



# ECA

Piloting Safety

## ECA<sup>1</sup> contribution to the consultation on “A fair & competitive digital economy”

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

The European Cockpit Association (ECA) agrees that the main topic is the **question of correct employment status classification**. It is important to note, as indicated in the consultation paper, that the majority of the digital platform workers consider themselves as employees. The document rightly identifies the main issue, by denying digital platform workers an employment status, i.e. that fundamental rights are violated (just, fair, safe and healthy working conditions, fair remuneration, freedom of association, non-discrimination, family life, access to social security and to social welfare, privacy...).

However, ECA believes that the Commission has not considered the **impact of incorrect classification of digital platform employees on social security**. The European Social Model and social security systems are threatened in many ways. Misclassified workers and their employers do not contribute to the social security system. Because platform workers are precarious, the social security system ends up having to compensate and helping those workers with public financed support. It is for the remaining workers with employment status and their employers to contribute to these funds that end up paying for bogus self-employed workers. This creates unfair competition conditions. As the number of atypical workers increases and the number of typical workers that finance the social security system decreases, the social welfare system is no longer sustainable.

The issue of **unfair competition with non-digital companies** is not addressed. Some of the services provided by digital platforms are identical to the services provided by companies not using a platform and employing their workers. The creation of a digital platform does not justify a different status for workers and lower working conditions. Digital platforms not paying the fair price of labour is eroding the conditions of workers and the benefits of companies that comply with their legal obligations.

ECA contests the statement that 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. **There is consistent jurisprudence** – even in very open economies such as the UK – considering that **e.g. workers in Uber, Delivero, Glovo and other well-known platforms are actually employees**.

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<sup>1</sup> The European Cockpit Association represents the collective interests of professional pilots at European level, striving for the highest levels of aviation safety and fostering social rights and quality employment.



As the consultation document affirms, there is an **important transnational component** attached to digital platforms. Therefore, it is necessary to analyse why coordination at EU level – to ensure that EU social legislation is applied to platform workers – has not taken place. The lack of action and the indulgence of the EU and the Member States regarding digital platforms non-compliance with social legislation has contributed to the lawless expansion of this business model. The Commission, as guardian of the Treaties and the institution responsible for the implementation of the primary and secondary legislation, **should have taken actions to ensure that EU social legislation is applied also to digital platform workers**. The same applies to national authorities in their own territory.

The Commission states that digital transformation creates new opportunities in terms of income, job creation and entrepreneurship, also for workers who previously had difficulty accessing the labour market. **The benefits of the development of digital platforms with a high proportion of workers with incorrect labour status should be better analyzed.** How is the wealth created distributed? What would be the impact if such model becomes the norm? A market composed of a majority of platform self-employed workers might lead to a more unequal society with a growing gap between the rich and the poor, to moonlighting, to growing difficulties to fair, safe and healthy working conditions and to impossible conciliation of family/work balance. At the end of the day, **the sustainability of the European Social Model is at stake.**

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

Yes. However, the issue that needs to be addressed, which determines the rest, is **the correct determination of the employment status**. The other issues related to working conditions, representation, access to social security, will be mostly resolved if misclassification problems are solved.

ECA considers that the **EU and its Member States should concentrate in adopting coordinated legislation that ensures, with legal certainty, clarity on the employment status**. However, ECA sees a problem if coordination is limited to drafting criteria on what constitutes direct employment (subordination, working time, etc.). Such legislative method leaves to the judges to decide, case by case, on the correct status. Instead, a system is needed where authorities verify compliance with requirements to be self-employment status *beforehand*.

*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?*

Digitalisation might result in the expansion of digital platforms as standard employment model reaching all sectors. The **focus should be on the correct classification of workers rather than a sector approach**. It is urgent to develop tools that facilitate a correct application of social legislation to workers. Real entrepreneurs should be free to develop their business. It is **important not to blur the boundaries between self-employment and employment**.

- 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?*

**Addressing misclassification of employment status in platform work:**

ECA supports actions in this field. **A refutable presumption of employment is preferable to the reversal of the burden of proof. They can be combined for a better result.** Just the reversal of the burden of proof would be less efficient as it implies that a legal process is needed. **Ex-ante clarification** through the presumption provides more legal certainty and thereby better protection for workers.

The presumption will also **facilitate the work of the inspection** and, by reducing the number of cases, the speed in resolution of legal cases.

**The other actions in point 5:**

**Those actions will not be necessary if workers are classified appropriately.** Employees have the right to fair working conditions, to social welfare, and to collective bargaining and representation. Extending this to some bogus self-employed workers blurs the boundaries between work and entrepreneurship and **creates a set of “low cost” rights for second-class workers while maintaining precariousness and unfair competition on labour standards.** Non-platform employers and employees will continue to pay the price for the social security and welfare systems and suffer from

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

ECA would not support agreements that create a set of “low cost” rights for bogus self-employed.

ECA considers that **the establishment of mandatory legislation addressing misclassification of employment status in platform work would be better achieved through a typical legislative procedure.** However, ECA would not oppose an agreement between social partners if this is a faster and more consensual way to achieve the objective.

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