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CONSULTATION DOCUMENT

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

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1. Introduction

In her political guidelines, President von der Leyen stressed that ‘digital transformation brings fast change that affects our labour markets’. She undertook the commitment to ‘look at ways to improve the labour conditions of platform workers’.¹

The Communication ‘A Strong Social Europe for Just Transitions’² describes the multiple opportunities and challenges Europe is facing with regard to climate action, digitalisation and demographic change, and underlines the need for an ambitious social policy moving forward. The Communication notes that the sustainable growth of the platform economy requires improved working conditions for platform workers.

While some supporting measures for people working through platforms have been taken by some digital labour platforms, and in some Member States they were eligible for income support offered to the self-employed, COVID-19 has brought to the fore the need for a more systematic approach to the challenges associated with platform work.

This consultation relates to a Commission initiative on ‘Improving the working conditions of platform workers,’ as announced in the 2021 Commission Work Programme³, within the framework of the Action Plan to implement the European Pillar of Social Rights.

The European Parliament has released a report on “A Strong Social Europe for just transitions”⁴, which calls on the Commission to propose a directive on decent working conditions and rights in the digital economy, also covering non-standard workers, workers on digital labour platforms and the self-employed. In November 2020, the European Parliament’s Employment Committee held an exchange of views with the Commission and different stakeholders on platform work.

¹ Political Guidelines for the Next European Commission 2019-2024. ‘A Union that Strives for More. My Agenda for Europe.’ Available [online](#).

² COM (2020)/14 final. Available [online](#).

³ COM (2020) 690 final. Available [online](#).

⁴ Available [online](#).

The Council has called on Member States and the Commission to strengthen efforts and take appropriate action as regards platform work⁵, in line with the ILO’s Centenary Declaration for the Future of Work.⁶

In December 2020, EU employment and social affairs ministers held a debate on platform work. They acknowledged that platform work is an international phenomenon with a strong cross-border dimension, and that therefore there is a role for the EU to address the related challenges.

The European Economic and Social Committee⁷ and the Committee of the Regions⁸ have put forward opinions on platform work.

The purpose of this document is to consult social partners, in accordance with Article 154(2) of the Treaty on the Functioning of the European Union (TFEU), and to request their views on the possible direction of EU action to improve the working conditions of people working through digital labour platforms active in the EU.

2. Opportunities &challenges

The digital transition is key to strengthen the social, green and economic resilience of the EU and the Member States. The COVID-19 crisis has accelerated the trends towards the digital transformation and shown the importance of addressing it in the context of the EU recovery plan. The ongoing digital transformation creates new opportunities in terms of income, job creation and entrepreneurship, also for workers who previously had difficulty accessing the labour market.

Digitalisation also facilitates new flexible work arrangements, such as those in the platform economy, by breaking down many of the space, time and organisational boundaries to working, and offering more options in terms of work-life balance and of when and where to work.

However, certain types of platform work are associated with precarious working conditions, reflected in a lack of transparency and predictability of contractual arrangements, health and safety challenges and inadequate access to social protection.

The questions around employment status of people working through platforms impact their working conditions. Today most of these people are classified as self-employed. While the self-employed status may be a matter of free choice and preference for some, it may represent a lack of choice or pose problems for others, since people with this status

⁵Council Conclusions “The Future of Work: the European Union promoting the ILO Centenary Declaration”, October 2019; <https://data.consilium.europa.eu/doc/document/ST-12765-2019-INIT/en/pdf>.

⁶https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf.

⁷ EESC opinion: Fair work in the platform economy (Exploratory opinion at the request of the German presidency). Available [online](#).

⁸ CoR opinion: Platform work – local and regional regulatory challenges. Available [online](#).

may be subject to control and vulnerabilities similar to workers, albeit without the same degree of protection guaranteed to the latter.

The Commission has identified the following areas in which measures to tackle the challenges could be envisaged:

- employment status;
- working conditions;
- access to social protection⁹;
- access to collective representation and bargaining;
- cross-border dimension of platform work (including social security contributions and tax collection);
- algorithmic management;
- training and professional opportunities for people working through platforms.

The challenges are further described under Section 2.3.

Those challenges are not necessarily specific to platform work. The question of correct employment status classification, access to collective bargaining or access to social protection is relevant also to some self-employed and other types of non-standard forms of employment in the ‘traditional’ economy.

Precarious working conditions or limited access to training and professional opportunities may be shared with workers in other non-standard forms of work. Algorithmic management, a characteristic of platform work, is spreading to ‘traditional’ workplaces as well. Still, some types of platform work are characterised by several or all of these challenges. The cross-border nature of such types of platform work, together with the adaptability of platforms’ business models to regulatory frameworks and increasing enforcement difficulties, could further affect the often already precarious working conditions of people working through these platforms.

The COVID-19 crisis has aggravated the challenges faced by several people working through platforms. Vulnerabilities regarding, for example, access to social protection, precarious working conditions and income stability have become more visible in some types of platform work. The pandemic has also resulted in increased health and safety risks for some people working through platforms, notably the on-location labour platforms.

Some categories of people providing high-skilled services online have benefitted from the platform model, in that they were still able to work and find new clients during lockdowns. The opportunities offered by the platforms have in fact helped many traditional businesses stay afloat during the confinement. However, because of reduced opportunities in ‘traditional’ labour markets, there might be more labour supply for digital labour platforms, potentially creating pressure on earnings and working

⁹ Including for example maternity, paternity and parental leave as well as building up of social protection rights.

conditions.¹⁰ The latest European Economic Forecast¹¹ notes that despite the quick reversal so far of decline in employment, a protracted crisis could affect particularly workers, who are already in a vulnerable situation.

2.1. What is meant by platform work?

According to Eurofound (2018)¹², platform work is ‘a form of employment that uses an online platform to enable organisations or individuals to access other organisations or individuals to solve problems or to provide services in exchange for payment’. Eurofound states that the main characteristics of platform work are the following:

- Paid work is organised through an online platform;
- Three parties are involved: the online platform, the client and the worker;¹³
- The aim is to carry out specific tasks or solve specific problems;
- The work is contracted out;
- Jobs are broken down into tasks;¹⁴
- Services are provided on demand.

Some types of platform work bear similarities to other types of work characterised by a triangular relationship, such as temporary agency work. However, temporary agency work, as defined under the Temporary Agency Work Directive¹⁵, entails a clear employment relationship between the temporary worker and the temporary work agency, unlike platform work, in which many people are currently classified as self-employed. Temporary agency work is also anchored in business-to-business situations, as it only applies to user undertakings engaged in economic activities.

Platform work customers, on the other hand, are often private individuals. Although there have been cases in which platform workers were hired by digital labour platforms through a cooperative or a temporary-work agency-like entity¹⁶, this is not the norm.

Platform work, as referred to in this document, is also distinct from activities carried out on platforms, whereby services are exchanged without remuneration, or with a remuneration that only covers the cost of providing said services (e.g. car-sharing). The scope of this initiative also does not include activities such as trade of material or capital goods, non-commercial activities, social media, rental of immovable property, etc.

¹⁰ Distancing Bonus or Downscaling Loss? The Changing Livelihood of US Online Workers in Times of COVID-19. Fabian Stephany, Michael Dunn, Steve Sawyer, Vili Lehdonvirta. Available [here](#).

¹¹ European Economic Forecast. Winter 2021 (Interim). Institutional Paper 144, February 2021. Available [online](#).

¹² Eurofound (2018), Employment and working conditions of selected types of platform work, Publications Office of the European Union, Luxembourg. Available [online](#).

¹³ Although in some cases an organisation representing or employing the worker and/or a business producing a good to be delivered may also be involved as a fourth party.

¹⁴ This does not apply to some platform work, especially the on-demand on-location work.

¹⁵ Directive 2008/104/EC. Available [online](#).

¹⁶ For example, the 2016-2018 agreement between Deliveroo and Belgium. More on this [here](#).

