

## Second-phase consultation of social partners on platform work

### Key messages

#### Employment status in platform work

- The EU cannot define employment status in platform work as this is a national competence. Once the clarification of the employment status is done at national level and it is clear whether the person is an employee or self-employed the applicable labour law can be determined and measures to improve working conditions be put in place
- Ceemet opposes the option proposing that all persons working through a platform are presumed to be in an employment relationship. This option does not reflect the variety of contractual arrangements and diversity of new ways of working that exist in platform work, including genuine self-employment.
- Ceemet also opposes the option of a shift in the burden of proof, as this would mean additional and significant burdens on platforms and start-ups to prove that the person working in platform is a genuine self-employed.
- As regards administrative procedures and work-related contracts, Ceemet considers that it is not for the EU to impose these proceedings on the Member States. It is for the national level to decide on the procedural tools, in line with national legislation and practice.

#### Algorithm management

- There is no need for a specific EU initiative in the area of algorithm management for platform work, since the Commission has already released a proposal for a Regulation on Artificial Intelligence that also covers the employment context.
- The promotion of a proper application of the GDPR should be favoured.

#### Platforms operating cross-border/Tackling cross-border issues

- Providing clarity on applicable rules for cross-border activities should not come with disproportionate burden on companies & start-ups in the platform economy.
- It is also for the national governments to take measures ensuring a better coordination of information between the Member States.

#### Collective representation

- The EU has no competence to regulate collective representation issues Art.153 TFEU (5)
- EU and/or national action in the area of collective representation and bargaining of the “new actors of the platform economy” has to be avoided as it will interfere with the autonomy of social partners.

#### Legal instruments

- Ceemet welcomes the Commission proposal to facilitate a dialogue with platform operators aimed at developing principles for good quality platform work by way of code of conduct or a charter.
- The European Semester process could be used to support Members States in addressing the challenges related to platform work.
- Ceemet does not agree with introducing a Directive and/or a Recommendation

## Preliminary remarks

On 15 June 2021, the Commission launched the second phase consultation of social partners on possible action addressing the challenges related to working conditions in platform work. This second consultation document presents a more in-depth analysis of the challenges that platform work entails and also briefly refers to the many opportunities that it creates. Ceemet agrees in general with the Commission analysis.

Platform work creates many opportunities for businesses, consumers and individuals. It can support people to complement their revenues from other jobs, facilitate the access to the labour market for those who have difficulties in entering the traditional labour market, offers increased flexibility and autonomy etc. Platform work also generates opportunities when addressing the skills gap, as companies have additional means to access the skilled and highly specialised workforce they need. Further, it provides companies with new business opportunities and possibilities to innovate and become more competitive.

Along with opportunities, platform work can cause challenges, including issues related to the employment status of the person working and/or providing services through platforms, to the algorithm-based model of platforms as well as to the cross-border nature of platform work. These challenges need to be addressed at the adequate level.

In this context, Ceemet would like to recall that platform work is a new way of working and organising work that has emerged as the result of the rapid transformation of the world of work, but it does not constitute a legal form of work as such: the diversity of contractual arrangements that it covers - fixed term work, part-time work, self-employment etc. - is already regulated in one way or another at national and EU level. Therefore, proper enforcement and implementation of existing legislation is important to provide solutions to many of the challenges that emerge around working conditions in platform work.

Besides, platform work also requires a flexible framework so that it can continue to evolve in a rapidly changing digitalised world of work. For example, the Commission itself points out that the number of people working to a various extent through platforms grew from 9.5% to around 11% of the EU workforce between 2017 and 2018, and that, for the majority of them, this does not constitute full-time employment. Therefore, overregulation in this area can be detrimental as it may hinder job creation, the ability to innovate of companies and start-ups as well as the flexibility and autonomy that people working and/or offering services through a platform are looking for.

A one-size-fits-all solution will thus not be a proper approach to address platform work challenges as it will not cover the variety of contractual arrangements and diversity of new ways of working that exist and will continue to emerge.

In its consultation document, the European Commission also mentions that “on-location platform work” represents 90% of intermediated services and that 75% of EU platform economy revenues originate from ride-hailing and delivery platforms. It would be important also to gather the views of the main actors of the platform economy before deciding on any further steps at EU level.

