

## OPINIONS ON THE INTERNATIONAL LABOUR ORGANISATION (ILO) REPORT ON THE TERMS AND CONDITIONS OF WORK IN THE PLATFORM

### **Federation of Finnish Enterprises (SY)**

*Federation of Finnish Enterprises (SY) states the following:*

The Ministry of Economic Affairs and Employment has requested an opinion on the International Labour Organisation (ILO) report on the terms and conditions of work in the platform economy. The questionnaire included in the report seeks to determine whether an ILO convention and/or recommendation should be drawn up on the subject.

The Federation of Finnish Enterprises does not consider an ILO convention or recommendation on platform work to be necessary. Work done in the platform economy and through platforms is not a one-dimensional phenomenon, and it is not possible to take into account the different manifestations of the platform economy in a possible ILO instrument. In particular, a legally binding convention could potentially limit the platform economy in a way that is difficult to predict.

A key issue in platform work is determining the legal status of a person working through a platform. If platform work is carried out in an employment relationship, the person is legally considered as an employee, in which case the existing ILO conventions are also fully applicable. Even if the person is not an employee, ILO conventions often have at least indirect significance. The Federation of Finnish Enterprises finds it very important that the question of employment status remains a national issue and that the definition of an employment relationship does not even indirectly include different assessment criteria for platform work. The legal status of platform work can be determined on the basis of the current legislation, and this line between an employment relationship and self-employment should not be blurred.

As the ILO report shows, different labour and social law solutions have been adopted in different countries to account for platform work. It is very important to note that these solutions are linked to the prevailing labour code and social security system of each country as a whole. In Finland, labour and social security legislation is based on a clear definition of an employment relationship and the demarcation between work done under an employment relationship and work done without an employment relationship (that is, self-employment). A possible ILO convention, but also a recommendation, could create significant legal uncertainty. In addition, it would strengthen the development where regulation is created according to the way work is done. This deviates from the established way of perceiving the legal status of workers on an equal footing, regardless of how the work is organised. The rights of the worker (and the employer) must

not depend on the means of commissioning the work; regulation must be technology-neutral.

In addition, it should be noted that the platform economy is not a one-dimensional phenomenon. Digital platforms have very different natures, operating models and user bases, and not all the work done through platforms is done in the circumstances dealt with in the ILO report that is the subject of the request for an opinion.<sup>1</sup> As the preparation of the EU's Platform Work Directive has shown, the definition of platform work and other issues relating to the platform economy is difficult. These difficulties are even more pronounced when the phenomenon is viewed from the perspective of global regulation.

The ILO request for an opinion came with a questionnaire presenting options and questions on the content of a possible ILO instrument. Although the Federation of Finnish Enterprises considers a convention and/or recommendation unnecessary, it provides the observations below in accordance with the breakdown used in the questionnaire.

On a general note, the Federation of Finnish Enterprises points out that the questionnaire is quite one-sided and, in many places, starts from the premise that platform work is carried out in an employment relationship. However, the existence of an employment relationship is not self-evident, as the functioning and actual situations of platforms vary significantly. Therefore, it is very problematic that the questions about the content of a possible ILO instrument are based on the idea that work mediated through a platform should be regulated in regard to issues that are exclusive to employment relationships.

#### Preamble, definitions and scope (questions 3–16)

The preamble to a possible ILO instrument should also recognise that the platform economy creates opportunities for employment for many groups that might otherwise be easily excluded from the labour market. It is not just low-skilled work; platforms can also provide opportunities in situations where, for example, geographical distances make it difficult to find suitable work.

The diversity of platforms should also be taken into account in the preamble to a possible ILO instrument. Not all platform work is done under an employment contract. There are also large differences between countries. These points should be taken into account in the preamble.

The definitions given in the questionnaire are insupportable. The definition of a platform company should take into account the diversity of platform companies and the fact that not all situations where a digital system, application or online service is used involve platform companies.

Insofar as any ILO convention or recommendation is issued, it should apply horizontally to situations of platform work without interfering with the

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<sup>1</sup> In Finland, the Fair Work on Platforms (REITA) project of the Finnish Institute for Health and Welfare listed the platform companies operating in Finland. The listing shows that, also in Finland, platform companies are different from one another and not every company's activities are about mediating work in the sense that issues related to employment status are even relevant. <https://www.tyoelamatiето.fi/en/analysis/a-list-of-platform-companies-that-mediate-work-is-now-available-for-viewing-and-complementing-for-everyone>

definition of an employment relationship. In this case, the convention or recommendation should only cover the platform economy in general terms and should also take into account the performance of platform work outside an employment relationship. Consequently, definitions and/or expressions referring to employment relationships should not be used in the convention or recommendation. For example, it is not possible to define the working hours of a person working through a platform (question 12) because platform work is usually premised on the freedom of the worker to choose whether to work or not to work. Similarly, the use of terminology that strongly refers to an employment relationship should be avoided. For example, the definition of “digital platform worker” should make it clear that it covers work done through a platform regardless of the worker’s employment status (question 10). Therefore, the term “remuneration” should also not be used for the remuneration paid to the platform worker, as it also strongly refers to the salary paid in an employment relationship (question 11). In the platform economy, compensation for work is often of a different nature than salary.

