of platform workers.

BusinessEurope closely follows the debates on platform work in the European Parliament and in the Council. At this point in time, it is very hard to see how the EU legislative debate, as it is set for now in both institutions, can lead to an appropriate and manageable EU legislative framework on platform work fit to reality.

In our view, the European Parliament legislative debate needs to be brought closer to the initial aims of this legislative initiative. What the EU needs to do is to design a well-balanced EU legislative framework recognising the legitimacy and providing legal certainty for organising work in digital labour platforms in the form of employment or self-employment, in a way that is respectful of diverse national labour law frameworks.

What the European Parliament is currently doing is to design rules that create in effect a sort of ban of the legitimate use of self-employment by digital labour platforms. The European Parliament proposed solutions also create misplaced EU regulatory interference with the way in which labour laws and practices apply in a myriad of companies across economic sectors that in actuality have nothing to do with a digital labour platform.

In this context, we urge the European Parliament to:

- Introduce a narrower definition of what constitutes a “digital labour platform” so the crucial and unique triangular relationship between the digital labour platform (as intermediaries), the client (as demand) and the platform worker (as supply) is clearly emphasised.
- Restrict the scope of the directive to automated decision-making process, as initially proposed by the European Commission, leaving aside semi-automated decision-making processes, because such an approach would create wide-scale legal uncertainty and could lead to the disclosure of sensitive information.
- Retain the support for the sustainable growth of digital labour platforms in the European Union.



Unfortunately, this legislative debate is also made complicated by the Commission's initial proposal to use a legal presumption. We agree with the objective to address situations of misclassification. However, a rebuttable presumption is too interfering in what should remain a genuine choice for companies and for people in line with diverse lawful options.

On this, it is essential that the European Parliament better takes into account the progress of discussions in the Council. BusinessEurope never supported a rebuttable presumption of employment. However, we believe that the only possible compromise between both institutions will be to adhere to a case-by-case rebuttable presumption of employment, in the best-case scenario based on national criteria or clear and well-tailored EU criteria, instead of introducing an automatic presumption of employment. In this respect, what is crucial is to ensure that platform workers that are genuinely self-employed are not affected by the directive.

We also continue to believe that it is useful for the directive to include clarity about the criteria to recognise genuine self-employment deriving from the relevant European Court of Justice jurisprudence<sup>1</sup> to make clear in the directive that self-employed platform workers are not covered by it. Finally, the directive must not try to solve challenges for self-employed platform workers by forcing upon them the rights and responsibilities of employees. Employment and self-employment have different merits and limitations but there can be no doubt that the existence of both statuses remains highly valuable for the European labour markets.

BusinessEurope and its member federations remain open to further cooperation, the result of which fully realises the potential of platform work rather than undermines it.

Yours sincerely,

Markus J. Beyrer

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<sup>1</sup> The ECJ ruling *Bridges v Yodel Delivery Network* C-692/19 specifies the following criteria:

- to use subcontractors or substitutes to perform the service which he has undertaken to provide;
- to accept or not accept the various tasks offered by his putative employer, or unilaterally set the maximum number of those tasks;
- to provide his services to any third party, including direct competitors of the putative employer, and
- to fix his own hours of 'work' within certain parameters and to tailor his time to suit his personal convenience rather than solely the interests of the putative employer.