

Ceemet response to first phase consultation of social partners on addressing the challenges related to working conditions in platform work

Key messages

- Platform work is not a sector-specific issue as the MET industries are practically not impacted by platform work for the time being.
- The challenges related to working conditions in platform work should not be addressed at EU level via binding legislation but should be decided and taken at national level, in line with national regulations and traditions that take into account the diversity of national labour markets and industrial relations systems, including the role of social partners.
- Platform work is a new way of working and of organising work but does not constitute a legal form of work as such: the diversity of contractual arrangements that it covers is already regulated at national level and EU level. The EU cannot define the employment status in platform work, nor introduce any other category or subcategory at EU level, as this is typically a national competence
- The proper enforcement and implementation of existing rules is of high importance to address the challenges related to working conditions in platform work.
- The EU has a role to play in fostering the exchange of information and best practices on how Member States deal with the legal uncertainties and challenges linked to certain contractual arrangements in platform work.
- Ceemet does not see the need for developing a common approach on the way algorithms impact and manage working relationships, including self-employed contractors since according to the action plan on the EPSR the Commission will issue a proposal for a regulation for the uptake of trustworthy artificial intelligence (AI) in the EU economy, including in the workplace and for all forms of work.
- When addressing the collective representation and bargaining of a person working through a platform, a distinction must be made if this person is considered an employee or a self-employed.
- It is important to explore different ways in which people working and/or providing services through platforms could access training in order to upskill and re-skill in line with national practices.

Preliminary remarks

Platform work is a growing phenomenon and the use of platform work has accelerated with the outbreak of the COVID-19 pandemic. As laid down in the consultation document, platform work creates new opportunities for workers, self-employed, business and customers, including new jobs and income for those who have difficulties in accessing the traditional labour markets, increased flexibility and autonomy etc.

However, though platform work creates opportunities, it also comes along with challenges that need to be addressed at the adequate level.

Ceemet and its member associations agree with the general objective of addressing the challenges related to “working conditions in platform work”, but would also underline that, in many occasions, these challenges are not specific to platform work.

Indeed, platform work can cover an important variety of work arrangements such as self-employment or employment contract, sometimes fixed-term but not always, generally part-

time but this also can vary. Platform work is a new way of working and of organising work but does not constitute a legal form of work as such: the diversity of contractual arrangements that it covers is already regulated, in one way or the other, at national level and EU level. Existing EU legislation¹ such as the three directives on non-standard work (part-time work, fixed-term work and temporary agency work), the Directive on transparent and predictable working conditions, the Recommendation on access to social protection, the General Data Protection Regulation (GDPR) rules, can also provide with solutions to most of the challenges mentioned in the consultation document.

Moreover, the Commission is currently carrying out a consultation on the clarification of EU competition rules on collective representation of self-employed and will soon release a Regulation on the uptake of AI including on the workplace and for all forms of work that can also serve to address challenges related to working conditions in platform work.

Yet, it is also a reality that the rapid transformation of the world of work is bringing along “legal uncertainties” around certain contractual arrangements within platform work. Nevertheless, as explained by the Commission itself, more than half of the Member States are taking action to clarify the employment status of a person working through a platform in a case-to-case basis and in the context of the rapid transformation of the world of work which is not static.

Further, national courts are also addressing the legal uncertainties of persons working and/or providing services through platforms through case laws.

Platform work is well suited being regulated by the social partners by means of well-balanced collective bargaining agreements which are adapted to the specific nature of platform work².

Therefore, the challenges related to working conditions in platform work should not be addressed at EU level via binding legislation but should be decided and taken at national level, in line with national regulations and traditions that take into account the diversity of national labour markets and industrial relations systems, including the role of social partners.

As mentioned above, the proper enforcement and implementation of existing rules is of high importance.

New ways of working, flexible working arrangements and new ways of organising work are emerging as a result of the rapid digital transformation of the world of work. Platform work, amongst others, requires new and flexible solutions. Overregulation can be detrimental and can also hinder the competitiveness of companies that have for example difficulties in accessing a highly skilled workforce “on-site” as well as the flexibility and autonomy that the majority of people working and/or offering services through a platform are looking for.

Finally, Ceemet would like to emphasize that platform work is not a sector-specific issue as the MET industries are practically not impacted by platform work for the time being. To our knowledge, the use of platform work in the MET industries is highly residual.

