

Consultation on working conditions in platform work

2nd stage consultation of social partners under Article 154 TFEU on possible action addressing challenges related to working conditions in platform work

15 September 2021

EXECUTIVE SUMMARY

On 15th June 2021, the European Commission launched the second stage consultation of social partners on a possible initiative on working conditions in platform work. With this position paper, the World Employment Confederation-Europe, voice of the private employment services industry and EU Sectoral Social Partner for temporary agency work, aims to contribute to the consultation. Platform work is not a form of work, but much more a new online approach for matching demand and supply on the labour market, which is based on various, existing forms of work, such as self-employment, direct employment as workers and triangular work relationships. Platform work is a positive aspect of digitalisation and the changing world of work, which is offering a new way for people and business to connect, finding or offering employment opportunities and which has the potential to reach more inclusive labour markets. A key pre-requisite is to ensure that labour market regulation in accordance with the employment status is correctly applied and that people working via online platforms have access to social protection.

Assessment of opportunities and challenges linked to platform work

- The World Employment Confederation-Europe broadly supports the Commission's assessment of opportunities and challenges linked to platform work. The benefits of online talent platforms in fostering diverse forms of organising work and social inclusion could have been highlighted more prominently.
- The World Employment Confederation-Europe is convinced that it is essential to look at the underlying business model and employment status of the diverse forms work being offered through platform work, before proposing an EU regulatory instrument on working conditions of people working via online platforms.

Need for EU action and views on the possible legal instruments (Question 2 & 3)

- Given the rising importance of online platform work and its cross-border dimensions, the World Employment Confederation-Europe agrees on the need for a European policy approach to online platforms. Focus should however be laid on the application and enforcement of existing, EU legal instruments, and the correct classification of people working via online platforms at the national level.
- Aspects of data protection, artificial intelligence and the use of algorithms are important features of online platform work. However, these aspects are already regulated at EU level with regard to data protection (especially through the EU General Data Protection Regulation) or will be addressed by other legal instruments (with regard to artificial intelligence and algorithms).
- Specific, social policy aspects of online platform work may be addressed in a Council Recommendation to foster social protection for diverse forms of work and promote social innovation. This could for example address access to and coverage by social protection scheme for people working via online platforms or access to training

Are the social partners willing to enter into negotiations with a view to concluding an agreement?

- Addressing working conditions in online platform work goes beyond the mandate of the EU sectoral social dialogue on temporary agency work. The World Employment Confederation-Europe aims to continue contributing to the debates at EU level, while not entering formal social partner negotiations.

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 characteristic for the trend 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 as online platform work provides opportunities to companies, to people working via online platforms and to consumers using the services offered. With an increasing number of companies in the private employment services industry starting to deliver (some of) 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 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. Online platform work has the potential of enabling inclusive work, prosperity, security and adaptation.
- 1.3. As sectoral social partners for temporary agency work, the World Employment Confederation-Europe and UNI-Europa conducted in 2017/2018 a research project on comparing temporary agency work and online talent platforms and issued joint recommendations.¹ 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, to ensure the application and enforcement of existing regulation and the need to ensure the right 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. At the same time, the use of new technical tools must not lead to circumvent the existing sectoral rules, especially the Directive 2008/104/EC on temporary agency work and national regulation on temporary work.
- 1.4. 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 a diverse range of legally recognised 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.
- 1.5. 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. Use of this term risks obscuring the diverse nature of work arrangements that exist in the online platform environment and thus conducting to misclassification.
- 1.6. Alongside with discussions on work via online platforms, it is equally important to launch a discussion at level on social protection and social benefits of diverse forms of work, which should be inspired by the principle of ensuring adequate social protection for all. Policy or regulatory initiatives must respect the diversity in the way work is organised, including via online platforms, and must respect

¹ For more information, please consult the World Employment Confederation-Europe website: [Digitalisation - World Employment Confederation Europe \(weceurope.org\)](https://www.weceurope.org/digitalisation-world-employment-confederation-europe)

the different levels of responsibilities for each stakeholder following from the applicable form of work – direct employment relationships, agency work, or self-employment.

