

## Response to Consultation on working conditions in platform work

### *First stage consultation of social partners under Article 154 TFEU on possible action addressing challenges related to working conditions in platform work*

2<sup>nd</sup> April 2021

#### EXECUTIVE SUMMARY

In February 2021, the European Commission launched a consultation of social partners on working conditions in platform work. With this position paper, the World Employment Confederation-Europe replies to this consultation. The World Employment Confederation-Europe calls for valuing diverse forms of work, for ensuring the correct classification of people working via online talent platforms at national level and for enabling fair working conditions and social protection for diverse forms of work. Bogus self-employment through platform work should be tackled through action at national and European level.

#### *Identification of the issues and possible areas of EU action*

- The World Employment Confederation-Europe overall supports the identification of the policy issues and the potential areas of action. At the same time, some elements could have been reflected more appropriately, including the need to value the benefits of diverse forms of work and the need for level playing field of different service providers and between diverse forms of work.

#### *Do you consider EU action is needed to effectively address the issues and achieve the objectives?*

- The World Employment Confederation-Europe clearly sees the benefits for a continued dialogue, exchange and policy guidance at EU level on how to nourish the benefits of diverse forms of work, including working conditions in platform work and to ensure a level-playing field for diverse forms of work. At the same time, given the diversity of online platform work, there is no one-size fits all approach to regulation of platform work at EU level. Platform work as such is not a category of work, but much more a form of service delivery and an HR service provider, which can be based on and performed via all recognised type of contract or work relationship. The correct classification of labour suppliers at national level is key to ensure protection of workers.

#### *If so, should the action cover all people working in platforms, whether workers or self-employed?*

- The World Employment Confederation-Europe considers that the existing regulatory framework (work contract/relationship or self-employed) should also be applied by online talent platforms.
- For those online platforms that operate under and apply an employment relationship there is already a comprehensive body of European and national law that is applicable.

#### *If EU action is deemed necessary, what rights and obligations should be included in the action? Do the objectives presented in section 5 provide a comprehensive overview of actions needed?*

- The World Employment Confederation-Europe questions the need for a legislative action to improve the working conditions and social protection in all platform work. Policy initiatives in this field need to reflect and respect the diversity of online platforms and focus should be laid on the correct classification of people working in platform work, the correct classification of the services being provided, as well as the application and enforcement of existing EU and national rules.

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

- The online platform economy touches on several aspects that are of key importance to the private employment services industry. At the same time, the scope and the diversity of platform work providers and their services goes beyond the mandate of the sectoral social dialogue on temporary agency work.
- The World Employment Confederation-Europe therefore does not intend to initiate a dialogue under Article 155 TFEU on the issues identified in the consultation.

