

Opinion of the European Economic and Social Committee on ‘The role and opportunities of social partners and other civil society organisations in the context of new forms of work’

(exploratory opinion requested by the Estonian Presidency)

(2017/C 434/05)

Rapporteur: **Franca SALIS-MADINIER**

Co-rapporteur: **Jukka AHTELA**

| | |
|--|--|
| Consultation | Estonian Presidency of the Council, 17.3.2017 |
| Legal basis | Article 304 of the Treaty on the Functioning of the European Union |
| Section responsible | Section for Employment, Social Affairs and Citizenship |
| Adopted in section | 19.7.2017 |
| Adopted at plenary | 20.9.2017 |
| Plenary session No | 528 |
| Outcome of vote (for/against/abstentions) | 185/2/3 |

1. Conclusions and recommendations

1.1 At this time of major digital, environmental and demographic change, which is in turn bringing about far-reaching changes for workers, employers and their relations as social partners, the EESC believes that the need to acknowledge the role that social dialogue and collective bargaining play at all levels is now greater than ever, as is the need to strengthen that role.

1.2 The Committee believes that the changes taking place are of such magnitude that they require collective, broad and inclusive debate. The method for carrying out such a debate is rooted in social dialogue at all levels and in the participation of all the stakeholders in a constant quest for new, relevant responses, putting forward suggestions and creating the world of tomorrow.

1.3 The social partners, as players in this process, need to be clear about the acceleration and scale of these changes; to resolve to limit their adverse effects; and to be firm in their belief that the sharing economy can lead to positive developments and opportunities that should be grasped.

1.4 The EESC is convinced that the key objectives and principles of social dialogue hold true in this new world of work. Social dialogue — which includes informing, consulting and involving workers — must be rooted in mutual trust and respect for national practices.

1.5 In several of its opinions, the Committee has reiterated the key part played by social dialogue in the new forms of work ⁽¹⁾. Social dialogue must play a leading role at all relevant levels and must fully respect the social partners' autonomy.

1.6 In the EESC's view, it is not yet possible to predict the full range of opportunities and challenges that the digital economy will bring. The role of social and civic dialogue is not to oppose these transitions, but rather to steer them in the best way possible for reaping the full range of benefits they can bring for growth, the promotion of innovation and skills, good jobs and the sustainable, solidarity-based financing of social protection.

⁽¹⁾ OJ C 125, 21.4.2017, p. 10, OJ C 303, 19.8.2016, p. 54, and OJ C 13, 15.1.2016, p. 161.

1.7 As the EESC has previously pointed out, trade union representation and collective bargaining for platform workers are being called into question⁽²⁾. We therefore need to remove the obstacles preventing people from asserting the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and the ILO conventions⁽³⁾.

1.8 Digitalisation defies traditional methods of management and administration; it calls for participative management, and for collective rules to be drawn up. This new form of management must give employees the opportunity to express their opinions; it must also enable them to participate in solving problems and sharing techniques for strengthening common benchmarks and professional expertise and for optimising human resources deployed in innovation and company development processes.

1.9 At the same time, the EESC recognises that the new forms of work, accompanied by disintermediation and continuous, rapid change, mean that the structure of and arrangements for social dialogue need to be adapted.

1.10 The EESC recommends respecting the autonomy of the social partners who, through collective bargaining, have undertaken to find innovative forms of social dialogue and responses tailored to the needs of employers and workers, both in traditional enterprises and in the digital economy.

1.11 In this opinion, the EESC describes some initial experiences, innovative responses and solutions, trade-union practices and collective bargaining outcomes that tackle the challenges thrown up by these changes.

1.12 The EESC notes that digitalisation and its effects on work need to be a priority at European level, as well as for all Member States, and must become a central component of social dialogue. The EESC recommends:

- monitoring the development, trends, threats and opportunities of digitalisation, as well as their impact on industrial relations, working conditions and social dialogue,
- improving the effectiveness and relevance of social dialogue amidst changes in the world of work by appropriate means such as exchanging information, drawing up forward studies, pooling best practice and achieving an appropriate legislative and non-legislative framework.

1.13 The far-reaching changes that the world of work is undergoing also raise the question of greater cooperation between the social partners and other civil society organisations. The EESC has already declared that a clear distinction has to be made between social dialogue and civil dialogue; but while they cannot be conflated, they should also not be completely divorced from one another⁽⁴⁾. Furthermore, the initiatives mentioned in this opinion include broad consultation at government level that brings other civil society stakeholders into broader debates on the overall impact of digitalisation.

