Council of the European Union
General Secretariat

Interinstitutional files:
2021/0414 (COD)

Brussels, 03 February 2022

WK 1585/2022 INIT

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WORKING DOCUMENT

From:	Presidency
To:	Delegations
N° Cion doc.:	ST 14450 2021 INIT
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work

In view of the discussion of the Impact Assessment in the Social Questions Working Party, delegations find in annex a compilation of the Member States' answers to the questionnaire on the Impact Assessment as received until today.

Examination of Commission IAs in the Council

in the context of the consideration of Commission proposals

- Questionnaire for Delegations -

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work -	
Lead DG	**LIFE.4**
Delegations	**Compilation of the 23 replies received until 3/02/2022** **(BG, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK)**

1. Context of the IA

a) Is the IA carried out at the initiative of the Commission, the Council, or the European Parliament?

☒ **Commission** ☐ **Council** ☐ **Parliament**

b) Is the policy context explained clearly?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, SE, SI, SK

NO:

PARTLY:

COMMENTS:

MT:

The policy context is tackled holistically, not only from a legal point of view but also from a socio-economic point of view. Moreover, it does enter in detail into the dynamics of the platform economy, and its specificities which were vital in the analysis underpinning the Impact Assessment (IA) to determine the best policy options in combination to address the issue of improving the working conditions of platform work.

PT:

New forms of work and operating models in the platforms 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. Ins many cases, they fall outside the scope of protection provide by UE 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 UE .

c) Is the legal basis of the initiative clear and appropriate?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, DK, EE, ES, HR, HU, IT, LU, LV, MT, PL, PT, SI

NO:

PARTLY: CZ, FI, IE, , LT, SE

COMMENTS:

CZ:

There may be uncertainties regarding the existence of a legal basis for establishing a rebuttable legal presumption of an employment relationship, as the link with the regulation of working conditions is indirect and a precedent in this area still does not exist.

FI:

We are still finalising our position, also in dialogue with social partners. In order to finalise our position regarding the legal basis of the initiative, we would like to have more information on how the legal presumption would affect national authorities and their applicable legislation regarding the employment status of a person performing platform work. We refer to the questions sent to the SQWP on 20.1.2022.

HU:

Az Európai Unió Működéséről szóló szerződés 153. cikk (1) bekezdés b) pontja a munkakörülmények, munkafeltételek javítása terén biztosít kiegészítő és támogató jellegű, osztott Uniós jogalkotási hatáskört. A tervezet jogalapja ugyanakkor nem ad lehetőséget a munkavállaló fogalmának Uniós szinten történő meghatározására, sem közvetlenül, sem közvetett módon.

Üdvözöljük, hogy a munkavállaló fogalmának uniós szintű definiálását a hatástanulmány is kategorikusan elutasítja (5.6), erre a tárgyalások során is törekedni szükséges.

Article 153 (1) (b) of the Treaty on the Functioning of the European Union provides for supportive and complementary, shared EU legislative powers in the field of improving working conditions. However, the legal basis of the draft does not allow for laying down the definition of a worker at EU level, either directly or indirectly.

We welcome the fact that the definition of the concept of worker at EU level is categorically rejected in the impact assessment (5.6), this situation needs to be maintained during negotiations.

IE:

Legal basis is established to enable the Union to set minimum standards regarding the working conditions of people working through platforms, where they are in an

employment relationship and thus considered as workers. Clarification how the legal presumption of employment fits within the legal basis requires elaboration.

NL:

The Dutch Parliament has entered a scrutiny reservation, because of which the government cannot yet formulate opinions or positions on this proposal. Therefore the response of the Netherlands to this questionnaire is limited to comments/questions.

PT:

The proposed Directive is based on Articles 153(1)(b) and 153(2)(b) of Treaty on the Functioning of the European Union (TFEU), which empowers the Union to support and complement the activities of the Member States, with the objective to improve working conditions having regard to the conditions and technical rules obtaining in each of the Member States. The proposed Directive is also based on Article 16(2) TFEU insofar as it addresses the situation of persons performing platform work in relation to the protection of their personal data processed by automated monitoring and decision-making systems. This Article empowers the European Parliament and the Council to lay down rules relating to the protection of individuals with regard to the processing of personal data.

SE:

Further clarifications is needed. For example, as regards solo self - employed.

LT:

The IA explains the chosen legal base, nonetheless it lacs explanation why other legal bases were not chosen or were not included additionally as for example the one regulating the self-employment. On one hand the Proposed directive, especially though legal presumption, regulates "workers", but in case this presumption is rebutted it directly effects self-employed persons too. Therefore, further explanation is required.

Secondly, IA bolds that Art 153(2)(b) TFEU allows to adopt directive that sets minimum requirements for gradual implementation. Nonetheless, IA do not explain why this Proposed directive satisfy condition of "minimum requirements", especially with the obligatory legal presumption, which is supplementary and not final step to determine person status.

2. Problem definition

a) Are the existence, scale and consequences of the problem clearly demonstrated?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LU, MT, PL, SI

NO: LT

PARTLY: LV, PT, SE, SK

COMMENTS:

HU:

Egyetértünk azzal, hogy a platformokon dolgozók foglalkoztatási státuszának rendkívül eltérő tagállamonkénti szabályozása jelenleg jogbizonytalanságot eredményez, versenytorzító hatása van, és visszaélésekre ad lehetőséget.

We agree that the different rules governing the employment status of those working on the platforms in the Member States currently lead to legal uncertainty, distort competition and open the door to abuse.

IE:

Nationally we are have engaged with representatives of platforms and platform workers and acknowledge an issue however it is difficult to gauge the full extent of the issues nationally and in an EU context

MT:

From an economic point of view the analyses carried out were mostly from a macro-economic point of view. The analyses were not deep enough to have a clear analysis from a micro-economic point of view. An example of a micro-economic analysis and which the Impact Assessment does not thoroughly examine is how platforms could use the lack of transparency in relation to the working conditions of workers to adjust and update price-fixing strategies.

NL:

Some characteristics and challenges of the platform sector are also seen in other sectors. Classification challenges, bogus self-employment, low wages and high risks with regards to occupational safety and health are not limited to platform work. Could the Commission clarify what information in the Impact Assessment justifies the proposal of a directive focussed only on the particular sector of platform work?

PT:

The report does not explain sufficiently why and how the issues related to algorithmic management are particularly relevant for the platform economy, but was refaced by the comments of the Regulatory Control Committee (RCC)

LT:

There is lack of explanation why the chosen problem is relevant only to the specific sector and not to others. Moreover, the problem specifies two objects: “poor working conditions” and “inadequate access to social protection”. Nonetheless, instead of

analysing its consequences for all persons in platforms separately, it mostly concentrates to misclassification of the status, which leads to the presumption that the one who do not fall under misclassification do not face the problem. Therefore, the problem identified and analysis is misleading, which requires changing either problem or analysis.

SE:

We want to draw attention to the fact that the there is, for example, no integrated gender equality perspective.

b) Is the analysis of the problem supported by evidence, including comments and studies submitted by Member States or stakeholders during consultations?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LT, MT, PL, SE, SI

NO:

PARTLY: LU, LV, PT

COMMENTS:

LT:

Answer is subject to the answer provided for the 2.a). Also, footnotes on page 11 are hidden under the table, thus it is impossible to see comments/studies.

