8 September 2020, Brussels

# ETF response to the public consultation on EU Digital Services Act

European Transport Workers' Federation (ETF) welcomes the Commission's initiative to tackle the issue of the growing inbalanaces within digital services providers. We also welcome an opportunity to list changes to the platform work that are necessary to make it socially sustainable.

However, we would like to stress that the issue of platform work deserves more attention and it should not be treated as what seems to be an afterthought, added to the DSA consultation without any vision how the answers will be used. The Platform Work Summit, planned for September 2020 and subsequently cancelled due to COVID-19 pandemic, should be either organised at a later date or replaced with targeted and profound public consultations.

This text accompanies the answers to the questionnaire and develops the ETF position.

## 1. Mobility platforms, Mobility as a Service (MaaS) considerations

Although MaaS concept and other digital solutions have a great potential to facilitate the transition to more efficient and cleaner transport, they have to fulfil certain criteria to be socially fair.

### Data access

Traffic data generated by private mobility platforms should be made available to public authorities in order to enhance urban mobility planning. The data generated and gathered by public authorities should be in turn granted only to the mobility platforms that are compliant with the existing legal requirements (labour regulations, taxation, licensing, etc.).

### MaaS governance and access

MaaS solutions should be governed by public authorities. Leaving their implementation to the market (private mobility platforms) could lead to discriminatory behaviours, with mobility platforms acting as gatekeepers. Therefore the roles and responsibilities of MaaS platform operators, as well as mobility service providers, need to be clearly established. The access to a MaaS platform should be granted only to the mobility platforms that comply with all the legal requirements.

## 2. Platform work considerations

### Employment status

European Union and its Member States should avoid creating 'third employment status categories' in between of 'a worker' and 'self-employed'. Introducing an intermediate category or allowing companies to pick and choose between arrangements would not achieve full labour protection – especially when real employment relationships are disguised. As we have seen in countries like Italy and the United Kingdom where a third employment category has existed for years, vulnerable workers are often excluded from vital employment protections like unfair dismissal. Similarly, leaving the choice between employment and self-employment to the worker would be the wrong approach, as the workers would be still pushed by their employers to choose the self-employment status.

In determining the existence of an employment relationship, regulators should be guided primarily by the facts relating to the performance of work, not on how the relationship is characterised by an employer. ILO Recommendation 198 from 2006 clearly sets out a framework for doing this.

While in some instances it is important to reinforce the employment relationship, it is essential to expand the conceptual boundaries of the employment relationship to workers not covered by it. This is the only way we can adequately afford protection to workers in non-standard forms of employment. A presumption of employment status is welcome and the adoption of the AB5 law in California in 2019 is a model that merits attention.

**Right to unionise**

A legal reform to expand the scope for collective bargaining for all workers is certainly one of the most important measures to take. Indeed, states have a very clear international legal obligation to do this. The ILO Declaration on Fundamental Principles and Rights at Work states that the ratyfying countries have obligation to respect and promote the right to collective bargaining of all workers. Additionally, under the ILO Right to Organise and Collective Bargaining Convention (C98), the 167 ratifying States must encourage and promote collective bargaining. 49 countries have also ratified ILO Collective Bargaining Convention (C154). The conclusions of the 2015 ILO Tripartite Meeting of Experts on Non-Standard Forms of Employment is clear: *Governments, employers and workers should use social dialogue to develop innovative approaches, including regulatory initiatives that enable workers in non-standard forms of employment to exercise these rights and enjoy the protection afforded to them under the applicable collective agreements. These initiatives should include promotion of effective bargaining systems and mechanisms to determine the relevant employer(s) for the purpose of collective bargaining, in coherence with international standards, national laws and regulations.*[1]

**Responsibility**

Workers in the platform economy have their labour controlled (and by extension their behaviour) by the platform, which determines what the job is and what the cost of the job is. These forms of control have impacts on workers, but at the moment the platform operators bear no responsibility for this. We therefore think that there should be named individuals legally responsible for the software that controls the work and its impacts on particular workers. We also think that it is important for platform workers to have access to a human being when they contact the platform and there are unified procedures for appeals and grievances established.

**Fair digital contracts**

On signing up to the platform the worker should sign a digital contract that establishes a fair and transparent process for pay, and deactivations and how to appeal them. The contract should also specify grievance procedures and the rights and responsibilities of both parties. One aspect of this is the worker's right to the data they produce during their work, the right to be consulted on changes to fares/payment rates and the commitment to enable portability of ratings.

**Workers' data rights**

Workers produce data as they work for a digital platform. This data describes the work process, but it also describes the worker. So the fact that they produce it, often using their own tools, and that it describes them, therefore means that they should have some rights over the data itself and over access to it. Workers should know what data is collected, why it is collected, where it is stored and how it is used to control their labour. In other words there should be transparency in relation to the software

[1] https://www.ilo.org/gb/GBSessions/previous-sessions/GB323/pol/WCMS_354090/lang--en/index.htm

being used. This access should recognise that the data is at least partially the workers – it is produced by the worker as they work, it is collected through the phone owned by the worker, while they work driving/riding a car/bike/van that is owned by them. And the workers should be able to access ALL of their data, including rankings, at any time.
Art. 88 GDPR, on processing data in the context of employment should be used as leverage for enhanced data protection for workers. Such data could specifically relate to recruitment, performance, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and dismissals. Furthermore, trade union representatives should be involved in monitoring the compliance with the GDPR of a given AI system at the workplace. The aim is to lay down measures to safeguard the human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing data, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity, and monitoring systems at the workplace.

**Bias neutral software**
Technology is not bias neutral, and so the software, the algorithms used by digital platforms need to be tested for bias (e.g. gender-based) impacts in order to ensure that certain groups of workers, e.g. women, are not negatively impacted by it in terms of pay, safety or other issues. For example, women are less likely to drive in late night surge times and therefore lose out on the most profitable times. This is an impact of the pricing structure that does not take into account safety concerns.