2. Introduction

2.1 As in 1985 — when the social partners and social dialogue were given legitimacy and allocated an important role in the European project — the EESC recommends strengthening the role of the social partners at all levels at this time of major change, recognising the role of civil society representatives.

2.2 New forms of fragmented work, and the rise in the number of atypical workers, mean that these workers need to be involved by informing and consulting them to a greater extent, as well as by adjusting collective rights, working time arrangements and social rights⁽⁵⁾.

⁽²⁾ OJ C 303, 19.8.2016, p. 54.

⁽³⁾ Articles 12 and 28 of the Charter, and ILO conventions No 87 and 98; see also below, points 3.2 et seq.

⁽⁴⁾ OJ C 458, 19.12.2014, p. 1.

⁽⁵⁾ As Marianne Thyssen noted at the joint ETUI/ETUC conference in June 2016 on 'Shaping the new world of work'.

3. The reality of work on platforms

3.1 According to Eurobarometer ⁽⁶⁾, 17 % of Europeans use digital platforms as customers and workers. They are predominantly well qualified and live in urban areas. In this group only 5 % of workers regularly offer services or work on platforms, and 18 % do so sporadically. Work on platforms as a primary occupation is therefore still rare, but is becoming more common. Meanwhile, digitalisation and artificial intelligence are having a much more significant impact on work in traditional businesses; without neglecting work on platforms, social dialogue should focus on these developments, which are having a profound effect on the nature and organisation of work.

3.2 The EESC calls for the contractual status of ‘crowd-workers’ and other new forms of employment relationship, as well as intermediaries’ obligations, to be examined when negotiating working conditions. Clarifications are needed as regards these forms of work and the applicable tax and social security systems.

3.3 The EESC recommends that the European Commission, the OECD and the ILO work together with the social partners with a view to developing suitable provisions on decent working conditions and protection for online workers and workers under other new forms of employment relationship. The EESC believes that defining an EU-level approach would be beneficial, whilst noting that most measures will need to be carried out at national, sectoral or workplace level ⁽⁷⁾.

3.4 The EESC is particularly concerned by the fact that trade union representation and the right to collective bargaining for digital workers is being called into question. Competition rules might in this way be applied to self-employed workers, who are in fact in a similar situation to dependent employees. It is therefore necessary to assess the status of the workers concerned on a case by case basis and, in the case of employed status, the obstacles tending to exclude such workers from collective bargaining and trade union representation should be removed ⁽⁸⁾.

4. Digitalisation and priority themes for the social partners in social dialogue

4.1 The EESC considers that the major themes of social dialogue in the age of digitalisation include questions relating to employment, career transitions, lifelong learning ⁽⁹⁾, particularly vocational training, social protection and the sustainability of its financing ⁽¹⁰⁾, working conditions and pay, and income security.

5. Employment and vocational training

5.1 It is difficult to pinpoint the qualitative and quantitative change that work will undergo following the digital transition, especially as the effects may vary in different sectors and occupations.

5.2 Nonetheless, it is up to the social partners to anticipate these changes so as to tailor workers’ skills to the new professions ⁽¹¹⁾. Lifelong learning, tailoring such training to digital skills, is a priority. Some Member States have introduced minimum entitlements to paid educational leave. It should be examined whether this is a useful instrument for employers and employees alike to gear skills to needs and whether European measures are needed to introduce this possibility across the EU ⁽¹²⁾.

6. Social protection

6.1 The way social security systems function needs to be reviewed and, if necessary, adapted, as they were designed for continuously-salaried careers, which are less and less frequently the norm. Over a period of 10 years, the number of Europeans working part-time has increased by 11 million (the figure now stands at 44 million) and the number of workers on temporary contracts has risen by more than 3 million (now a total of 22 million) ⁽¹³⁾.

⁽⁶⁾ Flash Eurobarometer 438, 2016.

⁽⁷⁾ OJ C 303, 19.8.2016, p. 54.

⁽⁸⁾ OJ C 303, 19.8.2016, p. 54.

⁽⁹⁾ EESC opinion on ‘Skills/New forms of work’ (see page 36 of this Official Journal).

⁽¹⁰⁾ On the necessary adjustments to the taxes and contributions levied on work on platforms in order to fund social protection, see OJ C 13, 15.1.2016, p. 161.

⁽¹¹⁾ EESC opinion on ‘Skills/New forms of work’ (see page 36 of this Official Journal).

⁽¹²⁾ OJ C 13, 15.1.2016, p. 161.

⁽¹³⁾ Reflection paper on the social dimension of Europe, April 2017.

