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EN

TRADE UNION PRIORITIES ON A NEW EU DIRECTIVE ON IMPROVING WORKING CONDITIONS IN PLATFORM WORK¹

RESOLUTION OF THE PRESIDIUM OF CESI

The European Confederation of Independent Trade Unions (CESI) is a confederation of more than 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 is a recognised European sectoral social partner and represents public and private sector workers.

The Presidium of CESI expresses broad support of the efforts of the EU Institutions to establish binding rules on employment in the so-called gig economy, to help reset imbalances of power between platforms and workers.

It considers the proposal of the European Commission for a directive on improving working conditions in the platform economy of December 9² an important first step to enhance the protection of platform workers in large parts of the platform economy.

During negotiations on a final text of the directive, it calls on the European Parliament and the Council to not water down the provisions of the proposal that can efficiently promote decent work.

It believes that certain parts of proposed by the European Parliament in its negotiation mandate³ and parts of a draft general approach of the Council, put together and published by the Presidency on December 8 2022⁴, could further strengthen the implementation of the proposed directive.

¹ This resolution builds on previous CESI positions published in March and September 2021 in the context of a first- and second-phase social partner consultation on the subject matter: as well as on an initial list of lobby priorities adopted in June 2022

https://www.cesi.org/wp-content/uploads/2021/04/2021-CESI-contribution-Platform-work-First-phase-social-partner-consultation-EN-20200407_final.pdf

<https://www.cesi.org/wp-content/uploads/2021/09/2021-C1.pdf>

<https://www.cesi.org/wp-content/uploads/2022/06/2022-CESI-resolution-Platform-directive-adopted-20220621.pdf>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0762&qid=1676045191347>

³ https://www.europarl.europa.eu/doceo/document/A-9-2022-0301_EN.html

⁴ <https://data.consilium.europa.eu/doc/document/ST-15836-2022-INIT/en/pdf>

CESI's Presidium expresses its broad support of the efforts of the EU Institutions to establish binding rules on employment in the so-called gig economy, to help reset imbalances of power between platforms and workers.

The Presidium of CESI considers the proposal of the European Commission on improving working conditions in the platform economy of December 9⁵ **an important first step** to enhance the protection of platform workers in large parts of the platform economy and **calls on the EU Institutions to not water down the provisions of the proposed directive that can efficiently promote decent work** during their negotiations on a final directive.

Although a possible proposal for an overarching framework directive for decent work in new employment models and forms of work would have been a more effective tool against precarious employment that exists also in fields of the economy beyond platforms **CESI believes that a directive on the platform economy can create more transparency, legal certainty and homogeneity in the sector, provided that the final text will not deviate down from the European Commission's proposal in terms of:**

- **the broad scope of the directive** (article 1), laying down (minimum) rights that apply to *"every person performing platform work in the Union who has, or who based on an assessment of facts may be deemed to have, an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice."*
- **the inclusive definition of digital labour platforms** (article 2) as *"any natural or legal person providing a commercial service which meets all of the following requirements: (a) it is provided, at least in part, at a distance through electronic means, such as a website or a mobile application; (b) it is provided at the request of a recipient of the service; (c) it involves, as a necessary and essential component, the organisation of work performed by individuals, irrespective of whether that work is performed online or in a certain location."*
- **the clear legal presumption** (article 4) that in principle *"the performance of work and a person performing platform work through that platform shall be legally presumed to be an employment relationship"*, which is rebuttable (article 5) only when platforms can prove that *"the contractual relationship in question is not an employment relationship as defined by the law, collective agreements or practice in force in the Member State in question, with consideration to the case-law of the Court of Justice."* **Tying the presumption to the fulfillment of certain criteria may be considered as a last resort; but it should not be tied to the fulfillment of unreasonably many conditions, because otherwise, the presumption will become void.**
- **the obligation of labour platforms to inform workers of "automated monitoring systems which are used to monitor, supervise or evaluate the work performance of platform workers through electronic means" as well as of "automated decision-making systems which are used to take or support decisions that significantly affect those platform workers' working conditions, in particular their access to work assignments, their earnings, their occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account."**(article 6)
- **basic information and consultation rights "of platform workers' representatives or, where there are no such representatives, of the platform workers concerned by digital labour platform"** (article 9), as stipulated in EU Directive 2002/14/EC on a general framework for informing and consulting employees.

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0762&qid=1676045191347>

- the right of “representatives of persons performing platform work or other legal entities” – including trade unions – to “**engage in any judicial or administrative procedure to enforce any of the rights or obligations arising from this directive**” on behalf of all persons working through platforms (article 14). Indeed, the access to remedies and enforcement tools, as laid out in articles 13 to 19, represent an important tool for potentially reinforced ties between all persons performing platform work and trade unions: While unions can provide needed services for persons in platforms and thus contribute to better working conditions for them, this could translate for them into expanding memberships and increasing collective bargaining coverage. Altogether, this may lead to reset imbalances of power between platforms and workers and to create a level playing field.

The Presidium of CESI also welcomes certain amendments proposed by the European Parliament in its negotiation mandate on the proposal⁶ and parts of a draft general approach of the Council, put together and published by the Presidency on December 8 2022⁷, which could further strengthen the implementation of the proposed directive. This concerns particularly:

- **Amendments 73 and 74 of the European Parliament negotiation mandate**, which broadly interpret the definition of ‘representatives’ specifying the notion of ‘workers’ representatives’ as “*representatives of recognised trade unions in accordance with national law and practice or other persons who are freely elected or who are designated by the workers in an organisation to represent them in accordance with national law or practices, or both*” (amendment 73), and the notion of ‘representatives of persons performing platform work’ as “*the representatives of recognised trade unions in accordance with national law and practice or other persons who are freely elected or who are designated by the workers or by the self-employed performing platform work in an organisation to represent them in accordance with national law or practices, or both*” (amendment 74).
- **Amendments 94 and 95 of the European Parliament negotiation mandate**, which add to the supporting measures for the effective implementation of the legal presumption the provision for “**sufficient resources and training for labour inspectorates** or the bodies responsible for the enforcement of labour law in order to strengthen their capacities, especially in the technological field, in order to enable them to effectively comply with points (d) and (da), including by carrying out routine or announced visits” (amendment 94) and the obligation for Member States to “ensure that **duly qualified technical experts and specialists, particularly with respect to algorithmic management, assist the labour inspectorates in their work when necessary**” (amendment 95).
- **Amendment 179 of the European Parliament negotiation mandate**, as well as the proposed changes in the draft general approach of the Council Presidency, which both **broaden the scope of protection against the termination of the relationship between the platform and the worker**, when this occurs on the grounds that the latter have exercised the rights provided for in the proposed directive. Particularly, the European Parliament suggests that the suspension of a worker’s account should be recognized as equal to dismissal, while the Council of Ministers adds the termination of contract to the prohibitions of article 18, clearly expanding the protection also to the self-employed.

⁶ https://www.europarl.europa.eu/doceo/document/A-9-2022-0301_EN.html

⁷ <https://data.consilium.europa.eu/doc/document/ST-15836-2022-INIT/en/pdf>