While different typologies of platform work could be proposed¹⁷, a basic distinction is made between on-location labour platforms (like passenger transport, deliveries, domestic work) and online labour platforms (where the tasks are not location-dependent, e.g. encoding data, translation work, tagging pictures, IT or design projects). These two categories do not take into account the existing heterogeneity in skills levels, forms of matching and degrees of work precariousness.

Glossary

For the purpose of this document, the terms below have the following meaning:

- “**people working through platforms**” refers to individuals providing services intermediated with a greater or lesser extent of control via a digital labour platform, regardless of these people’s legal employment status (worker, self-employed or any third-category status¹⁸). The term ‘platform worker’ is only used as an equivalent when quoting official documents which contain such term;
- “**digital labour platform**”¹⁹ refers to a private internet-based company which intermediates with a greater or lesser extent of control on-demand services, requested by individual or corporate customers and provided directly or indirectly by individuals, regardless of whether such services are performed on-location or online;
- “**on-location labour platform**” refers to a digital labour platform which only or mostly intermediates services performed in the physical world, e.g. ride-hailing, food-delivery, household tasks (cleaning, plumbing, caring...)
- “**online labour platform**” refers to a digital labour platform which only or mostly intermediates services performed in the online world, e.g. AI-training, image tagging, design projects, translations and editing work, software development;
- “**platform work**” refers to the services provided on demand and for remuneration by people working through platforms, regardless of the type of digital labour platforms (on-location vs online) or the level of skills required;
- “**algorithmic management**” means the greater or lesser extent of control exerted by digital labour platforms through automated means over the assignment, performance, evaluation, ranking, review of, and other actions concerning, the services provided by people working through platforms;
- “**false self-employment**” occurs when a person is declared as self-employed while fulfilling the conditions characteristic of an employment relationship. False self-employed people are *de facto* employees of their contracting entity.

¹⁷ Eurofound (2018), Employment and working conditions of selected types of platform work, Publications Office of the European Union, Luxembourg. Available [online](#).

¹⁸ See also box on third-category status in section 2.3.

¹⁹ This document uses the term ‘platform’ interchangeably with ‘digital labour platform’.

2.2. Who are the people working through digital labour platforms?

According to surveys by the Commission's Joint Research Centre,²⁰ around 24 million people (or 11% of the EU's workforce) are estimated to have provided services via on-location or online labour platforms at least once. Out of these, 3 million (1.4%) do it as a main job, 9 million (4.1%) as a secondary source of income, almost 7 million (3.1%) as a marginal and more than 5 million (2.4%) as a sporadic source of income. Worldwide, the online labour platform market has been found to have grown by 30% over a period of two years.²¹ This exponential trend is expected to continue and the number of people working through platforms is expected to become more significant in the years ahead. One third of EU-based platform work is estimated to be cross-border. The platform economy, which is very diverse, encompasses well-known international companies, as well as a multitude of small national or local start-ups.

According to the same surveys, men account for two thirds of the workforce in the platform economy. People working through platforms are younger than 'traditional' workers, their average age being around 34, compared to 43 years in the 'traditional' economy. They are more likely to live in a household with children. Their educational attainments are higher than those of workers in the 'traditional' economy: more than half of people working through platforms are highly educated. They are also more likely to be born in another country (either in a different Member State or outside the European Union).

2.3 Challenges²²

While the phenomenon is relatively new, a number of Member States have started to develop policies targeted specifically at platform work. National measures have so far mostly targeted on-location platform work or even single sectors (e.g. passenger transport). Other initiatives are initiated by social partners; these have a different scope and use different instruments than the former.

When it comes to regulating platform work to improve the working conditions of the people involved, and ensure adequate social protection, important considerations also include the sustainability of public finances (taxation, social contributions), the

²⁰ This analysis is based on two waves of JRC surveys. First wave – JRC (2018). Platform workers in Europe. Evidence from the COLLEEM survey. Publications Office of the European Union, Luxembourg. Available [online](#). Second wave - JRC (2020). New evidence on platform workers in Europe. Results from the second COLLEEM survey. Publications Office of the European Union, Luxembourg.

²¹ Online Labour Index (Oxford University) based on the five largest EN-language platforms worldwide (representing 70% of the market by traffic).²² The gap analysis of national measures in this section is based on CEPS (2019). Study to gather evidence on the working conditions of platform workers. Final Report prepared for the European Commission. Available [online](#). It reflects the situation (including EU Member State composition) at the moment the study was elaborated.

²² The gap analysis of national measures in this section is based on CEPS (2019). Study to gather evidence on the working conditions of platform workers. Final Report prepared for the European Commission. Available [online](#). It reflects the situation (including EU Member State composition) at the moment the study was elaborated.

importance of maximising job creation and the innovation potential of the platform work model, or levelling the playing field with ‘traditional’ economic actors.

The following sub-sections look into key aspects of the different areas where platform work challenges are observed. An overview of existing national measures, where available, is also provided in dedicated boxes.

2.3.1. Employment status of people working through platforms

When addressing working conditions and social protection challenges for people working through platforms at national and EU levels, the core issue is the employment status. The self-employed status excludes people from the personal scope of much labour and social legislation at national and EU level as far as their platform activity is concerned.

Most digital labour platforms opt for terms and conditions that *de facto* categorise people offering services through them (or working for businesses offering services to or through them) as self-employed.²³ Digital labour platforms that offer employment contracts are much rarer, and even those might change their approach over time or opt for different solutions in different countries (or even regions/cities) where they are active. However, a majority of people offering services through platforms perceive themselves as employees of the platforms.²⁴ Moreover, an increasing number of judges in many countries have come to the conclusion that an employment relationship exists, based in particular on degree of control, notwithstanding the choice of contractual terms.²⁵

Some people offering services through platforms, notably in online platform work based on contests and in on-location platform work where the person working through platforms can choose clients and set own rates, use platform work to test their entrepreneurial skills or to expand their activity if they are already self-employed.²⁶

Flexibility over where and when to work is among the main motivations for people to work through platforms. The self-employment status may meet those motivations.²⁷ However, the actual degree of legal and economic dependence on digital labour platforms vary considerably according to business model (e.g. on-location labour platforms, and most notably those active in the passenger transport and delivery sectors, tend to exert more control over the matching of labour demand and supply than online labour platforms).²⁸

Indeed, the level of autonomy that a person enjoys in carrying out a service for a company has in some instances been crucial to identify a relationship of subordination or

²³ Eurofound report, “Platform work: Maximising the potential while safeguarding standards?” (2019), available [here](#).

²⁴ JRC (2020) report on Colleem 2nd wave survey (available [online](#)), based on 16 surveyed Member States.

²⁵ See some recent examples in the table “Court rulings and administrative decisions” in Section 3.

²⁶ Eurofound report, “Platform work: Maximising the potential while safeguarding standards?” (2019), available [here](#).

²⁷ JRC (2018) report on Colleem survey (available [here](#)).

²⁸ Eurofound report, “Employment and working conditions of selected types of platform work” (2019). Available [here](#).

lack thereof.²⁹ Some Member States (e.g. Spain) have used the economic dependency criterion to regulate platform work, approaching it as an employment relationship that is in between that of a worker and a self-employed person. However, the algorithms used by digital labour platforms to match and manage labour demand and supply may be concealing the real conditions under which platform work is performed, including the degree of the legal and economic dependency of the people working through platforms.

A blurred distinction between employers and clients as well as grey zones between worker and self-employed causes regulatory fragmentation and uncertainty over applicable rules. Examples of employment relationships falling within these grey zones include ‘own-account workers’, who depend on one or a small number of clients for their income and possibly receive direction regarding how the work is to be done.³⁰ In such cases, determining the specific employment status of people working through platforms is challenging.³¹

Employment status of people working through platforms³²

Across the EU, less than half of Member States have taken actions directly relevant to employment status. Most of these are particular to on-location platform work (e.g. passenger transport or delivery). Some countries are considering the introduction of a rebuttable presumption of employment (the Netherlands, Spain) as a means to reduce uncertainty, or placing the burden of proving that an employment relationship does not exist on the platform (Germany).

National courts have in many instances adapted the concept of worker as defined under national law, and in some countries this has led to a more elaborated set of criteria to be considered when establishing the status of worker. Administrators and inspectorates have also challenged the legality of the employment status of certain people working through platforms and issued decisions on employment status as it concerns labour or social law.