6.2 At European and national level, financial and fiscal policy decisions need to be made to ensure that our social protection systems are sustainable; these issues are a matter for social dialogue.

7. Legal changes in the subordination relationship

7.1 In one of its opinions ⁽¹⁴⁾, the EESC concluded that legal changes were needed to the very definition of work and to the structural distinction between employment and self-employment, so as not to leave digital workers unprotected. The EESC calls for the statutes and relations in the digital economy to be clarified in order to ensure that all workers can enjoy sufficient rights and social protection. The social partners have a key role to play to ensure that this process leads to a positive, fair and sustainable result, and that any grey areas in rights and protection are addressed.

8. Impact on work

Digitalisation has a far-reaching impact on both existing and new entities. The impact of digitalisation on working methods — such as the rapid increase in teleworking in many sectors — is growing fast. A recent Eurofound study has found that across the EU28, an average of about 17 % of employees are engaged in telework/ICT-mobile work (i.e. mobile work involving information and communication technologies) ⁽¹⁵⁾.

8.1 An increase in the number of teleworkers and mobile workers means that the social partners have to find new ways and innovative methods to reach these workers, who are no longer physically present in offices.

9. Monitoring of and checks on work

9.1 While ICT and digitalisation offer some workers the opportunity of autonomy in terms of time management and workplace (their evaluation being based more on their results rather than time present), others find that information and communication technologies mean that their work is subject to a greater degree of monitoring and control.

9.2 The social partners must use social dialogue to tackle these challenges so as to protect the collective interests of all these workers and guarantee high quality work.

10. Permanently connected workers and risks to health

10.1 While the increasingly intensive use of ICT can provide some workers with opportunities for autonomy and a better work-life balance, it can also be a health risk if poorly managed. The increase in the number of workers suffering from stress and burnout is both worrying and costly: something for which social dialogue needs to find solutions. The Commission has issued a proposal for a Directive on parents' and carers' work-life balance as part of the package of measures accompanying the European Pillar of Social Rights ⁽¹⁶⁾.

10.2 ICT ⁽¹⁷⁾ can also blur the boundaries between work and private life. Wide-ranging dialogue aimed at limiting workers' being reachable at all times, and training people to use ICT effectively, are vital solutions, as are new rights, such as the right to switch off recently recognised in France.

11. Participation of workers in decision-making bodies

11.1 The trend towards more autonomy that digitalisation offers some workers represents a challenge for businesses, their constituent bodies and their governance, as well as for management methods and businesses' traditional hierarchies. These changes mean that more forms of social dialogue, information and consultation, and strong worker participation are needed. Workers can provide their own input into innovation and development processes that are beneficial to their company and its stakeholders.

⁽¹⁴⁾ OJ C 75, 10.3.2017, p. 33.

⁽¹⁵⁾ 'Working anytime, anywhere: The effects on the world of work', Eurofound, 2017.

⁽¹⁶⁾ Communication from the European Commission, entitled 'An initiative to support work-life balance for working parents and carers', April 2017.

⁽¹⁷⁾ See Eurofound study 'Working anytime, anywhere: The effects on the world of work', 2017.

11.2 Given this state of affairs, the EESC believes that there is a need for workers to have more of an influence on — and participate more in — decision-making bodies. It is essential to have workers' (and their trade unions') trust and contributions at all relevant levels and in all relevant bodies — be it at local level and/or on management or supervisory boards. It is vital that they participate in anticipating, managing and taking decisions on the changes that are taking place in order to address the effects of digital change and create an attitude and culture geared to innovation. According to a Eurofound report, most company managers are convinced that it is a competitive advantage for employees to be involved in the choices made by firms ⁽¹⁸⁾.

11.3 The EESC believes that the new forms of work must take into account appropriate ways to consult and inform workers. The social partners need to find the most appropriate solutions at national level and within companies to ensure that workers are involved.

12. Initial results of social dialogue on digitalisation in the Member States: principles and best practice

12.1 In some Member States, governments have launched dialogue on digitalisation issues and challenges. Trade unions, employers, researchers and civil society representatives have all been involved.

12.2 The EESC here sets out the initiatives taken in some countries in anticipation of new forms of work. These initiatives bring together social partners and civil society players, including youth groups and anti-poverty organisations.

12.2.1 Germany has taken the lead, publishing a green paper in 2015 entitled 'Work 4.0 — Rethinking work', paving the way for dialogue with the social partners and other stakeholders on the implementation of digital matters.

