

The European Confederation of Independent Trade Unions (CESI) is a confederation of over 40 national and European trade union organisations from over 20 European countries, with a total of more than 5 million individual members. Founded in 1990, CESI advocates improved employment conditions for workers in Europe and a strong social dimension in the EU. CESI represents public and private sector workers.

1. Do you consider that the European Commission has correctly and sufficiently identified the issues and the possible areas for EU action?

In the area of the platform economy, the European Commission correctly identifies areas in which measures could be envisaged for better employment and working conditions. Overall, the consultation document lays out a holistic approach to address existing challenges for better employment and working conditions in the platform economy. CESI's views on the areas for EU Action are as follows:

A. Employment status

It is essential to recognise that the contractual relationship with the platform worker is at the core of this consultation. As many social security entitlements and fundamental working rights are linked to an employment status, and since the distinction between employment and self-employment is increasingly blurred, it is important to cover as many platform workers as possible with core social and labour rights. On the one hand the employment status should be recognised for as many platform workers as possible. On the other hand, it is about establishing minimum standards even for those not classified as employees.

B. Working conditions

The European Commission describes correctly many challenges concerning working conditions. Particular attention should be paid to the following points:

The European Commission should acknowledge in a clearer way that the widespread lack of minimum wage or minimum income schemes further increases the precariousness of this type of work. Because of its task-based nature, platform labour often consists of very short tasks (sometimes as short as one click), each of which can be extremely low-paid. In the absence of any minimum pay standards (e.g. in the form of minimum fees per task, or minimum working time) platform workers struggle to accomplish micro-tasks with very little economic value and the total benefit derived from the performed tasks is minimal. Ideally, they should hence be covered by either minimum wage or income schemes.

The European Commission should carefully identify the particular risks of on-location platform work and online platform work regarding health and safety because the risks vary significantly based on the kind of platform. Of particular importance in this regard are serious psycho-social risks including technostress, isolation, technology addiction and cyber-bullying.

The Commission correctly stresses the implications of platform work on gender equality, but it overlooks the issue of age discrimination which may be even more prominent. The required digital skills, as well as the precarious conditions of platform labour (and particularly the need to compete for tasks and the rapid pace of work) exclude many older people from this market which are no digital natives.

C. Social protection

The consultation document correctly recognises the need to provide platform workers with social protection. The precarious nature of platform work mandates effective measures for the adequate, affordable, and effective protection of the involved persons. The principles established in the Council recommendation on access to social protection of 2019 should be guiding social protection in the platform economy too.

D. Challenges related to algorithmic management

The European Commission should pay special attention to information asymmetry and data privacy. More precisely, action should address the risks that platform workers face in the digital environment in which they operate and in this context particularly (1) the collection and processing of sensitive information, (2) profiling of workers, (3) information sharing to third parties and the provision of personal data that has economic value, as well as (4) matters related to the portability of data (the ability of workers to transfer data to another platform) and data deletion (the so-called 'right to be forgotten'), and (5) invasive and deceptive practices such as de-anonymisation (re-identification of private encrypted information), spamming (unwelcome messages), stalking (systematic surveillance), malware attacks, and scams.

E. Cross-border aspects

Overall, the cross-border aspects of platform labour are sufficiently identified. Especially online platform work is often subject to high competition among workers from different countries with different labour standards. This fact challenges national and EU standards in as much as the EU workforce would compete with workers from non-EU countries with lower income and labour standards. Especially, as regards the outsourcing to third countries, the EU should seek agreements at international level to ensure a level playing field for EU-based workers.

F. Skills, training and professional development of people working through platforms

The routine-biased technological change (RBTC) that accompanies the expansion of the platform economy and the task-based nature of platform work enhance job polarisation by increasing the demand for highly qualified workers with advanced digital competencies against less-skilled workers that become more and more 'disposable'. These discrepancies can be reduced only by the implementation of system that guarantees the equal access of platform workers to training.

G. Collective representation and bargaining

The limitations of article 101(1) TFEU for self-employed persons constitute an important obstacle to the collective representation of platform workers. In view of this, platform workers should be classified as employees in the absence of evidence to the contrary (a rebuttable assumption). This approach would facilitate the collective representation of labour in the platform economy and help mitigate another challenge that needs to be addressed: The low degree of participation of platform workers in trade unions. In line with CESI's recent contribution¹ to a roadmap consultation of the European Commission on the right of collective bargaining to the self-employed, it is especially the vulnerable self-employed that would benefit from a right to collective bargaining, as it would help them to avoid being excessively sold out by market powers.

2. Do you consider that EU action is needed to effectively address the identified issues and achieve the objectives presented?