Finally, Ceemet would like to emphasize, once more, 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 for the moment. However, we apprehend that some points discussed within the second phase consultation – especially concerning employment status and collective representation – could have far-reaching effects beyond the platform economy. It is, therefore, necessary to ensure that traditional business conduct will not be negatively affected by any measure.

Prior to replying to the Commission's specific questions, Ceemet would like to refer to its reply to the first phase consultation of social partners (available [here](#)) as the key messages contained in that response remain valid for this second phase consultation.

## Responses to the questions raised by the Commission

### 1- What are your views on the specific objectives of possible EU action set out in 5.1

Ceemet and its member associations agree with the Commission's overall objective of ensuring that people working through a platform have decent working conditions. However, Ceemet would like to underline that since platform work covers an important variety of work arrangements (see above), the challenges related to working conditions are not specific to this type of work.

Specific objectives:

***“Ensuring that people working through platforms have – or can obtain- the correct legal employment status in light of their relationship with the platform and gain access to associated labour and social protection rights***

Ceemet considers that clarifying the employment status of the person working and/or providing services through platform is crucial to determine the applicable labour law.

Indeed, the clarification of the employment status should be done at national level. Once it is clear whether the person is an employee (including all forms of work arrangements: fixed-term, part-time, etc.) or a self-employed, the applicable labour law can be determined and measures to improve working conditions can be put in place.

As a matter of fact, classification is done on a case-by-case basis, in accordance with national criteria and concepts (that may vary from one Member State to another) in full respect of national competence. Once this is done, the proper enforcement and implementation of existing rules at both national and EU level is of high importance to address working conditions in platform work.

Potential misclassifications can be best (and only) be addressed on the respective national levels – in line with country-specific employment classification schemes, labour market peculiarities and domestic social security systems.

Further, on EU level, for example, the Directive on Transparent and Predictable Working Conditions already provides for measures to protect working conditions of workers in non-standard forms of work and new working environments, including platform work.

In the case of self-employed, the Council Recommendation on access to social protection provides with the right framework to ensure that both workers and self-employed have access to effective and adequate social protection.

### ***Ensure fairness, transparency and accountability in algorithm management***

Ceemet is in line with the Commission analysis that people working through platforms may lack information and understanding on how algorithms are applied, are used to reach certain decisions and thus impact their working conditions etc.

In this regard, Ceemet and its member associations agree with the Commission's objective that people working in platform are informed and have access to an improved understanding on how algorithms are applied and how they impact their work. This is, indeed, a manner to contribute to better working conditions in platforms. In line with the GDPR, platform users need

to agree to the use of their personal data and it should be transparent how their data is processed by the platform. Again here, platforms have to apply all existing provisions laid down in European and national (employment) law – for instance if algorithms are used to decide on the provision of services, such as getting access to clients or tasks.

This being said, algorithms can contain commercially sensitive information and are hardly understandable for non-experts. For such reasons, they should not be disclosed. Instead, the promotion of a good application of the GDPR (nature of the data collected and purpose of such collection) should be favoured.

***Enhance knowledge of developments in platform work and provide clarity on applicable rules for all people working through platforms operating across borders***

Ceemet in general agrees with this Commission specific objective. However, providing clarity on applicable rules for cross-border activities should not come with disproportionate burden on companies and start-ups in the platform economy. Overregulation in this area should be avoided to remain innovative and competitive.

**2. What are your views on the possible avenues for action set out in section 5.2**

While Ceemet agrees in general with the Commission’s overall objective and partially with the specific objectives of the consultation paper, Ceemet considers that part of the proposals put forward by the Commission are not the adequate ones to address platform work challenges.

**Scope of an EU initiative:**

When it comes to the personal scope of an EU initiative, the Commission mentions that measures could target all people working through digital labour platforms, regardless of the employment status, or be limited to workers. A binding initiative focused on employees on platform has no added value as those working as employees, including those who are falsely classified as self-employed, are already covered by EU and national legislation providing for rights and obligations. Similarly, article 153.2, 56 (1) or 114 TFEU do not provide the EU with a competence to release binding measures targeting working conditions of the self-employed.

Further, the Commission mentions that an EU initiative could cover all digital platforms active in the EU or focus on certain types of platform work or certain types of platform business model. As already mentioned above, Ceemet considers that a one-size-fits-all solution will not be a proper approach 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. Additionally, creating specific rules for self-employed providing services through platforms (whether limited to certain platforms or applying to all platforms) could result in an un-level playing field between the former and those operating in the same business but off-line.