## 1. General assessment

- 1.1. The online platform economy is one of the most visible and pronounced features of the changing world of work and the trends of digitalisation and automation in the world of work. The World Employment Confederation-Europe, voice of the private employment services industry and EU Sectoral Social Partner for temporary agency work, welcomes this trend. With many companies of the private employment services industry starting to deliver their services through online platforms, there is no sharp differentiation between the private employment services industry and the online talent platform economy.
- 1.2. The online talent platform economy allows people and businesses to organise work in new ways and holds the potential to enhance labour market participation through diverse forms of work, thus also contributing to the economic recovery after the Covid-19 pandemic. Online talent platforms match people with work, improve labour market allocation, and efficiency and participate in the fight of discrimination. Online platform work has the potential of enabling work, adaptation, security and prosperity.
- 1.3. The World Employment Confederation-Europe questions the terminology of “platform work” and “platform workers” in the European Commission EU Social Partners consultation document, as this presumes that “platform work” is a rather homogeneous form of work, whereas in fact it is more a technological tool that can be used to organise and match different forms of work.
- 1.4. As sectoral social partners for temporary agency work, the World Employment Confederation-Europe and UNI-Europa conducted in 2017/2018 joint research on comparing temporary agency work and online talent platforms and issued joint recommendations.<sup>1</sup> Main conclusions of the project focused on the need for a correct classification of online platform labour suppliers as workers, agency workers or self-employed at national level, to ensure the application and enforcement of existing regulation and the need to ensure social protection for diverse forms of work based on the concept of social innovation. Thus fostering new solutions for working, learning and social protection to the benefits of workers, companies and society at large.
- 1.5. The World Employment Confederation-Europe identifies that working via an online platform is a new way of organising work rather than a new form of work. It can be done through all kinds of legally recognized contractual work arrangements, either in an employment relationship (fixed term, part-time, agency work, variable hours, etc.) or within the framework of self-employment. The online/digital way of (1.) the delivery of a service or (2.) the conclusion of a recruitment or work arrangement does not change the nature and requirements of the service provided and/or the work contract concluded. As such ‘online talent platform work’ is not a new legal form of work or a new business service: It is a new way of organising work that technological development allows.
- 1.6. As such, a legislative initiative on working conditions for platform work labour suppliers needs to respect the different EU, national and social partner competences and the different national social and industrial relations systems. These systems should complement each other to ensure that platform work is one element of the diverse forms of organising work, which is contributing to more inclusive labour markets, while at the same ensuring protection for workers and self-employment and creating opportunities for businesses.
- 1.7. Building on the findings of the WEC-Europe/UNI-Europa research and further studies it is evident that the online platform economy, even though still small in size, has the potential of enhancing job creation, participation and integration on the labour market, thereby fostering more dynamic and inclusive labour markets. At the same time, there is a need to provide adequate social protection and

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<sup>1</sup> For more information, please consult the World Employment Confederation-Europe website: [Digitalisation - World Employment Confederation Europe \(weceurope.org\)](https://www.weceurope.org)

working conditions for all workers as also stipulated in the European Pillar of Social Rights. Action to provide adequate working conditions and social protection for all needs to build on the established forms of work, including self-employment, dependent work (worker status) and temporary agency work, for which workers are performing work in a triangular work relationship, while temporary agency workers are defined as workers in accordance with national law and the EU Directive on temporary agency work. There is no need for a third category of workers to define the employment status of labour suppliers working via online platforms.

- 1.8. At global level, the World Employment Confederation also published a comprehensive position paper<sup>2</sup> calling for “A decent level-playing field for platform work”. With the World Employment Confederation-Europe being the European, regional organisation of the World Employment Confederation, the global position paper is of course also an important contribution to the debates in Europe.

## 2. Assessment of the issues identified and possible areas of EU action

- 2.1. The EU Commission consultation on addressing the challenges in platform work builds on several years of discussions on the topic at European level. Issues such as the employment status of people working via online talent platforms, working conditions, social protection, access to training and collective representation have been at the centre of these debates.
- 2.2. At the same time, the World Employment Confederation-Europe feels that some aspects could have been reflected in a more appropriate way in the Commission consultation document, leading to a more nuanced approach for action. This applies particularly for the following dimensions:
- The need to value better the benefits of existing and diverse forms of work on the labour market and in the platform work economy in general. Diverse forms of work contribute to generating new opportunities for workers and companies, increase competitiveness and help to respond to new and emerging needs in a changing world of work. Diverse forms of work exist and benefit both the general labour market as well as the platform work economy.
  - Online talent platform work is not a sector or a form of work in itself. It is a form of service, delivery, depending on sectoral classification or NACE, using digital tools. Also the European Court of Justice has confirmed in a ruling of December 2017 that different sectoral regulations must be applied to online platforms and that platform work is not a sector as such. Similarly, the EU Directive on temporary agency work must be applied for those platforms that provide temporary agency work services.
  - The diversity of online platforms and the heterogeneity of labour suppliers using online platforms also points to the fact that there is no one-size fits all approach to regulating platform work. Whereas a cleaning worker with a limited number of clients which are intermediated via an online platform might need more protection, the same it is not necessarily true for highly skilled IT consultants and specialists who chose to work as freelancers – potentially even via the same platform.
  - The benefits of fostering social innovation, understood as new solutions for working, learning and social protection to the benefits of workers, companies and societies at large. The EU sectoral social partners for temporary agency work, the World Employment

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<sup>2</sup> The position paper is available on the World Employment Confederation [website](#)

