

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. What are your views on the specific objectives of possible EU action set out in Section 5.1 of the European Commission’s consultation paper?

The European Commission correctly identifies the much-needed objectives of an EU initiative for decent employment and working conditions in the platform economy. To provide platform workers with adequate protection, four targets are, in our view, crucial: a precise and fair classification of the type of work and employment, access to adequate social protection, the provision of decent working conditions, and access to information to reduce the information asymmetry between the platform and the worker. The European Commission’s initiative can succeed only if all four conditions are present.

Regarding the precise and fair classification of people working through platforms, CESI believes that the EU initiative should lay down concrete criteria or indicators that will assist in the clarification of their employment status. This is particularly important because fundamental working rights and social security entitlements depend on the status of a ‘worker’- as defined by the national legislation of the Member States.

However, what is missing from the objectives presented in the second-phase consultation document is that these criteria or indicators should, according to CESI, lead to the recognition of the employment status for as many platform workers as possible. This means that the target is not only to guarantee a fair and objective classification procedure, but also offer the protection of an employment status to the majority of the workforce involved. This would require the application of a possibly uniform wide interpretation of the notion of a worker according to the definition of the ECJ. As platform work is the same, regardless of the place, the application of the national definitions of a worker leads to a patchwork of applicable laws, principles and protection. In order to establish minimum social and labour protection standards, such approach would be highly desirable.

2. What are your views on the possible avenues for EU action set out in Section 5.2?

Regarding the scope of the EU initiative, there should be an inclusive approach. The initiative must cover all people working through platforms, irrespective of their employment status. Such an approach would guarantee a minimum protection to all people working through platforms, regardless of the employment status, i.e. even if employment legislation is not applicable.

Despite the fact that the initiative should target all types of platforms, it appears that at this stage the regulation of on-location platform work could lead to legal clarity and become enforceable. If the European Commission concludes that the initiative on platform work must respect national concepts of employment status, then this is exactly the reason why the initiative must cover all platform workers irrespective of their status. However, there is still need for classification criteria that will be compatible with national legislations and collective agreements, but at the same time would create a solid common ground for the classification of workers across the EU.

A. Misclassifications in employment status

As regards misclassifications in employment status, the initiative should be based on a (rebuttable) legal presumption that assumes that if platform work involves the provision of services, then the person providing the services is a regular employee. This would apply to all platforms offering a consistent working framework – excluding platforms that merely consist in creating the link between the two parties. Should the platform claim that the person in question is self-employed, then this will have to be proved with sufficient evidence based on pre-defined binding and objective criteria, including whether the platform starts and ends the employment relation, if it provides work and pay and receives the fruits of the provided work, and if it has general considerable ‘organisational power’ for the delivery of the service and the extent of the managerial prerogatives.

To help both parties of the contractual relationship avoid lengthy and costly court proceedings, Member States must establish effective administrative procedures that will examine the status of employment.

B. Rights related to algorithmic management

The establishment of new rights related to algorithmic management is a prerequisite for fair working conditions including in the platform economy. In fact, with the rise of telework as a result of the Covid pandemic, it is a subject that concerns also many other sectors of the labour market, and a (separate) broader, horizontal initiative by the EU on algorithmic management in the labour markets and the world of work would in fact be desirable.

C. Cross-border challenges

Regarding cross-border challenges for national administrations to verify the compliance by (transnational) platforms with existing laws and their enforcement, CESI agrees with all the proposed actions presented in the consultation document which facilitate the work of the public services to ensure decent work also across borders. However, CESI believes that the most crucial challenge in this field is the enforcement and control of these policies. To ensure the enforcement, sufficient numbers of staff and adequate resources of the inspecting and controlling authorities are required, as well as further training for the concerned personnel.

D. Enforcement and collective representation and social dialogue

Concerning collective representation and social dialogue in the platform economy, EU action should be mainly focused on two targets: To support the representation of platform workers through the development of digital communication fora embedded in the platforms, accessible to both workers and trade unions, and to remove obstacles to the collective bargaining of the self-employed. The first target will facilitate the participation of workers in collective procedures and help upgrade the role of trade unions and social partners in the platform economy, while the latter will help especially the vulnerable self-employed to avoid being easily exploited by market powers - as stated in CESI's recent statement on collective bargaining agreements for self-employed¹.

3. What are your views on the possible legal instruments presented in Section 5.3?

In the absence of a strong and ambitious social partner agreement (see answer to question 4 below), to provide certainty and create binding effects, the EU initiative must take the form of a directive that will lay down binding minimum standards for all Member States. It is essential that the directive covers the whole range of platform work, without leaving anyone outside the scope of the initiative.

The European Commission should consider if a joint application of Art. 153(2) TFEU and 53(1) or 114 TFEU is possible as a legal basis for this EU initiative. Otherwise, the Commission could revert to Art. 352 TFEU – even if a directive under this legal basis needs unanimity in the Council and a proposal by the European Commission would face an increased risk to be watered down during negotiations in and between the European Parliament and the Council. This Article would allow the EU to act in order to attain the objective of “*the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health*” (Art. 9 TFEU), and at the same time respect the principle of non-discrimination which has been affirmed by Art. 21 CFREU and included into primary Union law via Art. 6 TEU.

In any case, a non-binding Recommendation is not likely to yield any difference in the Member States: If a Member States objects a binding directive, it is precisely because it does not want to implement new rules. In this case, it would only be natural that it would simply ignore a Recommendation – and render it useless.

4. Are the European social partners willing to enter into negotiations with a view to concluding an agreement under Article 155 TFEU with regard to any of the elements set out in Section 5.1 of this document?

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.

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