However, as sector social partner recognised at EU level, Ceemet would like to give its views on this first phase consultation paper.

¹ Legislation mentioned on the consultation document

² Such a development has, for instance, taken place in Sweden.

Questions I and II

Ceemet generally agrees with the identified issues in the consultation paper, particularly where it points out that determining the employment status of the person working and/or providing services through a platform is crucial to determine the applicable labour law/working conditions.

There is no need for an EU action, in particular not one of a binding nature, to address the challenges identified in the consultation document. Firstly, because those challenges are not specific to platform work. Secondly, because national and EU legislation, as well as collective agreements, to address and improve the working conditions in platform work already exist and simply need to be properly enforced and implemented. Lastly, since most Member States are already taking action, via national law or court cases, to clarify the legal uncertainties around the employment status of certain groups of persons working and/or providing services through platforms.

The EU has a role to play in fostering the exchange of information and best practices on how Member States deal with the legal uncertainties and challenges linked to certain contractual arrangements in platform work. The European Semester process is an adequate framework to encourage Member States to address the challenges linked to working conditions in platform work. The guidelines on employment policies to Member States that are updated yearly are yet another tool to encourage Member States to address the challenges linked to platform work.

Question III

As pointed out above, there is no need for EU action, in particular not one of a binding nature, in this area.

A harmonised EU/one-size-fits-all solution is not a proper solution as it will not cover the variety of contractual arrangements and diversity of new ways of working that exist and will emerge in a rapidly changing digitalised world of work.

Question IV

Addressing misclassification of employment statuses in platform work:

Ceemet generally agrees with the Commission's statement that when addressing working conditions and social protection for people working through platform "determining the employment status" of the person working through the platform is crucial.

However, the EU has no competence to introduce an EU action in this area. The EU cannot define the employment status in platform work, nor introduce any other category or subcategory at EU level, as this is typically a national competence. The EU should not introduce any action, in particular not one of a binding nature, to presume that a person working through a platform should be considered an employee and/or classified as an employee or as any other category.

Matters related to the notion of an employment relationship or the concept of a worker are a core competence of the Member States. EU interference in this regard would go fully against the principle of subsidiarity and the Treaty on the Functioning of the European Union (TFEU).

Indeed, within its field of competence, Member States are already addressing this topic and determining the employment status of groups of persons working through platform, either through legislation or court case, in order to address the legal uncertainties that certain types of “contractual arrangements” within platform imply.

It is up to the national level in line with national regulations and traditions to address the classification (employment status) of a person working through a platform.

Ensuring fair working conditions for all

Ceemet agrees that working conditions of people working through a platform should be ensured, notably health and safety aspects. It is also important that people working and/or providing services through a platform are informed clearly and in advance of their working conditions, tasks to be performed etc. in order to organise their work.

However, Ceemet would like to point out that working conditions can vary a lot depending on the type of task that a person is developing through a platform, and it can go from very highly skilled tasks (i.e., software development through web-based platforms) to services performed in the physical world (i.e., ride handling) through on-location labour platforms.

In the case of employees working through a platform, the Directive on Transparent and Predictable Working Conditions provides for measures to protect working conditions of people who work in non-standard forms of work and “new working environments”, including platform work. The focus should thus be on a proper transposition, implementation and enforcement of the Directive.

Further, the three EU Directives addressing part-time work, fixed-term work and temporary agency work all envisage equal treatment in working conditions between employees under an atypical employment contract and comparable employees engaged under a ‘standard’ employment contract. These Directives need to be complied with.

Guaranteeing protection against economic and social risks for people working through platforms – social protection

The Council recommendation on access to social protection applies to both workers and self-employed. Therefore, even though Ceemet agrees that social protection of a person working through a platform needs to be ensured and improved, there is no need for a specific EU action in this area as access to social protection is not a specific problem/challenge of a person working through a platform. These challenges are also linked to for example self-employed (be it a person working through a digital platform or not).

The Council Recommendation on access to social protection is the right framework as it encourages Member States to ensure that both workers and self-employed have access to effective and adequate social protection.

The focus should be on improving the enforcement and implementation of legislation and not on proposing additional legislation.

Encouraging an exchange of best practices in this area could also be useful.

