



Elisabetta Gualmini
Member of the European Parliament
European Parliament
Rue Wiertz 60
1047 - Bruxelles
Belgium

By email

BR1059657/SMR

Brussels, 30 août 2023

Re: Call to safeguard genuine self-employment in the Platform Workers Directive

Dear Ms Gualmini,

IRU, HOTREC and CEEMET – representing road transport operators, hospitality and the metal, engineering and technology-based industries – call upon legislators to agree on the upfront application of EU-wide criteria to determine the existence of an employment relation under the Platform Workers Directive, as provided in the Council's General Approach. A simple collaboration between an individual and a platform should not necessarily lead to the classification of that relation as an employment.

Applying criteria at a later stage, after the relation has already been classified as employment, as proposed by the European Parliament, would discourage businesses from collaborating with genuine self-employed workers from the very beginning. If a platform begins the collaboration, it faces a high-risk legal process to prove that the criteria are not met. This would involve time and costs and create legal uncertainty for a prolonged period.

The EU's economy is a combination of traditional employment and self-employment, in balance and full respect of social and taxation models. The self-employment model is well established and has been used in the EU since its inception in accordance with national laws. There is no reason to eliminate this model simply because some market players have taken the opportunity to deviate from it. According to the European Commission's Explanatory Memorandum to the proposal only 5.5 million out of the 28 million people working in platforms are likely to be of risk of misclassification. The rules should be embraced by those players only.

Our concerns

Our sectors largely consist of brick-and-mortar asset-based businesses, such as truck and bus companies, hotels, restaurants, and metallurgical production. However, due to the internet revolution, our businesses, and the service businesses connected to ours, are adapting and increasingly changing the traditional way they run certain processes. For example, in practice, it can become difficult to establish if a company providing transport and logistics may act in some instances as a "platform". Moreover, traditional businesses such as hotels or restaurants may use genuine platforms to engage services such as food delivery or cleaning.

No matter how appropriate the final definition agreed on by the European Parliament and the Council will be, in some cases the distinction cannot be fully made on the basis of a simple definition. Additional specific criteria are necessary from the very beginning to enable a complete assessment. Moreover, where our members, such as hotel or restaurant businesses or IT-companies, engage with genuine platforms, it is important for their partners to preserve the legal option to engage self-employed, especially since there is significant labour shortage in the broader tourism sector.

The European Parliament's criteria would come in too late. They are also optional and non-exhaustive. Even though the legal text expressly defines this situation as not being an automatic presumption of employment, it

actually is. Once a business is classed as a “platform” based on the definition, the relation of employment with the collaborator is presumed to exist. This is problematic for two reasons. Firstly, this will lead to costly litigation if businesses try to establish their “innocence” before a labour authority or a court. Secondly, the presumption of employment continues to apply all along the appeal, with all the relative costs and legal consequences included.

Solution

In order to safeguard genuine self-employment in the Platform Workers Directive and support legal certainty, we urge the negotiators to closely follow the Council's [General Approach](#) and retain in the final text of the Directive the following elements in particular:

- Establish a robust set of **EU-wide criteria** that ultimately enable the correct classification of the relation as employment or self-employment from the very beginning.
- Keep the **national systems of appeal in place, as available in each Member State**, instead of introducing a cumbersome new appeal procedure (“rebuttal process”) as prescribed in the Parliament’s text.
- Move recital 24a of the Council's General Approach, which allows platforms to collaborate with genuine self-employed workers without being classified as an employer when acting in compliance with specific national legislation or collective agreements, into the main body of the Directive.

We count on the negotiators to support a well-balanced text with mandatory ex-ante EU-wide criteria determining the employment relationship. This is essential to maintain self-employment throughout Europe, while simultaneously avoiding unnecessary legal complications for genuine self-employed individuals, employers and authorities in Member States.

Sincerely,



Raluca Marian

Director EU Advocacy and EU
General Delegate of IRU



Marie Audren

Director General of HOTREC



Delphine Rudelli

Director General of CEEMET

[International Road Transport Union \(IRU\)](#) is the voice of more than 900,000 road transport companies in the EU, including truck, bus, coach and taxi companies, which operate about 35 million vehicles. IRU is the official social partner recognised by the European Commission to engage in negotiations with trade unions on behalf of road transport employers in the EU. In total, the road transport sector employs over 5 million people.

[Council of European Employers of the Metal, Engineering and Technology-based Industries \(CEEMET\)](#) is the voice of national employers’ organisations of the Metal, Engineering and Technology-based (MET) industries, representing 200,000 member companies across Europe and providing direct and indirect employment for 35 million workers. As the recognised EU level Social Partner for our sector, Ceemet is focusing on labour market policy and industrial relations issues.

[Association of Hotels, Restaurants, and Cafés in Europe \(HOTREC\)](#) is the umbrella association of Hotels, Restaurants, Bars and Cafés and similar establishments in Europe, which brings together 47 National associations in 36 countries, and is the voice of European hospitality. HOTREC’s mission is to represent and champion its interests towards the EU and international institutions, foster knowledge sharing and best practices among its members to further promote innovation, and act as a platform of expertise for the hospitality sector.