PT:

The report does not sufficiently reflect the views of different categories of stakeholders, including platforms and platform workers. They are reported to have been consulted, but without express information, apart from trade unions and employers' organizations. However, the former are in favour of social dialogue and the latter have agreed to action at national level and within the framework of different national systems of social and industrial relations.

c) Is any gap in evidence acknowledged?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: ES, FI, IE, LT, MT, PL, SI

NO: BG, CY, CZ, EE, HR, HU, IT

PARTLY: DK, LU, LV, PT, SE

COMMENTS:

DK:

Platform work is newly emerging in Member States and still many questions remain about consequences and developments.

ES:

There is a great difficulty in accessing and collecting data that complicates an estimation

of the exact number of platforms operating in the European market, as well as the number of people working through these platforms and their working conditions. Therefore, it is difficult to know who will be affected by the initiative and to what extent.

FI:

It is good that the impact assessment recognises that many figures and calculations are estimates, such as the number of platform workers who have misclassified employment status.

LT:

Partly as only by statement that

MT:

When speaking of gap in evidence one concern here is the incompleteness of analysis which may be essential for proper policy design and formulation. The research methods utilised are primarily of a qualitative nature rather than of quantitative nature. Quantitative data was utilised to carry out projections, which projections were based on data which was already pre-computed, and so projections and hypothesis from such projections could not be further confirmed by triangulation. This means that the problem of platform workers having their rights violated exists, but one cannot assess with accuracy the magnitude of the problem. Although indications are clear that the Proposed Directive will have a significant impact on the labour market within the EU, it is not yet clear that the numbers of workers at the core of the issue are greater or smaller than those estimated in the Impact Assessment Report.

Moreover, there is no inductive input. The Impact Assessment lacks objective qualitative data/information of interviews with people working for platforms. The views of these individuals will confirm the replies provided by the unions and representatives alike. Such approach will ensure a broader picture when determining/identifying the anomalies that are being addressed by this Proposed Directive.

It is to be reiterated that the analysis is only valid short-term, given that polynomial analysis ceded to trend analysis.

PL:

There is no data (collected systematically) on the platform work; the main conclusions of the European Commission are based on COLLEEM surveys.

PT:

The report can be clearer as to its consistency, especially with the agreement with stakeholders and UE's initiatives to combat misclassification of employment status and improve transparency in the use of algorithms, including for worker representatives. Although algorithmic management is considered in certain aspects, neither the workers' perspective nor the specificities of the labour market or collective labour rights are specifically addressed.

SE:

The analysis is based on estimations.

3. Methodology

Is an appropriate methodology applied? Are the methodological choices, limitations and uncertainties clearly set out?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IT, LV, MT, PL, PT, SI

NO:

PARTLY: IE, LT, LU, SE

COMMENTS:

IE:

the reference to the case-law of the ECJ in our view does not take into account that there is no autonomous EU-definition of the term "worker" and that MS have competence in determination of employment or self-employment status.

LT:

The IA based on estimations rather the real data.

PT:

Choice of instruments in force, consultations with stakeholders and social partners, external experts and specialists who prepared several studies gathering important evidence and who contributed to the preparation of the impact assessment, and also the use of studies carried out by the European Centre of Specialization in the field of labour law, employment and labour market policies (ECE). Discussion of the impact assessment with the Regulatory Control Committee (CCR, which issued a favourable opinion with useful comments.

SE:

Chosen methodology is based on estimates, which makes data uncertain. Information from administrative data would be a good option, but it has not emerged that this has been used.

No statistics disaggregated by sex.

4. Policy objectives

a) Does the IA set out clear policy objectives, including general aims and more specific/operational objectives?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, SE, SI, SK

NO:

PARTLY:

COMMENTS:

PT:

Yes. The proposal expressly defines a general objective and specific objectives.

The general objective of the proposed directive is to improve the working conditions and social rights of people working on the platforms, with a view, inter alia, to promoting conditions conducive to the sustainable growth of digital working platforms in the European Union.

The specific objectives that will enable the general objective to be reached are as follows:

(1) ensure that persons working on the platforms have — or can obtain — a correct professional status, based on their effective relationship with the platform, and that they have access to applicable labor and social protection rights;

(2) ensure equity, transparency and accountability when applying algorithmic management in the context of working on digital platforms; and

(3) improve transparency, traceability and knowledge of developments in work on digital platforms, as well as compliance with applicable rules, for all people working on platforms, including across borders.

b) Do the policy objectives correspond to the identified problems?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LU, MT, PL, PT, SE, SI, SK

NO: LT

PARTLY: LV

COMMENTS:

IE:

The objective of correctly determining employment status is an identified problem.

LT:

see the answer to the question 2 a).

PT:

One of the Union's objectives is to promote the well-being of its peoples and the sustainable development of Europe, based on a highly competitive social market economy that has full employment and social progress as its goal. The right of all workers to healthy, safe and dignified working conditions and the workers' right to information and consultation are enshrined in the Charter of Fundamental Rights of the European Union. The European Pillar of Social Rights states that "regardless of the type and duration of the employment relationship, workers have the right to fair and equitable treatment in terms of working conditions" and to "access to social protection".

In her political guidelines, President Ursula von der Leyen stressed that "digital transformation introduces rapid changes that affect our labor markets" and committed to "considering ways to improve the working conditions of platform workers" . The proposed directive fulfills this commitment and supports the implementation of the Action Plan on the European Pillar of Social Rights, approved by the Member States, the social partners and civil society at the Porto Social Summit, in May 2021, addressing the changes introduced digital transformation in labor markets.

c) Are the policy objectives consistent with the broad EU policy strategies and the Strategic Agenda?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IT, LU, LV, MT, PL, PT, SE, SI

NO:

PARTLY:

COMMENTS:

PT:

Existing and proposed EU instruments on the internal market and data protection contain provisions relevant to the operations of digital workplaces and the people who work on them. However, not all identified challenges that are related to work on digital platforms are sufficiently addressed by these legal instruments. Although algorithmic management is considered in certain aspects, neither the workers' perspective nor the specificities of the labour market or collective labour rights are specifically addressed.

d) Are the objectives linked to measurable monitoring indicators?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: CY, CZ, FI, HR, HU, LT

NO: MT

PARTLY: BG, DK, EE, ES, IE, IT, LU, LV, PL, PT, SE, SI, SK

COMMENTS:

BG:

It would have been important to have a measurable impact of the proposal on the consumers. Administrative burden for implementation and monitoring for the competent bodies in the MS should be included as well.

EE:

It can be difficult to measure how the working conditions have improved in the field of algorithmic management only through evaluating collective agreements

ES:

The implementation of Chapter IV on transparency of work on platforms (Articles 11 and 12) will improve Member States' ability to collect quality data to enable an assessment of the implementation of the Directive. However, the lack of reliable baseline data makes an accurate assessment of the situation difficult.

Some indicators are based on data that are very complex to estimate. For example, the percentage of platforms that publish their additional terms and conditions compared to those that did before the initiative, or the increase in tax or social security revenues from platforms.

The indicator on the increase of decisions by labour authorities on platforms and the determination of the employment status or working conditions of persons working on platforms (as a sign of improved enforcement) may be inappropriate. We understand that an improved legal certainty in the determination of the applicable regime could also lead to a decrease in these decisions.

FI:

The IA provides information on possible indicators in order to measure the progress of the initiative's objectives. However, not all of the indicators mentioned in the IA are easy to implement in practise (e.g. to give information on a % of people working through platforms reclassified as workers). As mentioned in the IA there is currently no comprehensive data available on the number of persons performing platform work. Hence, it might also be challenging to gather information of those persons who are reclassified as workers (without a clear comparison scenario/data).