Promoting an approach to algorithm management

The Commission will issue in mid-2021 a proposal for a regulation for the uptake of trustworthy artificial intelligence (AI) in the EU economy including in the workplace and for all forms of work.

This forthcoming regulation will build amongst others on the White Paper on AI (February 2020) that has the twin objective of promoting the uptake of AI while addressing the risks associated with certain use of this technology. This White Paper, in addition to presenting several policy options to enable a trustworthy and secure development of AI in Europe, foresees that the future regulatory framework on AI could be based amongst others on the risk-based approach. The employment context, including the use of AI applications for recruitment processes as well as in situations impacting workers' rights etc. would always be considered "high-risk" and entitled to a special protection.

Ceemet welcomes the Commission's twin approach on AI including the fact that the use of AI applications "in the employment context" is considered of high risk. In this sense, Ceemet agrees with the human-centric approach on the uptake and applications of AI solutions, that can only be achieved by ensuring an appropriate human involvement within high-risk situations including the employment context.

As the Commission proposal for a regulation on the uptake of AI in the economy including in the workplace will cover **all forms of work**, and will be built, amongst others, on the Commission White paper on AI, Ceemet does not see the need for developing a common approach on the way algorithms impact and manage working relationships, including self-employed contractors.

It is important that initiatives do not overlap as it creates confusion.

Further, effective application and enforcement of existing EU and national legislation in the area of AI is also important. For example, the GDPR already lays down rules on the right not to be subject to automated decisions without human involvement.

Addressing access to collective bargaining and to collective rights

The EU does not have the competence to regulate collective representation issues (Art. 153 TFEU (5)).

It is up to representative and autonomous social partners to discuss and agree on how to potentially attract and represent the new actors of the platform economy and starts-ups. EU action and/or national action in the area of collective representation/bargaining of these new actors has to be avoided as it will interfere with the autonomy of social partners.

When addressing the collective representation and bargaining of a person working through a platform, a distinction must be made if this person is considered an employee or a self-employed.

Also, if a person working through a platform work is classified as an employee, this person may have access to collective bargaining/agreements. National social partners in most countries, continuously act to include platform companies in the collectively agreed labour market models.

For self-employed, Ceemet will answer the Commission's consultation which aims to ensure that EU competition law does not stand in the way of collective bargaining agreements for self-employed that intend to improve the working conditions of solo self-employed people, *while guaranteeing that consumers and SMEs continue to benefit from competitive prices and innovative business models, including in the digital economy.*

Investing in skills

Equipping people working through platforms with the tools to steer their career and have access to professional development and skills development is important.

In this regard, Ceemet agrees with the Commission that irrespective of the employment status of people working and/or providing services through platforms, they should be encouraged to take training in order to up-skill and re-skill. This issue should however be tackled at national level as education and training policies are a national competence.

Indeed, it is important to explore different ways in which people working and/or providing services through platforms could access training in order to upskill and re-skill in line with national practices.

New online tools, for example, can make available training offers more visible and more easily accessible. These new online tools can facilitate customised learning (e.g., online training) adapted to the needs of the person working through a platform and empowering this person to up- or re-skill. The use of MOOCS (massive open online courses), especially in the field of basic digital skills, could also be of use. People working through online labour platforms are certainly more aware of existing online trainings, MOOCs and other tools to foster their skills developments etc.

On their side, platforms could also be encouraged to partner up with other bodies in order to provide training to the persons working through platforms or to partner up with other stakeholders in order to access EU funds to develop right skilling initiatives.

Many platforms are already committed to providing training or access to training for people working and/or providing services through the platform, The EU could foster the exchange of best practices in this area in order to boost mutual learning.

Ceemet would like to point out, however, that skills needs of a person working through digital platforms might be very different depending on the task developed by this person and might range from very specific technical skills (e.g. software development) to more generic soft skills (e.g. communication skills).

Finally, as the representative of the tech and industry employers, Ceemet would like to emphasize that a highly skilled workforce is the basis for an internationally competitive industry that provides quality jobs. However, the existing skills gap is a cause of reduced competitiveness of industry & tech companies. In this sense, digital platforms provide companies with an additional tool to access the skilled workforce that they might not be able to access on site. It is thus important not to overregulate in this area.

Question V

Ceemet does not consider entering into negotiations.
