

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

The issue of platform works needs to be seen in the wider context of the reflections about the future of work, including in its atypical forms, as underlined by the ILO in its recent publications. The challenge to be tackled is represented by the need to ensure that all works, included platform ones, access to universal labor rights (and access to social protection and collective bargaining). This holds even truer in the current context, which demonstrates the limits of the platform work model and the precariousness of some labour arrangements not allowing for adequate sickness or “quarantine” leaves. As rightly recognized in the consultation document by the European Commission, many technological design decisions have repercussions on working arrangements, social security models and economic sustainability. This includes the questions on how to ensure the financing of our welfare systems (and more in general, the effectiveness of our current models for taxation of business and economic activity) or the role of artificial intelligence and the place algorithm-based mechanisms for surveillance should have in our societies.

A short economic analysis of platform work can be helpful to better frame the issue at stake. For platform service providers, there is a risk of economic dependency on intermediation platforms (more prominent in case platform work represents the main source of income). This situation can evolve further into a condition of abuse of dominance, creating unfair competition and hampering the entry of newcomers on the market. Such dominance can be further exacerbated if we take into due account the additional unfair “advantage” platforms enjoy: the absence of structural investment duties, coupled with virtually no of entrepreneurial “risk” being run in the exercise of the intermediation function.

While the managerial population in the EU is shrinking, it is important to highlight that the growth in the platform economy – one of the many aspects of the new world of work - requires solid responsibilities, accountability and highly professional staff. Issues such as surveillance of workers, algorithmic discrimination or even precarious labour model can be prevented by also strengthening the professional ethos of the managers and their

systematical involvement in the development of the platform business model, including by their structural implication in social dialogue. For this reason, we would appreciate that a deeper analysis of the role and contribution of managers be made by the European Commission, in the framework of the different exchanges on the present issue (as well as in the wider reflection on the future of work). In its current wording, we esteem that the consultation document misses on this aspect.

For CEC, the platform economy could unleash great potential, if aligned to the European Pillar of Social rights, the EU Green Deal objectives and fair taxation principles. Today however, the rapid and little-regulated development of platforms causes challenges for some of the features of the European social model. Better incentives are needed to cultivate a more sustainable and innovative leadership culture to create a platform economy in the interest of the EU's long-term resilience, sustainable employment, and distributed innovation. To develop the platform economy within a stakeholder approach, the participation of social partners at all levels seems crucial. What policy makers need to understand is that the development of the platform economy is more about concrete design than it is about abstract legal principles. The solutions must work hands-on for both workers and managers.

1. Do you consider that the European Commission has correctly and sufficiently identified the issues and the possible areas for EU action?

CEC considers that the paper presented by the European Commission correctly frames the main aspects and consequences of the growth of platform work. We have particularly appreciated the "systemic" observation that an intervention in the field would help not only improve the working conditions of those who are involved in it, but also "reinforce" the supply-side of the market, supporting the fair development of strong market actors. This would offer the possibility to counter "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" (p. 22 of the supporting document), with significant advantages also in terms of "strategic" independence of Europe in a sector with clear implications on the further use of digital technologies. Also, the attention brought to skills development seems very relevant. We will delve into both points further in this text.

The document also provides in section 2.2 a short description of the specificities of those who are active on platforms. As this introduction is very important and useful to better frame this phenomenon from a social point of view, more detail should have probably been

provided as to the percentage represented by the most vulnerable (the youth, the low-skilled, sometimes even the sans-papiers), why not correlating this information with other indicators of social distress (like for instance access to decent housing, social integration for the foreigners, etc.). So, if to a certain extent the fact of “working” on a platform can represent to some a quickly accessible entry-door into the labour market, it is even more important and necessary that the working conditions that apply are not such that risk worsening the conditions of marginality in which these categories of workers are.

2. Do you consider that EU action is needed to effectively address the identified issues and achieve the objectives presented?

We believe that EU action is needed in this domain. First and foremost, we see how the reflection on the conditions for platform work fits into the overall objective of ensuring fair working conditions to all, as defined in the Chapter 2 of the Pillar of Social Rights. Additionally, the diversity of the measures adopted by Member States to regulate this field, and the relatively high dependency on courts’ judgements to define the criteria and rules applying to handling platform work call for a EU initiative that sets common standards and minimum protection requirement, while safeguarding the autonomy and specificities of each Member State.

EU action is also required to ensure from an early stage the sustainability of the sector of digital platforming (or, to use the words of the document, the “sustainable growth of the platform economy”, with a meaning of sustainability that goes beyond the “simple” environmental one to include its continuity, as well as the respect of social standards). Digital platforming has a potential of growth and increase of its economic importance, and Europe would have a distinct interest to facilitate the emergency of a European sovereignty in the digital economy that respects higher protection standards.

