

To the European Commission

April 6th, 2021, 21-054VK

To the Commissioner for Jobs and Social Rights Nicolas Schmit

To the Executive Vice President of the European Commission for A Europe Fit for the Digital Age Margrethe Vestager

To the Directorate-General for Employment, Social Affairs and Inclusion

A NATIONAL SOCIAL PARTNER, LITHUANIAN BUSINESS CONFEDERATION ANSWERS TO THE COMMISSION'S CONSULTATION QUESTIONS ON POSSIBLE ACTION ADDRESSING THE CHALLENGES RELATED TO WORKING CONDITIONS IN PLATFORM WORK

In response to the rapid growth of the sharing economy sector the Lithuanian Business Confederation decided to convene a Gig economy working group (Working group) uniting digital service platform businesses operating in Lithuania. The sharing economy is already an important part of the employment sector, enabling thousands of people to provide so far unusual services and its importance will only increase in the near future. The working group, which consists of representatives of Wolt, Bolt, Ziticity and Uber digital platforms, is convinced of the need to maintain a modern, flexible and couriers-oriented operating model that is integrally connected to the social security guarantees for partners. **Therefore, the Lithuanian Business Confederation, as a social partner, provides the answers to the EC Consultation questions regarding platform work.**

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

The EU Commission has rightly identified platform work as one of its policy priorities and we welcome the Commission's plan to table a legislative proposal to improve platform workers' rights. However, some indicated problems are not problems, but instead features of individual activity that comes with its sectorial advantages and disadvantages for both contractors and businesses.

For instance, it is true that platform workers do not receive the benefit of social protection, in contrast to employees, and that it disadvantages platform workers. Therefore, it would be a welcome change to see a broader social safety net introduced for platform workers with state-provided guarantees, such as income support and accident at work benefits. It is also true that some workers would see pros in more stability and predictability in regards to their work conditions. Finally, collective bargaining could be a tool to ensure more fairness for platform workers in terms of remuneration, working conditions and other essential employment circumstances.

On the other hand, problems such as unstable income and work time, as well as lack of employment status, are not actual problems at all. Rather, they are a specific feature of the platform business. For instance, lack of stable working hours is an attractive perk of the industry, as it provides wide flexibility for workers to determine their own labour hours. The same goes for income variety. Platform workers are free to choose to work as much, or as little as they want, and with as many platforms they feel like. Such freedom and flexibility are impossible to provide with traditional employment, which demonstrates why platform work has a high supply and demand in the contemporary EU market. Thus, it is highly discouraged to misshape the current legal status of platform workers, ruining the provision of flexibility, which is desired by both platforms and their workers alike.

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

In general, yes. Cross-border harmonized regulation will improve legal certainty, compliance costs, set clear standards of operation, while a patchwork of different local regulations can stifle innovation in more strictly or faultily regulated national markets. Most platforms work on an international level and some member states have rushed regulation that have led to discrepancy vis-à-vis the current realities of the market. Hence, a unitary framework of basic functionality principles would be welcome. It ought to be emphasized, however, that action on cross-border level is required and encouraged only in terms of platform issues, as well as social guarantees for workers. As mentioned per question 1, the legal status of workers and the consequences of such status should remain untouched.

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?

The initiative should provide a broad framework with specific rules for different types of platform work. Action should cover specific issues (e.g. social protection for individual contractors). Platforms should not be obliged to employ platform contractors in all cases or be obliged to prove lack of employment. Most importantly, Commission action should not result in a unitary and an equalized status of self-employed and employed workers of platforms. As emphasized above, both legal statuses come with a set of benefits and setbacks for both parties and, in accordance with the freedom to conduct business and freedom of contract, guaranteed by the European Charter, platforms and their workers should remain free to determine their relationship status without invasive legal intervention.

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?

As mentioned above, some issues indicated are indeed issues that could benefit from EU-wide initiative. However, there are a number of points to emphasize:

Employment status: Legal status classification issue is misguided. As mentioned above, flexibility is the main appeal and innovation driving force of the platform working model. Trying to fit it in a traditional frame might lead to chilling effects of business development, stagnating growth and stifled innovation of services and its networks, as well as long-term harm to consumers via decreased quality of provided services, as competition in this sector could be negatively affected.

To increase legal certainty for platforms and courier partners, EU legislators should define platform-enabled delivery providers as independent contractors under the condition that: a) the platform does not set any dates, times of day or minimum hours the courier should be logged onto the platform; b) the platform does not require the courier to accept any specific delivery tasks; c) the platform does not restrict the courier's ability to offer their services on

other platforms; and d) the platform does not restrict courier's ability to work for other companies or run businesses.

Working conditions / surveillance: In the consultation document, the Commission notes that "surveillance, direction and performance appraisal techniques greatly rely on the use of technology, automated decision-making systems, apps and algorithms". One way to mitigate concerns around the use of data and algorithmic management is to protect the independence of platform-enabled couriers. The benefit of the self-employed model that is based on pay per task work is that platforms do not need to control or measure courier effectiveness in any way - the incentives of couriers and platforms are aligned. In employment models with hourly pay, however, platforms need to make sure that couriers are doing deliveries during their shifts. The only way to monitor such courier performance is to use data and algorithms, which bring about undesired elements of platform control.

Transparency and accountability obligations should not lead to disproportional obligations of monitoring and review for platforms that would impact operability, efficiency, and be financially burdening. Platforms are already adequately obligated according to current data protection, privacy and security regulation both on the EU and national levels.

Access to social protection: We fully agree with the Commission's view that platform workers' access to social protections should be improved regardless of classification. Self-employed persons often have weaker access to social protection. Member state institutional protection is an avenue to explore. Member states could take initiative to react to social topicalities of the sector and provide social protection measures for platform workers that, at the moment, are not covered by any form of social protection.

Furthermore, we believe Platforms could also be allowed to provide platform workers with better protections and benefits (such as sick pay, insurances, holiday pay, or certain earnings guarantees). Currently, platforms are not allowed to provide such protections to independent contractors.

However, Platforms should not be obliged to finance career training, provide particular career opportunities or other employment-like benefits for platform workers. Such imposed obligations would not be economically viable as far as most platforms' business models are concerned. Furthermore, such obligations would not constitute a fair balance of value between a flexible contractor's benefits and his or hers labour. A contractor is not bound to a platform like an employer is, most contractors work multiple platforms. Training a contractor as if he/she was an employee is not reasonable and therefore any such obligation imposed by law would amount to a disproportionate and irrational burden for the platform.

Access to collective representation and bargaining: In order to even out the bargaining power between platforms and couriers, independent couriers should have the ability to organize themselves and enter into collective bargaining negotiations with platforms. The European Commission is already working on a process to clarify that EU competition law does not stand in the way of self-employed persons who wish to protect their interests through collective negotiations. Such collective agreements could, for example include set compensation levels.

Cross-border dimension of platform work (including social security contributions and tax collection): Platforms should be allowed to pay social security and tax contributions on behalf of their courier partners.

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

Yes, a dialogue is a functional approach to policy building.

Sincerely,

Director General

Eglė Radišauskienė

Contacts:

Vilius Kriaučiūnas, Email: vilius@lvk.lt, Tel. +370 5 212 1111.