



# Study to support the impact assessment of an EU initiative to improve the working conditions in platform work

Final Report

**PPMi**

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# Study to support the impact assessment of an EU initiative to improve the working conditions in platform work

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## List of abbreviations

AIA	Artificial Intelligence Act
AI	Artificial intelligence
API	Application Programming Interface
CAGR	Compound Annual Growth Rate
CBA	Cost-benefit analysis
CEDEFOP	European Centre for the Development of Vocational Training
CEPS	The Centre for European Policy Studies
CJEU	Court of Justice of the European Union
COLLEEM	Collaborative Economy research project
CPC	Commission for the Protection of Competition in Bulgaria
DCCA	Danish Competition and Consumer Authority
DLP	Digital labour platform
DMA	Digital Markets Act
DSA	Digital Services Act
EC	European Commission
ECE	European Centre of Expertise
EU	European Union
EU FRA	EU Fundamental Rights Agency
ECJ	European Court of Justice
EEAS	European External Action Service
EFFAT	European Federation of Food, Agriculture and Tourism
EIGE	European Institute for Gender Equality
EQLS	European Quality of Life Survey
ESENER	European Survey of Enterprises on New and Emerging Risks
ESS	European Social Survey
ETF	European Transport Workers' Federation
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU-OSHA	The European Agency for Safety and Health at Work
EWCS	European Working Conditions Surveys
FEPS	Foundation for European Progressive Studies
FTE	Full-time equivalent
GDP	Gross domestic product
GDPR	General Data Protection Regulation
GPS	Global Positioning System
HOTREC	Association of Hotels, Restaurants, Cafés & similar establishments in Europe
IA	Impact assessment
IAC	Individual activity certificates
IAATW	International Alliance of App-Based Transport Workers
ICT	Information and communications technology
ILO	International Labour Organization
ISCED	International Standard Classification of Education
JRC	Joint Research Centre
LFS	Labour Force Survey
MCA	Multi-criteria analysis
MEP	Member of the European Parliament
MS	Member States

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NESET	Network of Experts working on the Social dimension of Education and Training
OECD	Organisation for Economic Co-operation and Development
OLI	Online Labour Index
OSH	Occupational safety and health
PES	Public employment services
PHV	Private hire vehicle
P2B Regulation	Regulation of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services
QA	Quality assurance
QMS	Quality management system
SME	Small and medium-sized enterprises
TFEU	Treaty on the Functioning of the European Union
TNC	Transportation network companies
TPWC	Transparent and predictable working conditions
TWA	Temporary work agencies
UGT	Spanish General Workers' Union
WEF	World Economic Forum
WRC	Workplace Relations Commission

## Abstract

This study was produced to support the impact assessment of the new EU-level legislative initiative, aimed at improving the working conditions and social rights of people working through platforms with the view to support the conditions for sustainable growth of digital labour platforms in the European Union. The initiative has been designed to address three core issues: misclassification of employment status of people working through platforms; fairness and transparency of algorithmic management practices applied by labour platforms; enforcement, transparency and traceability of platform work, including in cross-border situations.

The considered policy options varied in terms of their personal scope (for example, online, on-location platforms, all platforms, etc.), material scope, and strength (binding or non-binding nature). The analysis of individual options included quantification of costs and benefits, as well as comparative analysis of effectiveness, efficiency and coherence.

The policy package which scores the best in terms effectiveness, efficiency and coherence consists of a combination of policy measures. It includes, in case of potential misclassification: shifting in the burden of proof, a certification procedure and rebuttable presumption of employment applied to platforms that exercise a certain degree of control. For people experiencing algorithmic management the most effective and efficient policy option points to introducing rights related to transparency, consultation, human oversight and redress for both employed platform workers and people working through platforms as self-employed. Finally, the most effective and efficient policy combination concerning the enforcement, transparency and traceability of platform work consists of guidance/clarification, with certain publication requirements for platforms.

## Executive summary

Like other types of digital platforms, digital labour platforms emerged through the combined effects of decentralised information networks, big data analytics, and mobile digital devices. They introduce new ways to coordinate economic activities, and are re-defining the economy of the EU, as well as its labour markets. Existing means of regulating labour and employment are becoming increasingly inappropriate in the light of these new realities, opportunities and challenges.

From the perspective of challenges and opportunities, we can summarise much of the recent research, stakeholder and policy discussions on platform work and its growth. On the one hand, platform work brings great potential for innovation and provides numerous opportunities for people who work through digital platforms. It is considered to be an easily accessible source of (extra) income, a low-barrier entry point to employment for disadvantaged groups, and an alternative to regular employment that offers a high degree of flexibility. On the other hand, platform work is also related to a number of challenges in terms of working conditions, which are difficult to address within the existing legal frameworks.

Various external factors have driven the emergence of these challenges: the growth of the digital platform economy, global economic and societal megatrends, as well as the increasing digitisation of working lives and consumption. All of these have been further accelerated by the COVID-19 pandemic. Despite relevant EU and national-level measures having been planned or taken to address the consequences of these changes, some important gaps remain in relation to platform work. At least three core issue areas remain pertinent: the risk of misclassification of the employment status of people working through platforms; issues of algorithmic management by platforms; and issues relating to enforcement, traceability and transparency, including in cross-border situations.

This study aimed to support the impact assessment of a new EU-level legislative initiative. The initiative's main objective is to improve the working conditions and social rights of people working through platforms, at the same time as ensuring conditions for the sustainable growth of digital labour platforms in the European Union. More precisely, the initiative has three specific objectives:

- Ensuring that people working through platforms have – or can obtain – the correct legal employment status in light of their relationship with the platform, and can gain access to the corresponding labour and social protection rights.
- Ensuring fairness, transparency and responsibility with respect to algorithmic management in the context of platform work.
- Enhancing transparency, traceability and knowledge of developments in platform work, and improving the enforcement of the applicable rules for all people working through platforms, including those who operate across borders.

This study, in turn, focused on a number of alternative policy options with the aim of conducting an *ex-ante* assessment of their impacts, and to reveal the most appropriate package of policy measures to achieve the three specific objectives listed above.

## Methodological approach

The study to support the impact assessment closely followed the Better Regulation Toolkit in its operationalisation of research questions and the development of its methodological approach. Research activities focused on comprehensively answering the following questions:

1. What is the problem, and why is it a problem?
2. Why should the EU act?
3. What should be achieved?
4. What are the various options to achieve the objectives?
5. What are the impacts of the different policy options, and who will be affected?
6. How do the options compare?
7. What is the preferred option?

To answer these questions, a diverse set of methodological approaches have been employed for data collection and analysis. While the initial scoping activities covered all EU-27 Member States as well as several non-EU countries, the in-depth analysis focused on a selection of Member States, representing broader geographical regions and economic clusters within the EU: Denmark, France, Germany, Italy, Lithuania, the Netherlands, Poland, Romania and Spain. Data collection was carried out by applying both qualitative and quantitative approaches, resulting in a rich depository of data to be used in the further analysis:

- A broad review of national policies and measures implemented in the areas of platform work in the EU-27 and seven non-EU countries.
- An online panel survey of people working through platforms and those in traditional jobs who are exposed to algorithmic management at work, carried out in the nine Member States selected for in-depth analysis.
- An interview programme involving platforms, representatives of people working through platforms, trade unions and employers' associations, as well as national policy makers in the nine selected Member States.
- Automated data collection from the web, on people from the nine selected Member States who engaged in online platform work using Upwork, Freelancer.com, PeoplePerHour and Guru.com.
- A wide and exhaustive review of the relevant literature and existing data sources, including academic and grey literature, earlier surveys, national statistics, and other relevant information.
- Media monitoring for the latest developments relating to the adoption and initial effects of relevant policy initiatives taken by the national governments of EU Member States and third countries.

The data from different sources was combined and triangulated to develop an analysis that addressed each of the key research questions. The analysis of data involved extensive analysis of qualitative sources, descriptive statistics, time-series forecasting, econometric modelling, and a range of calculation methods and techniques.

## The policy options

The list of policy options assessed in this assignment focus on addressing three core issues or policy areas in relation to the current *status quo* of platform work:

- **Misclassification of employment status** of people working through platforms who operate as independent contractors but are in a *de facto* subordinate employment relationship. The goal is to ensure the correct classification of workers and reduce the 'grey area' that exists between dependent employment and self-employment.
- **The fairness and transparency of algorithmic management practices** applied by labour platforms. The goal is to provide workers with the necessary information on how their work and assignments are allocated, how their accounts are ranked or terminated, and other important aspects, as well as to ensure human oversight of decisions that are important to platform workers.
- **Enforcement, transparency and traceability of platform work, including in cross-border situations.** The goal is to increase the transparency and facilitate easier access to information by regulators, enforcement authorities, platform workers and other relevant stakeholders.

The policy options considered vary, first of all, in terms of **personal scope**. Different options cover different types of platforms, and therefore types of workers. The main distinction made is between *online* and *on-location* platform work, given the differences in their respective working conditions. In some options, the actual levels of control exercised by platforms over the people working through them also serves as an important distinction. The policy options considered also differ in terms of the **material scope and strength** (binding or non-binding nature) of the new rights and obligations they imply. The specific instruments range from legislative action based on Art. 153 of the Treaty on the Functioning of the European Union, to non-legislative tools such as guidance to ensure fair platform work or reinforced mutual learning between Member States. These measures are presented in the table below.

In the process of the impact assessment, each policy option was assessed individually in relation to the baseline. These options were then compared with each other according to the criteria of effectiveness, efficiency and coherence, to identify the preferred policy package.