A binding framework for the protection of platform workers would represent an important commitment of the EU to the implementation of the European Pillar of Social Rights. A bold legislative initiative can contribute to the enhancement of all the rights included in the Pillar.

The ongoing digitalisation of European societies, together with the increasing need for high productivity, efficiency and flexibility have transformed not only the way the economy functions but also the way that work is performed. The rapid expansion of the platform economy has shaped new trends and needs in the world of work and the EU rules should adapt to these changes without delay to mitigate precarious employment and ensure legal safety in the platform economy sector.

¹ <https://www.cesi.org/wp-content/uploads/2021/02/2021-CESI-response-Roadmap-consultation-Collective-bargaining-for-the-self-employed-EN-final.pdf>

Although there is a considerable number of recent court decisions on the working rights of platform workers both at the EU and national level, this is not sufficient to ensure legal certainty since the existent case law is not consistent.

Action by the EU to set standards for a level-playing field across countries is necessary especially because most of the Member States do not seem to dare to set restrictions on the activity of such platforms, fearing that they will harm their economic ‘competitiveness’ – which leads to a new race to the bottom against working rights between countries.

Especially the low unionisation of platform workers and their limited bargaining power at national level call for action to be taken.

3. If so, should the action cover all people working in platforms, whether workers or self-employed? Should it focus on specific types of digital labour platforms, and if yes which ones?

In principle, an EU initiative should adopt an inclusive approach and cover all people working through platforms, including both on-location platform work and online platform work. A minimum protection should be provided to all platform workers irrespective of their employment status. This is particularly important because despite the heterogeneity among the several types of platform workers, platform economy constitutes a field with distinct characteristics and the work performed through platforms presents some risks that are similar for all people involved in platform labour.

At the same time, the action should be based on a (rebuttable) legal presumption that if platform work involves the provision of services, then the person that provides the services is a regular employee (with all rights and obligations flowing from it), meaning that the burden of proof to demonstrate the absence of dependent work must lie with the platform. However, for reasons of legal clarity and enforceability, an EU directive could lay the focus on on-location platform work. This would not exempt the EU from aiming at establishing international obligations on platforms regarding employment and working conditions, for example to establish digital tools that will allow platform workers to discuss and share opinions, and to organise themselves (see point 4 below on collective bargaining).

4. If EU action is deemed necessary, what rights and obligations should be included in that action? Do the objectives presented in Section 5 of this document present a comprehensive overview of actions needed?

The action should include two groups of provisions: one for (1) “all people working through platforms” for persons providing services intermediated with a greater or lesser extent of control via a digital labour platform and one for (2) “all platform employees” for people working through platforms where these platforms cannot prove that these people are self-employed.

- (1) People working through platforms
 - Contractual agreements should include clear provisions governing:
 - information on expected pay and duration of activities, compensation rates for overtime and waiting time, and privacy rights under the provisions of the GDPR.
 - the maximum workload per day, specific health and safety measures by type of platform work, and wage supplements for night shift and national holidays
 - guaranteed access to affordable, adequate and effective social protection
 - entitlements to the right to be informed about the following topics: +
 - how algorithms calculate salaries
 - statistics about the wage, working hours, the sex, the age and the ethnic origin of people working through the platform
 - the predictions of the algorithm about future earnings of the involved person
 - As regards collective bargaining, platforms should be obliged to provide their workers with digital tools that will allow them to discuss and share opinions. This could be a digital forum embedded in the platform, not accessible to the representatives of the platform.
 - Social security coordination among the Member States must be effective, swift and transparent for the platform economy.
 - Training and upskilling especially on digital tools are needed in the platform economy.
 - It is essential to create a system that guarantees the transfer of data from platform to platform. Reviews, comments, and ratings comprise the work experience and reputation of platform workers. Contrary to other conventional types of work, the success in platform labour does not depend on curriculum vitae or interviews but on the positive feedback these workers receive after completing tasks or after uploading their work. Without this feedback, the work performed is almost invisible when it comes to a possible change of employer/ platform, something which may jeopardize professional development. Today, the portability of personal data to another platform is practically impossible. Neither is there an automated system that allows the transfer of feedback to other platforms, nor are there possibilities to fully access data either. Working under such circumstances, it is extremely difficult for platform workers to change ‘employer’ and work for another platform, since they know that their previous accomplishments will get lost.
- (2) Platform employees: Platform employees should be entitled to all the rights mentioned above, plus the working and social rights recognized for people having the status of employee according to the national legislation that is applicable.

5. Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation?

CESI is not a recognised cross-sector European social partner. CESI favours social dialogue agreements, but where these reach their limits, are not sufficiently compelling or impossible to achieve, the legislator should propose binding standards in the form of an EU directive.