



Council of the
European Union

Brussels, 10 December 2021
(OR. en)

Interinstitutional File:
2021/0414(COD)

14450/21
ADD 4

SOC 704
EMPL 549
MI 937
DATAPROTECT 289

COVER NOTE

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

date of receipt: 9 December 2021

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

Subject: REGULATORY SCRUTINY BOARD OPINION
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work

Delegations will find attached document SEC(2021) 581 final.

Encl.: SEC(2021) 581 final



EUROPEAN COMMISSION

Brussels, 29.10.2021
SEC(2021) 581 final

REGULATORY SCRUTINY BOARD OPINION

Proposal for a Directive of the European Parliament and of the Council
on improving working conditions in platform work

{COM(2021) 762 final}
{SWD(2021) 395-397 final}



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Improving the working conditions in platform work in EU

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

New forms of work and operating models in the platform economy may challenge traditional employment relations, working conditions and social protection systems.

People who work through digital labour platforms often operate under precarious working conditions. In many cases, they fall outside the scope of protection provided by EU and national labour and social laws. This can be because their working status is misclassified. The COVID-19 pandemic has exacerbated these vulnerabilities.

The aim of this initiative is to ensure fair working conditions and adequate social protection for people working through digital labour platforms in the EU.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report is not sufficiently clear on its coherence with linked initiatives.**
- (2) The report does not explain sufficiently why and how the issues related to algorithmic management are particularly relevant for the platform economy.**
- (3) The report does not sufficiently reflect the views of different categories of stakeholders, including platforms and platform workers.**

(C) What to improve

- (1) The report should clarify its scope as compared to that of the parallel initiative on collective bargaining agreements for self-employed. It should be more specific on the main gaps in existing or planned EU legislation this initiative aims to address (in particular GDPR, Platform-to-Business Regulation, Artificial Intelligence Act, Data Act). It should**

explain to what extent the problem of algorithmic management for self-employed is already covered in the Platform-to-Business Regulation. It should discuss how the data portability rights could overlap with the wider provisions that would be included in the Data Act.

(2) The report should explain why and how issues related to algorithmic management are particularly problematic for platforms. It should justify the need for platform-specific action in the absence of a horizontal approach. It should clarify any links between algorithmic management and addressing the risk of misclassification. It should explain how it would ensure a level playing field between platforms and traditional businesses.

(3) The report should explain how the publication requirements in the transparency options would avoid the disclosure of commercially sensitive information. It should specify the more stringent obligations envisaged for larger platforms as well as the obligations involved in the lighter approach for SMEs.

(4) The report should further develop the impact analysis. It should identify and analyse territorial impacts and impacts on employment. In particular, it should analyse whether an increase in business compliance costs may result in a reduction in employment by platforms. It should analyse to what extent the preferred option will affect the availability of services for on-location platforms in small towns and regions (territorial impacts). It should clarify whether the estimated increase in earnings resulting from reclassification accounts for the additional income tax. It should also clarify how the tax contributions of self-employed and workers are factored into the estimates of revenues for public authorities.

(5) The report should ensure analytical alignment with the parallel initiative on collective bargaining agreements for self-employed. Data, definitions and forecasts should be consistent and apparent differences between the two initiatives should be clearly explained.

(6) The methodological annex should include detail on the methodological approach and any limitations or uncertainties in the analysis. It should include information on how the estimates were calculated and what the assumptions were based on.

(7) The report should present stakeholder views with more precision, indicating the views of different categories of stakeholders on the options. It should include the views of platform businesses in the analysis of impacts and feature them more prominently in the discussion of the preferred option. The report should explain how it takes account of dissenting views. It should clarify references to 'representatives', 'experts' and 'interviewed people'.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG may proceed with the initiative.

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact assessment accompanying the document Proposal for a Directive of the European Parliament and the Council to improve the working conditions in platform work in the European Union
Reference number	PLAN/2020/8677
Submitted to RSB on	29 September 2021
Date of RSB meeting	27 October 2021