**The policy options assessed**

	Scope	Measures
<b>Policy Area A: Employment status of people working through platforms</b>		
Option A1	All digital labour platforms	Interpretation and guidance
Option A2		Procedural facilitations (including a shift in burden of proof, certification procedure, and clarification on the benefits provided by platforms to the self-employed)
Option A3a	Digital labour platforms for on-location services	Rebuttable presumption applied to on-location platforms
Option A3b	All digital labour platforms that exercise a certain degree of control	Rebuttable presumption applied to platforms that exercise a certain degree of control
Option A3c	All digital labour platforms	Rebuttable presumption applied to all digital labour platforms
<b>Policy Area B: Algorithmic management</b>		
Option B1	All platforms	Guidance
Option B2a	All platforms, rights for employed workers	New labour rights regarding transparency, consultation, human oversight and redress
Option B2b	All platforms, rights for employed and self-employed	
Option B2c	All platforms and companies applying algorithmic management, rights for employed workers	
Option B3a	All platforms, rights for employed workers	New labour rights regarding transparency, consultation, human oversight, redress AND the portability of reputational data
Option B3b	All platforms, rights for employed and self-employed	
<b>Policy Area C: Cross-border transparency</b>		
Option C1	All platforms	Guidance
Option C2		Publication requirement for platforms
Option C3		National register of platforms

**The baseline situation**

An estimated 28.3 million people in the EU-27 work through platforms more often than just sporadically. Available evidence shows that the vast majority of these people are formally self-employed. Based on further analysis, up to around 5.51 million of this group are at risk of misclassification of employment status. Although such a situation brings certain benefits to people working through platforms, in terms of flexibility and low barriers to entry, the absence of an employment relationship has overwhelmingly negative consequences for the misclassified workers – especially among those in on-location platform work. These consequences relate to unpredictable earnings, unpaid time and the necessity to work long hours to earn decent wages, lack of professional development, inappropriate social protection, and risks to occupational health and safety. The problems that stem from the misclassification of employment status translate into substantial monetary costs for the EU Member States. Given the lower level of taxation applied to the self-employed, the Member States lose revenue going into public budgets; while the overall legal uncertainty prevents the enforcement of labour, social protection and tax rules.

Meanwhile, platforms operate under increased legal uncertainty and legal fragmentation across the EU Member States. This impacts not only on the platforms themselves, but also on markets and consumers. By not employing their workers, the platforms assume only partial control over and responsibility for the quality of the services provided. At the

same time, using a labour force of independent contractors enables them to save labour costs and offer lower prices than those offered by traditional businesses. This factor has further implications on competition between platforms and traditional companies within their respective sectors.

The trends of recent years and an overview of the current developments indicate that the size of the labour platform economy will continue to grow. Since 2016, the revenues for the platform economy in the EU have seen an estimated six-fold increase, and are likely to grow in the upcoming few years. Platform business models are likely to spread to new sectors and transform them. The number of platforms active in the EU, both for online and on-location work, has also grown notably since the early 2010s and will probably continue to do so over the next few years. However, market concentration is ultimately likely to increase, reducing the numbers of smaller platforms, while the revenues will continue to grow. This concentration is also likely to limit competition for workers among the platforms, potentially causing a further deterioration in their working conditions. In the context of global megatrends in societies, economies and the world of work, the numbers of people opting to work in the platform economy, and therefore experiencing these disadvantages, will also grow – to an estimated 42.7 million in the EU-27 by 2030.

In the absence of specific EU-level regulatory action, the misclassification of employment status and issues relating to working conditions are therefore likely to persist and expand in scope. Existing and forthcoming initiatives aimed at addressing the issue of misclassification of employment status among people working through platforms do not appear to address the issue consistently across the EU-27. This situation of fragmented regulatory frameworks is likely to persist. As the situation of poor working conditions escalates, some Member States may put forward relevant policies (examples already exist in countries such as Spain), while others will not. In the absence of common standards across the EU, platforms are likely to limit their operations within highly regulated markets, while remaining active in Member States whose rules are laxer. Ultimately, this will hurt the small platforms the most, further driving the concentration of the market into the hands of a few multinational players, as well as exacerbating power asymmetries between the platforms and people working through them.

The practice of algorithmic management by platforms is another factor affecting the conditions of the people who work through them. Although this allows platforms to achieve unprecedented efficiency in the organisation of work and delivery of services, it further shifts the existing power dynamics between platforms and individuals providing services through them in terms of surveillance and control, lack of transparency, bias, and lack of platform accountability. Algorithms incentivise risky behaviours, increase stress levels, as well as diminish work-life balance, income stability and the autonomy of people working through platforms. Aside from platform work, algorithmic management is also increasingly prevalent in other, more traditional workplaces. In total, an estimated 72.48 million to 101.05 million people in the EU-27 experience algorithmic management at work at least in some form, and to some extent. Given the rapid advances in technology and trends towards the digitalisation of workplaces – among many other areas of daily life –algorithmic management practices can be expected to become increasingly prevalent, intrusive and disadvantageous for workers. Meanwhile, only a few Member States have either planned or implemented measures to address rights in relation to the algorithmic management of platform work. Even though a number of existing or planned EU regulations (P2B regulation, the GDPR, the Artificial Intelligence Act) are designed to tackle certain aspects of the problem, gaps and cross-national fragmentation in addressing the needs of people working through platforms are likely to persist.

Lastly, there is a lack of consistent and comparable data on the development of platform work. Platforms are not obliged and reluctant to share information about the people who work through them and their working conditions, given that these individuals are treated as clients of the software service rather than as employees. This creates obstacles not only for workers' rights and collective action, but also for informed policy making and enforcement in this area. Without regulatory intervention at EU level, these issues are unlikely to lessen. Even if individual Member States take action to address the issue of misclassification, the implementation of such policies would be disrupted by a lack of cross-border data sharing and reporting obligations.

## The preferred policy package

The detailed analysis of individual options, including quantifications of costs and benefits, as well as a comparative analysis of effectiveness, efficiency and coherence, allows us to identify a preferred combination of policy measures that are best suited to achieving the objectives of the initiative. This consists of a combination of policy measures in all three areas: the misclassification of employment status, algorithmic management and enforcement, and traceability and transparency (including in cross-border situations).

### Policy area A: misclassification of employment status

The preferred combination of measures to address the misclassification of employment status in platform work consists of:

- A shift in the burden of proof, a certification procedure, and the clarification of factors that should not be considered as indicating the existence of an employment relationship (Option A2), along with
- A rebuttable presumption of employment being applied to platforms that exercise a certain degree of control over the people working through them (Option A3b).

This combination is fully coherent with the EU's values, aims and objectives, and ensures the best cost-benefit mix. Compared with the other policy options assessed, this combination also provides the best balance in terms of minimising the extent of misclassification while taking into account the need to support the sustainable growth of digital labour platforms in the EU.

The combination of a shift in the burden of proof and the rebuttable presumption of employment will lead to the reclassification of a substantial share of people working through platforms who are currently misclassified. At the same time, it will provide certainty for both platforms and the people working through them with regard to the criteria for genuine self-employment. As the majority of people who are currently in 'bogus' self-employment on platforms will either become employees or genuinely self-employed, the most pressing cases of misclassification in platform work will largely be tackled.

Given that the prevalence of misclassification varies across different types and sectors of platform work, this combination of policy options is likely to affect certain platforms more than others:

- Low-skill on-location services, such as ride-hailing and delivery, will be affected the most, as they tend to exercise the highest levels of control over their workers, and the risk of misclassification is highest.
- Genuine freelance labour marketplaces that ensure genuine self-employment for people working through them, mostly for high-skill online and on-location services, will remain outside the scope of these measures.
- Other platforms for various types of platform work that deviate from a marketplace model and exert notable levels of control over workers, or operate similarly to temporary work agencies (TWAs), will also be affected.

This combination of policy measures is expected to lead to employment contracts for between 1.72 million and 4.1 million people who are currently at risk of being misclassified. A further group of up to 3.78 million people who currently work on location or online and are at risk of misclassification, will be guaranteed genuine self-employment. Furthermore, between 1.5 million and 2.47 million people who currently work in low-skill on-location jobs as their main or secondary activity on platforms, could see their working conditions and social security improve due to benefits being provided by the platform, as the risk of such benefits being considered evidence of an employment relationship will be lower.

The benefits to people who gain an employment contract will include more stable earnings, access to paid leave, better social security coverage, and better health and safety conditions at work (for example, safety gear being provided by the company to on-location delivery workers). The number of hours worked by these people is also likely to increase, for two reasons: first, they will be compensated for time on standby (e.g. waiting for orders); and second, the platforms are likely to change their work procedures so that their employed workers work more hours. Nevertheless, there will be some costs: people on employment contracts will lose some flexibility, and will have to follow shifts agreed with the platform company. The benefits to people working through platforms who are ensured genuine self-employment conditions will include greater autonomy, as these people will be in a position to set their own working hours, schedules and pay rates.

The digital labour platforms will bear most of the costs of these measures. They will face increased wage and non-wage costs, proportional to the number of people reclassified. The revenues of such platforms might decline somewhat, due to higher prices and the creation of a more level playing field with traditional businesses. Legal and non-compliance costs are likely to increase in the short to medium term, as both policy options would make it easier and less costly for people working through platforms to challenge their legal status. However, we consider that such costs will probably decline in the medium to long term due to greater clarity concerning the distinction between employees and the genuinely self-employed, as well as the steps that platforms are likely to take in order to clarify their business models and certify them in the light of this distinction.

With regard to their broader implications for the markets, the proposed policy measures will help to ensure a level playing field for 'traditional' businesses (e.g. taxi firms or cleaning companies) that employ their workers and currently compete with digital labour platforms that benefit from misclassification. However, there will be a slight decline in revenues for those businesses that use platform services, due to increased prices (e.g. in the case of legislation recently introduced in Spain, a loss of less than 1.0% in restaurant revenues is estimated). The effects on consumers are likely to be mixed – at least in the short term, access to certain platform services might decrease in smaller towns, and waiting times might increase. Quality of service is expected to improve,

however, as those who are employed by platforms will be more socially secure and better trained, while platforms will take full control of the quality of services.

The public sector will incur costs relating to the development and implementation of the certification procedure, as well as costs resulting from an increase in court cases in the short to medium term. In terms of benefits, the two options combined will facilitate the work of those authorities overseeing the issue of misclassification. The additional income likely to come into public budgets in relation to increased tax and social security contributions as a result of reclassification, will range from EUR 1.67 billion to 3.98 billion per year.

## Policy Area B: Algorithmic management

The analysis of the costs and benefits of each policy option under the Policy Area B shows that the most beneficial is Sub-option B2b, which introduces rights relating to transparency, consultation, human oversight and redress both for employed platform workers and people working through platforms as self-employed. While all policy options are consistent with the EU's values, aims and objectives, Sub-option B2b is the most beneficial in relation to the objectives of the planned initiative.