Still, most evidence suggests that substantial legal uncertainties on the employment status of people working through platforms remain within Member States and across the EU.

While EU law applies a binary distinction between worker and other statuses such as self-employed, in some countries (e.g. Germany, France, Italy, Spain and Portugal) one or more additional categories or subcategories of these two statuses exist for the purposes of national law. In other countries, there is an ongoing debate on introducing such third status for people working through platforms.^{33 34}

²⁹ Order of the Court of 22 April 2020, *B v Yodel Delivery Network Ltd*, C-692/19, EU:C:2020:288. Available [here](#).

³⁰ https://www.ilo.org/global/topics/non-standard-employment/WCMS_534833/lang--en/index.htm.

³¹ CEPS (2019). Study to gather evidence on the working conditions of platform workers. Final Report prepared for the European Commission. Available [online](#).

³² Ibid.

³³ <https://www.eurofound.europa.eu/data/platform-economy/dossiers/employment-status>.

Proponents of a third status have claimed that it could protect those in a situation of economic dependency without harming their potential desire for flexibility. They would also have argued that it could also clarify their legal situation and reduce uncertainties in case of litigation.

Opponents have underlined that it makes employment more precarious, erodes the protections offered by the employee status, and makes the existing labour and social law even more complex. In their views, the extra complexity connected to creating a third status could be detrimental to both workers and employers and might increase the risk of misclassification. They believe it could also cause ‘widespread arbitrage favoured by the existence of low-cost alternatives to employment’³⁵, with possible broad consequences for society, the economy and public finances.

Some people working through platforms in most of the EU thus provide their services while facing a lack of clarity on their employment status and on the applicability of labour and social protection legislation. Reduced ‘traditional’ labour market opportunities during the pandemic have exacerbated the challenges stemming from this uncertainty. To date, jurisprudence has not removed possible legal uncertainty of employment status for people working through platforms, or more broadly for people who are misclassified as self-employed. In parallel, Member States have also tried to improve the protection of genuine self-employed as they might also need to be further insured against social risks.

2.3.2. Working conditions - transparency and predictability, earnings, working time, and health and safety

The employment status of people working through platforms decisively influences their level of protection. **Transparency and predictability of working conditions** is a first issue. In some cases, people working through platforms may not receive a formal written statement, instead they have to accept the work-related terms and conditions stipulated by the digital labour platform, which may be obscure, complex and can be changed without any notice or explanation. Often, there is also no mechanism for redress or complaint handling.

Work-related contracts³⁶

Several Member States have taken actions related to contractual arrangements in platform work. Most of the measures are only relevant for people working through on-

³⁴ These categories which are created under national law do not affect the status of a worker under EU law for the purposes of the application of the EU acquis.

³⁵ Cherry, M. and Aloisi, A. (2017). "Dependent Contractors" In the Gig Economy: A Comparative Approach. Available [online](#).

³⁶ Ibid.

location labour platforms. Only a couple of top-down³⁷ actions directly address the terms and conditions of contracts.

Bottom-up³⁸ initiatives in a few Member States include collective agreements with clauses addressing the challenge related to contracts. In general, these actions seem very narrow in scope and have done little to effect systemic change. Safeguarding contractual freedom is, and continues to, be a key aspect in this context.

The challenges of **surveillance, direction and performance appraisal** refer to the extent to which the digital labour platform and/or client monitors and controls the person working through platforms, which can have a strong impact on autonomy and well-being. Additionally, surveillance, direction and performance appraisal techniques greatly rely on the use of technology, automated decision-making systems, apps and algorithms. This can also impact the direction, evaluations, or even penalties for the people working through platforms. Surveillance of people working through platforms raises also questions of privacy and protection of personal data; ensuring proportionality of the interferences with these fundamental rights provoked by the surveillance measures also constitutes a challenge.

These challenges are relevant for all people working through platforms, regardless of whether the person is considered employed or self-employed. The specific challenges related to algorithmic management are further described below.

Surveillance, direction and performance appraisal³⁹

Several Member States have taken or plan to take actions relevant to this challenge. Most measures concern the representation of people working through platforms, or the intention to give people working through platforms a say in the appraisal process. Existing and planned actions mostly target people working through on-location labour platforms.

Some bottom-up approaches to this challenge have also been taken in a few Member States. Most are concentrated in one Member State, where collective agreements and the protests of people working through platforms have addressed surveillance and rating mechanisms, among other issues.

Bottom-up actions mostly address the suspension of the account of a person working through a platform, requirements for reputational or ratings systems (fairness, transparency, portability, forbidding ratings from impacting working time, etc.), and the right to disconnect.

³⁷ ‘Top-down’ national measures refer to legislation, jurisprudence, or administrator and inspectorate actions.

³⁸ ‘Bottom-up’ national measures refer to actions from platforms, people working through platforms, and collective agreements.

³⁹ Ibid.

Earnings from most types of platform work are variable and, for most people working through platforms available data suggests it is an additional source of revenue rather than a primary income.⁴⁰ Earnings are particularly low in some types of on-location platform work where key characteristics of the work (matching, pricing) are determined by the platform, and in online micro-tasking⁴¹. In on-location platform work, where people working through platforms can set their own rates and largely determine their own working time, the earnings may be quite predictable. In online platform work where tasks are distributed through contests, earnings may be (relatively) good but may also be unpredictable.⁴²

Issues related to earnings in some types of platform work include being paid by the task rather than by the hour; platform work being outside the scope of minimum wage systems and social dialogue; and workers' low bargaining power.

In a triangular relationship between the digital labour platform, the people working through platforms and the client, the payment for a task sometimes depends on the acceptance of the work by the client. In this context, another problem could be related to limited possibilities to seek recourse if the client refuses to pay for an already performed task. People working through platforms who depend on this type of work are particularly affected and may face the threat of income insecurity. These issues are relevant for all people working through platforms, but are especially problematic for those who cannot set their own prices.⁴³

⁴⁰ <https://www.eurofound.europa.eu/data/platform-economy/dossiers/earnings>.

⁴¹ As defined for example by [Eurofound](#): Microwork (also known as “clickwork” or “microtasking,”) involves the outsourcing of small work tasks, via platforms, to workers in a global market through a process known as “crowdsourcing.”

⁴² Eurofound report, “Employment and working conditions of selected types of platform work” (2019). Available [here](#).

⁴³ CEPS (2019).

Earnings from platform work⁴⁴

Actions to address earnings from platform work have been taken in less than half of Member States and mostly concern food delivery couriers.

In addition, most of these initiatives are bottom-up. In most of these, people working through platforms or social partners negotiated with, or put pressure on, digital labour platforms regarding the price of services. Relevant measures include demonstrations by people working through platforms, collective agreements, and the creation of cooperatives or collectives.

For many people working for on-location labour platforms, negotiations with digital labour platforms, often with trade union involvement, are unresolved and ongoing. In most cases, digital labour platforms still set the external price of services. Even less progress is evident for people working through online labour platforms, which may in some cases be explained by earnings representing less of a challenge in some types of online platform work.

As regards **working time**⁴⁵, the flexibility to decide when to work is often one of the main reasons to engage in platform work. This flexibility may, however, become problematic for some people working through platforms where, for example, not all time spent on the digital labour platform is paid (e.g. waiting time) or when digital labour platforms nudge people to be available for work when the demand is high, and it may also compromise work-life balance.

In some cases, people may be punished for declining work. While working time issues are relevant for all people working through platforms, it appears mostly problematic for those who work on fixed schedules and who are required to commit to working certain shifts in advance – especially those carrying out lower-skilled, on-location tasks, such as food delivery.⁴⁶

Working time

Several Member States have reported actions to address challenges related to working time. Generally, measures address this challenge alongside employment status, representation, and earnings. Most actions concerning working time directly target food couriers.

National measures also include actions and collective agreements by people working through platforms. In fact, all concluded or pending collective agreements on platform work directly address working time.