IE:

The IA mentions figures for growth of numbers in Platform work in recent years and projected figures which are striking but

IT:

Some indicators seem difficult to detect, such as the one that provides for a direct assessment of the people employed through platforms.

LU:

It would have been interesting to have a measurable impact of the proposal on the recipients/consumers welfare.

MT:

One of the main concerns is the problem of misclassification of workers which is a lumbar concept in this Impact Assessment and the proposed Directive analysed, which enforcement efficacy cannot be determined with certainty given that, the issue is dealt

with almost exclusively by judicial authorities, which intervention on a community wide extent, cannot be measured in a concrete and objective manner.

PL:

Indicators on progress towards the initiative's objectives are stated in the IA, however in some cases doubts arise as regards their source of data and whether they are appropriate – see more in point 10.

PT:

The objectives are linked to monitoring indicators that are intended to be measurable clearly expressed in the proposal and there are already instruments in the EU on the internal market and data protection that contain provisions and mechanisms relevant to monitoring operations.

5. Subsidiarity & Proportionality

a) Is the Union's competence clearly established?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, IE, IT, LT, LU, LV, MT, PL, PT, SI

NO:

PARTLY: HU, SE

COMMENTS:

FI:

This is a provisional opinion since we are still defining our position.

HU:

Az irányelv jelenlegi szövege a foglalkoztatás-felügyeleti szervek eljárását tekintve az Uniós hatáskört meghaladó mértékű előírásokat tartalmaz.

A foglalkoztatás-felügyelet rendszere tagállami hatáskörbe tartozik, nem egyértelmű, miként írhatja elő jelen irányelv az EUMSZ 153. cikk (1) bekezdés b) pontján alapuló jogalapon az ellenőrzési kapacitások növelését, és az ellenőrzési volumen növelését egységesen, valamennyi tagállamra nézve kötelező jelleggel, figyelmen kívül hagyva az egyes tagállamok meglévő kapacitásait és ellenőrzési gyakorlatát (4. cikk (3) bekezdés d) pont). A hatástanulmány e kérdéskört nem tisztázza.

The current text of the directive with regard to the procedure of labour inspectorate bodies contains requirements that go beyond the competence of the Union.

The system of labour inspection falls within the competence of the Member States, it is not clear how this Directive may provide for an increase in control capacity and an increase in the volume of control on a legal basis based on Article 153 (1) (b) TFEU, binding on all Member States, not taking into account the existing capacities and control practices of each Member State (Article 4 (3) (d)). The impact assessment does not clarify

this issue.

PT:

The proposed Directive is based on Article 153(1)(b) of Treaty on the Functioning of the European Union (TFEU), which empowers the Union to support and complement the activities of the Member States with the objective to improve working conditions. In this area, Article 153(2)(b) TFEU enables the European Parliament and the Council to adopt – in accordance with the ordinary legislative procedure – directives setting minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining.

SE:

Further clarification is needed. For example, as regards solo self - employed.

b) Does the IA analyse whether the proposed action is consistent with the principle of subsidiarity, and are necessity and added value of EU action clearly demonstrated?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, IE, IT, LU, LV, MT, PL, PT, SI

NO:

PARTLY: HU, LT, SE

COMMENTS:

HU:

See above

NL:

On page 17 of the Impact Assessment it is mentioned that: "The working conditions and social protection of people doing cross-border platform work is equally uncertain and depends strongly on their employment status." And: "In this context, relevant actions aimed at tackling the cross-border challenges of platform work, including but not limited to social dumping risks and lack of data to allow for a better enforcement of rules, are best taken at EU level."

Can the Commission specify what is meant by 'cross-border' platform work? Could you illustrate this with examples? We are particularly interested in your view about the cross-border aspects of on-location platform work (such as food delivery) and online platform work. And which percentage of platform work is estimated to be cross-border platform work? Could you also elaborate on the social dumping risks?

Could the Commission reflect on the objective of creating a level playing field by preventing fragmented implementation among member states, considering that the outcome of the possibility to rebut (article 5) might vary among member states? How does the Impact Assessment take into account possibly differing rebuttal procedures among member states?

LT:

the IA presents the necessity to take common actions due to misclassification but not on

the problem raised.

PT:

Only an EU initiative can set common rules that apply to all digital labour platforms operating in the EU, while also preventing fragmentation in the fast-developing single market for digital labour platforms. This would ensure a level playing field in the area of working conditions and algorithmic management between digital labour platforms operating in different Member States. (…)

EU action is necessary to achieve the fundamental EU objectives set out in the Treaty of promoting sustainable economic growth and social progress (Article 3 TEU). Only an EU initiative can establish common rules to eliminate the risk of misclassification of professional status, applicable to all relevant platforms operating in the EU, while avoiding fragmentation of current and future regulatory approaches to algorithmic management and responding to size cross-border work on platforms.

SE:

The considerations in the IA on the application of the principle of subsidiarity are not entirely convincing at this point. Further discussions as regards for example the degree of detail in the proposed regulations is needed.

c) Does the IA analyse whether the proposed action is consistent with the principle of proportionality?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, IT, LU, MT PL, PT, SI

NO: HU, LT

PARTLY: IE, LV, SE

COMMENTS:

IE:

The Directive will apply rules concerning algorithmic management upon genuinely self-employed people. As both National and EU labour law has traditionally been applied to "workers" only it is difficult to see if this imposition onto the affairs of self employed is proportionate without further deliberations

LT:

the IA do not address the principle of proportionality. It is especially important regarding the EU Treaty-based requirement at the EU level to set only minimum standards in this area.

PT:

The principle of proportionality was respected, taking into account the scale and nature of the problems identified. In particular, the rebuttable presumption proposed to resolve the problem of misclassification of professional status will only apply to digital work platforms that exercise a certain level of control over the execution of the work. The remaining digital work platforms will therefore not be affected by this presumption. Likewise, provisions for automated monitoring and decision-making systems do not go beyond what is necessary to ensure the objectives of equity, transparency and accountability in algorithmic management.

SE:

The considerations in the IA on the application of the principle of proportionality are not entirely convincing at this point. Further discussions as regards for example the degree of detail in the proposed regulations is needed.

d) Does the IA take into account action already taken or planned at EU or MS level?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LT, MT, PL, PT, SK

NO:

PARTLY: LU, LV, SE, SI

COMMENTS;

BG:

The main EU instruments both in terms of legal provisions and on the internal market and data protection are identified in the proposed Directive.

HU:

Jelenleg nincs hatályos uniós szabályozás a digitális platformok munkajogi aspektusaira, a platform dolgozók munkafeltételeit a tagállamok nemzeti szabályai fedik le. A meglévő és javasolt uniós belső piaci és adatvédelmi eszközök pedig nem kezelik megfelelően a platformalapú munkavégzés kihívásait, nincsenek figyelemmel a dolgozók érdekeire, a munkaerőpiaci sajátosságokra és a kollektív munkavállalói jogokra.

Megjegyendő továbbá, hogy az irányelv javaslat egyes elemei nem állnak teljes mértékben összhangban a polgári peres eljárás alapelveivel. E rendelkezések indokoltságát a hatásvizsgálat sem támasztja alá megfelelően.

There is currently no EU legislation in force on the labour law aspects of digital platforms, the working conditions of platform workers are covered by national rules in the Member States. Existing and proposed EU internal market and data protection instruments do not adequately address the challenges of platform work, nor do they take into account the interests of workers, the specificities of the labour market and collective rights.