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

A4.1 Overview of benefits of the preferred option

Overview of benefits (total of all policy options and accompanying measures) of the Preferred Option		
Stakeholder	Description	Amount
People working through platforms (employed and self-employed)	Better working conditions and improved social protection for people reclassified as employees (combination of Policy Options A2, A3b and B2b)	<p>Policy Option A3b is likely to contribute to the reclassification of between 1.7 million (760 000 low-skilled on-location, 60 000 high-skilled on-location, 400 000 low-skilled online and 500 000 high-skilled online) and 4.1 million people (2m low-skilled on-location, 340 000 high-skilled on-location, 1.25m low-skilled online and 500 000 high-skilled online).</p> <p>The benefits for them:</p> <ul style="list-style-type: none"> - More stable and predictable income - Longer and more stable working hours - Compensation for standby working time - Paid leave - Fuller access to social protection - Better opportunities for collective bargaining - Better health and safety conditions for reclassified on-location workers (especially delivery riders and ride-hailing drivers) <p>Of those who would be reclassified (in the upper bound scenario), 31% would experience a rise in their income if they earned at least the minimum wage after reclassification. This results in a total increase of EUR 203-484 million for all platform workers in EU-27, or an average increase per person of EUR 121.07 per year. The latter would vary from 0 for those workers who already make minimum wage or more, to at most EUR 1800 per year for those who make less than minimum wage and work an average number of hours.</p> <p>In addition to gains from the increased earnings, reclassified workers would also benefit from access to paid leave, valued at an average annual gain of EUR 178 per worker, or EUR 349 million to EUR 630 million for all reclassified workers in the EU combined (asuming that they would continue working the same number of hours as prior to reclassification).</p> <p>Compensation for the costs of COVID-19 protective materials, currently borne by on-location workers, can reach EUR 42 million – EUR 121 million per year. In addition, reclassified delivery workers would receive a one-off benefit in terms of a high-visibility vest and helmet, valued at EUR 73.2 million.</p> <p>Health and safety benefits include: reduction in injuries and fatalities of traffic participants due to decreased incentives for risky behaviour in traffic; wider use of safety gear as it is provided by platforms safety training provided by platforms.</p> <p>Policy Option B2b will strengthen the effect of Policy Option A3b and contribute to the improvement of the working conditions of platform workers:</p> <ul style="list-style-type: none"> - Workers will be better aware about algorithmically made decisions that impact their working conditions (for example, allocation of work) and will be able to use a set of tools and procedures to challenge decisions that are not acceptable to them - Platforms will design the algorithms by taking workers' position into consideration in response to the consultation process or as a result of

4

		the complaint-handling mechanism
	Better working conditions and improved social protection for the self-employed working through platforms (combination of Policy Options A3b and B2b)	<p>As an effect of Policy Option A3b, up to 3.79 million people who are currently at risk of being misclassified, are likely to become genuinely self-employed.</p> <p>Policy Option B2b will complement the beneficial effect of Policy Option A3b, improving the self-employed's working conditions:</p> <ul style="list-style-type: none"> - The self-employed persons working through platforms will be better aware about algorithmically made decisions that impact their working conditions (for example, allocation of work, determination of pay rates) and will be able to use a set of tools and procedures to challenge decisions that are not acceptable to them - Platforms will design the algorithms by taking the position of people working through platforms into consideration, in response to the consultation process or as a result of the complaint-handling mechanism
	Improved transparency, information and consultation rights (Policy Option B2b)	<p>As an effect of Policy Option B2b, people working through platforms will be granted rights concerning algorithmic transparency, consultation, human oversight and redress. This will apply to up to 28.29 million people currently working through platforms. These would grant the possibility for people working through platforms to better understand criteria used for algorithmic management, control of how their data is being used and challenge the decisions that are taken on this basis, as well as improve collective rights and strengthen social dialogue.</p>
Digital labour platforms	Lower legal and compliance costs (Policy Option A3b)	<p>The legal and non-compliance costs are likely to increase in the short to medium term as Policy Option A3b would make it easier and less costly for people working through platforms to challenge their legal status. However, such costs are likely to decrease in the medium to long term. Policy Option A3b provides for a clear set of criteria concerning the definition of control exercised by digital platforms over people working through them. The platforms will adapt to make sure that their business models take these criteria into consideration.</p> <p>Significant savings to platform companies are likely, given that the number of legal cases concerning misclassification has been increasing in the EU since 2015, resulted in reclassification decisions in 65 out of observed 103 court decisions, and incurred cost for the on-location digital platforms from tens to hundreds of millions euros in legal costs and fines.</p>
	Reputational and business gains through higher service quality and social responsibility (Policy Options A3b, B2b, C1 and C2)	<p>Better service quality of on-location platforms due to better supervision of service delivery, training to people working through platforms, adequate access to social protection and improved working conditions.</p>
Traditional businesses competing with platforms	Level playing field with other platforms and traditional companies in the same sectors (Policy Option A3b and C1)	<p>Removal of the unfair competitive advantage of platforms relying on false self-employment vis-à-vis the companies that currently employ their workers.</p> <p>The clarification of the obligation to declare platform work, including in cross-border would also ensure that digital labour platforms are treated on an equal footing with offline businesses vis-à-vis social protection coverage of their workers.</p>
Consumers	Improved quality of services provided by platforms	<p>Better service quality of on-location platforms due to better supervision of service delivery, training to people working through platforms and improved working conditions.</p>
Public sector	Increased income from tax and social protection contributions (A)	<p>From on-location platforms: EUR 0.93 billion to EUR 2.64 billion per year</p> <p>From online platforms: EUR 0.74 billion to 1.33 billion per year</p>
	Better implementation and enforcement of labour market policies and platform regulation (combination of Policy Options A3b, B2b, C1 and C2)	<p>Policy Option B2b will provide better transparency concerning algorithmic management, which underpins platforms' business models.</p> <p>Policy Option A3b will provide more clarity to authorities concerning the criteria for assessing the extent of control that platforms exercise over people working through them. The rebuttable presumption will also provide the authorities instruments to bring potential cases of misclassification to court.</p>