Confederation-Europe and Uni-Europa, recently completed a project on Social Innovation in the temporary agency work industry identifying innovative practices of working, learning and social protection in the sector.<sup>3</sup>

- The need for a level-playing field for treating similar services in a similar way. A policy approach on platform work at EU level needs to take account of the fact that the most important reason why many platforms opt for models based on self-employment is that current employment legislation is often not fit for purpose in a digital world of work. It imposes at times burdensome processes and procedures on employers, which include requirements for physical signatures on labour contracts and obligations to archive/store physical documents, requirements to physically meet people for ID checks and “right to work” checks, requirements for physical offices to hold interviews etc. requirements following from the Directive on transparent and predictable working conditions and the Working Time Directive. Complications also arise due to work/shifts performed in several tax regimes within the same period (either different regions in one country or even across national borders). Business-model of some platforms are based on that specific tax regime for self-employed (i.e., micro-entrepreneurship). While these requirements might be justified from the perspective of workers’ rights, these make operating an employment-based platform more complicated than a platform that intermediates self-employed workers. More appropriate legislation that safeguards workers’ rights while allowing more flexibility may avoid the „waterbed effect“ towards self-employment that we witness today. And so, while this is not on the agenda right now, a proper discussion about platform work can only take place in a context of a more general discussion about adaptable, less restrictive and efficient labour markets.
- Linked to an approach of better valuing diverse forms of work, the World Employment Confederation-Europe is concerned by the Commission’s approach of labelling working conditions in platform work as precarious. While some may face precarious situations, others do not – and this is not inherent to platform work. Platform work should thus not be addressed with a negative stigma, but its contribution to the economy and labour market should be valued.

2.3. The World Employment Confederation-Europe is strongly convinced that the majority of issues identified in the consultation document, including the employment status, working conditions, social protection, access to training and collective representation can and should be addressed based on existing EU Directives and instruments, which have been comprehensively and rightfully listed in the Consultation document.

### **3. Assessment on the need for EU action to effectively address the issues and achieve the objectives**

3.1. The World Employment Confederation-Europe clearly sees the benefits for a continued dialogue, exchange and policy guidance at EU level on how to nourish the benefits of diverse forms of work, including working conditions for online platform labour suppliers and to ensure a level-playing field for diverse forms of work. When a platform is de facto offering the same services as a temporary work agency regulated by the EU Directive on temporary agency work, that platform should be subject to the same rules, including the conditions for establishment, for providing services and for the protection of temporary agency workers. As such, given the diversity of online platform work, there is

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<sup>3</sup> The report on “Social Innovation in the temporary agency work industry” is available on the World Employment Confederation-Europe [website](#)

no one-size fits all approach to regulation of platform work. Platform work is a multi-faceted and complex concept, including platforms based on a direct employment relationship, platforms based on a self-employment model and platforms that offer a triangular work relationship. A one-size fits all regulatory approach at EU level will not be able to capture this complex phenomenon. The fact that there is no one-size fits all approach to regulating platform work at European level is also underpinned by “the neutrality of technology”.

