

Opinion of the European Economic and Social Committee on 'Non-standard employment and platform cooperatives in the digital transformation of industry'

(own-initiative opinion)

(2022/C 152/06)

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1. Conclusions and recommendations

1.1. The digital platform economy is a rapidly expanding phenomenon which goes beyond the borders of the European Union itself. As this phenomenon has grown, the forms of employment relationships for people working through these platforms have also multiplied. Examples are self-employment, discontinuous working relationships and individualised employment contracts. In this context, workers' cooperatives can be a useful means of making employment relationships set up through digital platforms more stable.

1.2. Given the scale of this market, the EESC considers that the European Union and the Member States could and indeed should coordinate the implementation of appropriate rules in order to strike a balance between the needs of innovation and safeguarding the rights of digital platform workers, as they are doing for consumers and users in the draft regulations DSA and DMA.

1.3. Digital platforms are promoting the development of new types of business which provide a greater range of options for many people to participate in the new digital markets. Out of all these various types of business, cooperatives are particularly suited to supporting inclusive participation in the governance of digital platforms.

1.4. The cooperative model allows for the development of businesses established by self-employed workers aspiring to maintain their autonomy and creativity while at the same time improving their income, working conditions and access to social protection, avoiding non-standard forms of work.

1.5. The EESC notes that the cooperative model can combine the features of digital platforms with the organisational model of cooperatives; where conditions allow, it also enables cooperative workers to retain the status of employee, with all the safeguards provided for workers by collective labour contracts.

1.6. The EESC urges the European Commission, the EU Member States and the social partners to provide for initiatives promoting the development of platform cooperatives which, through the new technologies, support entrepreneurship by bringing young workers and entrepreneurs together in a cooperative.

1.7. For these initiatives to be implemented effectively all stakeholders must be involved: thus, social dialogue can play a key role and the EESC is ready to play a part in promoting platform cooperatives.

1.8. Digital platforms know no land borders. Moreover, the country of origin principle applies in our European territory. The success of these initiatives depends on a common understanding and application of these issues. The EESC calls for attention to be paid to the risk of fragmentation of the internal market, which would penalise both the platforms and their employees.

1.9. The EESC considers that the European strategy for the digital transition should make provision for initiatives supporting the setting-up of cooperatives managing digital platforms. This would foster collective ownership of digital services, data and technological infrastructure, thereby encouraging greater economic diversification and promoting economic democracy.

1.10. The EESC notes that cooperatives, as autonomous entities comprised of people who have chosen to come together to meet their common social, economic and cultural needs through a democratic and interactive form of organisation, provide a useful solution to the problems of the governance and democratic oversight of digital platforms.

1.11. The EESC calls for the European Commission's proposals for regulating digital platform workers to focus on and be open to innovation, in a way that helps support businesses' competitiveness without losing sight of the protection of workers' rights. In particular, it must be ensured that people working for digital platforms are trained and enabled to be able to better understand and control how algorithms governing the hiring of workers are applied.

2. Introduction and background

2.1. In the process of rapid transformation of the economy and businesses, digitalisation has taken on a key strategic role, to the point of becoming pervasive across all sectors of activity, and affecting the entire cycle of the product and service value chain, involving both large companies and small and micro enterprises. The consequences for the world of work, in terms of new opportunities and new challenges, are significant as regards both their nature and the speed of change.

2.2. New ways of working and new forms of business organisation are emerging as a result of the fast digital transformation. Platform work requires new, flexible solutions that the current legal frameworks are not always able to regulate.

2.3. The rapid transformation underway has revealed gaps in legal certainty, which is why social dialogue and collective bargaining are important as a framework for negotiating new rules for work on digital platforms. Many Member States have taken steps to clarify the employment status of a person working through digital platforms. To this end, the Commission should regulate the matter in a way that encourages agreements that can both adapt to labour market changes and, at the same time, provide the essential safeguards for the social protection of workers.

2.4. While the phenomenon of digital platforms covers a wide variety of models that can include social networks, e-commerce sites, financial intermediation websites and access to and management of resources and data, this opinion will take a specifically work-related angle and refer in particular to businesses operating through applications or websites. In particular, we will look at the specific case of digital platforms in the form of cooperatives.