5

		Policy Options C1 and C2 will ensure that people working through platforms cross-border as workers have adequate access to social protection, as per relevant national rules of the country they work in. It will also ensure that digital labour platforms are treated on an equal footing with offline businesses. The publication requirements will enhance availability of data on people working through platforms that could be used for policy design, monitoring and implementation.
--	--	---

A4.2 Overview of costs of the preferred option

Overview of costs (total of all policy options and accompanying measures) of the Preferred Option		
People working through platforms (employed and self-employed)	Loss of flexibility and autonomy for the reclassified people working through platforms (Policy Option A3b)	Some loss of flexibility and autonomy for those people (around 1.72 – 4.09 million people) who are currently working through platforms, are at risk of misclassification and will obtain the status of an employee after the policy options are implemented
	Lower availability of work through platforms and lower income for the self-employed (Policy Option A3b)	Very difficult to estimate in a meaningful way. According to platforms, reduced market access and fewer work opportunities for 41-80% of people currently working through delivery and ride-hailing platforms. Potentially increased price competition by self-employed people who could set their own prices. Fewer EU citizens will provide services via online platforms because they could not compete on price with self-employed non-EU freelancers.
Digital labour platforms	Increased legal and compliance costs (Policy Option A3b)	Currently legal and non-compliance costs are from tens to hundreds of millions euros for on-location platforms. As Policy Option A3b would make it easier and less costly for people working through platforms to challenge their legal status, the legal and non-compliance costs are likely to be even higher in the short to medium term. Nevertheless, they are expected to decrease below the baseline in the long run.
	Administrative costs (Policy Option A3b, B2b, C1 and C2)	Administrative cost of hiring employees (recruitment, contractual arrangements, shift allocations, etc.) are not considered to change drastically given that platforms already recruit and contract people as independent contractors. Furthermore, the processes are largely automated. Legal research to adapt to changing employment rules in different Member States: one-off combined cost of legal research of at least EUR 557,000 + recurring costs of at least EUR 712.5 per expansion to a new country + the cost of adapting to the new legal rules. One-off costs of providing more algorithmic transparency for people working through platforms. Recurring cost per consultation with workers' representatives estimated at EUR 67.36 for each platform (assuming one manager attends one two hour consultation), or EUR 199,665 across affected platforms. The recurring cost of ensuring human oversight and review of significant decisions taken by algorithms, providing written explanations of these decisions, and internal complaint-handling procedures. Recurring cost of maintaining address mechanisms. The precise costs per platform could vary depending on whether the platform already has any complaint handling procedures and how many people work through the platform. The clarification on the obligation to disclose platform work, including in cross-border situations would have no costs above the baseline, since it would make sure that platforms abide by the national rules they would have to comply with anyway, in their capacity of employers. Providing information on the web-site regarding the number of people working through platforms and their employment status: One-off cost per platform: EUR 92.28 Combined one-off cost for all on-location platforms: EUR 30,360 Combined one-off cost for online platforms: EUR 17,256 Recurring annual cost of updates per platform: between EUR 0 (if data are automatically linked to the tool) and EUR 185 (if manual updates are needed) Combined cost of updates for all on-location platforms: EUR 0 – EUR 60,720.

6

		Combined cost of updates for all on-location platforms: EUR 0 – EUR 34,512
	Costs to platforms due to rise in wages for people making less than minimum wage, and social protection contributions paid by employers	Annual costs related to reclassification: EUR 1.87 – 4.46 billion
	Ambivalent effect on revenue growth	In some relevant cases (i.e. Uber in Geneva following a court decision to reclassify workers), a drop in orders was reported following reclassification. In others (i.e. Hilti in Denmark following the collective agreement with 3F), an increase in revenues was observed.
Traditional businesses	Loss of revenue	Difficult to assess as it will depend on market structures, platform strategies and those of their competitors, as well as level of dependence of restaurants on delivery platforms. Based on the case of Spain, around 0.16% - 1.0% of restaurant revenue lost.
Consumers	Reduced availability and potentially higher prices of platform services	Reduced availability of services (especially on-location) as on-location platforms may cease operations in smaller cities Higher service prices from 0 to 40%, with 24% as the realistic scenario
Public sector	Administrative costs (Policy Options A3b, B2b, C2)	The number of court cases concerning misclassification will be higher than the baseline in the short to medium term, then this number will decrease (A3b). Extra resources will be needed in order to carry out and conclude the increased number of inspections, however they are not considered significant in view of the overall public spending on labour market supervision. Cost to public sector of overseeing how the platforms implement the transparency, consultation, human oversight and address are not considered significant given the overall public spending on market regulation and monitoring (B2b). Cost to public sector of monitoring whether platforms publish the information requested and enforce the publication requirement if platforms do not comply (C2)

7