#### Employment status, fundamental rights and occupational safety (questions 17–30)

It is not appropriate to determine the legal status of work done in the platform economy by means of an ILO instrument. The worker’s employment status must be determined in accordance with national law and practice. Consequently, it is not appropriate for the possible convention or recommendation to refer to collective bargaining (question 17). The prerequisite for collective agreement operations is the existence of an employment relationship. If the platform work is carried out on the basis of self-employment, collective bargaining in the form of “collective agreements” is not possible, and the ILO instrument should not extend the application of rights and obligations that are part of an employment relationship to those with a different employment status. On the other hand, the references to the prohibition of forced and compulsory labour, child labour and discrimination are appropriate.

With regard to occupational safety, the possible convention or recommendation should recognise that occupational safety obligations cannot be extended to the mere use of a platform; the starting point for occupational safety responsibilities is the existence of an employment relationship. Consequently, responsibility for ensuring occupational safety cannot be placed on the platform in all situations. Here, there is also a noticeable difference between platforms. In the case of an employment relationship, ILO conventions already cover platform work situations.

#### Working hours and compensation (questions 31–39)

If an ILO convention or recommendation is intended to cover all types of platform work situations, it should not take a position on working hours or rest periods in accordance with the questionnaire. The regulation of working hours is linked to employment relationships and, in this case, the relevant ILO conventions are applicable without a separate ILO instrument. It is important to note that, in platform work, work can be done according to the worker’s own choice. If there is no employment relationship, the worker is not obliged to work at the times set by the platform and the person performing the work is also free to work on other platforms. There is no reason to regulate the details of the contractual relationship with an ILO instrument.

#### Algorithms and data protection (questions 40–49)

The formulations given in the questionnaire are insupportable in terms of algorithms and data protection. In terms of employment relationships, the use of algorithms and data protection is already restricted by many other regulations. In particular, the regulation of non-discrimination is also technologically neutral in situations where algorithms are used.

#### Social security and terms of the convention on platform work (questions 50–58)

With regard to social security, it is very important that the possible convention or recommendation does not create restrictions on the application of national social security systems. The social security issues of platform work must remain national issues. In addition, the convention or recommendation should not define choice-of-law issues with regard to the conditions applicable to employment.

#### Right to belong in a union and collective bargaining (questions 59–63)

All workers and employers have a right to belong in a union. The right to belong in a union also extends to self-employed persons. However, a distinction must be made between the right to belong in a union and collective bargaining or collective agreements. While everyone has the right to belong or not to belong to a union, the right to collective agreements/bargaining on the conditions for the performance of work only belongs to employees and employers. An ILO convention or recommendation should not blur the boundaries of employment status and, therefore, it should not mention the right to collective bargaining in connection with platform work. Collective agreements only apply to employees. Therefore, an ILO convention or recommendation that also broadly applies to platform workers should not create new collective rights to information, bargaining or representation of trade unions and workers that would extend rights exclusive to employment relationships to persons with a different employment status.

#### Other questions (questions 64–81)

There is no need to create new monitoring procedures or dispute resolution mechanisms in any convention or recommendation.

### **Office for the Government as Employer (VTML)**

*Office for the Government as Employer (VTML) states the following:*

The Ministry of Economic Affairs and Employment requested an opinion on the report of the International Labour Organisation ILO on the terms and conditions of work in the platform economy. The Ministry of Economic Affairs and Employment asked the opinion givers to take a stand on the issues presented in the report in particular.

The European Union has reached an agreement on the content of the Platform Work Directive, which safeguards the position of platform workers in the European Union. Due to this, the Office for the Government as Employer does not consider it necessary from Finland's point of view to draw up ILO regulations on platform work. In the event that a decision is

reached to do so, any provisions drawn up by the ILO should not be mandatory; they should be recommendations that leave sufficient national room for manoeuvre.

The Office for the Government as Employer considers that the contractual relationship between a digital platform mediating work and a person working through the platform is and must continue to be determined in accordance with national law. According to the Platform Work Directive, such a contractual relationship is legally presumed to be an employment relationship when facts indicating control and direction are present in accordance with national law, collective agreements or practices in force in the Member States, and when taking into account the case law of the Court of Justice. The Office for the Government as Employer considers that Finnish legislation adequately defines what constitutes an employment relationship. The Office for the Government as Employer considers that it is not appropriate to extend the protections intended for persons in an employment relationship to platform workers whose contractual relationship with a digital platform does not meet the definition of an employment relationship in accordance with national law.