

To: Elisabetta Gualmini
Member of the European Parliament
Group of the Progressive Alliance
of Socialists and Democrats

[Letter sent by e-mail]
elisabetta.gualmini@europarl.europa.eu

Dear Ms Gualmini,

Based on the discussion in the EMPL Committee on 12th July, you are well aware of the scandal of the Uber papers, revealing Uber's lobbying towards the EU institutions and Member States.

As you know, the European Trade Union Confederation has requested the European Parliament to conduct an investigation into Uber's advocacy in the EU Institutions. As journalists continue to uncover the depth of Uber's law-breaking modus operandi, we believe that any **further steps in the legislative procedure towards the Directive on improving working conditions in platform work should await the result of this investigation.**

It is intolerable that the US based ride-hailing company that has since expanded to many other sectors and continents, has hired government officials and academics to help them design and implement rules and laws to cover their already ongoing malpractice. Indeed it feels like some of the amendments tabled to your report aim to justify the ongoing exploitation of workers and echo the lobbying efforts of Move EU and Delivery Platforms Europe where Uber & Uber Eats are active members. This exploitation was already confirmed by numerous justice bodies across Europe and in some cases, as described below, the digital labour platforms continue to ignore the verdict, while putting enormous efforts into diluting the proposal of a strong Directive.

On 12th May 2021, 426 days ago! Paris Court of Appeal recognised the employment relationships of Uber Drivers. Uber continues to ignore the decision.

On 13th September 2021, 302 days ago! the Amsterdam Court of Justice made the same ruling. Uber continues to ignore it.

Uber can claim that together with the leadership in 2017, also their tactics have changed but their actions speak louder! What do they wait for to implement the court decisions, a Directive that mirrors their wishes and justifies their action?

The Uber case proves that digital labour platforms do their utmost to evade compliance with any legislation and shows an extreme imbalance between them on one side, bending the rules to their advantage with help of governments, and workers on the other, left to accept whatever unfair conditions they are dictated. This is all the more an argument for a strong Directive which provides for a genuine presumption of the employment relationship. This is the only fair solution that can't be further denied or watered down by a shady lobby.

Those digital labour platforms asserting not to be employers and their workers to be genuinely self-employed should be required to prove that no employment relationship exists by opening the algorithm to test those elements that have an impact on workers and organisation of work against a set of criteria (shift in the burden of proof).

Any legislation relying on individual action by a worker to activate the presumption or an investigation by the labour inspectorate will not provide for any change to the current situation, with extended bogus self-employment promoted by digital labour platforms. Expecting good faith from the digital labour platforms during these procedures is a naïve attitude from the

legislator, if not a lack of political responsibility. Digital labour platforms have no problems with legal certainty, and they definitely do not need to be guided by a “signalling effect” – the leaked documents evidence that Uber very well knows the laws that they are breaking. The only signal the Directive brings them is to reinforce the legal department and their budget for lobbying.

The Uber leaks bring evidence of *'playbooks to fight governments' enforcement* and *'computers going black'* at any attempt of regulators to investigate their daily practices. The Directive cannot be built around the statement that platforms have changed. Labour inspectorates will never be met with fair play if they are tasked with the investigation and the triggering of the presumption. Not all platforms are the same however, the honest ones or those who truly changed have nothing to fear if the presumption is applied.

This is why we advocate for evidence-based demand for a general presumption, where platforms are allowed to trigger a rebuttal procedure, which will bring clarity and legal certainty through validation or certification that the working relationship is of real genuine self-employment nature. This will not lead to an automatic reclassification because only the platforms unable to prove the absence of subordination will have to reclassify all their workers.

ETUC hereby urges the rapporteur and shadow rapporteurs of the Parliamentary file on the proposal for a Directive to support our request for investigation and wait for its result before enacting European legislation facilitating criminal strategies of dishonest platform companies.

I remain available to discuss any further details,

Yours truly,

A handwritten signature in black ink, appearing to read 'L. Voet', written over a horizontal line.

Ludovic Voet
ETUC Confederal Secretary