2. World Employment Confederation-Europe views on the specific objectives of possible EU action (Question 1)

- 2.1. **General assessment:** The World Employment Confederation-Europe broadly supports the European Commission assessment of the opportunities and challenges linked to platform work. At the same time, the benefits and advantages of online platform work could have been highlighted more in terms of new ways of organising work, of creating employment opportunities and access to the labour market for people, especially for the young.
- 2.2. **Employment status in the context of online platforms :** The World Employment Confederation-Europe calls for better and fully recognising that platform work is a form to organise and provide work and not a form of work as such. Platform work is fundamentally based on diverse forms of work, including self-employment, direct employment as workers and the triangular work relationship characteristic to temporary agency work. Companies of the private employment services industry have established in some countries fully online temporary work agencies, which are based on the triangular work relationship and assign workers to clients in the same way as traditional temporary work agencies. Vice versa, some agencies also engage in intermediation for clients looking to engage self-employed workers, even outside of an online platform context. When developing an EU legislative initiative on working conditions in platform work, it is essential to recognise these different models in compliance with national law. The World Employment Confederation-Europe calls for a focus on promoting policies and approaches that ensure the correct classification people working via online platforms at national level and in accordance with national definitions and approaches to the employment status and self-employment. At the same time, online platforms must respect the national and EU law that apply to the sector they depend on ([EUCJ 20 Dec. 2017, C-434/15](#)), whatever the sectoral regulation. Recognising a sui generis activity for platforms will encourage bypass the applicable sectoral regulation.
- 2.3. **Challenges stemming from the algorithm-based business model:** Online platform work is among the most visible forms of the digitalisation of the world of work. At the same time, the World Employment Confederation-Europe is convinced that the most important elements stemming from the algorithm-based business model are already regulated in existing EU instruments, such as the EU Data Protection Regulation. Algorithms and the use of artificial intelligence will also be covered and sufficiently addressed by the proposed regulation on the use of Artificial Intelligence.
- 2.4. **Challenges stemming from cross-border platform work :** Research suggests differentiating between location-based and non-location-based platforms. The platform work economy include some platforms who provide services cross-border, some even beyond the EU context, while a significant share of platforms are de facto location based, implying that while they provide the services via an online tool, the actual work performed for example for cleaning, ride hailing, or the delivery of micro-tasks are provided on location in the national and often local context. For the non-location-based platforms, the EU rules for the single market of business services should fully apply. The World Employment Confederation-Europe therefore does not see a need for an EU regulatory intervention to address the cross-border dimension of platform work.
- 2.5. **Regulatory gaps at EU level:** The World Employment Confederation-Europe is convinced that existing EU legal instruments sufficiently cover online platform work and that the starting point should

be the real activity of the platform (sectoral regulation), the employment status and model an online platform is based on. For self-employed platform labour suppliers, non-legally binding EU instruments, such as the Council Recommendation on access to social protection for workers and self-employed, are fully sufficient. As also outlined in the World Employment Confederation-Europe reply to the first stage EU Social Partner Consultation, focus should be laid on the application and enforcement of existing EU and national law, rather than addressing all different models of platform work in a one-size fits all, regulatory approach.

3. World Employment Confederation-Europe views on the possible avenues for EU action? (Question 2)

- 3.1. **Need to respect national competences:** The World Employment Confederation-Europe supports the European Commission approach to fully respect national competences and the autonomy of social partners. The relevance and national approaches to regulating employment and self-employment, including via different forms of platform work reflect the different, EU Member States traditions. The employment status and classification of the people working via online platforms can and should only be done at the national level, reflecting these national differences. An EU policy initiative should focus on application and enforcement of existing rules. An EU Directive regulating minimum working conditions in all categories of online platforms is not the appropriate way forward.
- 3.2. **Cross-border dimension of online platforms:** For the approximately one-third platform work that is focused on performing work across borders, the national rules applicable in the country of establishment should apply. 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 by physical/traditional companies.
- 3.3. **For the use of artificial intelligence technology and the human oversights,** the European Commission proposal for a regulation on artificial intelligence covers the use of high-risk artificial intelligence in labour market technologies, including those that enable platform work. In this context, the World Employment Confederation underscores that AI technologies hold the potential to identify and minimize conscious and unconscious bias in 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). Establishing a forum for dialogue between online platforms, EU policymakers and EU level sectoral and cross-industry social partners would be an appropriate approach to build mutual understanding and shape the digital transition of the world of work.