It should also be noted that some elements of the proposed Directive are not fully in line with the principles of civil procedure. The justification for these provisions are not adequately supported by the impact assessment.

PT:

The main EU instruments both in terms of legal provisions and on the internal market and data protection are identified in the proposed Directive.

SE:

Yes, as regards legal actions taken or planned at EU or MS level, but there is a lack of presented initiatives by social partners and concluded collective agreements in the IA.

6. Policy Options

a) Which of the following options does the IA identify to meet the objectives?

(more than one answer is possible)

☐ **No EU action** ☐ **Policy alternatives**

☐ **Alternatives to regulation** ☐ **Further harmonization**

NO EU ACTION:

POLICY ALTERNATIVES: BG, CZ, ES, IE, LT, LU, LV, MT

ALTERNATIVES TO REGULATION: DK, EE, FI, IE, LU, PT, SE, SK

FURTHER HARMONIZATION: BG, CY, HU, IT, LU, LV, PL, PT, SI

COMMENTS:

FI:

The IA introduces different alternatives to regulation and non-binding instruments, such as guidelines, as options to meet the objectives.

NL:

The Impact Assessment concludes for Policy Area C that options C1 + C2 are recommended together. However, it appears that the Commission has not adopted C2 (publication requirements) in the Directive. Could the Commission explain why the Impact Assessment has not been followed in this instance?

PT:

The legal instrument chosen for EU action is the directive. The directive is considered the most adequate, proportionate and effective instrument to achieve the initiative's objectives. It sets binding minimum requirements, leaving Member States the possibility to adapt measures to specific national contexts

b) Are the most affected public/stakeholders identified?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LT, LV, MT, PL, PT, SE, SI, SK

NO:

PARTLY: LU

COMMENTS:

IE:

it is mentioned that platform workers were consulted through the representatives of digital labour platforms and people working through platforms. According to the Commission, to what extent are the responses given by the workers that have been consulted representative for all platform workers.

PT:

The overall objective of the initiative is to improve the working conditions and social rights of people working on digital platforms, in particular to create conditions conducive to the sustainable growth of digital workplaces in the European Union. Specifically, the initiative aims to: i) ensure that people working on digital platforms have — or can obtain — a correct professional status, based on their effective relationship with these platforms, and have access to applicable labour and social protection rights; ii) guarantee equity, transparency and accountability in the algorithmic management used in the context of work on digital platforms; and iii) enhancing transparency, traceability and awareness of the evolution of work on digital platforms, and improving compliance with applicable rules, for all people working on the platforms, including across borders.

SI:

The risks are particularly relevant for people in a weak labour market position (low - income groups, young people and those with migrant background).

c) Does the IA contain elements on how public and stakeholders consultations informed the policy options ?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, IE, LT, MT, PL, PT, SE, SI, SK

NO:

PARTLY: HR, IT, LU, LV

COMMENTS:

PT:

The impact assessment analysed three action domains, which together address the identified challenges: A) eliminating the risk of misclassification; B) issues related to algorithmic management and C) issues related to enforcement, traceability and transparency, including in cross-border situations. In these domains, the strategic options analysed differed in terms of personal and/or material scope. The options of defining the concept of "worker", establishing a third professional status at EU level or introducing a "rebuttable" presumption of employment were rejected at an early stage.

SI:

The IA contain enough information on how will each policy (A, B, C) effect to the stakeholders.

d) Where relevant, are there reasons given for discarding options that were favoured during public and stakeholders consultations?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, EE, ES, FI, HR, HU, IE, IT, LT, MT, PT

NO:

PARTLY: DK, LU, LV, PL, SE, SI

COMMENTS:

PT:

In domain A) (eliminating the risk of misclassification), the preferred option envisages limiting the rebuttable presumption to platforms that exercise a certain degree of control. This option also includes a reversal of the burden of proof: once the presumption has been applied, in the event of a challenge, it is up to platforms that are presumed to be employers to prove otherwise. In domain B) (algorithmic management), the preferred option is to guarantee a set of rights in terms of transparency, consultation, human control and recourse, both for employees and for self-employed workers. In domain C) (enforcement, transparency and traceability, including in cross-border situations), the preferred option is to combine the clarification of the obligation to report the work carried out on the platforms, including in cross-border situations, with the duty of the platforms to

publish information about their terms and conditions, the number of people who work for them, their professional status, social protection and other relevant data.

SE:

Further clarifications would be appreciated as regarding how the options from the social partners in the different Member States has been assessed by the Commission.

7. Analysis of impacts

a) Are the criteria used to determine the impact of the different policy options transparent?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LT, LU, MT, PL, PT, SI

NO:

PARTLY: LV, SE

COMMENTS:

PT:

Yes. The impact assessment analysed three action domains, which together address the identified challenges.

b) Are the impacts of the different policy options set out in a comparable format?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, SE, SK

NO:

PARTLY: IE, SI

COMMENTS:

PT:

The impact assessment analysed three action domains A, B and C

c) Where appropriate, are both the short and long-term costs and benefits of the different policy options taken into consideration?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: CY, CZ, EE, ES, FI, HR, HU, IT, LT, MT, PL, PT, SE, SK

NO:

PARTLY: BG, DK, IE, LU, LV, SI

COMMENTS:

BG:

Most of the platforms are expected to significantly increase their cost due to the change of the employment status of the persons working through them. Therefore, further clarifications would be appreciated as regarding the financial impact on consumers due to the possible increasing of the prices of the services.

Also further discussions and justifications are needed on the assessment on the number of persons, engaged in platform work, which will be reclassified as workers.

IE:

additional clarity required about the amounts mentioned regarding 'increased income from tax and social security contributions'. These amounts are not further substantiated. Could the Commission give details how the amounts were calculated?

NL:

Regarding the benefits for Member States (up to EUR 3,98 billion p. 35, p. 78), the Netherlands would like to receive additional clarity about the amounts mentioned regarding 'increased income from tax and social security contributions'. These amounts are not further substantiated. Could the Commission give details and explain if these amounts regard all the Member States together and how the amounts were calculated?

Measures under Policy Area A may lead to a reclassification of (a substantial group of) workers to employees. In the event that these employees become ill, unemployed or incapacitated for work, they will be eligible for social security benefits. The measures under Policy Area A may lead to an increase of social welfare expenses. In the Impact Assessments section dealing with 'costs for Member States (p. 36)', consequences of the measures on social welfare expenses are not described. The Netherlands is interested in the European Commission's view on this matter.

Are there estimations of enforcement costs for Member States? The box on p.79 does not refer to data.

Regarding the costs for digital labour platforms, these are estimated at EUR 4.5 billion (p.34, 78) a year. Annual costs related to reclassification vary from : EUR 1.87 – 4.46 billion (p. 78). Could the Commission give details about these amounts? How did COM calculate the impact of the rebuttable assumption if the outcome of the process, regarding the possibility to rebut the legal presumption (art. 5) will be different in each Member State and the degree of reclassification is unpredictable?