3. 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?

Without entering a potentially delicate discussion about the legal interpretation of the concept of worker (in the overall context where a unique definition applying at EU level is missing, also due to a clear opposition from several EU countries), CEC considers it relevant to shift the discussion from the “formal” aspects related to classification of employment status to focus on the concreteness of the “object” of the action. Following a train of argumentation defended in past consultations and positions, CEC reckons that the entitlement to the enjoyment of rights (in this case, fair working conditions and all the

“objectives” referred to in section 5 of the document) should not depend on the nature of the employment condition of the individual. The very distinction between “workers” or “self-employed” is, when it comes to analyzing what consequences it can have in terms of the coverage workers can get, less and less relevant as it is no longer compatible with a labour market that evolves so rapidly and where there can be frequent changes in the employment status of people.

In the light of the above, CEC considers that the envisaged action of the European Commission should concern all types of platforms and all people working on platforms, irrespective of their formal employment status. The level of protection individuals enjoy should not depend on the sector of activity; we trust in the initiative of the EC to suggest ways to bring more clarity, while respecting Member States’ autonomy and prerogatives in the field.

4. 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?

Yes, the objectives listed in Section 5 offer a comprehensive overview of actions needed. From a transversal, horizontal perspective, the objectives mentioned should all contribute to the fundamental question of how they can support overall job quality and make access to collective bargaining and social security easier. Better regulatory, fiscal and cultural incentives are needed to ensure workers of platforms can participate in social dialogue, invest in trainings and are able to benefit from healthy working conditions.

Looking more in details to the specific objectives, we would like to underline the following aspects:

- a) We appreciate the accent put on the issue of training and skills-advancement: CEC has long defended the importance of continuous training, re-skilling and upskilling of all workers (including the highly skilled like managers) as the main factor to ensure employability and the overall capacity of labour markets to adapt continuously to the changing world of work (especially in the current context of the post-Covid economic adjustment). The document correctly hints at the “weight” of employer-sponsored training and upskilling schemes; this reality of over-dependance should call for a reflection on how to counter it via better functioning PESs and a move towards less compartmentalized access to career counseling and other ALMPs tools. In this respect, we see many synergies with the ongoing debate

about the positive effects of Individual Training/Learning Accounts, which can represent an effective solution to modernize and adapt the functioning of professional training to the new realities of a fast-changing world of work.

b) The action towards mitigating the negative consequences of poor algorithm design and “automated decision-making” is fundamental and spans well beyond the application on platform work to concern potentially every aspect of our social life. The “human-in-control” approach is a principle that CEC has for a long time been campaigning for (with a specific reference to responsibility for its design and providing the right training to those – managers – who have to bear this responsibility). This is why CEC invites the European Commission to include in its initiative the human intervention or “human-in-control principle in the automated decision-taking processes relating to labour conditions”. The responsibility and legal accountability of managers has to be a key principle in this respect. And the scope of automated decision-making on workers’ performance is not a prerogative of digital platforms alone: in this respect, the work done in the context of this proposal can be an inspiration for any future possible initiative on the implications of digital technologies on privacy in the professional field. Hence, we are confident that these reflections will also feed and serve as a basis for the upcoming initiative on the uptake of trustworthy AI use in the EU economy, announced for Q2 this year. A clear reference to AI and its impacts on the world of work is made in the framework agreement of EU social partners on digitalization, adopted in June 2020.

c) The reference to the support and promotion of collective bargaining and the diffusion of social dialogue (including the development of unionization) is very welcome, and we support it fully. As briefly mentioned above, platform work creates unfair competition conditions; in order to help establishing a level playing field, developing social dialogue instruments (in a wider global economic and social model) for platform workers is necessary. Such global social model must include common social dialogue rules, based on effective solutions derived from employment law and “specific” provisions, adapted to the reality of platform workers. To animate such dialogue, CEC supports the establishment of a system of collective bargaining, adding a layer of intermediation between platforms and workers ensured by trained (and protected) workers’ representatives. This objective is to be contextualized in the wider reflection about how social dialogue should evolve in the future to keep up with the new realities of the world of work, including the necessity to ensure full representation to new categories of workers (and employers, too). Here too, we are glad to see the commitment of the European Commission to

continue on the path of reinforcing social dialogue and the launch of an initiative in this direction, foreseen in 2022.

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

As a European social partner organization, representing managers in the European social dialogue, CEC European Managers is always ready and committed to delivering its institutional responsibilities.