2.5. The European Commission is exploring the implications for the conditions of platform workers through a consultation, the first stage of which opened on 24 February 2021, with the second phase running from 15 June to 15 September 2021. Through these consultations, the Commission has asked the social partners to give their views on whether legislative action is needed. The consultation sets out seven areas in which action could be envisaged: 1. employment status, 2. working conditions, 3. access to social protection, 4. access to collective representation and bargaining, 5. the cross-border dimension, 6. algorithmic management, and 7. continuous training and job opportunities for people working through platforms.

2.6. Digital platforms build a 'virtual space' in which interactions and exchanges take place that involve much more than simply matching supply and demand, and which can exert an increasingly refined power of control and influence vis-à-vis workers, suppliers and users, offering new services for customers and new choices for employment. This is made possible through profiling systems and the extensive use of data, using artificial intelligence systems and algorithms determined by those who run the platforms.

2.7. By means of a sophisticated marketing policy that makes people who interact with the platforms think that they are key players in a horizontal peer-to-peer process, platforms present and define themselves as meeting spaces for a direct and unmediated relationship, but in reality they are never fully decentralised or neutral; rather, they themselves are active players in the intermediation, with a well-established but often not obvious hierarchy.

2.8. Although there is a comprehensive body of EU and national legislation governing the various forms of employment, it is not always easy to apply these legislative frameworks to platforms. Information, social dialogue and mutual learning should be encouraged in order to facilitate and support the sound, sustainable development of digital platforms, with a view to increasing cooperation and trust between digital market players. Social dialogue and collective bargaining are more effective at regulating rapidly changing situations than rushed legislation that could hamper innovation.

2.9. It is, in any case, clear that a good regulatory framework must accommodate the major innovations that can come from digital technologies, along with recognition of workers' rights in these new forms of work organisation. Intervening in these changes means actively steering the development model, which, as we see it, must have a specific focus on the environment and society.

2.10. In the context of the digital transformation taking place worldwide, consideration must be given at all levels to the measures needed to support the development of a sustainable digital transition regulated by an appropriate European regulatory framework that is clear to digital market players, and particularly those involved in platforms. The European institutions have started to tackle this issue from a number of angles ⁽¹⁾ and the EESC has already adopted several opinions regarding the tax issues ⁽²⁾, regulation of the digital market ⁽³⁾, and the issues that arise in the labour sphere ⁽⁴⁾.

2.11. In a general context of changing working conditions, ever-increasing numbers of people are in the position of providing services through self-employment via digital platforms, as shown by the impact assessment published in January 2021 by the European Commission ⁽⁵⁾. The lack of a proper regulatory framework could encourage inappropriate forms of self-employment, which, as such, must meet certain criteria including: autonomy, free expression of the parties' willingness to participate, self-determination in the organisation of work, and independence.

2.12. The European Commission's analysis shows that people working through platforms may not have enough information or understanding with regard to how algorithms are applied to reach certain decisions that could have an impact on their working conditions. This lack of understanding and information can be problematic, particularly in the context of digital surveillance and data management when algorithmic design and management affect working conditions. This is why social dialogue is essential.

2.13. Businesses and workers alike have to be made aware of, and given legal certainty regarding the employment contracts of platform workers, guaranteeing decent pay and access to social protection and collective bargaining. Clarity is also required when it comes to the criteria for being classified as entrepreneur and self-employed. The EESC has given its views on this issue in the SOC 645/2021 opinion on *Fair work in the platform economy*, requested by the German presidency of the Council of the EU in the second half of 2020.

⁽¹⁾ <https://www.eurofound.europa.eu/data/platform-economy/dossiers>

⁽²⁾ EESC opinion on (additional opinion) (OJ C 364, 28.10.2020, p. 62).

⁽³⁾ EESC opinion on the Digital Markets Act (OJ C 286, 16.7.2021, p. 64).

⁽⁴⁾ EESC opinion on the Working Conditions Directive (OJ C 283, 10.8.2018, p. 39).