- 3.2. The World Employment Confederation-Europe considers the rise of platform as consequence of technological development, which does not as a general principle lead to a lowering or undermining of working conditions and social protection. The technology should operate in such a way that it applies the relevant EU and national laws. The use of the platform technology can also have different applications in different sectors, which again illustrates that there is no one-size fits all approach to regulating platform work.
- 3.3. In the consultation document, page 4, the European Commission seems to undermine the B-to-B platforms and exclude the possibility to apply the 2008 Directive on temporary work to them. In our view, this Directive must apply to platforms that put in relation workers that are under the direction of a client. The Directive covers these situations, especially when bogus self-employed status is used to circumvent the national law (the provision of staff is an exclusivity activity for temporary work agencies in some member states, for example in France and Belgium). The EU Directive on temporary agency work and the ILO Convention 181 set appropriate rules for temporary agency work.
- 3.4. In the Consultation document, the European Commission acknowledges that a comprehensive body of EU legislation is already today applicable to online platforms, including the Directive on fixed-term contracts, part-time work, the Directive on temporary agency work, the Directive on transparent and predictable working conditions and the General Data Protection Regulation (GDPR). The Council Recommendation on access to social protection for workers and self-employment provides the adequate framework to improve social protection for people working through online platforms, with them being either workers under national law or self-employed. At the same time, the European Commission states that platform labour suppliers are predominantly self-employed and that many EU Directives regulating working conditions for workers at EU level do not apply to them. Looking at the Commission Work Programme and political guidelines of the European Commission, the forthcoming legislative proposals on artificial intelligence (AI) and the clarification of EU competition rules and collective representation of self-employed also address elements that are highly relevant for the online talent platform economy. The focus should be on encouraging enforcement and implementation of existing rules.
- 3.5. The main responsibility of policymakers in modern labour markets should focus less on whether work is performed online via an online platform or offline in the traditional economy, but to ensure that adequate social protection and fair working conditions are provided to all workers and applicable labour laws are correctly applied by online platforms. A differentiation between the rights that various workers have may still be warranted, but only based on their employment status. Self-employed may need a different set of rights and obligations compared to other employees. The fact that a person provides work via an online platform should not be the decisive factor. At EU level, a comprehensive set of legislative instruments is already in place. The World Employment Confederation-Europe calls for developing social innovation, defined as new solutions for working, learning and social protection also with regard to online talent platforms. This does not imply changing the employment status of online talent platform labour suppliers, but for creating new safety nets in a changing world of work. Online talent platforms should be based on a human-centred approach to labour markets, which means that labour market regulation and social protection schemes at national level need to be appropriate and futureproof.

- 3.6. It is not the personal condition that determine the status that should be applied: a student or a jobseeker does not have to be self-employed “by default” but only if the way the work is performed is not under the supervision of another person.
- 3.7. The World Employment Confederation-Europe does not believe that it would be appropriate or needed to propose an additional Directive or other, legislative instrument on working conditions in platform work, but to encourage the application of existing laws at national and EU level to online platforms, depending on the services provided and the reality of independence of the platform labour suppliers.

#### **4. If so, should the action cover all people working in platforms, whether workers or self-employed?**

- 4.1. As explained in section 3, the World Employment Confederation-Europe considers the existing European legal instruments as sufficient to ensure appropriate working conditions and social protection in platform work. Creating specific working conditions and social protection rules for online platform labour suppliers might create de facto a new (third) employment status between self-employed that do not use online platforms and employees, thus leading to legal uncertainty.
- 4.2. The European Semester process and the annual, Country-Specific Recommendations can provide an important policy framework to promote convergence, mutual learning and the exchange of good practices in addressing challenges linked to online platforms.
- 4.3. For any policy or regulatory initiative, it is important to target it clearly and to define its scope. The European Union has no competence to set minimum working conditions or social rights of self-employed. This has also been underlined in the World Employment Confederation-Europe reply to the consultation on collective bargaining rights for self-employed. The European Commission can and should, however, foster discussions in and between EU Member States on access to social protection for self-employed. This has been done in an appropriate way in the EU Council Recommendation on access to social protection for workers and self-employed adopted in 2020. This Council Recommendation provides the appropriate, EU legal instrument to ensure social protection for self-employed people working through online talent platforms.
- 4.4. For those online platforms that operate under and apply an employment relationship, either in the traditional employer – worker relationship or the triangular work relationship that characterises temporary agency work (thus involving a temporary work agency, an agency worker and a client company), as regulated by the Directive on temporary agency work,<sup>4</sup> there is already a comprehensive body of European of European and national law covering different dimension of the employment relationship and including working conditions, pay and remuneration.
- 4.5. If online platforms operate under a bogus self-employment status to assign people to companies to perform work under the supervision and direction of the client, it falls under the scope of the Directive on temporary agency work and the misclassification must be addressed at the appropriate levels.

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<sup>4</sup> See also the EU Directive 2008/104/EC on temporary agency work: [Working Conditions - Employment, Social Affairs & Inclusion - European Commission \(europa.eu\)](#)

## 5. If EU action is deemed necessary, what rights and obligations should be included in the action? Do the objectives presented in section 5 provide a comprehensive overview of actions needed?