PT:

Measures to eliminate the risk of misclassification (domain A) could result in an increase in the platforms' annual costs of between €1.9 billion and €4.5 billion. Platform-dependent companies and consumers may be faced with a share of the costs, depending on whether and how those costs will be passed on by the platforms to third-party costs. New rights related to algorithmic management (domain B) as well as the preferred combination of enforcement, transparency and traceability options (domain C) would have negligible or low costs

SI:

The IA is too weak for the short and long-term cost and benefits of the different policy options for the Member States with a low level of platform work.

d) Are impacts on affected public and stakeholders clearly analysed, for each policy

option, in particular for the selected option?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, EE, ES, HR, HU, IE, MT, PT, SE, SI

NO:

PARTLY: DK, FI, IT, LT, LU, LV, PL, SK

COMMENTS:

FI:

Regarding the preferred option, the IA does not recognise a possibility that the legal presumption (if rebutted later) may lead to a rectification of different administrative decisions based on the presumption. This brings administrative costs to member states and affects also platforms and persons performing platform work.

LT:

the IA do not analyse what impact the rebutted classification could have to the sector. Moreover, under employment contracts, employees are assigned work schedules and working hours. Currently, service providers are connecting whenever and how much they want. They usually connect to multiple platforms at once. It is not analysed how and if it still be possible under employment contracts.

PL:

The document indicates, for example, assuming that platforms cannot adapt their business models to actual self-employment (policy area A), an increase in the prices of transport and delivery services by up to 40%. On the other hand, the impact on businesses that rely on platforms is estimated to be less than 1% of restaurant revenue. Considering the possible increase in prices, the impact on the business environment seems to be underestimated. Nevertheless, due to the lack of a detailed description of the assumptions, it is difficult to make an unambiguous assessment.

As a rule, the information contained in the IA on the application of Regulation No 883/2004 to platform workers in determining the appropriate social security system should be considered correct. The IA accurately identifies the impact of determining the status of a platform worker on the basis of the proposed directive on the situation of that worker in terms of social security. However, the lack of information on the practical aspects of applying Art. 11 of the proposed directive in relation to the information obligations of employers, resulting from Regulations 883/2004 and 987/2009.

PT:

The preferred options in action domains A and B are supported by trade unions, representatives of people working on platforms, as well as many representatives of national authorities and some platforms. Most stakeholders paid less attention to domain C options. Trade unions support improved transparency and traceability of work done on digital platforms across borders Representatives of national authorities support the obligation for platforms to publish certain information, if at all limited to platforms above a certain size. Employers' organizations support the need to eliminate the risk of misclassification, although they consider that this should be done at the national level. They agreed with the need for greater transparency in terms of algorithmic management and underlined the importance of taking into account the regulations in force for this

purpose. The preferred options are in line with the European Parliament resolution of 16 September 2021 on the creation of fair working conditions, rights and social protection for platform workers (2019/2186(INI)).

SK:

Possible impacts are clearly analysed on affected public and stakeholders for each policy option and in particular for selected option. In some cases prevailing impacts are unclear - for instance: "It is difficult to meaningfully quantify the impacts of measures under Policy Area A on overall employment levels. Such a quantification would have to consider a very high number of variables (e.g. evolving national regulatory landscapes, shifts in platforms' sources of investment, reallocation of tasks from part-time false self-employed to full-time workers), as well as assumptions on the behaviour affected actors would have in response to the measures." (IA report, s. 35)

8. Specific aspects included in the IA

Where applicable, indicate whether the impact has been sufficiently assessed, both in qualitative and quantified terms, and whether the data and evidence used were appropriate.

a) Economic impacts

Impacts on competition

Sufficiently assessed ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LT, LU, MT, PL, PT, SE, SI, SK

NO:

Based on appropriate data/evidence ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LU, MT, PL, PT, SI

NO: LT, SK

If not, please elaborate:

Impacts on consumers

Sufficiently assessed ☐ **Yes** ☐ **No**

YES: CY, CZ, DK, EE, ES, FI, HR, HU, IT, LT, MT, PL, PT, SE, SK

NO: BG, IE, LU, SI

Based on appropriate data/evidence ☐ **Yes** ☐ **No**

YES: CY, CZ, DK, EE, ES, FI, HR, HU, IT, MT, PL, PT

NO: BG, IE, LT, LU, SI, SK

If not, please elaborate:

BG:

The financial impact on consumers is not clearly demonstrated in the IA.

IE:

further elaboration on the proposed impact of the options on consumers would be required. One would assume any change in the employment status would increase cost base for platforms which in turn would likely raise costs on consumers.

LT:

the IA analyses impacts on consumers, but does not specify how much expensive the delivery services through platforms would become, also, it states that consumers would suffer a reduction in the quality of services due to longer delivery/arrival times, however, it depends on how much longer the delivery times would become. If, for example, delivery times would double or even triple, there is a high chance that consumers simply would not wait and decline their delivery order.

LU:

A further evaluation of the impact on consumers would have been welcome.

SI:

For the Member States where the incidence of platform work is much lower the clarification of this impact is not sufficient.

Impacts on competitiveness

Sufficiently assessed ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IT, LT, LU, MT, PL, PT, SE, SK

NO: SI

Based on appropriate data/evidence ☐ Yes ☐ No

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IT, LU, MT, PL, PT

NO: LT, SI, SK

If not, please elaborate:

SI:

For the Member States where the incidence of platform work is much lower the clarification of this impact is not sufficient.

Impacts on Small and Medium Enterprises, including micro-enterprises[1]

Sufficiently assessed ☐ Yes ☐ No

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, LT, LU, MT, PT, SE

NO: IE, PL, SI

Based on appropriate data/evidence ☐ Yes ☐ No

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, LT, LU, MT, PT

NO: IE, PL, SI, SK

If not, please elaborate:

IE:

There has been an attempt to consider impact on smaller platforms however the client firms who utilise platforms as clients may be comprise SME or micro enterprises and it is not clear the extent that the potential impact on them has been considered.

IT:

Impact on SMEs should consider the potential need for level playing field interventions to equilibrate the power concentration of bigger platform as data gatekeeper over both internal and cross-border markets.

LT:

the IA only shortly says that businesses that rely on platforms in their operations may experience strong negative impact because platform services may become more limited as a result of the initiative. However, it should be emphasized that the majority of these businesses are small, medium and micro enterprises, such as bars, restaurants, catering businesses, etc. Platform model allows these businesses to survive difficult periods (e.g.

[1] Impact assessments should assess SME impacts, and should also analyse the case for allowing (a) exemptions for micro-enterprises with <10 employees and <€2 mio turnover or balance sheet, and (b) lighter regimes for SMEs. See http://ec.europa.eu/governance/impact/key_docs/docs/meg_guidelines.pdf.

quarantines during the COVID-19 pandemic) and even grow. Therefore, IA should include the data regarding how many small businesses depend on platforms and evaluate the possible negative consequences in terms of losts profits, lost growth opportunities, etc.

PL:

The impact of the proposed directive is insufficient with regard to the sector of micro, small and medium-sized enterprises. Chapter 6 “WHAT ARE THE IMPACTS OF THE POLICY OPTIONS” lacks a detailed description of what impact the implementation of the Directive will have on the MSME sector. The differences between the impact on the SME sector and the large enterprise sector indicated in Annex A3.3, such as: "The impact on revenue growth for SMEs may be the same, lower or higher as for large companies, depending on how much of the additional costs they pass onto consumers.” seem to be too general and poor.

To some extent, the document refers to platforms that are classified as small and medium-sized enterprises. Only 18 interviews were conducted with representatives of such companies. Such an approach to consultations seems to be far from sufficient to identify potential regulatory threats for entities in this category. With regard to traditional small and medium-sized enterprises, 6 interviews were conducted with organizations representing employers.

It is worth emphasizing that the authors of the Impact Assessment, although to a small extent, referred to the impact of the regulation on small and medium-sized enterprises, noting that it will have much greater consequences for SMEs than for the platforms themselves.

