



Council of the
European Union

Brussels, 10 December 2021
(OR. en)

Interinstitutional File:
2021/0414(COD)

14450/21
ADD 3

SOC 704
EMPL 549
MI 937
DATAPROTECT 289

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: SWD(2021) 397 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a Directive of the European Parliament and of the Council On improving working conditions in platform work

Delegations will find attached document SWD(2021) 397 final.

Encl.: SWD(2021) 397 final



Brussels, 9.12.2021
SWD(2021) 397 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT
Accompanying the document
Proposal for a Directive of the European Parliament and of the Council
On improving working conditions in platform work

{COM(2021) 762 final} - {SEC(2021) 581 final} - {SWD(2021) 395 final} -
{SWD(2021) 396 final}

A. Need for EU action

What is the problem being addressed?

Some people working through digital labour platforms face poor working conditions and inadequate access to social protection. In many cases, this concerns people who are false self-employed, i.e. their employment status is misclassified. Misclassified people working through such platforms have neither the rights and protections of the national and EU labour *acquis* that workers have, nor the autonomy and stronger labour market position enjoyed by many genuine self-employed people. There are around 28 million people who are estimated to work through platforms in the EU. 22.5 million of these people are believed to be correctly classified, either as workers or as self-employed (the vast majority, as the latter). 5.5 million of the total 28 million people, however, may be at risk of misclassification. The misclassification of the employment status in platform work has been the subject of over 100 court and 15 administrative decisions across the EU.

Some people experience a certain degree of control by the platforms they work through, which use algorithms to assign tasks to, monitor, supervise, evaluate and draw consequences which have repercussions for them. This “algorithmic management” can have a negative impact on some of their working conditions and their risk of being misclassified, because it can conceal subordination behind complex digital arrangements. People working through platforms need to understand how their behaviour influences access to future task opportunities determined through the algorithms. Access to tasks has implications for their income, irrespective of their employment status. Hence, algorithmic management challenges are relevant for both workers and self-employed people working through platforms.

Difficulties in enforcing existing obligations, driven by issues of transparency and traceability of platform work, including in cross-border situations, also have an impact on working conditions and access to social protection. National authorities have difficulties in accessing data on platforms and on people working through them, as well as on platforms’ terms and conditions. Issues of traceability are especially relevant when platforms operate across borders in several Member States, making it unclear where platform work is performed and by whom. This should be done with a view to improving legal certainty, creating a level playing field between digital labour platforms and offline providers of services and supporting the sustainable growth of digital labour platforms in the Union.

What is this initiative expected to achieve?

The general objective of this initiative is to improve the working conditions and social rights of people working through digital labour platforms, including with the view to support the conditions for the sustainable growth of digital labour platforms in the European Union. Specifically, the initiative aims to i) ensure that people working through digital labour platforms have – or can obtain – the correct legal employment status in light of their actual relationship with such platforms and gain access to the applicable labour and social protection rights; ii) ensure fairness, transparency and accountability in algorithmic management in the platform work context; and iii) enhance transparency, traceability, and awareness of developments in platform work and improve enforcement of the applicable rules for all people working through digital labour platforms, including those operating across borders.

What is the value added of action at EU level?

EU action is necessary to achieve the EU's Treaty-based core objectives of promoting sustainable economic growth and social progress (Article 3 TEU). Only an EU initiative can set common rules on how to address the risk of misclassification of the employment status that apply to all relevant platforms operating in the EU, while also preventing fragmentation in existing and forthcoming regulatory approaches to algorithmic management and addressing the cross-border dimension of platform work.

B. Policy options

What legislative and non-legislative policy options have been considered? Is there a preferred choice? Why?

The impact assessment considered three policy areas (A – addressing the risk of misclassification, B – issues related to algorithmic management, and C – issues related to enforcement, traceability and transparency, including in cross-border situations), which, taken together, address the identified challenges. Within these policy areas, the examined policy options differed in terms of their personal and/or material scope. Options to define the concept of worker, establish a third employment status at EU level, or introduce an “irrebuttable” presumption of employment were discarded at an early stage.

Under Policy Area A (addressing the risk of misclassification), the preferred option is a **rebuttable presumption limited to those platforms that exercise a certain degree of control**. This option also includes a **shift in the burden of proof**: once the presumption is triggered, in case it is challenged, it is for the platforms which are presumed to be employers to prove otherwise. Under Policy Area B (algorithmic management), the preferred option is a package of rights regarding transparency, consultation, human oversight and redress for both workers and the self-employed. Under Policy Area C (enforcement, transparency and traceability, including in cross-border situations), the preferred option is to combine a clarification on the obligation to declare platform work, including in cross-border situations, with a duty for platforms to publish information on their Terms and Conditions, the number of people working through them, their employment status, social protection coverage and other relevant data.

In terms of choice of the legal instrument, the cornerstone of the package would be a Directive. A Directive is regarded as the most suitable, proportionate and effective instrument to deliver on the objectives of the initiative. It provides binding minimum requirements, while it leaves room for the Member States to adapt to the specific national contexts.

Who supports which option?

The preferred option under Policy Areas A and B are supported by trade unions, representatives of people working through platforms as well as by many representatives of national authorities and some platforms. Most stakeholders paid less attention to options under Policy Area C. Trade unions support improving the transparency and traceability of platform work across borders. Representatives of national authorities support a duty for platforms to publish certain information, if limited to platforms above a certain size. Employers' organisations support the need to address the risk of misclassification, although

they believe this should be done at national level. They agree on the need for more transparency on algorithmic management and have stressed existing regulations should be taken into account to this end. The preferred option package is in line with the European Parliament's resolution of 16 September 2021 on fair working conditions, rights and social protection for platform workers (2019/2186(INI)).

C. Impacts of the preferred option

What are the benefits of the preferred option?

As a result of action to address the risk of misclassification (Policy Area A), between 1.7 million and 4.1 million people are expected to be reclassified as workers. This would grant them access to the rights and protections of the national and EU labour *acquis*. The earnings of people working through platforms may increase by up to EUR 484 million per year. New rights related to algorithmic management in platform work (Policy Area B) may lead to improved working conditions for 28 million people. The obligation to declare platform work and the publication requirements (the preferred combination of options under Policy Area C) will (indirectly) improve working conditions, legal certainty and business transparency.

What are the costs of the preferred option?

Action to address the risk of misclassification (Policy Area A) could result in increased costs per year for platforms between EUR 1.9 billion and EUR 4.5 billion. Businesses relying on them and consumers may be faced with part of these costs, depending on if and how platforms decide to pass them onto third parties. New rights related to algorithmic management (Policy Area B), as well as the preferred combination of options on enforcement, transparency and traceability (Policy Area C) imply negligible to low costs.

How will enterprises and SMEs be affected?

Conservative estimations found that there are more than 500 active platforms – a majority of which are on-location – active in the EU. Approximately 360 of them are SMEs. SMEs may face unfair competition by larger platforms and are therefore expected to gain from a level playing field.

Will there be significant impacts on national budgets and administrations?

Action to address the risk of misclassification will result in up to EUR 4 billion increased revenues per year for Member States (in the form of social protection and tax contributions).

Will there be other significant impacts?

No other significant impacts are expected.

D. Follow-up

When will the policy be reviewed?

The Directive would be evaluated 5 years after it enters into force. This would take into account a two-year period of transposition by Member States.