Any EU-initiative needs to take into account the complexity of the platform economy with its wide-ranging diversity of businesses and users involved. It is practically impossible to make general claims about working conditions in the platform economy. Relationships between platforms and users are highly individual and need to be assessed on a case-by-case basis.

**Defining employment status in platform work**

Ceemet welcomes the Commission statement that an EU initiative on platform work should respect national concepts of employment status as well as the Commission statement that it does not intend to create a third employment status. Indeed, the EU has no competence to introduce an EU action in this area. The EU cannot define employment status in platform work (or outside platform work) as this is a national competence. 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.

It is within the remit of the Member States' competences and fully in line with their national practices and in accordance with the criteria established by national labour and social security systems to address the classification of a person working through a platform. In fact, Member States are already dealing with this topic and determining the employment status of groups of persons working through platform whether via legislation or court cases.

### Addressing misclassification in employment status:

As explained above, Ceemet agrees that clarifying the employment status in platform work is crucial to determine the applicable labour law. However, Ceemet opposes the Commission proposed options in this area:

#### *Rebuttable presumption of an employment relationship*

Ceemet fully opposes the option that all persons working through platform would be presumed to be in an employment relationship, in particular if laid down in a binding initiative. This option will not reflect the variety of contractual arrangements and diversity of new ways of working that exist in platform work, including genuine self-employed. Indeed, the Commission

It needs to be considered, also, that many tasks brokered through platforms are performed by individuals that have no interest, in the great majority of cases, in becoming an employee of the platform. Indeed, most users see platform work as an additional and flexible source of income through, for example, renting underutilized assets (such as a car or a room), performing micro-tasks through an app, running errands, walking dogs or fixing bugs on a website.

itself acknowledges that there is genuine self-employment in platform work, given the wide variety of digital labour platforms and their business model. This option could thus lead to a genuine self-employed person (such as freelancers or consultants) being considered in an employment relationship. Moreover, this would mean that platforms will need to challenge this presumption in costly and lengthy legal procedures before a court. This option will clearly hinder job creation and will impose new burden on companies and start-ups. Further, this option will hamper the flexibility and autonomy that people working in platform are looking for and will create legal uncertainty for employees, self-employed and companies.

Presuming that everyone is in an employment relationship will certainly limit the job opportunities of genuine self-employed, who will possibly reject a "potential job opportunity" through a platform as he/she will be presumed to be in an employment relationship.

Equally important, this option contradicts the Commission statement that an initiative on platform work should respect national competences of employment status. Determining that all people working in platform should be presumed to be in an employment relationship does not respect Member States' competences to decide whether a person is qualified as an employee, fully in line with their national practices and in accordance with the criteria established by national labour and social security systems.

In fact, presuming that everyone working in platform is in an employment relationship is a way to determine employment status or at least to determine which status does not apply.

Moreover, the Directive on transparent and predictable working conditions provides amongst others the option to Member States to install a rebuttable presumption of the existence of an

employment contract in case of on-demand contracts. As Member States are only to take the necessary measures to transpose and implement this Directive as of 1 August 2022, Ceemet considers it necessary for the Commission to await the transposition of said Directive before taking measures which go even further than the recently adopted Directive.

#### *Shift in the Burden of proof*

Ceemet also opposes the option of a shift in the burden of proof, in particular if laid down on a binding action, as this would mean again new burdens on platforms and start-ups to prove that the person working in platform is in fact a self-employed.

Moreover, the shift of burden of proof is already laid down in the soon to be transposed Directive on transparent and predictable working conditions and also applies to platform workers that meet the criteria of a worker as determined in the case law of the European Court of Justice. It is, therefore, unnecessary to propose a separate legislative tool which solely concerns platform work as this would be a mere duplication of legislation. We also again underline the need to await the transposition of said Directive before proposing additional legislation on the same topic.

In any case, Ceemet considers that it is not for the EU to impose this option on Member States. Indeed, it is up to the national level to decide on the best tools to help platforms and people working people working through platforms to correctly establish the classification of employment status in line with national legislation and practices

#### *Administrative procedures and certification of work-related contracts:*

As regards the two last options, Ceemet considers that it is not for the EU to impose these proceedings on the Member States. It should be for the national level to decide on the procedural tools, fully in line with their national legislation and practices.