4. What are your views on the possible legal instruments presented? (Question 3)

- 4.1. **Policy objectives of an EU initiative:** The World Employment Confederation-Europe supports the overall objective of decent working conditions for people working via online platforms, while supporting the sustainable growth of digital labour platforms in the EU. Decent working conditions based on the diverse forms of platform work can best be approached based on the current classification of online platform labour suppliers and the application and enforcement of existing, EU and national rules.

- 4.2. **Legal instruments addressing the misclassification needs to be done via the national level:** Given the national diversity of platform work, addressing the misclassification in the employment status and the correct classification of online platform labour suppliers can and should only be done at the national level and based on national criteria and the jurisprudence of the EU Court of Justice. Besides jurisprudence of the EU Court of Justice and some well-established criteria, there is no codified, EU definition of a worker and in recent EU policy debates for example on the Directive on transparent and predictable working conditions, there have been good and valid reasons not to establish an EU definition.
- 4.3. **Establishing a rebuttable presumption of an employment relationship at EU level is a disproportionate legal instrument :** The World Employment Confederation-Europe does not believe that a rebuttable presumption of employment is a fruitful solution, but we can observe that some platforms act like private employment services companies and offering temporary agency work without respecting or complying with the European and national laws on temporary agency work and impose a self-employed status. That is the reason why we do believe that online talent platforms should be classified and judged based on their de facto and real business activities and should not be allowed to hide behind a too strong presumption of self-employment examined on a case-by-case basis. In addition to this, the correct classification of people working via online platforms at the national level is essential in order to prevent the involuntary and mandatory status of self-employed. In cases where clarity on the employment status could not be reached and there is a litigation at national courts, the World Employment Confederation-Europe could support the reversal of the burden of proof.
- 4.4. **Strengthen enforcement, collective representation and social dialogue:** As also underlined in the reply to the first stage consultation, the World Employment Confederation-Europe supports a focus on compliance and enforcement with existing national and European regulation. Collective representation and social dialogue largely depend on the employment status an online platform is based on and the respective, national traditions of collective representation and social dialogue. Given the diversity of national industrial relations traditions these elements should be settled at national level and in the forthcoming initiative of DG Competition on collective bargaining rights for self-employed.
- 4.5. **Transparency and accountability in algorithmic management:** The World Employment Confederation-Europe agrees with the policy objective that people working via online platforms should be informed about the importance of algorithms and artificial intelligence to platform work. At the same time, there should not be a legal obligation to make commercial sensitive information or the algorithm public. The most important aspects linked to the collection and processing of data and related transparency rules are already sufficiently addressed in the EU General Data Protection Regulation. The proposed Regulation addressing high-risk artificial intelligence will address AI related aspects of online platforms and there is therefore no need for a further, separate initiative.
- 4.6. **Relevant EU instruments:** The European Commission outlined that an initiative on working conditions in platform work could take the form a Directive, Council Recommendation or a combination of the two. This could be complemented by a policy communication with non-binding instruments.

Given the diversity of models of online platform work, the World Employment Confederation-Europe does not support the option of a Directive to set minimum standards based on Article 153 (2) TFEU. With regard to those people working via online platforms with an employment status and as workers, their working conditions are already sufficiently regulated at EU level. The representation of people working via online platforms will be addressed by the initiative of DG Competition, which will address rights to collective representation and collective bargaining of self-employed and competition rules.

The World Employment Confederation-Europe would be more favourable to a proposal for a Council Recommendation providing policy guidance without setting mandatory requirements. This can and should be complemented by non-legislative measures, such as facilitating dialogue and developing good quality platform work by means of a code of conduct or a charter. The World Employment Confederation-Europe is supportive to self-regulatory tools and/or non-legally binding guidance at national level covering social benefits, training and complementary aspects in relation to working condition. In many countries, such tools already exist for the agency work sector, and as such those will also apply to online forms of agency work. The self-regulatory approach would be best-suited to cover the diversity of online platform work.

5. Willingness to enter into negotiations with view to conclude an agreement under Article 155 TFEU?

5.1. Similar to the reply to the first stage consultation, the World Employment Confederation-Europe would like to highlight that 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 social partners' consultation 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 Social Partners' consultation 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

Position Paper

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.

- 5.2. 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.