5.1. The World Employment Confederation-Europe questions the need for a legislative action at EU level to improve the working conditions and social protection in platform work. Policy initiatives in this field need to reflect and respect the diversity of online platforms and the service provided through them, and focus should be laid on the correct classification at national level of people working in platform work, the application and enforcement of existing EU and national rules.

5.2. With regard to the actions under consideration as outlined in section 5 of the consultation document, the World Employment Confederation-Europe would like to underline the following:

- On classification: In the debate on the Directive on transparent and predictable working conditions, policymakers at EU level (European Commission, EU Council and European Parliament) agreed not to include an EU definition of a worker into the Directive, but to build on national definitions and the established EU Court of Justice case law. The same approach should be followed with regard to working conditions for online platform labour suppliers. The correct classification is essential, as also highlighted in the WEC-Europe/UNI-Europa Joint Recommendations on "Online talent platforms, labour market intermediaries and the changing world of work", but this should be done at national level and respecting the national law and practice. EU Member States should be encouraged to create a simple and clear framework for the classification of people working via platform work. Workers and business need clear rules on the worker status. Digital tools should not be confused with contractual relationships or the provision of services. At the same time, action should be taken at national level to fight against bogus self-employment and an EU mutual learning/best-practice exchange on addressing bogus self-employment would be highly welcomed.
- On fair working conditions for all: The World Employment Confederation-Europe fully supports the policy objective of fair working conditions for all, including pay transparency for specific tasks where appropriate. For people engaged in platform work based on a worker status, rules against unfair dismissal are already in place, for the self-employed platform labour suppliers, this aspect is less relevant. The World Employment Confederation-Europe supports the principle of the same rules and regulation for adequately similar services, independent of the fact whether these are delivered online via platform work or offline in the traditional economy. The principle of applying the same rules for adequately similar services takes account of the fact that not all platforms deliver the same service and outcome and regulation on working conditions in the platform work economy needs to reflect this diversity of platform work, including the differences between B to C and B to B services.
- On information to people working via online platforms: The World Employment Confederation-Europe agrees that there is a need to provide clear information to platform labour suppliers in a transparent way, on how the platform functions and its terms and conditions, as this helps predictability and understanding. The Platform to Business regulation, which was adopted in 2019 and is applied by Member States since July 2020, already places obligations on platforms in this field.
- On the access to social protection and the protection against economic and social risks for people working through platforms, the World Employment Confederation-Europe is convinced that the appropriate and relevant EU instrument is already in place based on the EU Council Recommendation on access to social protection for workers and self-employed. For self-employed engaged in platform work, there is no need for a new legal instrument at EU level to ensure social protection for platform labour suppliers. The World Employment Confederation-

Europe welcomes the work of the EU Council Social Protection Committee on developing a monitoring framework on access to social protection, including for self-employed, which covers many of the branches of social protection highlighted as challenging in the consultation document (e.g. sickness benefits, unemployment, accidents at work). Reforms have taken place or are in process in a number of Member States to recalibrate and extend schemes to cover self-employed. The EU policy should encourage a level playing field between self-employed (independent on whether they provide their services via an online platform or not). Creating a third status for online platform workers is not the appropriate way forward.

- On an approach to automated decision-making and human oversights: With regard to automated decision-making and human oversights, the World Employment Confederation-Europe is convinced that these aspects do not have to be addressed in a legislative instrument on working conditions for people working through online talent platforms. For the dimension of data protection and privacy, the EU General Data Protection Regulation (including its provisions on automated decision-making) is fully applicable to online talent platforms (like it is to any way of working). For the use of artificial intelligence technology and the human oversights, the European Commission will this year publish a legislative proposal on artificial intelligence, which should also cover the use of high-risk artificial intelligence in labour market technologies, including those that enable platform work.

In this the World Employment Confederation underscores that AI technologies holds the potential to identify and minimize conscious and unconscious human decision-making, as well as the risk that these technologies can amplify them. To optimize the positive and minimize the negative, European policymakers should work with developers of labour market technologies (including platform technologies).