SI:

Impact assessment mostly involves larges enterprises, less attention is paid to small and micro enterprises.

Administrative burdens and compliance costs, especially for businesses

Sufficiently assessed ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, ES, FI, HR, HU, IT, LU, MT, PL, PT, SE, SI, SK

NO: EE, LT, LV

Based on appropriate data/evidence ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, ES, FI, HR, HU, IT, LU, MT, PL, PT, SI

NO: EE, LT, LV

If not, please elaborate:

BG:

Administrative burden for implementation and monitoring for the competent bodies in the MS should be more clearly accessed.

LT:

IA only states that there might be administrative burdens for platforms, but does not provide any the concrete numbers such as how much it would cost from platforms to reclassify partners as workers in terms of legal side (reclassifying all current platform workers, signing work contracts with them, etc.) and also from the administrative side (e.g. setting up the timetables, ensuring holidays, paid-leaves, etc.). In addition, IA says that platforms would experience compliance costs, but again - no specific numbers and data are provided. It should be noted that compliance costs for platforms would be huge because of different labour regulations in all 27 EU countries.

Digital aspects (including on the development of the Digital Single Market)

Sufficiently assessed ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, HR, LT, LU, MT, PL, PT, SI

NO: HU, IT

Based on appropriate data/evidence ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, HR, LU, MT, PL, PT, SI

NO: IT, LT

If not, please elaborate:

IT:

The coherence between Policy Area B proposal, GDPR and the AI act proposal should be better addressed. In particular, a focus on workers' data (both personal and non-personal data) and potentially rights attached to them should be foreseen.

Futureproofing (degree to which proposal is future proof and innovation-friendly?)

Sufficiently assessed ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, HR, LU, MT, PL, PT

NO: HU, IT, SI

Based on appropriate data/evidence ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, HR, LU, MT, PL, PT

NO: IT, SI

If not, please elaborate:

IT:

'Platformisation' of traditional sectors is already happening, particularly with regard to the use of algorithmic management practices. It would have been useful to provide potential impact of the extension of the Policy Area B and C proposal extended to all workers exposed to automatised decision and monitoring systems.

SI:

The measures envisaged by the proposal will have an impact on the further development of the platforms, so the question arises as to how this affect innovation.

b) Social impacts[2]

Sufficiently assessed ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, HR, HU, IE, IT, LU, MT, PL, PT, SE

NO: LT, LV, SI

Based on appropriate data/evidence ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, HR, HU, IE, IT, LU, MT, PT

NO: LT, LV, PL, SI

If not, please elaborate:

[2] e.g. impacts on employment and labour markets, social inclusion and protection of particular groups, public health and safety, etc.
See also Guidance for assessing Social Impacts within the Commission Impact Assessment system (http://ec.europa.eu/smart-regulation/impact/key_docs/docs/guidance_for_assessing_social_impacts.pdf)

FI:

It would be interesting to know if the Commission has analysed to what extent platforms may adapt their practises so that legal presumption will not apply to them and if this affects somehow the Commission's estimation that up to 4.1 million people are expected to be reclassified as workers. Would it be possible that also on-location platforms adapt their practises so that they employ self-employed and wont reclassify workers?

LT:

the IA do not analyse what adverse effect options could have, only providing few example that need to be looked on case by case bases and provide with exact numbers. There is no estimation what impact it could have on overall employment levels or poss. decrees of hourly payments, which after implementation could become the level of MW while now it could be higher. Also it is not clear what social impact it will have if platforms will adopt and the classification of these workers would not change.

PL:

According to the IA, between 1.7 million and 4.1 million people are expected to change their employment status to employees of 5,5 million incorrectly qualified as self-employed. The question remains if it was taken into account that in some Member State self-employment is subject or not to social security eg. preferential rules for people starting self-employment.

SI:

For the Member States where the incidence of platform work is much lower the clarification of this impact is not sufficient.

SK:

We cannot review because we don't have appropriate data/evidence.

c) Environmental impacts[3]

Sufficiently assessed ☐ **Yes** ☐ **No**

YES: CY, CZ, DK, EE, ES, FI, MT, SI, SK

NO: HU, LT, PL

Based on appropriate data/evidence ☐ **Yes** ☐ **No**

YES: CY, CZ, DK, EE, FI, MT, SI

NO: LT, PL

If not, please elaborate:

IE:

[3] e.g. impacts on climate, air and water quality, use of the renewable or non-renewable resources, the likelihood or scale of environmental risks, use of energy etc.

Further information could have been provided on the assumptions made re impact on environment. For example was thought given as to the potential impact of a platform providing bike deliveries ceasing to trade and the work falling to one using vehicles with producing emissions.

BG:

Not relevant

IT:

N.A.

LT:

IA analyses environmental impacts, however, it does not take into account the most obvious scenario: currently platform work is based on efficient matching of supply and demand whereas reclassification of people working through platforms as employees would lead to fixed schedules and, as a result, more standby time, which would negatively affect the environment. IA only states that this incentive is likely to have important environmental effects and also assumes that platforms would be incentivised to optimise trips in order to minimise deadheading. However, this assumption is based on no evidence and data, furthermore, it is questionable if fixed schedules are more efficient and beneficial for the environment than matching demand with supply on the spot.
Suggestion: IA could measure the impact on environment in Spain, which has adopted similar initiative on national level. Spain's case would allow us to evaluate the real data rather than assumptions.

LU:

Not relevant

d) Impacts on individual Member States, regional or local authorities (territorial impacts)

Sufficiently assessed ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, IT, LT, LU, PT

NO: IE, HU, MT, PL, SI

Based on appropriate data/evidence ☐ **Yes** ☐ **No**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, IT, LU, PT

NO: IE, MT, PL, SI

If not, please elaborate:

IE:

The proposal will have impacts on tax, labour and social protection authorities in each MS and is prefaced on the belief that MS does not have the competence to determine employment status with regard to the case law of the CJEU, however the majority of member states have established legislation and case law which has developed over many years and rules on the true nature of the relationship between the parties. Further

discussions with MS and considerations of the legal basis applicable was required to show where National Law has perceived difficulties or limitation.

LT:

the IA is based on the estimations

MT:

After analysing in detail the IA (Impact Assessment) there seems to be a problem concerning the level of cooperation expected, and how it is to be concretised by the respective administrative authorities when it comes to the enforcement and implementation of Chapter IV of the Proposed Directive on improving working conditions in platform work. That is, whether the expected cooperation is between supervisory authorities within the same Member State, and how and when the cooperation especially data sharing is expected to occur between the administrative authorities of one Member State with those of other Member States. Malta would welcome clarifications both from the Commission's services and Council Legal Services.

PL:

The questionnaire does not take into account the impact of the Directive on the functioning and organisation of the national judiciaries. The entry of the Directive into force may result in a significant increase in the number of cases in labour courts.

SE:

Partly, country specific digits could have been more explicit and detailed.

SI:

Issues of cross border impact are raised in the event that one of the Member States accepts more stricter measures.

SK:

We cannot review because we don't have appropriate data/evidence.

9. Opinion of the Regulatory Scrutiny Board[4] (RSB) of the Commission

Are the comments and recommendations of the RSB considered in the IA report?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IT, LU, LV, MT, PL, PT, SE, SI, SK

NO:

PARTLY:

COMMENTS:

[4] Available by searching by Commission DG and date of publication at the following website http://ec.europa.eu/governance/impact/ia_carried_out/cia_2012_en.htm

PT:

The RSB issued a favourable opinion with comments, which were taken into account by clarifying the coherence of the impact assessment with related initiatives, explaining why and how issues related to algorithmic management are particularly relevant to the economy. of digital platforms and more adequately considering the position of different stakeholders, including digital working platforms and the people working on the platforms.