Generally, actions pertaining to working time also concern remuneration and the ability to set one's own prices or negotiate better earnings. A frequent point of contention in

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ CEPS (2019).

protests staged by people working through platforms is that digital labour platforms pay per task rather than per hour.

The challenge has been addressed narrowly, for people working through specific platforms (almost exclusively food couriers), in a handful of countries.

General working-time issues or ambiguities, such as how to monitor working time or what constitutes working time (e.g. waiting for a task), are largely unresolved.⁴⁷

As regards **health and safety**, risks will depend on the type of work performed through digital labour platforms, as well how the work is organised. For example, the need to compete for tasks and the role of rating mechanisms may imply a rapid pace of work without breaks, which may in turn induce accidents and may have implications for example for road safety. The lack of appropriate training further increases the risk of accidents, especially in occupations that could be dangerous, such as construction and food delivery.

Online platform work, like many other fields of work involving primarily screen-based work, carries risks such as visual fatigue and musculoskeletal problems. Associated psycho-social risks include isolation, stress, information overload, burn-out, musculoskeletal disorders, cyber-bullying⁴⁸ and an increased risk of gender-based violence or harassment of people working through on-location platforms. All online platform work can increase the risk of stress through continuous evaluation and rating of performance, competitive mechanisms for allocating work, or uncertain payment.⁴⁹

Whether and how digital labour platforms provide transparent evaluations of health and safety risks or insurance against occupational accidents as part of their terms of service remains unclear. In this regard, self-employed people can face precariousness.

Improving the physical environment of people working through platforms mostly entails addressing health and safety risks and ensuring they have the required job equipment. While relevant for all people working through platforms, it has been especially noted as a challenge for lower-skilled people working through on-location labour platforms.

⁴⁷ On 21 January 2021, the European Parliament adopted a [resolution](#) with recommendations to the Commission on the right to disconnect (2019/2181(INL)). The resolution is concerned with the growing evidence of work-induced burnouts, psychosocial stress linked to increased telework and the blurring of boundaries between private and professional life. It calls on the Commission, among other things, to present a Union directive “on minimum standards and conditions to ensure that workers are able to exercise effectively their right to disconnect and to regulate the use of existing and new digital tools for work purposes”. As per established procedures, the Commission will reply within three months, outlining its next steps. Engagement with Social Partners and social dialogue will be key in addressing these challenges. As highlighted by the Parliament’s resolution, the Commission’s follow-up will have to take into account the 2020 Framework Agreement on Digitalisation and its foreseen 3-year implementation period.

⁴⁸ Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU - European Agency for Safety and Health at Work (2017). Available [online](#).

⁴⁹ Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU - European Agency for Safety and Health at Work – EU-OSHA (2017).

Addressing health and safety risks⁵⁰

National approaches include actions from inspectorates or administrative bodies, national or regional legislation, or jurisprudence in several Member States and bottom-up initiatives (actions by trade unions on the health and safety of people working through platforms, and collective agreements which have either been concluded or continue to be negotiated).

Generally at national level it seems that physical environment challenges are partially addressed for people working through on-location labour platforms, and not addressed for people working through online labour platforms.

Platform work highlights important considerations in terms of **gender equality**. Platform work seems to reproduce, rather than challenge, gender inequalities from the broader labour market, such as the gender pay gap and gender segregation in occupations or sectors.⁵¹

The self-employment status of people working through platforms has implications for access to family leaves, which particularly affects women who still largely carry a disproportionate burden of care responsibilities for children and dependent family members. Access to parental leave is also limited for the self-employed in a number of Member States.⁵²

Platform work can offer people with reduced mobility or disabilities flexible opportunities to participate in the labour market, such as working from home at their convenience. At the same time, precarious working conditions can further reinforce disparities if digital labour platforms are not designed to be accessible to people with disabilities.⁵³

2.3.3. Access to social protection

The employment status influences access to and level of protection for people working through platforms.

They may have limited **access to social protection** as the status of self-employed may provide more limited access to social protection in some branches (unemployment, parental leave, accidents at work, etc.). Moreover, platform work may yield low incomes or last for short durations. People working primarily or solely through platforms face particular challenges in meeting eligibility requirements and accumulating social security entitlements, due to more frequent career interruptions, changes in jobs or across statuses. Their exclusion from social security systems risks undermining the financial stability,

⁵⁰ CEPS (2019).

⁵¹ European Institute for Gender Equality (EIGE). Gender Equality Index 2020. Digitisation and the future of work. Available [online](#).

⁵² Gender Equality Index 2020. Digitalisation and the future of work. Available [online](#).

⁵³ The impact of digitalisation on labour market inclusion of people with disabilities. Available [online](#).

solidarity and redistributive role of social security systems⁵⁴, increasing the number of people seeking help from last resort safety nets, and decreasing the number of people contributing to social security systems.

Nevertheless, most people working through platforms are likely to be engaged in other professional activity outside of platform work, and/or may be active on a number of different digital labour platforms. They may therefore have rights (including in relation to social protection) stemming from another professional activity. However, platform work as a supplementary income, may not open up entitlements to social protection.

These challenges largely align with those experienced by non-standard workers and the self-employed. Policy measures to open up access to social protection have the potential to benefit a wider group of non-standard workers and self-employed as a result.

Access to social protection⁵⁵

National measures addressing this challenge include top-down (legislation adoption or modification and administrative decisions impacting the access to social protection of people working through platforms) and bottom-up approaches in 12 Member States (trade union challenges in courts, collective agreements for certain people working through platforms, the creation of digital labour platform cooperatives for the purposes of facilitating access to social protection).

Overall at national level, social protection is partially addressed for people working through on-location labour platforms, and not addressed for people working through online labour platforms.

2.3.4. Challenges related to algorithmic management

Platform work is characterised by a triangular relationship between the digital labour platform, the person working through platforms (and potentially its third-party representative or *de facto* employer) and the client or clients⁵⁶, linked by algorithmic intermediation and intervention, entailing varying degrees of control.

While **algorithmic management** can be a useful tool that helps achieve efficient solutions, it also raises new challenges as some decisions impacting the working lives of people are taken within so-called 'black boxes' which may make them difficult to understand, analyse and question. These algorithms can carry for example gender,

⁵⁴ For a wider discussion on challenges related to social security systems in the EU, see also Green Paper on Ageing. Fostering solidarity and responsibility between generations. COM (2021) 50 final. Available [online](#).

⁵⁵ CEPS (2019).

⁵⁶ In some cases there is even a "quadrangular" relationship – e.g. on food delivery labour platforms the relationship involves four parties: the digital labour platform, the client and two service providers: the restaurant and the rider.

ethnical or other bias. While formally not assuming the role of an employer, platforms may deploy algorithms for decisions impacting pay, performance assessment, to determine directions given for the provision of services and/or influence clients' ratings and reviews. Because these algorithms often lack human oversight, they may lead to unaccountable and potentially discriminatory decisions or to a lack of predictability in work relationships. The means of recourse and the burden of proof often lie on the people working through platforms, which is particularly problematic in this context.

In addition, research suggests that digital labour platforms have sometimes developed invasive, if subtle, forms of modern electronic monitoring; digital technologies to track workers location, activity, and output are an integral part of their system. New tools and strategies, such as ratings or gamification, can be used to motivate workers on a psychological level, for example by combining computer game techniques together with insights from behavioural economics to monitor and "nudge" them to increase their work effort.⁵⁷

The challenges related to algorithmic management remain to largely unaddressed. Intermediation in platform work can entail surveillance, performance appraisal, and non-transparent contracts, also due to non-comprehensive enforcement and scarce awareness among people working through platforms of the rights they enjoy under EU laws (e.g. GDPR, platform-to-business regulation). These features seem to be growing beyond platform work as well.⁵⁸

2.3.5. *Cross-border aspects*

Cross-border work or service provision, including through platforms, represent significant economic opportunities for citizens and the European economy at large. Within the EU, such cross-border activity builds on the fundamental freedoms underpinning the single market. However, the cross-border character of some digital labour platforms has implications for determining the choice of jurisdiction for the collection of taxes⁵⁹ and payment of social security contributions, and potentially poses challenges to the **application of EU law** relating to **freedom of movement** (of workers

⁵⁷ This could include for example automatically offering new jobs to drivers just before current jobs are completed, to reduce the chance that drivers will log off; reminding drivers how close they are to reaching earnings targets when they try to log off; or not revealing a passenger destination before drivers accept a new job. See Henderson, T., Swann, T., Stanford, J. (2018). Under The Employer's Eye: Electronic Monitoring & Surveillance in Australian Workplaces, Centre for Future Work at the Australia Institute. Available [online](#).