- On addressing collective bargaining and collective rights: Addressing the collective bargaining and collective rights requires to take account of the diversity of online platforms and underlining organisational structures and business models. For online platforms that operate under a self-employment model, there is no need to address collective bargaining and collective rights, as it is up to the people working via online platforms and the online platforms to determine the terms and conditions of engagement. For online platforms that are based on an employee model, the principle of similar regulation for similar service must apply.
- On promoting cross-border fairness in platform work: Online platforms are service providers in the EU single market and as such, they fully benefit from the freedoms that constitute the EU single market. EU rules to ensure working conditions and fairness in the cross-border provision services should also apply to online talent platforms to the extent that their services are comparable or similar to services provided in the real economy.

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

- 6.1. As part of their sectoral social dialogue on temporary agency work, the World Employment Confederation-Europe and UNI-Europa issued in 2018 a set of joint recommendations on "Online talent platforms, labour market intermediaries and the changing world of work". These Joint Recommendations address many of the issues also covered in the consultation of social partners and thus provide valuable input. The most important elements of the WEC-Europe/UNI-Europa Joint Recommendations of 2018 remain fully consistent with the World Employment Confederation-Europe reply to the 2021 Consultation of Social Partners on working conditions in platform work. These have been the following:

- I. Establish a level-playing field by ensuring the same treatment for adequately similar services and forms of work: If an online talent platform provides adequately similar services as a temporary work agency, it should be governed by the same regulation, conditions and standards.
  - II. National and European regulation on the different forms of work should be correctly applied and enforced to ensure a level-playing field. Particular focus should be laid on preventing bogus self-employment of online talent platforms labour suppliers.
  - III. Diverse forms of work can play a key role in well-functioning labour markets; conditions of this is that they are matched by updated, flexible social protection schemes providing portable and transferable rights. Policymakers should take inspiration from practices developed in the temporary agency work sector, especially via social dialogue.
  - IV. Measures such as national regulation or voluntary agreements that enable the statistical mapping of the size, scope of online talent platforms should be put in place, including for example the number of hours worked and the number of labour suppliers. At the same time, these should be focused on main elements and respect the principle of business confidentiality of certain data produced by online platforms.
  - V. In ensuring compliance with existing European and national regulation, specific attention must be devoted to the protection of personal data of online talent platform labour suppliers. The EU General Data Protection Regulation must be correctly applied to the business activities of online talent platforms. The online talent platform labour suppliers should remain the principle owner of their data. Therefore, the right of data portability must be ensured.
  - VI. Develop and strengthen continued education, training and skills enhancement. Continued education and training is of central importance to equip all labour suppliers with the relevant skills they need to succeed in the labour market. To reach that goal, policymakers should involve social partners where relevant, getting inspiration from the temporary agency work sector (such as dual learning schemes, bipartite funds, training on the job).
  - VII. Monitor and foster the correct classification of people working via online talent platforms at national level. Modern and futureproof labour markets are characterised by diverse forms of work, including for example directly employed workers, temporary agency workers and self-employed. Therefore, it is essential to ensure the correct classification of people working via online talent platforms and to have clarity on their employment status and corresponding rights to social security.
- 6.2. Given the fact that a possible action addressing the challenges related to working conditions in platform work goes significantly beyond the mandate of the sectoral social partners for temporary agency work, the World Employment Confederation-Europe does not intend to enter into dialogue under Article 155 TFEU on the issues identified in this consultation.

***About the World Employment Confederation-Europe***

The World Employment Confederation-Europe is the voice of the employment industry at European level, representing labour market enablers.

The World Employment Confederation-Europe includes in its membership national federations from all across Europe, as well as several of the largest international workforce solutions companies. It is therefore fully representative of the industry, both in size and diversity. The World Employment Confederation-Europe brings a unique access to and engagement with European policymakers (EU Commission, European Parliament, and Council) and stakeholders (trade unions, academic world, think tanks). The World Employment Confederation-Europe strives for a recognition of the economic and social role played by the industry in enabling work, adaptation, security and prosperity in our societies. Its members provide access to the labour market and meaningful work to almost 11 million of people in Europe.