In terms of scope, this policy option will affect all people working through platforms (up to 28.3 million in the EU-27). It targets both those who have the status of employee, as well as people who work through platforms as self-employed. Its reach is therefore larger than that of Sub-option B2a, which targets only platform employees. Sub-option B2b is also more focused than Sub-option B2c, which targets platform employees as well as people in employment more generally, who are subject to algorithmic management – but leaves aside the self-employed, who account for the majority of people working through platforms. The preferred measure is therefore more likely to create a level playing field in platform work and avoid creating a disincentive to platforms to offer people working through platforms the status of employee.

Platform companies will bear most of the costs of these policy options. These costs include technical and procedural changes that platform companies would need to implement to ensure human oversight of the significant decisions taken by algorithms, provide written explanations, set up written complaints-handling procedures and consult workers, among other obligations. Nevertheless, these costs are unlikely to be significantly enough to strongly affect the platforms' businesses.

Sub-option B2b is more efficient than other policy options under Policy Area B. As it formulates specific rights at EU level, it will be more effective than a 'soft law' option such as issuing guidelines (B1), because mandatory rights are more likely to be taken up and implemented in the Member States. In addition, while the cost of setting up the necessary changes under Sub-options B2a (same rights for employed platform workers only) and B2b is essentially the same, the target group for Sub-option B2b is much larger. Meanwhile, the aggregate cost of B2c (the same rights not only for all platform workers, but also for workers of traditional companies applying algorithmic management) is much larger than that of B2b, because it would affect a much bigger group of companies. Comparing these two options, B2b is more efficient because it is better focused, whereas B2c leaves aside the largest group of people working through platforms – those who are, and will remain, self-employed.

Lastly, the data portability offered by Sub-options B3a and B3b is potentially an important aspect of fairness, transparency and worker power *vis-à-vis* the platforms. Here, Sub-option B3b is more effective than B3a, because it offers data portability to both employed

and self-employed platform workers, to whom this functionality is especially relevant. Nevertheless, both policy options will be very difficult to implement in practice. They will require unprecedented collaboration between a large number of competing platforms to agree on a common ratings and feedback standard, and to reengineer the back end and front end of their applications to comply with the new standards. We consider that the cost of either B3a or B3b would be excessive. Meanwhile, the actual benefits and broader impacts on platforms (e.g. the resources needed by small platforms to comply with the new industry standards for interoperability might be excessive) and the people working through them (e.g. risk of review fraud, protection of personal data) will remain questionable.

## Policy Area C: Cross-border transparency

While all of the policy options presented under this Policy Area are coherent with EU values, aims and objectives, the analysis revealed that a combination of Policy Option 1: Guidance, and Policy Option C2: Publication requirement for platforms, would be the most effective and efficient. Policy Option 3 can also potentially be effective; however, it is the least efficient due to its potentially very high cost to the public sector. Implementing the measure could require anything between thousands and millions of euros from public budgets to create and maintain a register of all platforms operating in each EU Member State.

Complying with the new publication requirements will result in both one-off and recurrent costs for the platforms; however, these will not be substantial. Estimates indicate that one-off costs of around several hundred euros per platform to establish the necessary reporting structures, as well as recurring costs of a similar size. The public sector will also experience costs in terms of human resources to ensure compliance and monitoring of the information reported. However, the benefits of having access to relevant information to facilitate the work of policy makers and enforcement authorities will significantly outweigh the costs.

## Résumé analytique

Les plateformes numériques de travail, tout comme d'autres types de plateformes numériques, sont apparues sous les effets combinés des réseaux d'information décentralisés, de l'analyse des big data et des dispositifs numériques mobiles. Elles introduisent de nouvelles formes de coordination des activités économiques et redéfinissent l'économie de l'UE ainsi que ses marchés du travail. La réglementation actuelle du travail et de l'emploi est de plus en plus inadaptée aux nouvelles réalités, aux nouvelles opportunités et aux nouveaux défis.

La perspective des défis et des opportunités permet de résumer un grand nombre de recherches récentes, de discussions avec les parties prenantes et de discussions politiques concernant le travail sur plateformes et son évolution. D'une part, le travail sur plateformes présente un fort potentiel d'innovation et offre de nombreuses possibilités aux personnes travaillant sur des plateformes numériques. Il est considéré comme une source de revenus (supplémentaire) facilement accessible, un point d'entrée à l'emploi à faible barrière pour les groupes défavorisés, et une alternative à l'emploi régulier offrant un haut niveau de flexibilité. D'autre part, le travail sur plateformes est lié à un certain nombre de défis en termes de conditions de travail, qui sont difficiles à traiter à l'appui des cadres juridiques existants.

Divers facteurs externes favorisent l'émergence de ces défis : la croissance de l'économie des plateformes numériques, les mégatendances économiques et sociales mondiales, ainsi que la numérisation croissante de la vie professionnelle et de la consommation – le tout accéléré par la pandémie de COVID-19. Les mesures pertinentes prévues ou prises aux niveaux européen et national pour faire face aux conséquences de ces changements présentent des lacunes importantes en ce qui concerne le travail sur les plateformes. Au moins trois questions essentielles restent pertinentes : le risque de classification erronée du statut d'emploi des personnes travaillant par l'intermédiaire de plateformes ; les questions de gestion algorithmique par les plateformes ; et les questions liées à l'application, à la traçabilité et à la transparence, y compris dans les situations transfrontalières.

Cette étude vise à soutenir l'évaluation de l'impact d'une nouvelle initiative législative au niveau européen. L'objectif principal de l'initiative est d'améliorer les conditions de travail et les droits sociaux des personnes travaillant par le biais de plateformes, tout en assurant les conditions d'une croissance durable des plateformes numériques de travail dans l'Union européenne. Plus précisément, l'initiative poursuit trois objectifs spécifiques :

- Veiller à ce que les personnes travaillant par l'intermédiaire de plateformes aient – ou puissent obtenir – le statut juridique d'emploi correct au regard de leur relation avec les plateformes, et aient accès aux droits en matière de travail et de protection sociale qui en découlent.
- Garantir l'équité, la transparence et la responsabilité en matière de gestion algorithmique dans le contexte du travail sur plateformes.
- Renforcer la transparence, la traçabilité et la connaissance de l'évolution du travail sur plateformes, et améliorer l'application des règles applicables à toutes les personnes travaillant par le biais de plateformes, y compris celles qui opèrent au-delà des frontières.

Cette étude, quant à elle, se concentre sur un certain nombre d'options politiques alternatives dans le but de réaliser une évaluation ex ante de leurs impacts, et de révéler l'ensemble de mesures politiques le plus approprié pour atteindre les trois objectifs spécifiques énumérés ci-dessus.

## Approche méthodologique

L'étude destinée à soutenir l'évaluation d'impact suit de près le Kit d'outils pour une Meilleure Réglementation dans l'opérationnalisation de la question de recherche et le développement de l'approche méthodologique. Les activités de recherche visaient à répondre de manière exhaustive aux questions suivantes :

8. Quel est le problème et pourquoi est-ce un problème ?
9. Pourquoi l'UE devrait-elle agir ?
10. Quels sont les objectifs à atteindre ?
11. Quelles sont les différentes options pour atteindre ces objectifs ?
12. Quels sont les impacts des différentes options politiques et qui sera affecté ?
13. Comment les options se comparent-elles ?
14. Quelle est l'option privilégiée ?

Un ensemble diversifié d'approches méthodologiques pour la collecte et l'analyse de données a été utilisé pour y répondre. Alors que les activités initiales d'évaluation couvraient l'ensemble de l'UE-27 ainsi que plusieurs pays non membres de l'UE, l'analyse approfondie s'est concentrée sur une sélection d'États membres, représentant des régions géographiques et des groupes économiques plus larges de l'UE : Allemagne, Danemark, Espagne, France, Italie, Lituanie, Pays-Bas, Pologne, Roumanie. La collecte de données a été menée en appliquant des approches qualitatives et quantitatives, ce qui a permis de constituer une abondante banque de données utilisée dans l'analyse ultérieure :

- Un large examen des politiques et mesures nationales mises en œuvre dans les domaines du travail sur plateformes, dans l'UE-27 et dans sept pays non membres de l'UE.
- Une enquête par panel en ligne, menée dans les neuf États membres sélectionnés, auprès de personnes travaillant par l'intermédiaire de plateformes et de personnes occupant des emplois traditionnels, toutes exposées à la gestion algorithmique au travail.
- Un programme d'entretiens, impliquant les plateformes, les représentants des personnes travaillant par le biais des plateformes, les syndicats et les associations d'employeurs, ainsi que les décideurs politiques nationaux des neuf États membres sélectionnés.
- Une collecte automatisée de données sur le web, auprès de personnes des neuf États membres sélectionnés travaillant sur des plateformes en ligne telles que Upwork, Freelancer.com, PeoplePerHour et Guru.com.
- Un examen large et exhaustif de la littérature pertinente et des sources de données existantes, y compris la littérature universitaire et grise, les enquêtes antérieures, les statistiques nationales et d'autres informations pertinentes.

- Un suivi médiatique des derniers développements liés à l'adoption et aux premiers effets des initiatives politiques pertinentes prises par les gouvernements nationaux des États membres de l'UE et des pays tiers.

Les données provenant des différentes sources ont été combinées et triangulées pour développer l'analyse répondant à chaque question clé de la recherche. L'analyse des données a nécessité une analyse approfondie des sources qualitatives, des statistiques descriptives, des prévisions de séries chronologiques, de la modélisation économétrique, ainsi qu'une série de méthodes et de techniques de calcul.

## Les options politiques

La liste des options politiques évaluées dans le cadre de cette mission se concentre sur trois questions ou domaines politiques fondamentaux liés au statu quo actuel du travail sur plateformes :

- **Classification erronée du statut d'emploi** des personnes travaillant par l'intermédiaire de plateformes, qui opèrent en tant qu'entrepreneurs indépendants mais se trouvent *de facto* dans une relation d'emploi subordonné. L'objectif est de garantir une classification correcte des travailleurs et de réduire la zone grise entre le travail salarié et le travail indépendant.
- **Équité et transparence des pratiques de gestion algorithmique** appliquées par les plateformes de travail. L'objectif est de fournir aux travailleurs les informations nécessaires sur la manière dont leur travail et leurs missions sont attribués, les comptes classés ou résiliés, et d'autres aspects importants, ainsi que d'assurer une surveillance humaine dans les décisions importantes pour les travailleurs des plateformes.
- **Application, transparence et traçabilité du travail sur plateformes, y compris dans les situations transfrontalières.** L'objectif est d'accroître la transparence et de faciliter l'accès à l'information pour les régulateurs, les autorités de contrôle, les travailleurs des plateformes et les autres parties prenantes.