⁵⁸ CEPS (2019).

⁵⁹ In this regard, please see also the [recently agreed in Council proposal](#) on new tax transparency rules for digital platforms (i.e. DAC7 revision).

and of services), **jurisdiction and applicable law** (Brussels Ia⁶⁰ and Rome I⁶¹ regulations) and **social security coordination**.⁶²

The external dimension is also important. Research⁶³ suggests that online platform work is generating outsourcing to non-EU countries, especially those where average wages, but also the quality of working conditions, are much lower.

Determining which law is applicable to contracts of people engaged in platform work (particularly online platform work), as well as identifying which courts are competent to settle disputes between parties, may raise questions in cross-border contracts, both within the EU, but also with regard to non-EU countries. Under EU law⁶⁴, for employees, the choice of jurisdiction and/or law applicable to their individual employment contract cannot lead to them being deprived of protections that they would otherwise have in the absence of such choice in their contract.

Also, the applicability of the principle of non-discrimination of EU workers by reason of nationality may raise issues in cross border situations where the national worker of reference may not be easy to identify. If the qualification of these activities is done differently under the different legislations involved, the number of conflicts of EU competence rules is likely to grow.⁶⁵

If platform work were to grow substantially, and workers were to shift to it from more traditional forms of work, the amount of social contributions paid would shrink and this could impact the sustainability of national public budgets.⁶⁶ Such an impact could also be exacerbated given the potential geographical relocation of work carried out online, i.e. employers in high-income countries outsourcing to workers in lower-income countries,

⁶⁰ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1.

⁶¹ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

⁶² Regulation (EC) No 883/2004 on the coordination of social security systems. Available [online](#).

⁶³ Oxford Internet Institute, the Online Labour Index (OLI). Available [here](#). This [blog post](#) is particularly noteworthy.

⁶⁴ Article 23 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1–32 and Article 8(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

⁶⁵ Grega Strban (coordinator), Dolores Carrascosa Bermejo, Paul Schoukens, Ivana Vukorep (2020), Social security coordination and non-standard forms of employment and self-employment: Interrelation, challenges and prospects, report prepared for the European Commission. Available [online](#).

⁶⁶ The vulnerable position of platform workers extends beyond individual effects and concerns society's ability to retain the capacity, financial and otherwise, to take care of all its members. If a sizeable segment of the population does not pay social contributions or insurance and underpays on tax and pensions, this will eventually negatively impact the ability of national social protection systems to provide public goods and social benefits, while the demand for those benefits will increase. See Eurofound's working paper Digital Age. Platform work: types and implications for work and employment – literature review. Available [online](#).

which could lead to a reduction in wages working conditions in high-income countries. Despite providing new opportunities to all in the global economy, this trend could also challenge the collection of social protection contributions in high-income countries.

The cross-border dimension of platform work has led the Global Commission on the Future of Work established by the ILO to recommend that an international governance system for digital labour platforms be established to require said platforms (and their clients) to respect certain minimum rights and protections⁶⁷.

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

Platform work is sometimes described as a way to effectively match skills with tasks. There are nevertheless several challenges related to the **skills-matching, training and professional development** of people working through platforms.

People working through platforms appear to have little or no access to employer-provided training opportunities. Some of them are overqualified for their tasks and generally have very limited possibilities for career development. There are also considerable differences between people working through platforms executing low-skill tasks and those performing activities requiring higher skills. The latter group has more opportunities to apply and develop their skills, set their own prices and use platform work as a springboard to other occupations.⁶⁸

Apart from the skills required to perform the actual task, people working through platforms need to develop skills related to the use of the digital labour platform, i.e. operating the digital labour platform, self-marketing, reputation building, obtaining high-quality tasks, etc. New people working through platforms also face difficulties breaking into the market because they lack client feedback, which is the primary means of signalling skills and trustworthiness on some platform labour markets.

Over 80% of job-related training programmes in the EU Member States are employer-sponsored.⁶⁹ Moreover, many policies put forward by Member States to stimulate training provision target companies. As digital labour platforms are not considered employers, they have little incentive to invest in developing the skills of people working through them, as well as in their professional development beyond the skills necessary to operate the platform itself.

People working through platforms have little access to training due to their self-employed status, the fact they use platform work as a secondary source of income and often perform tasks on several digital labour platforms.

⁶⁷ “Work for a brighter future” Report of the Global Commission on the Future of Work, ILO 2019 https://www.ilo.org/global/publications/books/WCMS_662410/lang--en/index.htm.

⁶⁸ Ibid.

⁶⁹ Vera-Toscano, E., Urzì Brancati, C. Towards an improved adult learning monitoring framework. Revisiting the available data and indicators. Available [online](#).

Digital labour platforms often utilise reputation systems, which are non-transferrable and could contribute to enforced dependence (lock-in) of people working through platforms, thus limiting their possibility of skills development. More than half of people working through platforms surveyed in Cedefop's study⁷⁰ believe that they cannot switch to another digital labour platform without negatively impacting their income. This limits mobility between digital labour platforms and potentially also from platform work to traditional employment, possibly resulting in skills under-utilisation.

Public Employment Services (PES) may not be able to provide services such as matching and counselling to people working through platforms, since their labour market situations are unclear, and they may not meet all the conditionality related to job search. They may also be more difficult to contact than workers in the traditional economy.

The lack of clarity in labour market status also affects eligibility for various active labour market policies (ALMPs). This is an important issue, since platform work may be an employment opportunity for some hard-to-place categories of unemployed people.

2.3.7. *Collective representation and bargaining*

The employment status of people working through platforms has an influence on their access to collective bargaining.

For the purpose of competition law, all genuinely self-employed people are 'undertakings' and are in principle not allowed to conduct collective bargaining and conclude collective agreements concerning tariffs, as these may constitute 'cartels' under Article 101 TFEU. The case-law of the CJEU shows that false self-employed can be treated as employees and thus do not risk infringing competition law when bargaining collectively.⁷¹ However, also genuine solo self-employed might be in a situation of unbalanced negotiation power and competition law can be an obstacle for them to collectively bargain to improve their precarious situation.⁷²

At national level, there have been some efforts to give some room to collective bargaining for certain categories of self-employed. At EU level, on 30 June 2020 the Commission launched a process to ensure that EU competition rules do not stand in the way of collective bargaining for those solo self-employed who need it.⁷³ The objective of the initiative is to ensure that EU competition law does not stand in the way of initiatives to improve working conditions through collective agreements for solo self-employed where they choose to conclude such agreements, while guaranteeing that consumers and SMEs continue to benefit from competitive prices and innovative business models,

⁷⁰ [Developing and matching skills in the online platform economy: Findings on new forms of digital work and learning from Cedefop's CrowdLearn study \(2020\)](#).

⁷¹ See Judgment of 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden, C-413/13*, EU:C:2014:2411.

⁷² See e.g. Independent Workers and Industrial relations in Europe (2018); Collective Bargaining in Times of Platform Work (2020); as well as the Commission's Inception Impact Assessment in relation to its initiative "[Collective bargaining agreements for self-employed –scope of application of EU competition rules](#)".

⁷³ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1237.

including in the digital economy. An inception impact assessment was published in the beginning of January 2021.⁷⁴

The objective of the aforementioned Commission initiative is not to bring collective bargaining within the scope of the EU competition rules, but to remove the threat of EU competition law for certain solo self-employed when they choose to enter into collective bargaining agreement to improve their working conditions.

This consultation does not address the issue of potential impacts of EU competition law, notably prohibitions under Article 101(1) TFEU, on platform work.