⁽⁵⁾ Initial impact assessment, *Collective bargaining agreements for self-employed- scope of application of EU competition rules*, 6 January 2021. See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules_en

2.14. As the Commission itself acknowledges, in the digital platform economy cooperatives have managed to create models which allow for the successful combination of entrepreneurship, social rights and decent working conditions ⁽⁶⁾.

3. General comments

3.1. The profound and rapid changes brought about by the digitalisation of the economy and social life are creating a new need for flexibility and swift adaptation and expanding the number of options available in terms of self-employment. On occasion, however, they lead to new forms of fragmentation and parcelling out of work, not only as a process broken down into stages (such as in classic assembly lines), but also subdivided in terms of space and time, often blurring the work-life distinction for the people involved in certain stages of these processes.

3.2. This is part of a complex phenomenon, involving even highly qualified professionals, who are tasked with parts of the production process through independent or freelance contracts. For example, consider the world of computer programmers, data analysts and application developers, and all of the providers of complementary services that are increasingly decentralised.

3.3. The COVID-19 crisis has shown that the proper implementation of national and EU rules, recognising the need to safeguard workers with non-standard contracts ⁽⁷⁾, is still a challenge for many Member States.

3.4. The emergence of digital platforms as a tool for hiring workers has in many cases resulted in the use of self-employment type contracts, even when the workers concerned did not actually work autonomously and independently. There have also been cases in which this approach was intended more to keep down the cost of work than to maximise autonomy in the organisation of work. The number of legal disputes in various European countries has therefore risen. It is clear, however, that such a fast-changing phenomenon cannot be regulated through the courts and litigation, but requires feasible solutions that properly capture and interpret the profound changes under way.

3.5. Against this backdrop, cooperatives enable the development of enterprises made up of self-employed workers (such as independent workers' cooperatives), which aspire to maintain the workers' autonomy and creativity while at the same time improving their income, working conditions and access to social protection. Moreover, the more traditional form of cooperative (workers' cooperatives) can combine the features of digital platforms with the organisational model of cooperatives, which is underpinned by a democratic structure and the safeguards provided for employees in national employment contracts.

3.6. A platform cooperative is a business in the form of a cooperative that is democratically governed in a way that involves participating stakeholders, which organises the production and exchange of goods and services through an IT infrastructure and protocols that interact with different devices, both fixed and mobile.

3.7. Like any cooperative, platform cooperatives belong to and are governed by those who are most dependent on them, in this case the workers, users and other stakeholders. Of course, this is done with due regard for the proper contractual treatment of cooperative workers, whether they work as employees or as self-employed workers.

3.8. The cooperative model, as well as characterising the form of the business and the relationship between the stakeholders, has a decisive influence on the decision-making flows of the operating algorithm, and also helps to 'better distribute benefits amongst producers/service providers, and include citizens/consumers in governance, decision-making and benefit-sharing', as recently argued in opinion CESE NAT/794 ⁽⁸⁾.

⁽⁶⁾ The cooperatives affiliated to the CoopCycle federation are a prime example here. These are cooperatives of bike couriers/delivery workers (who are members and workers in their own cooperatives). They in turn link up with other such cooperatives in other cities, pooling the software used for the transactions and to match up workers, suppliers and users: <https://coopcycle.org/en/>.

⁽⁷⁾ The concept of non-standard work has been gaining traction at political level, particularly in the last few decades. For instance, see the All For One study: <https://cecop.coop/works/cecop-report-all-for-one-reponse-of-worker-owned-cooperatives-to-non-standard-employment>

⁽⁸⁾ EESC opinion on Digitalisation and Sustainability — status quo and need for action in civil society perspective (OJ C 429, 11.12.2020, p. 187).

3.9. With this in mind, encouraging the emergence of new businesses, which group these workers together in cooperatives, can help to develop new forms of enterprise. Joining forces in this way is beneficial for those involved in these activities, both in terms of expanding business opportunities (both between themselves and externally) and in terms of pooling the costs and benefits. Often, where national legislation so allows, such cooperatives make it possible for their self-employed workers to have access to existing social protection systems.