10. Monitoring, transposition, compliance

a) Will the proposed indicators enable the intended effects to be measured?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: CZ, FI, HR HU, IT, MT

NO:
PARTLY: BG, EE, ES, IE, LT, LU, LV, PL, PT, SE, SI, SK

COMMENTS:

DK:

We do not understand the reasoning behind the link to fiscal revenues?

EE:

LFS or other survey sample's might be too small for calculating necessary indicators for all countries.

ES:

See Answer 4 d).

FI:

Indicators as such yes. The problem is that the information might not be easily accessible.

IT:

Italy, starting from 1st of January, has introduced mandatory communication for platforms on each worker providing services though platform independently from the contractual arrangements.

PL:

As regards indicators mentioned IA in Table 17 (AI, pages 49-50)":

1/ It is not clear whether "% of people working through platforms reclassified as workers", shall cover also the cases when the legal presumption was rebutted.

2/ Doubtful whether "% of increased fiscal revenues coming from platforms" is a good indicator to monitor the objective "*Facilitate the enforcement of existing rules related to platforms and people working through them.",* because the increase of revenues may be related to the growth of the platform economy and not only to the taxes of those whose employment status has been changed due to the directive.

3/ In our opinion, "% of all collective agreements involving platforms which cover algorithmic management" being the only indicator to monitor the objective: "*Facilitate the disclosure, scrutiny and social dialogue over platforms' algorithmic use in the labour domain"* is not sufficient. The proposed directive concerns strengthening the right of people working through platforms and their representatives to be informed and consulted on decisions that could lead to significant changes in the use of automated monitoring and decision-making systems.
The objective set out in the IA *("Facilitate the disclosure, scrutiny and social dialogue…*") can be achieved in various ways - so there may be many indicators for

monitoring the above-mentioned objective.

PT:

Only an EU initiative can establish common rules applicable to all digital workplaces operating in the EU, while avoiding the fragmentation of the fast-developing single market for digital workplaces. This will ensure fair conditions, with regard to working conditions and algorithmic management, between digital working platforms operating in different Member States.

SE:

Use of LFS can be uncertain.

SI:

The question is whether the proposed indicator for monitoring appropriate employment status is the most appropriate.

SK:

It might be useful to add to portfolio of indicators: for instance number of people losing the opportunity to platform work, change in number of platform workers, % of platform workers satisfied with their working status, % of platform workers satisfied with information on algorithmic management…

b) Are those responsible for monitoring (and compliance) identified?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CZ, EE, ES, FI, HU, MT, SI

NO:
PARTLY: HR, IE, IT, LU, LV, PL, PT

COMMENTS:

DK:

Lack of information on labour market models where public authorities do not supervice working conditions (apart from OSH) but where it is left to the social partners

PL:

No source of data as regards "% of people who are satisfied with the intelligibility and accessibility of the terms and conditions of the platforms they work through".

PT:

Comission, Employers' organizations and Member States with competent authorities.

c) Are operational monitoring and evaluation arrangements proposed?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: BG, CZ, DK, EE, ES, HU, PL, PT

NO: IT, MT
PARTLY: HR, IE, LT, LU, LV, SE, SI

COMMENTS:

PT:

Progress achieved in meeting the initiative's objectives will be monitored through a set of indicators (listed in the impact assessment report). The monitoring framework will be adjusted according to the final legal and enforcement obligations and the final timetable.

SE:

Yes, but very little is said about the arrangement of evaluation. How is it intended to measure the effects?

d) Does the IA address the impact of the proposed transposition deadline for MS ?

☐ **Yes** ☐ **No** ☐ **Partly**

YES: CZ, DK, FI, HR, HU, IT, SI

NO: EE, ES, MT, PL
PARTLY: BG, IE, LT, LU, LV, PT, SE

COMMENTS:

PT:

Member States must transpose the Directive within two years of its entry into force and communicate national implementing measures to the Commission via the MNE database. In accordance with Article 153(3) TFEU, they can entrust the social partners with the implementation of the Directive. The Commission will provide the necessary technical support to the Member States to implement the Directive and will assess is application five years after its entry into force. If necessary, will propose legislative amendments.

SE:

Yes but these aspects could have been further analyzed.

11. Summary

Main issues proposed for discussion during the WP meeting on the Commission's IA:

BG:

1. The impact of transposition of article 4 and 5 related to the legal presumption should be further clarified. More clarity on the origin and the content of the criteria in Art. 4, par. 2 is also needed. It is of utmost importance to have common understanding and unified application of the Directive across the EU.

DE:

1. **Reputational data portability:** According to the IA report, a majority of platforms and employers' representatives saw reputational data portability as unfeasible from a technical infrastructure viewpoint. The IA report discarded policy option B3b, referring (among other arguments) to the disproportionate administrative and compliance costs it may place on platforms. Have these doubts about the feasibility of reputational data portability rights been confirmed by the experts in the stakeholders' consultation?
2. We would like to know if Art. 4 of the proposed directive applies to all EU law and its national transposing acts as well as to other national labour law (inter alia remuneration regulations, dismissal protection) and other national law (including social security law, tax law and criminal law)?
3. **Choice of preferred options by the Commission in the IA (proportionality): Could the Commission elaborate on the reasons for choosing a** legal presumption and not other measures? Why is the right to information provided for in the proposal for a directive (art. 6) in the view of the Commission not sufficient for achieving the objectives of the proposed initiative, that is to let people working on platforms, which are employees, benefit from labour law protection? Is the Commission expecting that other groups of employed persons will also demand a legal presumption regulation and a tailor-made catalogue of criteria for themselves?
4. **Gender dimension of expected effects of platform directive:** Since gender aspects were not explicitly addressed in the IA report what are the expected implications of the proposed directive for female platform workers? How does this legislation contribute to the prevention of discrimination and gender-based violence in the platform economy?

DK:

1. The choice of indicators
2. Commission's reflection concerning labour market models where the social partners are responsible for regulation wage and working conditions, including monitoring the right employment status since this focus is missing in the IA

EE:

1. The evaluation of the impact of policy option A2/A3 (article 4 of the directive) could have been more sufficient. We would have liked to see a more exhaustive impact evaluation on the legal presumption, e.g what impact has the legal presumption had on countries where such presumption has been introduced in the fields of platform work (how platforms have adapted, how have they managed to continue operating, has there been a widespread re-classification of people performing platform work). A further examination on the effect of case law and administrative practice on classification of people performing platform work would be/could have been beneficial.

EL:

1. **<u>LEGAL BASIS - PROBLEM DEFINITION – METHODOLOGY</u>**

- More clarity is needed on how the legal presumption will influence national legislation and mainly if the proposed legislation affects a. MS definition of worker b. social protection/social security law. Answers on the above questions may influence our analysis the legal basis.
- Although the problem identified is "some people working through platforms face poor working conditions and inadequate access to social protection", the analysis focuses on the issue of status (reclassification) instead of measures to improve the above. This approach is not evident, especially when by definition it cannot improve the situation of those who are truly self-employed and will not be reclassified.

- Methodology highly based on estimates.

2. POLICY OBJECTIVES

The policy objectives partly correspond to the identified problem.