Rather, with the present document, the Commission would like to consult the social partners on collective bargaining aspects in platform work that go beyond the competition law dimension. Taking due account of the autonomy of social partners and in line with national practices, such aspects could for example support social partners' coverage of platform work, facilitate contacts between people working through platforms, and promote social dialogue, also to cater to new technological developments and the impact these may have on the world of work.⁷⁵

Some trade unions have opened their membership to non-standard workers and the self-employed, and have started campaigning for the rights of people working through platforms. A few innovative collective agreements have also recently been signed between unions and digital platforms, but they remain very limited.

Social partners and social dialogue

Trade unions have opened to the self-employed in some Member States (for instance, Unionen in Sweden and IG Metall in Germany) or have established separate branches specifically for the self-employed (the Unión General de Trabajadores (UGT) in Spain, the Confederazione Italiana Sindacati Lavoratori (CISL) in Italy and the Federatie Nederlandse Vakbeweging (FNV) in the Netherlands). They have also set up specific branches or union-affiliated guilds for non-standard forms of work (Confederazione Generale Italiana del Lavoro (CGIL)).

Collective bargaining agreements were concluded between trade unions and platforms in recent years. In 2018, the Danish union 3F signed a collective agreement in the platform economy with Hilfr.dk, a platform for cleaning services in private homes. An agreement was also signed in April 2018 by the German-based company Delivery Hero, an online food-delivery service with the European Federation of Food, Agriculture and Tourism Trade (EFFAT) unions to establish a cross-border works council.

The website faircrowd.work is a cross-border union initiative aiming at supporting fair working conditions for platform work, by providing information and advice to platform

⁷⁴<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules>

⁷⁵ See in particular H.Johston and C.Land-Kazlauskas "Organizing on-demand: Representation, voice, and collective bargaining in the gig economy", ILO, 2019; https://www.ilo.org/wcmsp5/groups/public/-ed_protect/-travail/documents/publication/wcms_624286.pdf.

workers and in particular ratings of working conditions on different online platforms based on surveys of workers. It was launched by the German metal-worker union IG Metall, the Austrian union confederation, together with the Austrian Chamber of Labour, and the Swedish trade union Unionen.⁷⁶

At the end of January 2021, Danish trade union 3F and the employers' organisation Dansk Erhverv reached a national sectoral agreement for delivery riders valid from 2021 to 2023. The agreement covers Just Eat's riders, who will be guaranteed to receive information about the terms of employment, a base hourly wage, minimum and maximum working times, and other benefits.⁷⁷

The question of workers' involvement and information and consultation processes in platform work is also important. This is particularly relevant to help overcome the opacity of certain aspects of platform work, such as algorithmic management and the asymmetry of information that such remote and fragmented work organisation may entail.

2.4. Consequences on people and the economy

The complexities of platform work and the variation in the degree of regulation across European jurisdictions reduce the legal certainty for digital labour platforms. When platforms can be deemed to provide more than mere intermediation - there may be an increase in the risk of unfair competition faced by 'traditional' businesses. Although outsourcing is increasingly widespread among traditional businesses, they still have to pay substantial social contributions for the bulk of their workforce made of employees who are subject to various employment regulations. On the other hand, some types of digital labour platforms may avoid some of these costs by contracting self-employed people to carry out the very services that are inherent to their core business, potentially disguising actual subordination relationships. In view of this uneven playing field, 'traditional' businesses providing services in the same sectors as digital labour platforms may decide to compete with them by adopting similar business models.

At the macro-level, not addressing the issues faced by people working through platforms in the EU may have repercussions for European labour markets and societies aggravating labour market segmentation and inequalities and potentially leading to a diminished fiscal base for EU governments and thus reducing the effectiveness of social security systems.⁷⁸ Properly addressing these issues would also maximise the benefits of the digital economy, e.g. in terms of reducing barriers for people to become economically active and the resulting positive impact on tax base and social security systems.

⁷⁶ OECD (2019), Negotiating Our Way Up: Collective Bargaining in a Changing World of Work, OECD Publishing, Paris, <https://doi.org/10.1787/1fd2da34-en>.

⁷⁷ <https://www.etf-europe.org/3f-secures-ground-breaking-national-sectoral-agreement-for-delivery-riders/>

⁷⁸ Ogembo, D., and Lehdonvirta, V. (2020) Taxing Earnings from the Platform Economy: An EU Digital Single Window for Income Data? British Tax Review [2020](1): 82-101, Available [here](#).

However, the current baseline scenario is that of a European platform economy that is not able to grow at scale, mostly because of the lack of wide-ranging investments due to legal fragmentation in a number of domains (R&D, IP, taxation, labour law, regulation of services).⁷⁹ The potential future mismatch between EU customers' high demand for digital labour platforms' intermediated services, on the one hand, and the insufficient supply of said services by European companies, on the other, may favour the growth and market-entry of non-EU digital labour platforms

Improving working conditions in platform work could have a positive effect on employment as well as public finance and social security systems. More people could be motivated to seek work in this sector, thereby driving growth in the platform economy with positive spill over effects for both consumers and people working through platforms themselves. On the other hand, increasing the cost of platform work risks a reduction in hours worked through digital labour platforms. Overly restrictive regulation could have a stifling effect on innovation and job creation potential, especially for smaller-scale European scale-ups and start-ups and self-employed persons, depending on its scope.

Tackling working conditions on digital labour platforms operating in the EU could also have implications for the global platform economy. Online labour platforms faced with increased social costs may decide to favour cheaper, non-EU labour. Conversely, on-location labour platforms worldwide may harmonise some elements of their business practices on the basis of EU rules, for e.g. on contract transparency and algorithmic management, to ensure at-scale growth and reduce compliance costs. As with data protection rules, EU platform work regulation could help to achieve a worldwide upward convergence in the social rights of people working through platforms.

3. Existing EU law and instruments

Directive (EU) 2019/1152 *on Transparent and Predictable Working Conditions*⁸⁰ provides for measures to protect working conditions of people who work in non-standard and new working relationships. It guarantees minimum working standards to all workers, including those workers who are active in flexible and new working environments. It is important to note that Directive 2019/1152 does not cover self-employed persons and permits Member States to exclude from its scope workers with a very low number of monthly working hours.

Directive (EU) 2019/1158 *on Work-life balance for parents and carers*⁸¹ lays down minimum requirements related to parental, paternity and carers' leave and flexible work arrangements for parents or carers. It applies to all workers and does not cover the self-employed.

⁷⁹ In this regard, it is also worth noting the recent legislative proposals (such as the proposal for a Digital Services Act), which aim to ensure a better functioning of the digital single market in the EU.

⁸⁰ Directive (EU) 2019/1152. Available [online](#).

⁸¹ Directive (EU) 2019/1158. Available [online](#).

The three EU Directives concerned with non-standard work address *part-time work*⁸², *fixed-term work*⁸³ and *temporary agency work*⁸⁴, all envisaging equal treatment in working conditions between workers (employees) employed under an atypical employment contract and comparable workers (employees) engaged under a ‘standard’ employment contract. Self-employed people working through platforms thus fall outside the scope of the non-standard work directives that apply only to ‘workers’.

The *Working Time Directive*⁸⁵ lays down some minimum requirements for the organisation of working time and defines concepts such as ‘working time’ and ‘rest periods’. According to consistent interpretations by the CJEU, the determining factor for classifying ‘working time’ is the requirement that the worker is physically present at the place determined by the employer and that they are available to the employer to provide the appropriate services immediately, if needed.⁸⁶ People working through platforms can often choose when they work and how much time they want to spend working, which raises questions as to the applicability of the Working Time Directive when platform work is concerned.⁸⁷ The Directive only applies to workers.

The *Occupational Health and Safety (OSH) Framework Directive*⁸⁸ lays down the main principles for encouraging improvements in the health and safety of workers at work. It guarantees minimum health and safety requirements throughout Europe, with Member States allowed to maintain or establish more stringent measures. The Directive does not cover the self-employed.