12.2.2 In France, a National Digital Council has been set up, and the 'Metting Report' was published in 2015. Trade unions, employers and the public were involved in drafting this report, which set out a number of recommendations that firms are obliged to implement.

12.2.3 Similar government initiatives, involving the social partners, academia and civil society representatives, have also been rolled out in Austria, Finland, Sweden, Portugal, Italy, Spain, Hungary and Denmark.

The EESC believes that the results of this multi-stakeholder dialogue need to be consolidated at European level, and that the needs and problems expressed must be taken into account in European initiatives to help align the reference framework.

13. Social partners and the evolution of social dialogue issues and trade-union measures in response to digitalisation

13.1 Experiments carried out in many Member States — and set out below in a non-exhaustive list — demonstrate the evolution of trade-union measures and the acquisition of new rights thanks to collective bargaining on new forms of work.

13.2 Two new rights have been recognised in France: the first, included in the labour law of August 2016, is the right to switch off, which tackles the risks of work without borders or limits. This right ensures that workers who use ICT can avoid having to be permanently connected.

13.3 Social dialogue at company level enacts the right to switch off by means of collective or sectoral agreements. Teleworking and mobile work agreements have also been negotiated in a number of companies. An agreement on digitalisation — the first in Europe — was also signed in 2016 between social partners within a telecommunications group. In particular, it provides for the creation of a committee with the social partners that is to anticipate the new skills employees will need due to digital developments.

13.4 The second new right obtained in France is the personal activity account. All workers (employees, self-employed workers or 'bogus' self-employed workers, as well as platform workers) are eligible and can use it to build up rights to training, social welfare, unemployment benefits and retirement in a single transferable account.

⁽¹⁸⁾ 'Work organisation and employee involvement in Europe', 2013; see also OJ C 161, 6.6.2013, p. 35.

13.5 Moreover, innovative trade union practices are starting to emerge: some unions have created a platform for self-employed people, providing new services such as health insurance, welfare guarantees and legal services tailored to their occupation.

13.6 In June 2016, the German trade union IG Metall and the Swedish trade union Unionen entered into a partnership to monitor and evaluate work on digital platforms with a view to anticipating the changes generated by the new economy and developing digital tools for trade union communication, so as to organise self-employed workers and 'crowd-workers'. It is possible to access this trade union platform internationally; it is aimed at workers across national borders. In Germany, a sectoral agreement on mobile work has also been reached, which takes into account new working arrangements: teleworking, mobile working and working from home.

13.7 In some companies in Italy, trade unions have negotiated agreements for unorthodox workers, which set out social security and sickness coverage guarantees (previously reserved for employees in traditional jobs) as well as tailored legal assistance.

13.8 In Denmark and in many other EU countries, as well as the United States, new forms of digital work have been widely criticised by trade unions because they get around the labour regulations applying to traditional sectors and avoid taxation. The transport company Uber — that emblem of platform work — has been at the heart of discussions on the digital economy. The challenge was to gain recognition that Uber drivers are dependent workers, and thereby to require Uber to declare them, pay employer's contributions and comply with labour regulations⁽¹⁹⁾. Trade unions aim to negotiate minimum wages on behalf of platform workers, as well as transparency regarding the criteria that govern the algorithms and determine their ratings and assessment, and decent working conditions⁽²⁰⁾.

13.9 In the Netherlands, workers on flexible contracts and 'self-employed' workers have also started to unionise.

13.10 European social dialogue in the metallurgy sector has resulted in a joint position on the impact of digitalisation and action to be taken, signed by the IndustriALL trade union and CEEMET, an employers' organisation⁽²¹⁾.

13.11 At European level, BusinessEurope, UNI Europa, CEEP and UEAPME have signed a joint declaration on the effects of digitalisation in the world of work and highlighted the major challenges facing EU leaders and the social partners⁽²²⁾.

Brussels, 20 September 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

⁽¹⁹⁾ A tribunal in England ruled against Uber in case Mr Y Aslam, Mr J Farrar and Others -V- Uber. Uber has appealed.

⁽²⁰⁾ 'Digitalisation of the economy and its impact on labour markets', Christophe Degryse, ETUI working paper, February 2016; 'ReformsWatch', online information service provided by ETUI, 2016; 'Trade unions must organise people working through platforms', Gunhild Wallin, June 2016 and 'Digitalisation and working life: lessons from the Uber cases around Europe', Eurofound, January 2016.

⁽²¹⁾ 'An IndustriALL Europe and CEEMET joint position', 8 December 2016.

⁽²²⁾ Declaration of the European social partners on digitalisation, signed at the Tripartite Social Summit on 16 March 2016.