Further, Ceemet acknowledges that there are a number of court cases dealing with the issue of classification at national level– as there often is when new forms of work emerge. Therefore, adding another forum to discuss classification is not the best solution.

Finally, Ceemet would like to emphasize that the situation is different in the case of a platform worker that is being treated as a self-employed while having the characteristics of an employee according to national legislation. In this case, Ceemet and its member associations agree that this constitutes bogus self-employment and this platform worker should be re-classified as an employee and the person should be entitled to all rights and obligations (working conditions) of an employee. This, however, can only be solved by Member States with their specific classification schemes and respective administrative procedures on a case-by-case basis considering established criteria laid down in national law

#### **Introducing new rights related to algorithm management:**

As stated in our response to the first phase consultation on platform work, Ceemet does not see the need for a specific EU initiative, in particular if of a binding nature, in the area of algorithm management for platform work, since the Commission has recently released a proposal for a regulation on AI that covers also the employment context. In this sense we do not welcome the Commission solution of proposing an EU initiative that could propose new rights in this area.

In fact, the proposed AI act, that considers the employment context as of high risk, already imposes requirements to enable human oversight and extensive documentation on high-risk AI systems, as well as specific requirements on documentation, logging and transparency etc.

Further, the Commission itself considers that a **single regulatory framework** on AI will facilitate the development and deployment of AI based on European values and would help to avoid the fragmentation of the single market. Therefore, there is no need for another EU initiative in this area as this would mean regulatory fragmentation.

It is important that initiatives do not overlap or are not duplicated as it would create confusion.

Moreover, 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.

On the proposed AI regulation, Ceemet welcomes the Commission objective to promote the development and deployment of AI based on EU fundamental rights and EU values but is of the opinion that considering that all AI systems used in the area of education, training, employment, human resource management and self-employment are of high risk could create legal uncertainty and disproportionate bureaucracy for companies.

### **Tackling cross-border challenges**

Ceemet agrees that access to clear and reliable information is needed. It should however be noted that the responsibility of tackling cross-border challenges cannot only be placed on the platform companies. It is also for the national governments to take measures ensuring a better coordination of information sharing between the Member States. In case that platform companies are requested to provide additional information it will undoubtedly impose additional costs and increase administrative burden for the platforms and therefore, any information requirements in this regard must be proportionate and cannot be overly prescriptive.

Furthermore, in principle and depending on how it will be designed, Ceemet supports the set-up of the European Social Security Pass and the idea to take platform work into account in the pilot of this project. We do however want to underline that it is extremely important to first investigate the feasibility of this project and ensure that it works in practice before including it in a legislative act.

### **Collective representation**

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 start-ups. The Commission must respect the diversity of industrial relations systems.

EU and/or national action in the area of collective representation and bargaining of the “new actors of the platform economy” 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 agreements in line with national collective bargaining systems.

Ceemet would also like to refer to its response on the application of EU competition law on collective bargaining agreements by self-employed (see [here](#)).

## **3- Possible legal instruments**

Ceemet does not agree with introducing an EU directive or any other binding instruments in this area. As expressed above, a binding initiative focused on employees on platform has no added value as those working as employees, including those who are falsely classified as self-employed, are already covered by EU and national legislation providing for rights and obligations. When it comes to self-employed, the Commission itself acknowledges that article 153.2 TFEU does not provide to the EU with a competence to release binding measures targeting self-employed.

Ceemet does not favour, neither, the Commission option of a Council Recommendation in this area. It is indeed challenging and not realistic to make recommendations that would apply to all Member States given not only the multitude of platforms but also the multitude of national legislations and practices.

In this context, Ceemet welcomes the Commission proposal to facilitate a dialogue with platform operators aimed at developing principles for good quality platform work by way of code of conduct or a charter. Indeed, involving the real actors of the platform economy in this dossier with the aim of putting together a self-regulatory tool is certainly a positive approach to address platform work challenges

The European Semester process, and in particular the Country Specific Recommendations, could be another tool to encourage Members States on how to possibly address the challenges related to platform work. A structured exchange of best practices, within the Semester, with an increased involvement of platform operators and people working in platform would be of big added value.

#### 4. Negotiations

Ceemet does not consider entering into negotiations.

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