The *Council recommendation of 18 February 2003* on improving the protection of the health and safety at work of the self-employed⁸⁹ promotes the prevention of occupational accidents and diseases among the self-employed, measures for promoting health and safety and surveillance, including access to training in the area of health and safety.

The *Council Recommendation on Access to Social Protection*⁹⁰ encourages Member States to ensure that both workers and the self-employed have access to effective and adequate social protection.

The three directives on *anti-discrimination* and *equal treatment* lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation,⁹¹ sex⁹² and racial or ethnic origin⁹³, with a view to putting into

⁸² Council Directive 97/81/EC of 15 December 1997. Available [online](#).

⁸³ Council Directive 1999/70/EC of 28 June 1999. Available [online](#).

⁸⁴ Directive 2008/104/EC. Available [online](#).

⁸⁵ Directive 2003/88/EC. Available [online](#).

⁸⁶ Interpretative Communication on Directive 2003/88/EC, C/2017/2601, OJ C 165, 24.5.2017, p. 16s.

⁸⁷ See for instance Order of 22 April 2020, *B v Yodel Delivery Network Ltd*, [C-692/19](#), EU:C:2020:288.

⁸⁸ Council Directive 89/391/EEC of 12 June 1989. Available [online](#).

⁸⁹ Council Recommendation 2003/134/EC. Available [online](#).

⁹⁰ Council Recommendation (2019/C 387/01) of 8 November 2019. Available [online](#).

⁹¹ Council Directive 2000/78/EC, OJ L 303, 2.12.2000, p. 16–22. Available [online](#).

⁹² Directive 2006/54/EC, OJ L 204, 26.7.2006, p. 23–36. Available [online](#).

⁹³ Council Directive 2000/43/EC of 29 June 2000. Available [online](#).

effect in the Member States the principle of equal treatment. They apply to conditions for access to both employment and self-employment.

The 2020 Employment Guidelines⁹⁴ reckoned that '*Employment relationships that lead to precarious working conditions should be prevented, including in the case of platform workers and by fighting the abuse of atypical contracts.*'

Regulation (EU) 2019/1150⁹⁵ *on promoting fairness and transparency for business users of online intermediation services* (the so-called 'Platform-to-Business' or 'P2B' regulation) aims to ensure that self-employed 'business users' of an online platform's intermediation services are treated in a transparent and fair way and that they have access to effective redress in the event of disputes. It has a review clause concerning the potential misclassification of 'business users' as self-employed. The regulation only covers self-employed 'business users' engaged in direct transactions with customers.⁹⁶

The *General Data Protection Regulation*⁹⁷ lays down rules for the protection of natural persons with regard to the processing of personal data. It provides people working through platforms a range of rights regarding their personal data. Such rights include, among others, the right to access, including the right to obtain a copy of the personal data undergoing processing; the right to have individual's data corrected or completed if it is inaccurate or incomplete; the right to restrict the processing of individual's data under certain conditions; the right to data portability; and the right not to be subject to automated decisions without human involvement, including profiling, which produces legal effects concerning the individual or similarly significantly affects him or her.

The *Late Payment Directive*⁹⁸ regulates payment terms in commercial transactions, lays down penalties in case of delayed or non-payment and addresses unfair payment provisions and practices. The Directive applies to any commercial transaction, intended as the supply of goods and/or provision of services in exchange of payment, either between public authorities and businesses (G2B) or between businesses (B2B), including self-employed.

Existing EU-level instruments only partially impact the challenges posed by platform work, notably due to the question of employment status. The issue of surveillance, direction and performance appraisal, most notably as related to algorithmic management, is an area where existing EU labour law also does not provide specific protection. The self-employed are outside of the scope of most of the instruments.

⁹⁴ Council Decision (EU) 2020/1512, OJ L 344, 19.10.2020, p. 22–28.

⁹⁵ Regulation (EU) 2019/1150. Available [online](#).

⁹⁶ Judgment of 10 April 2018, *Criminal proceedings against Uber France*, [C-320-16](#), EU:C:2018:221 confirmed the earlier Judgment of 20 December 2017, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL*, [C-434/15](#), EU:C:2017:981 whereby the Court clarified that the main component of the services offered by UberPOP should be considered a service in the field of transport, not in the field of online intermediation.

⁹⁷ Regulation (EU) 2016/679. Available [online](#).

⁹⁸ Directive (EU) 2011/7. Available [online](#).

Court rulings and administrative decisions

Many national cases concern the classification of the relationship as an employment relationship or as services offered through digital labour platforms. Concerning employment status, the courts have reached various conclusions. They may consider different criteria or emphasise multiple criteria differently (for example the autonomy of the people working through platforms, who bear costs associated with work, or experience economic or technical dependence). Overall, the jurisprudence is not yet sufficiently settled on this issue for us to draw clear conclusions from it.

Recent national rulings

Spain's Supreme Court has ruled that riders working for Glovo (a digital food-delivery labour platform) are employees.⁹⁹ In France, the Cassation Court has ruled that the same was true for Uber's drivers.¹⁰⁰

The French Constitutional Council has also deemed illegal a provision in the government's law on mobility that would have prevented lower courts from re-classifying' the self-employed status of people working through platforms.¹⁰¹

In Italy, a wide-ranging investigation into the working conditions of people working through platforms has led to the executives of one digital labour platform to be accused of 'exploitation and modern slavery', and a digital labour platform to be put into 'judiciary administration'.¹⁰²

Denmark's Competition Authority has recently accepted commitments by a digital labour platform that were considered to likely facilitate minimum fee arrangements between self-employed cleaners.¹⁰³

In Belgium, in 2019, a Brussels court considered UberX drivers to be self-employed¹⁰⁴.

In the field of passenger transport, courts have also considered whether services provided by platforms were in fact taxi or private hire vehicle services, thereby questioning whether such digital labour platforms should not comply with local transport rules. In many cases, the courts decided that these platform services were in fact taxi or private hire vehicle services, albeit non-compliant with sector-specific regulations.¹⁰⁵

ECJ rulings

⁹⁹ Ruling of 25 September 2020, *Glovoapp23 SL* 805/2020, STS 2924/2020, [ES:TS:2020:2924](#).

¹⁰⁰ Ruling of 4 March 2020, *Mr X v Uber France and Uber BV*, No. 374 FP-P+B+R+I; Appeal No. S 19-13.316, [FR:CCAS:2020:SO00374](#)

¹⁰¹ Decision of 20 December 2019, *Loi d'orientation des mobilités*, [2019-794](#), FR : CC : 2019 : 2019.794.DC.

¹⁰² Decree of 28 May 2020, *Uber Italy S.r.l.*, [9/2020](#).

¹⁰³ Danish Competition Authority decision of 26 August 2020. Available [here](#).

¹⁰⁴ Judgment of 16 January 2019, [A/18/02920](#), *Tribunal de l'entreprise francophone de Bruxelles*

¹⁰⁵ BE, BG, DK, FI, NL, SK, and SE competent courts have ruled in such cases. Source: CEPS (2019).

The jurisprudence of the CJEU remains limited with regard to the labour dimension of digital labour platforms. In December 2017, the CJEU ruled¹⁰⁶ that services such as those provided by UberPop, must be classified as ‘a service in the field of transport’ within the meaning of EU law, given they are “inherently linked” to the underlying transport service and that UberPop exercised “decisive influence” over the conditions under which the transport services were provided. In another ruling, the Court found that Star Taxi App’s passenger transport service must be classified as “information society services”.¹⁰⁷ These rulings shed light on the importance, from a judicial perspective, of the control exerted by a digital labour platform over the provision of the service it nominally intermediates, for determining whether said digital labour platform should be considered as a provider of an underlying service and therefore be subject to a sector-specific regulations¹⁰⁸.

4. EU added value

EU action would aim to improve working conditions for people working through platforms in the Union. The added value of EU action is to help avoid a patchwork of regulatory requirements across Member States, which could result in diverging working conditions and an uneven playing field. Actions by Member States alone may increase fragmentation.

The cross-border nature of some platform work makes a common EU approach most appropriate. Digital labour platforms are internet-based and, in many cases, transnational. Platform work is often performed cross-border. In view of this, action at EU level is the most appropriate means to ensure adequate protection of people working through platforms and avoid fragmentation of the single market.