Les options politiques envisagées varient, tout d'abord, en termes de **portée personnelle**. Les différentes options couvrent différents types de plateformes et donc de travailleurs. La principale distinction est faite entre le travail sur plateformes *en ligne* et le travail sur plateformes *sur site*, étant donné les différences dans les conditions de travail respectives. Dans certaines options, les niveaux réels de contrôle exercés par les plateformes sur les personnes qui travaillent par leur intermédiaire constituent également une distinction importante. Les options politiques envisagées diffèrent également en termes de **portée matérielle et de force** (caractère contraignant ou non) des nouveaux droits et obligations. Les instruments spécifiques vont de l'action législative basée sur l'art. 153 du TFUE, à des outils non législatifs, tels que des orientations visant à garantir un travail sur plateformes équitable ou un apprentissage mutuel renforcé entre les États membres. Ils sont présentés dans le tableau ci-dessous.

Dans le processus d'évaluation d'impact, chaque option politique a été évaluée individuellement au regard de la situation de base. Par la suite, les options ont été comparées les unes aux autres sur la base de critères d'efficacité, d'efficience et de cohérence, afin d'identifier l'ensemble de mesures privilégié.

**Options politiques évaluées**

	Portée	Mesures
<b>Domaine politique A : Statut d'emploi des personnes travaillant par le biais de plateformes</b>		
Option A1	Toutes les plateformes numériques de travail	Interprétation et orientation
Option A2		Facilitations procédurales (y compris déplacement de la charge de la preuve, procédure de certification et clarification des prestations fournies par les plateformes aux indépendants)
Option A3a	Plateformes numériques de travail pour les services sur site	Présomption réfutable appliquée aux plateformes sur site
Option A3b	Toutes les plateformes numériques de travail qui exercent un certain degré de contrôle	Présomption réfutable appliquée aux plateformes qui exercent un certain degré de contrôle
Option A3c	Toutes les plateformes numériques de travail	Présomption réfutable appliquée à toutes les plateformes numériques de travail
<b>Domaine politique B : Gestion algorithmique</b>		
Option B1	Toutes les plateformes	Orientation
Option B2a	Toutes les plateformes, droits des travailleurs salariés	Nouveaux droits du travail en matière de transparence, de consultation, de contrôle humain et de réparation
Option B2b	Toutes les plateformes, droits des travailleurs salariés et indépendants	
Option B2c	Toutes les plateformes et entreprises appliquant la gestion algorithmique, droits des travailleurs salariés	
Option B3a	Toutes les plateformes, droits des travailleurs salariés	Nouveaux droits du travail en matière de transparence, de consultation, de contrôle humain, de réparation ET de portabilité des données relatives à la réputation
Option B3b	Toutes les plateformes, droits des travailleurs salariés et indépendants	
<b>Domaine politique C : Transparence transfrontalière</b>		
Option C1	Toutes les plateformes	Orientation
Option C2		Obligation de publication pour les plateformes
Option C3		Registre national des plateformes

**La situation de base**

On estime que 28,3 millions de personnes dans l'UE-27 travaillent par l'intermédiaire de plateformes de façon plus que sporadique. Les données disponibles révèlent que la grande majorité de ces personnes sont formellement indépendantes. Sur la base d'une analyse plus poussée, la question de la classification erronée du statut d'emploi se pose pour environ 5,51 millions de personnes. Bien qu'une telle situation présente certains avantages pour les personnes travaillant par l'intermédiaire de plateformes, liés à la faiblesse des barrières à l'entrée et à la flexibilité, l'absence de relation d'emploi a des conséquences extrêmement négatives pour les travailleurs incorrectement classés – en particulier pour ceux qui travaillent sur des plateformes sur site. Il s'agit de l'imprévisibilité des revenus, des longues heures de travail pour gagner un salaire décent et du temps non rémunéré, du manque de développement professionnel, de la protection sociale inappropriée et des risques pour la santé et la sécurité au travail. Les problèmes découlant de la classification erronée du statut d'emploi se traduisent par des coûts monétaires substantiels pour les États membres de l'UE. Étant donné que les

indépendants sont moins imposés, les États perdent des recettes pour les budgets publics, tandis que l'incertitude juridique générale empêche davantage l'application des règles en matière de travail, de protection sociale et de fiscalité.

Parallèlement, les plateformes opèrent dans un contexte d'incertitude juridique et de fragmentation juridique accrues dans les États membres de l'UE, ce qui a des répercussions non seulement sur les plateformes, mais aussi sur les marchés et les consommateurs. N'employant pas leurs travailleurs, les plateformes n'assument qu'un contrôle et une responsabilité partiels sur la qualité des services fournis. Dans le même temps, l'utilisation d'entrepreneurs indépendants leur permet d'économiser des coûts de main-d'œuvre et de proposer des prix plus bas que ceux des entreprises traditionnelles. Cela a d'autres implications sur la concurrence des plateformes avec les entreprises traditionnelles dans leurs secteurs respectifs.

Les tendances de ces dernières années et l'aperçu des développements actuels indiquent que l'économie des plateformes de travail va continuer à croître à l'avenir. Depuis 2016, les revenus de l'économie des plateformes de l'UE ont été multipliés par six, selon les estimations. Ils sont susceptibles de connaître une croissance au cours des prochaines années également. Les modèles commerciaux des plateformes vont probablement s'étendre à de nouveaux secteurs et les transformer. Le nombre de plateformes actives dans l'UE, tant pour le travail en ligne que pour le travail sur site, a également augmenté de façon notable depuis le début des années 2010, et continuera probablement à le faire dans les prochaines années. Toutefois, la concentration du marché devrait s'accroître, ce qui réduira le nombre de petites plateformes, tandis que les revenus continueront de croître. Cette concentration est également susceptible de limiter la concurrence entre les plateformes pour les travailleurs, ce qui pourrait détériorer davantage leurs conditions de travail. Dans le contexte des mégatendances mondiales qui affectent les sociétés, les économies et le monde du travail, le nombre de personnes qui optent pour un emploi dans l'économie des plateformes, et qui sont donc confrontées à ces inconvénients, va également augmenter pour atteindre environ 42,7 millions dans l'UE-27 d'ici 2030.

La classification erronée du statut d'emploi et les problèmes liés aux conditions de travail sont donc susceptibles de persister et de s'étendre en l'absence d'une action réglementaire spécifique au niveau de l'UE. Les initiatives existantes et à venir visant à traiter la question de la classification erronée du statut d'emploi des personnes travaillant par l'intermédiaire de plateformes ne semblent pas aborder la question de manière cohérente dans l'UE-27. Cette situation de cadres réglementaires fragmentés est susceptible de perdurer. Certains États membres peuvent mettre en place des politiques pertinentes lorsque les conditions de travail s'aggravent (des exemples de telles actions existent déjà dans des pays comme l'Espagne), tandis que d'autres ne le feront pas. En l'absence de normes communes dans l'ensemble de l'UE, les plateformes limiteront probablement leurs activités sur les marchés très réglementés, tout en restant actives dans les États membres où les règles sont plus laxistes. En fin de compte, ce sont les petites plateformes qui en pâtiront le plus, ce qui accentuera la concentration du marché entre une poignée d'acteurs multinationaux, ainsi que les asymétries de pouvoir entre les plateformes et les personnes qui travaillent par leur intermédiaire.

Les pratiques de gestion algorithmique par les plateformes sont un autre facteur qui affecte les conditions des personnes travaillant par leur intermédiaire. Bien qu'elles permettent d'atteindre une efficacité sans précédent dans l'organisation du travail et la prestation de services, elles déplacent encore davantage la dynamique de pouvoir existante dans les relations de travail en termes de surveillance et de contrôle, de manque de transparence, de partialité et d'absence de responsabilité des plateformes. Les algorithmes encouragent les comportements à risque, augmentent les niveaux de

stress et détériorent l'équilibre entre vie professionnelle et vie privée, la stabilité des revenus et l'autonomie des personnes travaillant par le biais de plateformes. Outre le travail sur plateformes, la gestion algorithmique est également de plus en plus répandue dans d'autres lieux de travail plus traditionnels. Au total, on estime qu'entre 72,48 millions et 101,05 millions de personnes dans l'UE-27 font l'expérience de la gestion algorithmique au travail, au moins sous une forme ou une autre, dans une certaine mesure. Compte tenu des progrès rapides de la technologie et des tendances à la numérisation des lieux de travail – parmi de nombreux autres domaines de la vie quotidienne – on peut s'attendre à ce que les pratiques de gestion algorithmique soient de plus en plus répandues, intrusives et désavantageuses pour les travailleurs. Entre-temps, seuls quelques États membres ont prévu ou mis en œuvre des mesures pour traiter les droits algorithmiques dans le travail sur plateformes. Même si un certain nombre de réglementations européennes existantes ou prévues (règlement P2B, RGPD, loi sur l'intelligence artificielle) sont conçues pour s'attaquer à certains aspects du problème, les lacunes et la fragmentation transnationale dans la prise en compte des besoins des personnes travaillant par le biais de plateformes vont probablement persister.

Enfin, il existe un manque de données cohérentes et comparables relatives au développement du travail sur plateformes. Les plateformes ne sont pas obligées et sont réticentes à partager des informations sur les personnes travaillant par leur intermédiaire et sur leurs conditions de travail – étant donné qu'elles sont traitées comme des clients du service logiciel plutôt que comme des employés. Cela crée des obstacles non seulement aux droits des travailleurs et aux actions collectives, mais aussi à l'élaboration et à l'application de politiques éclairées dans ce domaine. Sans une intervention régulatrice au niveau de l'UE, les problèmes ne sont pas susceptibles de s'atténuer. Même si chaque État membre prend des mesures pour résoudre les problèmes de classification erronée, la mise en œuvre de ces politiques sera perturbée par l'absence d'obligations transfrontalières en matière de partage et de communication des données.