3.10. A spirit of enterprise, entrepreneurial skills and business start-ups are key levers for growth. However, starting up a business on your own is difficult, particularly if you are a young person. It therefore makes sense to develop these forms of cooperatives, which, thanks to the new technologies, can harness budding entrepreneurship by pooling young workers in cooperatives regardless of their legal status (employed or self-employed).

3.11. Labour laws and social security systems that developed in line with standard employment do not now seem able to meet the needs of workers employed on non-standard contracts, who nevertheless need social protection and appropriate forms of collective bargaining. Many of the challenges posed today by the transformation of work and digitalisation have encouraged cooperatives to respond to the needs of workers that are not being met by the current institutional arrangements. At the same time they seek to increase the workers' self-fulfilment by encouraging the workers themselves to be part of the ownership.

3.12. With regard to workers who want their autonomy guaranteed (thus leaving aside the phenomenon of the 'bogus self-employed'), new cooperative models have recently appeared in response to the significant increase in new forms of work. These new forms of cooperative could be an excellent tool for fostering a wider dissemination of entrepreneurial skills and pooling the costs and benefits. Specifically, thanks to the new technologies, some form of new economy such as the platform economy could harness cooperatives as a way of enabling many self-employed workers to also have ownership of these platforms and thus steer away from the negative trends of dispersion⁽⁹⁾.

3.13. The basic idea of platform cooperatives is clear: new business models based on the internet and on-line platforms can be combined with the cooperative model by giving ownership and controlling power to the very people who use and work through on-line platforms. These innovative forms of enterprise can increase good-quality employment in the platform economy and make the digital economy more participatory.

3.14. Digital platforms in the form of cooperatives thus create a business model that uses digital technologies, websites and distributed mobile applications, and operates on the basis of democratic decision-making and shared stakeholder ownership.

3.15. In this way, the legal form of a cooperative, operating on a digital platform, also lends itself well to the format of data exchange and sharing agencies, which could increasingly be used by companies, and in particular SMEs, which can find it more difficult to set up intermediaries for data management and exchange, enabling SMEs in clusters, for example, to maintain the governance of these structures.

3.16. The potential here has not escaped the European Commission, which indeed, in Article 9 of its proposal for a Regulation on European data governance (Data Governance Act), published on 25 November 2020, expressly provides for the possibility of organising 'services of data cooperatives', as also highlighted by the EESC in its opinion INT/921⁽¹⁰⁾.

3.17. On the role that cooperatives can play in democratising the digital economy, an important reference can also be found in the UN Digital Economy Report 2019⁽¹¹⁾ and in a recent ILO report⁽¹²⁾.

3.18. It is important to provide people working through platforms with the tools to guide their careers and give them access to professional and skills development. As noted by the Commission, regardless of the employment status of people working and/or providing services through digital platforms, these people should be supported with continuous training and reskilling as well as in accessing social protection and, in particular, protection of health and safety at work.

⁽⁹⁾ <https://cecop.coop/works/cecop-report-all-for-one-reponse-of-worker-owned-cooperatives-to-non-standard-employment>

⁽¹⁰⁾ EESC opinion on Data governance (OJ C 286, 16.7.2021, p. 38).

⁽¹¹⁾ https://unctad.org/system/files/official-document/der2019_en.pdf

⁽¹²⁾ <https://www.ilo.org/global/research/global-reports/weso/2021/lang-en/index.htm>

3.19. The digital platform model, including in the form of cooperatives, can be applied to develop and improve accessibility to distance learning, which can facilitate personalised learning.

3.20. The broad dissemination of tools for digitalisation not only of work activities but also of many aspects of daily life requires widespread training in basic digital skills to be available. The social partners and the European institutions should encourage the exchange of best practices in this field with a view to promoting mutual learning and raising awareness of the potential generated by digitalising the economy. Continuing training for employed workers must be promoted first and foremost through social dialogue and collective bargaining.

Brussels, 8 December 2021.

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of the European Economic and Social Committee
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