National regulatory differences in platform work may prevent the potential of digital labour platforms operating across borders within the EU from being fully explored. Digital labour platforms operating in different countries are currently subject to different regulations. The lack of a comprehensive approach, clarity and guidance on applicable rules might increase their administrative burden and stifle innovation. This may pose a barrier to scaling up European-based platforms and thus hinder their international competitiveness and their potential to lead by example. In the absence of regulatory solutions to the challenges of platform work in some Member States, some national courts have taken the lead in providing case-by-case solutions, direction of which has not necessarily been consistent across Member States, or even within the same Member State. On the other hand, possible new regulatory or non-regulatory approaches must be carefully considered in order not to have a stifling effect on the employment, competitiveness and innovation potential of platform work.

¹⁰⁶ Judgment of 20 December 2017, *Asociación Profesional Élite Taxi v Uber Systems Spain SL*, [C-434/15](#), EU:C:2017:981.

¹⁰⁷ Judgment of 3 December 2020, *Star Taxi App SRL v Unitatea Administrativ Teritorială Municipiul București prin Primar General, Consiliul General al Municipiului București*, [C-62/19](#), EU:C:2020:980.

¹⁰⁸ For further information on CJEU clarifications regarding how the ‘worker’ status is defined in EU jurisprudence, see Judgment of 22 April 2020, *B v Yodel Delivery Network Ltd*, [C-692/19](#), EU:C:2020:288.

Addressing working conditions in platform work may create a more level playing field in the single market. Less regulation in the platform economy, as compared to the corresponding sectors of the ‘traditional’ economy, can lead to unfair competition or an impression that this is the case. EU-level action to improve working conditions in platform work may help create a more level playing field between digital labour platforms and other forms of business.

European leadership in the digital economy can help us maintain our standards of living and support market innovation and entrepreneurship. The initiative can boost Europe’s position in the digital economy. It would help create a level playing field in this activity across the world. It will build upon the ongoing digital initiatives, notably the Digital Services Act, and the General Data Protection Regulation, a global point of reference on data protection.

5. Actions under consideration

The challenges outlined in this document affect all Member States. The Commission takes the view that an EU initiative to improve working conditions of people working through platforms could be appropriate, given the issues set out in this document. EU action can support Member States to ensure fair conditions and opportunities in platform work regarding employment, working conditions, and social protection. Fair working conditions and opportunities for all, irrespective of any personal characteristics, may ensure that platform work does not contribute to new divides or to amplifying inequalities. The initiative could support the implementation of the principles contained in the European Pillar of Social Rights, by pursuing the objectives below. Possible options for action are described under each objective:

- **Addressing misclassification of employment status in platform work** - EU action to ensure correct classification at appropriate level could be considered to improve clarity and predictability for authorities, businesses and workers (options to be considered could include rebuttable presumption of employment status or reversal of burden of proof). EU action could also aim at facilitating the enforcement of existing labour legislation and strengthening controls and inspections of digital labour platforms, to detect and pursue possible cases of misclassification. Access to information on people working through platforms for competent authorities could also ensure better enforcement of rights and obligations. Access to timely and effective out-of-court dispute-resolution mechanisms for people working through platforms could be ensured. EU action addressing the potential misclassification of the employment status would impact several of the objectives listed below.
- **Ensuring fair working conditions for all** - EU action could aim at ensuring that information on expected pay and duration of an activity is available to people working through platforms in advance of accepting each task. The information provided should be accessible to all, including disadvantaged groups. Actions could aim at ensuring protection from unfair dismissal or deactivation from the platform and from non-payment for properly completed tasks, in case of termination of contract. Rights could be defined regarding currently unpaid search

or waiting time. To preserve the health and safety of people working through platforms, overall working time might need to be monitored, in line with minimum standards applicable throughout the EU. The injury and disease prevention, as well as health and safety protection of people working through platforms against occupational risks could be ensured. Improved and accessible information on entitlements and obligations for people working through platforms could be provided.

- **Guaranteeing protection against economic and social risks for people working through platforms** - Building on the Council Recommendation on Access to social protection for workers and the self-employed, actions could be taken to further improve the access to social protection of people working through platforms. Permanent solutions could be considered, building on the crisis measures granting access to unemployment and sickness benefits schemes to the self-employed and some groups of non-standard workers during the pandemic, while ensuring that digital labour platforms also contribute to the schemes.
- **Promoting an approach to automated decision-making in platform work based on transparency, human oversight and accountability and full respect of data protection rules** - Building on existing and proposed legislation, a common approach could be developed on the way algorithms impact and manage working relationships, including self-employed contractors. An objective could be to ensure more effective redress mechanisms for workers to challenge algorithmic management decisions and improve transparency and predictability of automated decision-making, including by leveraging existing provisions such as Article 22 GDPR. Human agency in, and oversight of, automated decision-making processes concerning working relationships could be promoted, notably to address the risk of potentially discriminatory decisions.
- **Addressing access to collective bargaining and to collective rights** - Social partners' coverage of platform work could be supported and social dialogue promoted. Opportunities for people working through platforms to discuss, share experiences and opinions, could be established and actively encouraged, including the rating of digital labour platforms. The right to be informed, consulted and provide opinions as part of the digital labour platform's decision-making process could be considered for people working through platforms, including possible representation and collective defence of the interests of workers at the appropriate platform decision-making level. Unionisation among people working through platforms could be encouraged, as well as the participation of platforms in employers' organisations.
- **Promoting cross-border fairness in platform work** - Interpretation and guidance regarding existing EU legislation could be elaborated regarding the implications of cross-border platform work. These could enhance legal transparency and certainty and ensure concrete access to the relevant existing rights for people engaged in cross-border platform work within the EU, notably

with regard to social security coordination. Awareness of EU rules regarding jurisdiction and applicable law could also be promoted.

- **Equipping people working through platforms with the tools to steer their career and have access to professional development** - Reputational assets could be made transferable. Personal data portability as provided in Article 20 of the GDPR must be ensured. Platforms could be encouraged to develop interoperable formats that enable data portability. People working through platforms could be informed about the right to data portability. Irrespective of employment status, people working through platforms should benefit from support for training and upskilling.

An EU initiative would aim at these goals, while safeguarding both access to employment and incentives to innovate and reap the benefits of digitalisation. An EU initiative would also take into account the effects on job creation and competitiveness, including for small businesses (SMEs), as well as the situation of genuinely self-employed people. Possible actions would be devised in full compliance with applicable single market legislation as well as respecting contractual freedom.

Several options could be envisaged for the personal scope of the EU initiative. It could cover all people working through digital labour platforms, regardless of employment status, or be limited to workers (including those people with a misclassified employment status). An EU initiative could cover all digital labour platforms active in the EU, or focus on certain types of platform work or certain types of platform business models.

A range of EU instruments could be considered in the preparation of such an EU initiative. Legislative instruments could be based on Art. 153 TFEU. Non-legislative instruments could include, for example, monitoring in the framework of the European Semester, guidance for ensuring fair platform work or reinforced mutual learning between Member States. A package, combining several of these instruments, may be considered to address the issues at stake, while taking into account the wide diversity of national circumstances as well as the need to respect the subsidiarity and proportionality principles of the EU.

6. Aim of the consultation

Under Article 154(2) TFEU, before submitting proposals in the social policy field, the Commission must consult management and labour on the need for and possible direction of EU action.

The Commission will examine the views expressed by the social partners. If, having considered those views, the Commission concludes that there is a need for action at EU level, it will launch a second-stage consultation of the social partners on the envisaged content of any proposal for action, in accordance with Article 154(3) TFEU. It will also provide an analytical document on the consequences of the current situation and the likely impacts of potential EU action.

The questions on which the Commission would be grateful for the views of the social partners at this first stage are the following:

- I. Do you consider that the European Commission has correctly and sufficiently identified the issues and the possible areas for EU action?
- II. Do you consider that EU action is needed to effectively address the identified issues and achieve the objectives presented?
- III. 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?
- IV. 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?
- V. Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation?