



ECA's<sup>1</sup> Contribution to the CONSULTATION DOCUMENT Second phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages.

1. What are your views on the specific objectives of possible EU action set out in Section 5.1?

- a) Specific objective of ensuring correct classification of the legal-employment status  
ECA agrees with this specific objective.
- b) Specific objective of fairness, transparency and accountability in algorithmic management  
ECA agrees with this specific objective. However, whenever platforms have a mixed employment system (employees/contractors), the algorithms must respect the obligations under employment law including the non-substitution of employees engaged in industrial conflicts and other rules related to collective dismissals and restructuring.
- c) Enhance knowledge  
ECA agrees with this specific objective.

2. What are your views on the possible avenues for EU action set out in Section 5.2 of this document?

- a) Avenues to address misclassification  
ECA support the avenues proposed for tackling misclassification of employment. ECA considers that the options that clarify the status from the start of the employment relationship give the best legal certainty and therefore the best social protection. ECA supports the avenues that provide *ex-ante* solutions rather than avenues that provide solutions to be used when conflicts arise.

Option 1 (providing a rebuttable presumption of employment relationship) and Option 3, (providing for an administrative procedure to examine the employment status, if it is systematic and performed at the start of the employment relation) would be the preferred avenues for ECA.

<sup>1</sup> The European Cockpit Association (ECA) was created in 1991 and is the representative body of European pilots at European Union (EU) level. It represents over 40,000 European pilots from the National Pilot Associations in 33 European states.

To prevent forum shopping, these options need the adoption of common criteria throughout the EU for assessing the employment status.

Option 2 regarding a shift in the burden of proof could have a dissuasive effect but would, in practice, be mostly used in courts. ECA considers that the resolution of employment disputes in courts should be avoided as court cases are long, costly, and ineffective. In a dynamic framework such as platform work, employees cannot wait for five or more years to have their claims resolved in court. In that time span, the platforms might have disappeared or changed completely, and employees might not even be able to enforce their rights. Furthermore, the effect of claims will affect individuals and not have effect on systematic misclassification. The burden of proof is a good idea and ECA supports it but only as a secondary avenue, complementing the implementation of options 1 and/or 3.

Option 4 is attractive on paper, however, ECA has doubts on its effectiveness. If an employee asks to have the contract certified, his/her candidature might not be retained. An alternative would be to facilitate the procedures for individuals or their representatives to request inspections to assess their employment status, or the employment status of a group of employees in each digital platform.

b) Avenues to address algorithm management

The algorithms of platforms are often protected by confidentiality rules. ECA agrees, that business secrecy cannot be an obstacle to detect abusive, illegal, or discriminatory functions.

ECA does not have the specific knowledge on the functioning of algorithms, but it should be based on objective factors.

The respect for human dignity implies that a machine alone cannot decide for the individual and that all persons concerned by the algorithm must have the right to question machine decisions before a human.

c) Avenues to address cross border challenges

The EU proposals must address the issue of platforms providing services permanently in countries different to the one or the principal place of establishment or from secondary establishments. In these cases, platforms must register and report in those countries.

Special attention should be made to the application of posting and social security rules.

d) Strengthening enforcement, collective representation and social dialogue

The consultation document says that the self-employed are considered as undertakings by competition law. This is not the case for competition law only but for the law in general. They are obliged to register as companies and their relations are ruled by civil law in civil law countries and not by employment law. Therefore, the self-employed cannot be represented by unions.

Opening collective bargaining rights could lead to the establishment of intermediate status of employees with lower rights. If the issue of misclassification is solved, then employed platform workers could be represented by unions. The paper should consider avenues to fight anti-union policies from some platform employers and to promote social dialogue in the countries where this has disappeared.

Protections for the self-employed should come from the civil law instruments. One possible avenue is codifying abusive clauses and abusive commercial practices linked to platforms providing services across EU borders. The Commission should explore existing instruments protecting the weak part in a commercial relationship.

### 3. What are your views on the possible legal instruments presented in Section 5.3?

As the choice of a single legal base is privileged by the Commission, the internal market legal base is the most effective one, the one that allows for the wider action.

Misclassification of the employment status and lack of transparency in algorithms, have clear impact on the internal market:

- It deprives EU social legislation from all "*effet utile*" giving a competitive advantage to companies that do not have to comply with the burdens of social law.
- Allows exploiting workers without respecting their rights and the social legislation

However, the proposals must be accompanied with a list of clear social objectives to guide Member States and Courts in their implementation and enforcement.

### 4. Are the European social partners willing to enter into negotiations with a view to concluding an agreement under Article 155 TFEU with regard to any of the elements set out in Section 5.1 of this document?

The establishment of a European Sectoral Social Dialogue Committee for digital platform workers might be a good idea although the diversity of businesses concerned might be a problem. As there will be common and specific issues, establishing subgroups in such Committee could be a solution.

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Brussels, 14/09/21