3. SUBSIDIARITY, PROPORTIONALITY

- More clarification is required on the notion of "cross-border" platform work, especially in relation to on-location platform work, where the problem is mostly identified. Furthermore, given that the rebuttal of the presumption is based on national law, the efficiency of the intended harmonisation is questionable.
- The respect of the principle of proportionality needs further justification.

4. POLICY OPTIONS

- It is not clear from the IA that both the persons working through platforms and the platform businesses were adequately represented.

5. ANALYSIS OF IMPACTS

Specific economic impacts:

The IA acknowledges that in certain cases the initiative can result in having fewer people in employment and some platforms exiting the market without adequately explaining/quantifying, in our opinion. Same for the impact on consumers and on M/S (unemployment). We kindly ask the Commission to further elaborate on these issues.

Impacts on Small and Medium Enterprises, including micro ones:

Not adequately explained in the IA, we would appreciate more analysis from the Commission especially on the impact on adjacent small businesses, such as restaurants with respect to delivery platforms.

Administrative burdens and compliance costs/ Impacts on individual Member States, regional or local authorities (territorial impacts):

In our opinion it is not sufficiently quantified how the businesses (and the consumers) will be affected by the extra costs that the procedure of reclassification/rebuttal etc may entail. The same goes for the burdens for the MS from the supplementary procedure.

6. MONITORING -TRANSPOSITION – COMPLIANCE

We are not fully convinced that the proposed indicators enable the intended effects to be measured. Special doubts as per the efficiency of the indicator "increased fiscal revenues".

The IA partly addresses the impact of the proposed transposition deadline for MS.

FI:

1. How the legal presumption would affect to national authorities who assess the employment status of a platform worker? This relates to our comments given in question 1 c).

HU:

1. A szubszidiaritás és arányosság kérdésköre kapcsán javasoljuk tisztázni, hogy miként írhatja elő jelen irányelv az EUMSZ 153. cikk (1) bekezdés b) pontjára történő

hivatkozással az ellenőrzési kapacitások növelését, és az ellenőrzési volumen növelését egységesen, valamennyi tagállamra nézve kötelező jelleggel, figyelmen kívül hagyva az egyes tagállamok meglévő kapacitásait és ellenőrzési gyakorlatát.

With regard to the issue of subsidiarity and proportionality, we propose to clarify how this Directive, by referring to Article 153 (1) (b) TFEU, may provide for an increase in control capacity and an increase in control volume in a uniform manner, binding on all Member States, excluding the existing capacities and control practices of each Member State.

2. A hatástanulmány 10. melléklete tételesen felsorolja a munkavállalói státusz meghatározásával összefüggő tagállami jogeseteket, ugyanakkor arra vonatkozó összefoglalást nem tartalmaz, hogy az esetjog alapján miként került kiválasztásra az irányelv-javaslat 4. cikkének (2) bekezdése által rögzített kritériumrendszer. E kérdéssel összefüggésben kérnénk a Bizottság magyarázatát.

Annex 10 of the impact assessment lists the legal cases in the Member States related to the determination of the status of the worker, but does not provide a summary of how the criteria set out in Article 4 (2) of the proposed directive has been selected on the basis of case law. We would like to ask the Commission for clarification on this issue.

IE:

1. Why were other measures discounted as not sufficient for achieving the objectives of the proposed initiative?

2. The presumption of an employment relationship where the platform 'controls to a certain degree the performance of the work and the platform worker. This sounds nebulous, in light of the difficulty in testing the control a business may have over a worker, not discounting the further information provided at article 4.1 on the 9 criteria. Any 2 of 9 criteria being met will be considered enough to justify the presumption. This seems arbitrary as National Laws of MS in the main looks at each the merits of each request on a case-by-case basis with regard to the full facts of each case.

3. The Directive will apply rules concerning algorithmic management upon genuinely self-employed people. As both National and EU labour law has traditionally been applied to "workers" only it is difficult to see if this imposition onto the affairs of self employed is proportionate without further deliberations

4. Article 12 provides that platforms publish information on the extent, conditions and numbers of platform workers working in the MS, to facilitate labour, social protection and tax authorities to correctly determine their employment status. How is it envisaged this will work in practice.

IT:

1. Analyse the coherence between the platform work directive proposal, the GDPR, the AIA and the Data Act.

2. Extension of the policies foreseen by Policy area B and C - Algorithmic Management-to all workers dealing with automated decision and monitoring systems

3. 1. What is the impact of algorithmic transparency if neither algorithms or workers' data are made accessible to institutions or trade unions? How to prevent the risk that transparency requirements become a procedural informative obligation with no concrete application for the improvement of working conditions?

4. 2.Could public data trust create the condition for sharing information safely and granting, from one hand commercial secrets for platforms, and from the other hand access to data and algorithms relevant for the definition of working conditions to trade unions, so

allowing an effective negotiation of the algorithms?

LU:

1. As they represent the core of this instrument, the legal effects of the transposition of article 4 (legal presumption) and 5 (possibility to rebut the legal presumption) into national frameworks should have been properly assessed in the IA, especially for those MS which did not implement similar provisions at national level. The IA could have drawn from the useful experiences of those MS that enacted similar framework.

LV:

1. We consider that IA on some aspects/issues is not performed sufficiently detailed, therefore it was not possible to provide an unambiguous answer on certain questions/issues.
2. Taking into account the diversity of work platforms and their different style of operations, we have doubts, whether such a strict legal presumption mentioned in Section 4 of the Proposal of the Directive is necessary and whether this presumption is proportionate.
3. In this stage obligation for national labour and social protection authorities mentioned in Section 19, Paragraph 2 of the Proposal of the Directive regarding exchange of relevant information is unclear (role, responsibility, scope that are expected).

MT:

1. The determination of the role of ELA in the enforcement of the proposed Directive.
2. The establishment of a scoreboard to ascertain within a period of five years (5) from the entry into force the level of efficiency and effectiveness of the proposed Directive.

NL:

1. Cross border aspects of platform work vis-à-vis a level playing field
2. Justification for targeted directive for platform work
3. Benefits and costs for member states
4. Costs for digital labour platforms
5. C2 (publication requirements) is not adopted in the Directive.

PL:

1. Impact of introduction of legal presumption of the employment status and possibility to rebut the legal presumption into national frameworks, especially for those MSs where such a solution has not been set in their national legislation.
2. Impact on national courts and other authorities (eg. labour inspectors) of proposed rebuttable legal presumption.
3. Proposed indicators.

PT:

1. A proposal for a directive on improving working conditions on work platforms;
2. A draft guideline on the application of EU competition law to collective agreements on the working conditions of individual self-employed workers, covering those working through digital working platforms;
3. Calls for further steps, as described below, to national authorities, social partners and all relevant stakeholders to achieve better working conditions for those working through digital working platforms.

SE:

1. Possible impacts on the autonomy of the social partners and for different national labour market models need to be further addressed. Further discussions are needed as regards the scope and degree of detail in the proposed regulations at this point. There is also a lack of addressing labour market models where public authorities do not supervise working conditions in the IA.
2. Commissions view as regards the possible bias in the LFS sample surveys carried out. It is challenging to construct indicators from survey data where one can predict difficulties with samples, at the same time as it is hard to get respondents to answer.
3. No statistics disaggregated by sex and no integrated gender equality perspective.

SI:

1. Territorial impacts – to what extent the preferred option will affect the availability of services for on-location platforms in small town and regions
2. The IA contains enough information on how each policy (A, B, C) effect to the stakeholders in general. But we miss more emphasis for the Member States with low level of platform work