## L'ensemble de mesures privilégié

L'analyse détaillée des différentes options, y compris la quantification des coûts et des avantages, ainsi que l'analyse comparative de l'efficacité, de l'efficacité et de la cohérence, ont permis d'identifier la combinaison de mesures politiques privilégiée, soit la mieux adaptée pour atteindre les objectifs de l'initiative. Il s'agit d'une combinaison de mesures politiques dans les trois domaines considérés : classification erronée du statut d'emploi, gestion algorithmique, et application, traçabilité et transparence (y compris dans les situations transfrontalières).

### Domaine politique A : classification erronée du statut d'emploi

La combinaison de mesures à privilégier pour remédier à la classification erronée du statut d'emploi dans le cadre du travail sur plateformes est la suivante :

- déplacement de la charge de la preuve, procédure de certification et clarification des facteurs qui ne doivent pas être considérés comme indiquant l'existence d'une relation de travail (option A2), ainsi que

- présomption réfutable d'emploi appliquée aux plateformes qui exercent un certain degré de contrôle sur les personnes travaillant par leur intermédiaire (option A3b).

Cette combinaison est parfaitement cohérente avec les valeurs, les buts et les objectifs de l'UE, et garantit le meilleur rapport coût-bénéfice. Par rapport aux autres options politiques évaluées, cette combinaison offre également le meilleur équilibre en termes de réduction de l'ampleur des erreurs de classification, tout en tenant compte de la nécessité de soutenir la croissance durable des plateformes numériques de travail dans l'UE.

La combinaison du déplacement de la charge de la preuve et de la présomption réfutable conduira au reclassement d'une part importante des personnes travaillant par l'intermédiaire de plateformes incorrectement classées. Dans le même temps, elle apportera une certitude aux plateformes et aux personnes travaillant par leur intermédiaire concernant les critères d'un véritable travail indépendant. Étant donné que la majorité des personnes qui exercent actuellement un faux travail indépendant sur des plateformes deviendront soit des salariés, soit de véritables indépendants, les cas les plus pressants de classification erronée dans le travail sur plateformes seront en grande partie réglés.

Dans la mesure où la prévalence des erreurs de classification diffère selon les types et les secteurs de travail sur plateformes, cette combinaison d'options politiques est susceptible d'affecter certaines plateformes plus que d'autres :

- Les services sur site peu qualifiés, tels que le covoiturage et la livraison, seront les plus touchés, car ils ont tendance à exercer les plus hauts niveaux de contrôle sur leurs travailleurs, et le risque de classification erronée est le plus élevé.
- Les véritables marchés du travail en freelance qui garantissent un véritable travail indépendant aux personnes travaillant par leur intermédiaire, principalement pour des services en ligne et sur site hautement qualifiés, ne seront pas concernés par ces mesures.
- D'autres plateformes pour divers types de travail sur plateformes qui s'écartent du modèle des marchés et exercent des niveaux de contrôle notables sur les travailleurs, ou qui fonctionnent de manière similaire aux agences de travail intérimaire, seront également concernées.

Cette combinaison de mesures politiques devrait déboucher sur des contrats de travail pour entre 1,72 et 4,1 millions de personnes qui risquent actuellement d'être incorrectement classées. Par ailleurs, jusqu'à 3,78 millions de personnes qui travaillent actuellement sur site ou en ligne et risquent d'être incorrectement classées se verront garantir un véritable emploi indépendant. En outre, de 1,5 à 2,47 millions de personnes qui occupent actuellement des emplois peu qualifiés sur site en tant qu'activité principale ou secondaire sur les plateformes pourraient voir leurs conditions de travail et leur sécurité sociale s'améliorer grâce aux avantages fournis par les plateformes, car le risque que ces avantages soient considérés comme la preuve d'une relation de travail sera plus faible.

Les avantages pour les personnes bénéficiant d'un contrat de travail comprennent des revenus plus stables, l'accès aux congés payés, une meilleure couverture sociale et de meilleures conditions de santé et de sécurité au travail (par exemple, équipement de sécurité fourni par l'entreprise pour les livreurs sur site). Le nombre d'heures travaillées par ces personnes est susceptible d'augmenter. Premièrement, elles seront

indemnisées pour le temps passé en stand-by (par exemple, en attendant les commandes). Deuxièmement, les plateformes sont susceptibles de modifier leurs procédures de travail afin que leurs travailleurs salariés effectuent davantage d'heures. Néanmoins, du côté des coûts, les personnes sous contrat de travail perdront une certaine flexibilité et devront suivre des horaires convenus avec la plateforme. Les avantages pour les personnes travaillant par l'intermédiaire de plateformes et bénéficiant de véritables conditions de travail indépendant sont notamment une plus grande autonomie, puisque ces personnes seront en mesure de fixer leurs heures de travail, leurs horaires et leurs taux de rémunération.

Les plateformes numériques de travail supporteront l'essentiel des coûts de ces mesures. Elles devront faire face à une augmentation des coûts salariaux et non salariaux, proportionnelle au nombre de personnes à reclasser. Les revenus de ces plateformes pourraient diminuer quelque peu en raison des prix plus élevés et des conditions de concurrence plus équitables avec les entreprises traditionnelles. Les coûts juridiques et de non-conformité sont susceptibles d'augmenter à court et moyen terme, car les deux options politiques permettraient aux personnes travaillant par l'intermédiaire de plateformes de contester plus facilement et à moindre coût leur statut juridique. Cependant, nous considérons que ces coûts vont probablement diminuer à moyen et long terme en raison d'une plus grande clarté concernant la distinction entre salarié et véritable indépendant, et en raison des mesures que les plateformes sont susceptibles de prendre pour clarifier leurs modèles d'entreprise et les certifier en fonction de cette distinction.

En ce qui concerne les implications plus larges sur les marchés, les mesures politiques proposées contribueront à garantir des conditions de concurrence équitables pour les entreprises « traditionnelles » (par exemple, les sociétés de taxi ou de nettoyage, etc.) qui emploient leurs travailleurs et rivalisent avec les plateformes numériques de travail qui profitent des erreurs de classification. Toutefois, il y aura une légère baisse des revenus pour les entreprises qui utilisent les services de plateformes en raison des augmentations de prix (par exemple dans le cas de l'Espagne, on estime à moins de 1,0 % la perte de revenus des restaurants). Les effets sur les consommateurs seront probablement mitigés car, au moins à court terme, l'accessibilité de certains services de plateformes pourrait diminuer dans les petites villes et les temps d'attente pourraient augmenter. Pourtant, la qualité des services devrait s'améliorer, car les personnes employées par les plateformes seront plus sûres socialement et mieux formées, tandis que les plateformes prendront le contrôle total de la qualité des services.

Le secteur public supportera des coûts liés à l'élaboration et à la mise en œuvre de la procédure de certification, ainsi que des coûts résultant d'une augmentation des affaires judiciaires à court et moyen terme. Du côté des bénéfices, les deux options combinées faciliteront le travail des autorités qui supervisent la question des erreurs de classification. Les recettes supplémentaires probables pour les budgets publics liées à l'augmentation des impôts et des cotisations de sécurité sociale en raison de la reclassification se situeront entre 1,67 et 3,98 milliards d'euros par an.

## Domaine politique B : Gestion algorithmique

L'analyse des coûts et des bénéfices de chaque option politique dans le cadre du domaine politique B a montré que la plus bénéfique est la sous-option B2b, qui introduit des droits liés à la transparence, à la consultation, à la surveillance humaine et à la réparation, tant pour les travailleurs salariés des plateformes que pour les personnes travaillant sur des plateformes en tant qu'indépendants. Si toutes les options politiques

sont cohérentes avec les valeurs, les buts et les objectifs de l'UE, la sous-option B2b est la plus avantageuse au regard des objectifs de l'initiative prévue.

En termes de champ d'application, cette option politique touchera toutes les personnes travaillant par l'intermédiaire de plateformes (jusqu'à 28,3 millions dans l'UE-27). Elle vise aussi bien les personnes qui ont le statut de salarié que celles qui travaillent sur des plateformes en tant qu'indépendants. Sa portée est donc plus grande que celle de la sous-option B2a, qui ne vise que les travailleurs salariés des plateformes. La sous-option B2b est également plus ciblée que la sous-option B2c, qui vise les travailleurs salariés des plateformes ainsi que, plus généralement, les personnes salariées qui sont soumises à une gestion algorithmique, mais laisse de côté les indépendants qui représentent une majorité des personnes travaillant par le biais des plateformes. La mesure privilégiée est donc plus susceptible de créer des conditions de concurrence équitables pour le travail sur les plateformes et d'éviter de dissuader les plateformes d'offrir le statut d'employé.

Les sociétés de plateformes supporteront la plupart des coûts des options politiques. Ces coûts comprennent les changements techniques et procéduraux que les sociétés de plateformes devraient mettre en œuvre pour assurer une supervision humaine des décisions importantes prises par les algorithmes, fournir des explications écrites, mettre en place des procédures écrites de traitement des plaintes et consulter les travailleurs, entre autres obligations. Néanmoins, il est peu probable que ces coûts soient suffisamment importants pour affecter fortement les activités des plateformes.

Compte tenu de ces éléments, la sous-option B2b est plus efficace que les autres options politiques. Comme elle formule des droits spécifiques au niveau de l'UE, elle sera plus efficace qu'une option de droit non contraignant, comme les orientations (B1), car les droits obligatoires sont plus susceptibles d'être repris et mis en œuvre dans les États membres. En outre, alors que le coût de mise en place des changements nécessaires est essentiellement le même pour les sous-options B2a (mêmes droits pour les travailleurs des plateformes, mais salariés uniquement) et B2b, le groupe cible dans le cadre de la B2b est beaucoup plus important. Parallèlement, le coût global de la B2c (mêmes droits non seulement pour les travailleurs des plateformes, mais aussi pour les travailleurs des entreprises traditionnelles appliquant la gestion algorithmique) est beaucoup plus important que celui de la B2b, car il toucherait un groupe d'entreprises beaucoup plus large. Si l'on compare ces deux options, la B2b est plus efficace parce qu'elle est mieux ciblée, tandis que la B2c laisse de côté le plus grand groupe de personnes qui travaillent par l'intermédiaire des plateformes : celles qui sont et resteront indépendantes.

Enfin, la portabilité des données couverte par les sous-options B3a et B3b est potentiellement un aspect important de l'équité, de la transparence et du pouvoir des travailleurs vis-à-vis des plateformes. La B3b est plus efficace que la B3a, parce qu'elle offre la portabilité des données à la fois aux travailleurs salariés et aux travailleurs indépendants, pour lesquels la fonctionnalité est particulièrement pertinente. Néanmoins, ces deux options politiques sont très difficiles à mettre en œuvre dans la pratique. Elles nécessiteraient une collaboration sans précédent entre un grand nombre de plateformes concurrentes pour convenir d'une norme commune en matière d'évaluation et de retour d'information et pour réorganiser le back-end et le front-end de leurs applications en fonction de cette norme. Nous considérons que le coût des options B3a et B3b serait excessif. Dans le même temps, les avantages réels et les impacts plus larges sur les plateformes (par exemple, les ressources nécessaires aux petites plateformes pour se conformer aux nouvelles normes industrielles d'interopérabilité, qui pourraient être excessives) ainsi que sur les personnes travaillant par leur intermédiaire

(par exemple, le risque de fraude aux examens, la protection des données personnelles, etc.) resteront discutables.

## Domaine politique C : Transparence transfrontalière

Alors que toutes les options politiques relevant de ce domaine sont cohérentes avec les valeurs, les buts et les objectifs de l'UE, l'analyse a révélé qu'une combinaison de l'option politique C1 : Orientation, et de l'option politique C2 : Obligation de publication pour les plateformes, est la plus efficace et efficiente. L'option politique C3 peut également être efficace, mais elle est la moins efficiente en raison de son coût potentiellement très élevé pour le secteur public. La création et la tenue d'un registre de la plupart des plateformes opérant dans chaque État membre de l'UE pourraient nécessiter des milliers ou des millions d'euros provenant des budgets publics.

La mise en conformité avec les nouvelles exigences de publication entraînera des coûts ponctuels et récurrents pour les plateformes, mais ils ne seront pas substantiels. Les estimations indiquent des coûts uniques d'environ plusieurs centaines d'euros par plateforme pour établir les structures de rapport, et des coûts récurrents de volume similaire. Le secteur public devra également supporter des coûts en termes de ressources humaines pour assurer la conformité et le contrôle des informations communiquées. Toutefois, les avantages de l'accès à des informations pertinentes facilitant le travail des décideurs politiques et des autorités chargées de l'application de la loi l'emporteront largement sur les coûts.

## Zusammenfassung

Digitale Arbeitsplattformen sind wie andere Arten von digitalen Plattformen auch aus dem Zusammenwirken von dezentralisierten Informationsnetzwerken, Big-Data-Analysetools und mobilen digitalen Geräten entstanden. Sie bieten neue Koordinierungsformen für wirtschaftliche Aktivitäten und sorgen für eine Neudefinition der EU-Wirtschaft und -Arbeitsmärkte. Dabei werden die bestehenden Regulierungen für Arbeits- und Beschäftigungsverhältnisse den neuen Realitäten, Chancen und Herausforderungen immer weniger gerecht.

In jüngsten Forschungsarbeiten und Diskussionen von Interessenvertretern und Politikgestaltern werden die Chancen und Herausforderungen des wachsenden Plattformarbeitsmarkts betrachtet. Auf der einen Seite birgt Plattformarbeit ein immenses Innovationspotenzial und bietet Personen, die mittels digitaler Plattformen arbeiten, zahlreiche Möglichkeiten. Sie wird als leicht zugängliche Quelle von (zusätzlichem) Einkommen, als niedrigschwelliger Einstiegspunkt für Beschäftigung für benachteiligte Gruppen und als Alternative zu regulärer Beschäftigung betrachtet, die mehr Flexibilität bietet. Auf der anderen Seite ist Plattformarbeit auch mit vielen Herausforderungen hinsichtlich Arbeitsbedingungen verbunden, die mit den bestehenden rechtlichen Rahmenbestimmungen nur schwer angegangen werden können.

Mehrere äußere Faktoren treiben diese Entwicklung voran: Wachstum der digitalen Plattformwirtschaft, globale wirtschaftliche und gesellschaftliche Megatrends sowie zunehmende Digitalisierung in den Bereichen Arbeit und Konsum – zusätzlich noch beschleunigt durch die COVID-19-Pandemie. Die auf europäischer und nationaler Ebene geplanten oder ergriffenen Maßnahmen, um auf die Folgen dieser Veränderungen zu reagieren, weisen hinsichtlich Plattformarbeit große Lücken auf. Mindestens drei zentrale Problembereiche bleiben bestehen: das Risiko einer falschen Klassifizierung des Beschäftigungsstatus von Personen, die mittels Plattformen arbeiten, die algorithmische Verwaltung der Plattformen und Problemen im Zusammenhang mit Durchsetzung, Nachvollziehbarkeit und Transparenz, einschließlich grenzüberschreitender Arbeitssituationen.

Ziel dieser Studie ist es, die Folgenabschätzung einer neuen Gesetzesinitiative auf EU-Ebene zu unterstützen. Hauptziel dieser Initiative ist es, die Arbeitsbedingungen und sozialen Rechte von Personen, die mittels Plattformen arbeiten, zu verbessern und zugleich Bedingungen für nachhaltiges Wachstum von digitalen Arbeitsplattformen in der Europäischen Union zu sichern. Hierbei wurden drei spezifische Ziele festgelegt:

- Sicherzustellen, dass Personen, die mittels Plattformen arbeiten, entsprechend ihrer Arbeitsbeziehung mit der Plattform den richtigen Beschäftigungsstatus haben – oder erhalten können – und Zugang zu Arbeitsrechten und sozialer Absicherung erhalten
- Für Fairness, Transparenz und Verantwortung bei der algorithmischen Verwaltung von Plattformarbeit zu sorgen
- Die Transparenz, Nachvollziehbarkeit und das Wissen über die Entwicklung der Plattformarbeit zu steigern und die Durchsetzung geltender Regeln für alle Personen, die mittels Plattformen arbeiten – auch grenzüberschreitend – zu verbessern

In dieser Studie hingegen wurde der Fokus auf alternative Politikoptionen gelegt, um eine Ex-Ante-Bewertung ihrer Folgen durchzuführen und die am besten geeignete Kombination von politischen Maßnahmen zur Erreichung der oben genannten spezifischen Ziele zu ermitteln.

## Methodischer Ansatz

Für die Studie zur Unterstützung der Folgenabschätzung wurde das Instrumentarium für eine bessere Rechtsetzung bei der Operationalisierung von Fragestellung und methodischem Ansatz angewandt. Die wissenschaftliche Untersuchung wurde darauf ausgerichtet, die folgenden Fragen umfassend zu beantworten:

15. Worin besteht das Problem und warum ist es ein Problem?
16. Warum sollte die EU handeln?
17. Was sollte erreicht werden?
18. Welche Optionen bestehen, um die Ziele zu erreichen?
19. Welche Folgen haben die unterschiedlichen Politikoptionen und wer wird betroffen sein?
20. Worin gleichen und unterscheiden sich die Optionen?
21. Welche ist die bevorzugte Option?

Um diese Fragen zu beantworten, wurden unterschiedliche Ansätze zur Datensammlung und -analyse angewandt. Während die anfängliche Vorstudie alle 27 EU-Mitgliedstaaten und mehrere Drittstaaten abdeckte, wurde bei der tiefgehenden Analyse der Schwerpunkt auf eine Auswahl von Mitgliedstaaten gelegt, die größere geografische Regionen und Wirtschaftskluster der EU darstellen: Dänemark, Deutschland, Frankreich, Italien, Litauen, Niederlande, Polen, Rumänien, und Spanien. Bei der Datensammlung wurden sowohl qualitative als auch quantitative Ansätze angewandt, was einen reichen Datenschatz für die weitere Analyse ergab:

- Eine breitangelegte Überprüfung nationaler politischer Maßnahmen, die für Bereiche der Plattformarbeit in den 27 EU-Mitgliedstaaten und in sieben Drittstaaten eingeführt wurden
- Eine Online-Befragung in den neun ausgewählten Mitgliedstaaten von Personen, die mittels Plattformen arbeiten, und Personen, die traditionellen Tätigkeiten nachgehen, aber von algorithmischer Verwaltung betroffen sind
- Ein Interview-Programm, bei dem Plattformen, Vertreter von Personen, die mittels Plattformen arbeiten, Gewerkschaften, Arbeitgeberverbände und nationale politische Entscheidungsträger in den neun ausgewählten Mitgliedstaaten involviert wurden
- Eine automatisierte Datensammlung im Internet über Personen in den neun ausgewählten Mitgliedstaaten, welche die Online-Plattformen Upwork, Freelancer.com, PeoplePerHour und Guru.com nutzen
- Eine weitreichende und umfassende Überprüfung von einschlägiger Literatur und bestehenden Datenquellen einschließlich wissenschaftlicher und grauer Literatur, früherer Befragungen, nationaler Statistiken und anderer sachdienlicher Informationen

- Medienbeobachtung zu den jüngsten Entwicklungen im Zusammenhang mit der Umsetzung und den anfänglichen Folgen der politischen Initiativen, die von den nationalen Regierungen der EU-Mitgliedstaaten und Drittstaaten ergriffen wurden

Die Daten aus unterschiedlichen Quellen wurden kombiniert und trianguliert, um eine Analyse zu entwickeln, mit der jede Forschungsfrage beantwortet werden kann. Die Datenanalyse umfasste eine umfassende Analyse von qualitativen Quellen, beschreibenden Statistiken, Zeitreihenprognosen, ökonometrische Modellierung sowie eine Reihe von Berechnungsmethoden und -techniken.

## Politikoptionen

Die in dieser Studie bewerteten Politikoptionen wurden an den drei Kernproblemen bzw. Politikbereichen im Zusammenhang mit dem Status quo von Plattformarbeit orientiert:

- **Falsche Klassifizierung des Beschäftigungsstatus** von Personen, die mittels Plattformen arbeiten und als selbstständiger Unternehmer operieren, obwohl sie de facto in einem abhängigen Beschäftigungsverhältnis stehen. Ziel ist es, für eine angemessene Klassifizierung der Arbeiter zu sorgen und die Grauzone zwischen abhängiger Beschäftigung und Selbstständigkeit zu verkleinern.
- **Fairness und Transparenz bei der algorithmischen Verwaltung**, die von Arbeitsplattformen angewandt wird. Ziel ist es, den Arbeitern die notwendigen Informationen über die Arbeits- und Auftragsvergabe, die Bewertung oder Beendigung von Konten und weitere wichtige Aspekte zugänglich zu machen und dafür zu sorgen, dass Entscheidungen mit großen Konsequenzen für Plattformarbeiter von Menschen kontrolliert werden.
- **Durchsetzung, Transparenz und Nachvollziehbarkeit bei Plattformarbeit einschließlich grenzüberschreitender Verhältnisse**. Ziel ist es, die Transparenz zu erhöhen und Regulierungs- und Durchsetzungsbehörden, Plattformarbeitern und anderen Interessenvertretern einen leichteren Zugang zu Informationen zu ermöglichen.

Die betrachteten Politikoptionen unterscheiden sich zunächst in Bezug auf ihren **persönlichen Anwendungsbereich**. Die unterschiedlichen Optionen finden Anwendung für verschiedene Arten von Plattformen und betreffen daher verschiedene Arten von Arbeitern. Der Hauptunterschied besteht zwischen *Online*- und *Vor-Ort*-Plattformarbeit in Anbetracht der unterschiedlichen Arbeitsbedingungen. Bei manchen Optionen dient zudem die von den Plattformen in der Praxis ausgeübte Kontrolle über die Plattformarbeiter als wichtige Abgrenzung. Die betrachteten Politikoptionen unterscheiden sich auch in Bezug auf den **materiellen Anwendungsbereich und die Stärke** (bindend oder nicht bindend) der neuen Rechte und Pflichten. Die spezifischen Instrumente reichen von rechtlichen Maßnahmen basierend auf Artikel 153 TFEU bis hin zu nicht rechtsbindenden Instrumenten wie zum Beispiel Handlungsempfehlungen für faire Plattformarbeit oder ein verbessertes Voneinanderlernen zwischen den Mitgliedstaaten. Diese werden in nachstehender Tabelle dargestellt.

Im Zuge der Folgenabschätzung wurde jede Politikoption einzeln vor dem Hintergrund der Ausgangssituation bewertet. Danach wurden die Optionen hinsichtlich der Kriterien Wirksamkeit, Effizienz und Kohärenz miteinander verglichen, um die bevorzugte Kombination politischer Maßnahmen zu bestimmen.

**Bewertete Politikoptionen**

	Anwendungsbereich	Maßnahmen
<b>Politikbereich A: Beschäftigungsstatus von Personen, die mittels Plattformen arbeiten</b>		
Option A1	Alle digitalen Arbeitsplattformen	Interpretation and Handlungsempfehlungen
Option A2		Erleichtertes Verfahren (einschließlich Verlagerung von Beweislast, Zertifizierungsverfahren und Klarstellung bezüglich Leistungen, die selbstständige Unternehmern von Plattformen erhalten)
Option A3a	Digitale Arbeitsplattformen für Vor-Ort-Dienste	Anwendung von widerlegbarer Vermutung für Vor-Ort-Plattformen
Option A3b	Alle digitalen Arbeitsplattformen, die ein bestimmtes Maß an Kontrolle ausüben	Anwendung von widerlegbarer Vermutung für Plattformen, die ein bestimmtes Maß an Kontrolle ausüben
Option A3c	Alle digitalen Arbeitsplattformen	Anwendung von widerlegbarer Vermutung für alle digitalen Arbeitsplattformen
<b>Politikbereich B: Algorithmische Verwaltung</b>		
Option B1	Alle Plattformen	Handlungsempfehlungen
Option B2a	Alle Plattformen, Rechte für Angestellte	Neue Arbeitsrechte hinsichtlich Transparenz, Anhörung, menschliche Kontrolle und Entschädigung
Option B2b	Alle Plattformen, Rechte für Angestellte und Selbstständige	
Option B2c	Alle Plattformen und Unternehmen, die algorithmische Verwaltung anwenden, Rechte für Angestellte	
Option B3a	Alle Plattformen, Rechte für Angestellte	Neue Arbeitsrechte hinsichtlich Transparenz, Anhörung, menschliche Kontrolle und Entschädigung UND Übertragbarkeit von Reputationsdaten
Option B3b	Alle Plattformen, Rechte für Angestellte und Selbstständige	
<b>Politikbereich C: Grenzüberschreitende Transparenz</b>		
Option C1	Alle Plattformen	Handlungsempfehlungen
Option C2		Veröffentlichungspflicht für Plattformen
Option C3		Nationales Register für Plattformen

## Ausgangssituation

In der Europäischen Union (EU-27) arbeiten Schätzungen zufolge 28.3 Millionen Menschen mehr als nur gelegentlich mittels Plattformen. Die verfügbaren Daten belegen, dass die große Mehrheit hiervon formal als Selbstständige tätig sind. Die weitere Analyse ergab, dass für rund 5.51 Millionen Menschen das Risiko einer falschen Klassifizierung des Beschäftigungsstatus besteht. Obwohl Personen, die mittels Plattformen arbeiten, bestimmte Vorteile haben, da sie einen niedrighwelligen Einstiegspunkt und Flexibilität bieten, ist das Fehlen eines Beschäftigungsverhältnisses mit immensen negativen Folgen für die falsch klassifizierte Person verbunden – insbesondere bei Vor-Ort-Plattformarbeit. Dazu zählen unsichere Einkünfte, lange Arbeitstage für ein annehmbares Gehalt und unbezahlte Arbeitszeit, fehlende berufliche Weiterbildung, unzureichende soziale Absicherung and Risiken hinsichtlich Gesundheit und Sicherheit am Arbeitsplatz. Durch falsche Klassifizierung des Beschäftigungsstatus verursachte Probleme sind mit hohen monetären Kosten für die EU-Mitgliedstaaten verbunden. Aufgrund der niedrigeren Besteuerung von Selbstständigen verlieren sie Einnahmen für die staatlichen Haushalte. Darüber hinaus verhindert die allgemeine Rechtsunsicherheit die Durchsetzung von Arbeitsrechten, sozialer Absicherung und Steuerregelungen.

Währenddessen operieren Plattformen bei zunehmender Rechtsunsicherheit und -zersplitterung in den EU-Mitgliedstaaten. Dies ist nicht nur mit Folgen für Plattformen verbunden, sondern auch für Märkte und Verbraucher. Da Plattformen keine Beschäftigungsverhältnisse eingehen, können sie die Qualität der erbrachten Dienste nur zum Teil kontrollieren und die Verantwortung hierfür übernehmen. Zugleich ermöglicht ihnen der Rückgriff auf selbstständige Unternehmer Arbeitskosten einzusparen und Dienste zu niedrigeren Preise als traditionelle Unternehmen anzubieten. Dies hat weitere Folgen für den Wettbewerb zwischen Plattformen und traditionellen Unternehmen im jeweiligen Sektor.

Der Trend der letzten Jahre und die allgemeine aktuelle Entwicklung lassen darauf schließen, dass die Plattformwirtschaft in der Zukunft wachsen wird. Seit 2016 sind die Einnahmen der EU-Plattformwirtschaft um das Sechsfache gestiegen. Auch in den nächsten Jahren ist von einem Wachstum auszugehen. Plattform-Geschäftsmodelle werden voraussichtlich auch in neuen Sektoren entstehen und diese verändern. Auch die Zahl der in der EU operierenden Plattformen ist seit den frühen 2010er Jahre bedeutend gestiegen. Diese Entwicklung wird sich auch in den kommenden Jahren fortsetzen. Allerdings ist es absehbar, dass letztlich die Marktkonzentration zunehmen wird und sich die Zahl der kleinere Plattformen verringern wird, während die Einnahmen weiter steigen werden. Eine derartige Konzentration sorgt dafür, dass der Wettbewerb um Arbeiter zwischen den Plattformen abnimmt und sich ihre Arbeitsbedingungen möglicherweise weiter verschlechtern. Vor dem Hintergrund globaler Megatrends in Gesellschaften, der Wirtschaft und Arbeitswelt wird auch die Zahl der Personen, die sich dafür entscheiden in der Plattformwirtschaft zu arbeiten und daher von diesen Nachteilen betroffen sein werden, bis 2030 auf geschätzte 42.7 Millionen in der Europäischen Union (EU-27) steigen.

Die falsche Klassifizierung des Beschäftigungsstatus und Probleme im Zusammenhang mit den Arbeitsbedingungen werden aufgrund fehlender spezifischer regulatorischer Maßnahmen auf EU-Ebene fortbestehen und weiter zunehmen. Die in den Mitgliedstaaten (EU-27) bestehenden und geplanten Initiativen scheinen nicht einheitlich auf das Problem der falschen Klassifizierung des Beschäftigungsstatus von Plattformarbeitern zu reagieren. Diese Situation von fragmentierten Regulierungsrahmen wird voraussichtlich fortbestehen. Einige Mitgliedstaaten könnten entsprechende Maßnahmen vorschlagen, da sich die Arbeitsbedingungen immer weiter verschlechtern (Beispiele solcher Maßnahmen gibt es bereits in Ländern wie Spanien), während andere dies nicht tun werden. Solange es keine einheitlichen Standards in der EU gibt, werden Plattformen ihr Geschäfte in stark regulierten Märkten vermutlich einschränken und in Mitgliedstaaten mit lockerer Regulierung weiterführen. Letztlich wird dies kleine Plattformen am meisten benachteiligen und die Marktkonzentrierung einer Handvoll multinationaler Plattformen sowie Machtasymmetrien zwischen Plattformen und Plattformarbeitern weiter verstärken.

Der Einsatz von algorithmischer Verwaltung durch die Plattformen ist ein weiterer Faktor, der die Arbeitsbedingungen von Plattformarbeitern beeinflusst. Wenngleich hierdurch eine beispiellose Effizienz bei der Organisation von Arbeit und der Erbringung von Diensten erreicht werden kann, verschieben sich zugleich die bestehenden Machtdynamiken bei Beschäftigungsverhältnissen durch Überwachung und Kontrolle, fehlende Transparenz, Verzerrungseffekte (bias), und fehlende Rechenschaftspflicht der Plattformen. Algorithmen belohnen riskantes Verhalten, sorgen für ein erhöhtes Stressniveau und wirken sich negativ auf die Vereinbarkeit von Arbeits- und Privatleben, die Einkommensstabilität und die Autonomie von Plattformarbeitern aus. Neben dem Bereich der Plattformarbeit herrscht algorithmische Verwaltung auch immer mehr in anderen, eher traditionellen Arbeitsverhältnissen vor. Schätzungen zufolge sind in der Europäischen Union (EU-27) insgesamt 72.48 – 101.05 Millionen Personen an der Arbeit

in irgendeiner Form und zu einem bestimmten Maße mit algorithmischer Verwaltung konfrontiert. Angesichts der schnellen technologischen Entwicklung und der Trends zur Digitalisierung von Arbeitsplätzen – neben vielen weiteren Bereichen des täglichen Lebens – kann davon ausgegangen werden, dass der Einsatz von algorithmischer Verwaltung immer mehr vorherrschen, alles bestimmen und nachteilig für die Arbeiter sein wird. Bisher haben nur einige Mitgliedstaaten Maßnahmen geplant oder eingeführt, um Rechte im Zusammenhang mit algorithmischer Verwaltung für Plattformarbeit festzulegen. Obwohl eine Reihe von bestehenden und geplanten EU-Verordnungen (P2B-Verordnung, DSGVO, Verordnung zur Regulierung von Künstlicher Intelligenz) so gestaltet wurden, dass sie einige Aspekte des Problems angehen, werden Lücken und eine länderspezifische Fragmentierung bei den Maßnahmen für Plattformarbeiter voraussichtlich fortauern.

Letztendlich mangelt es an einheitlichen und vergleichbaren Daten über die Entwicklung von Plattformarbeit. Plattformen sind nicht verpflichtet und zögerlich, wenn es darum geht, Informationen über Plattformarbeiter und ihre Arbeitsbedingungen zu teilen. Dies liegt auch daran, dass sie von den Plattformen eher als Kunden eines Software-Dienstes und nicht als Angestellte betrachtet werden. Hieraus ergeben sich nicht nur Hürden für Arbeiterrechte und kollektives Handeln, sondern auch für eine sachkundige Politikgestaltung und -durchsetzung in diesem Bereich. Ohne regulatorische Maßnahmen auf EU-Ebene werden diese Probleme nicht verschwinden. Auch wenn einzelne Mitgliedstaaten Maßnahmen ergreifen, um auf die Probleme der falschen Klassifizierung zu reagieren, wird die Umsetzung dieser Maßnahmen durch fehlenden grenzüberschreitenden Datenaustausch und fehlende Veröffentlichungspflichten unterhöhlt.

## Bevorzugte Kombination politischer Maßnahmen

Die detaillierte Analyse der einzelnen Optionen einschließlich einer Kosten-Nutzen-Quantifizierung und vergleichenden Analyse von Wirksamkeit, Effizienz und Kohärenz ermöglichte es, die bevorzugte Kombination politischer Maßnahmen zu bestimmen, die sich am besten eignet, um die Ziele der Initiative zu erreichen. Es handelt sich hierbei um eine Kombination politischer Maßnahmen für die folgenden drei Bereiche: falsche Klassifizierung des Beschäftigungsstatus, algorithmische Verwaltung und Durchsetzung, Nachvollziehbarkeit und Transparenz (einschließlich grenzüberschreitender Arbeitssituationen).

### Politikbereich A: Falsche Klassifizierung des Beschäftigungsstatus

Die bevorzugte Kombination von Maßnahmen, um falsche Klassifizierung des Beschäftigungsstatus bei Plattformarbeit zu korrigieren, umfasst:

- Verlagerung der Beweislast, Zertifizierungsverfahren und Klärung von Faktoren, die nicht als Beweis für das Bestehen eines Beschäftigungsverhältnisses betrachtet werden sollten (Option A2)
- Widerlegbare Beschäftigungsvermutung für Plattformen, die ein bestimmtes Maß an Kontrolle über Plattformarbeiter ausüben (Option A3b)

Diese Kombination steht im Einklang mit den Werten und Zielsetzungen der EU und weist das beste Kosten-Nutzen-Verhältnis auf. Im Vergleich mit den anderen bewerteten Politikoptionen ist sie zudem am ausgewogensten, wenn es darum geht, falsche

Klassifizierung zu minimieren und zugleich die Notwendigkeit zu berücksichtigen, nachhaltiges Wachstum von Arbeitsplattformen in der EU zu fördern.

Die Kombination aus Verlagerung der Beweislast und widerlegbarer Vermutung wird zu einer Neuklassifizierung eines bedeutenden Anteils der Plattformarbeiter führen, die derzeit falsch klassifiziert sind. Gleichzeitig wird Klarheit für Plattformen und Plattformarbeiter geschaffen, welche die Kriterien für echte Selbstständigkeit sind. Da hierdurch die Mehrheit der Personen, die aktuell in falscher Selbstständigkeit mittels Plattformen arbeiten, entweder Angestellte oder echte Selbstständige werden, können die meisten der dringlichsten Fälle falscher Klassifizierung bei der Plattformarbeit geklärt werden.

Vor dem Hintergrund, dass das Vorkommen von falscher Klassifizierung von Plattformart und Sektor abhängig und daher unterschiedlich ausgeprägt ist, wird diese Kombination politischer Maßnahmen bestimmte Plattformen voraussichtlich mehr betreffen als andere:

- Vor-Ort-Dienste durch Geringqualifizierte, wie z. B. Fahrten und Lieferungen, werden am meisten hiervon betroffen sein, da sie das höchste Maß an Kontrolle über ihre Arbeiter ausüben und das Risiko falscher Klassifizierung am größten ist.
- Marktplatz-Plattformen für selbstständige Unternehmer, die echte Selbstständigkeit für Personen die mittels der Plattform arbeiten gewährleisten (meist für hochqualifizierte Online- und Vor-Ort-Dienste) fallen nicht in den Anwendungsbereich dieser Maßnahmen.
- Andere Plattformen für diverse Arten von Plattformarbeit, die vom Marktplatzmodell abweichen und ein deutliches Maß an Kontrolle über ihre Arbeiter ausüben oder ähnlich wie Zeitarbeitsfirmen operieren, werden ebenfalls betroffen sein.

Diese Kombination politischer Maßnahmen wird vermutlich bei rund 1.72 – 4.1 Millionen Personen zu Arbeitsverträgen führen, die derzeit dem Risiko einer falschen Klassifizierung ausgesetzt sind. Für bis zu 3.78 Millionen Personen, die derzeit vor Ort oder Online arbeiten und dem Risiko einer falschen Klassifizierung ausgesetzt sind, wird echte Selbstständigkeit garantiert. Zusätzlich könnten sich die Arbeitsbedingungen und soziale Absicherung von 1.5 – 2.47 Millionen Plattformarbeitern, die aktuell geringqualifizierte Vor-Ort-Dienste als Haupt- oder Zweittätigkeit erbringen, durch Leistungen von den Plattformen verbessern. Denn das Risiko, dass diese Leistungen als Beweis für ein Beschäftigungsverhältnis betrachtet werden, wird verringert.

Für Personen, die einen Arbeitsvertrag erhalten, bedeutet dies ein stabileres Einkommen, Zugang zu bezahltem Urlaub, eine bessere soziale Absicherung und bessere Bedingungen hinsichtlich Gesundheit und Sicherheit am Arbeitsplatz (z. B. durch vom Arbeitgeber gestellte Schutzausstattung für Vor-Ort-Lieferanten). Die geleisteten Arbeitsstunden dieser Personen werden sich voraussichtlich erhöhen. Zum einen werden ihnen Bereitschaftszeiten (z. B. Warten auf Bestellungen) angerechnet. Zum anderen werden die Plattformen wahrscheinlich ihre Arbeitsabläufe anpassen, damit ihre Angestellten mehr Stunden arbeiten können. Die Kehrseite ist, dass Personen mit Arbeitsvertrag einen Teil der Flexibilität einbüßen werden und in Schichten arbeiten müssen, die sie mit der Plattform vereinbaren. Personen die mittels Plattformen arbeiten und echte Selbstständige werden, genießen mehr Autonomie, da sie in der Lage sind, ihre Arbeitsstunden, Verfügbarkeiten und Tarife selbst festzulegen.

Die digitalen Arbeitsplattformen werden den Großteil der Kosten dieser Maßnahmen tragen. Sie werden mit erhöhten Lohnkosten und anderen Kosten konfrontiert, die proportional zur Zahl der neu zu klassifizierenden Personen sein werden. Aufgrund der höheren Preise und einem ausgewogenerem Wettbewerb mit traditionellen Unternehmen könnten die Einnahmen dieser Plattformen leicht sinken. Prozesskosten sowie Kosten, die durch die Nichteinhaltung der Regeln entstehen, nehmen vermutlich kurz- bis mittelfristig zu, da beide Politikoptionen es Plattformarbeitern erleichtern werden, ihren Beschäftigungsstatus in Frage zu stellen. Allerdings ist anzunehmen, dass derartige Kosten mittel- bis langfristig sinken werden, da mehr Klarheit darüber bestehen wird, wie sich ein Angestellter und ein echter Selbstständiger unterscheiden. Zudem werden Plattformen sehr wahrscheinlich ihre Geschäftsmodelle erläutern und im Hinblick auf diese Unterscheidung zertifizieren.

Was weiterreichenden Folgen für die Märkte betrifft, werden die vorgeschlagenen politischen Maßnahmen dazu beitragen, einen fairen Wettbewerb mit „traditionellen“ Unternehmen sicherzustellen (z. B. Taxi- oder Reinigungsunternehmen), die ihre Arbeiter anstellen und mit digitalen Arbeitsplattformen konkurrieren, die bisher von falscher Klassifizierung profitieren. Aufgrund der Preiserhöhung werden Unternehmen, die Plattformdienste nutzen, allerdings einen leichten Rückgang bei den Einnahmen verzeichnen (beim Beispiel Spaniens betrug der Verlust für Restaurants geschätzt weniger als 1.0%). Die Folgen für Verbraucher sind vermutlich gemischter Natur, zumindest kurzfristig, da die Verfügbarkeit von Plattformdiensten in kleineren Städten abnehmen könnte und Wartezeiten vielleicht länger werden. Die Qualität der erbrachten Dienste dürfte sich allerdings verbessern, da die Arbeiter, die von Plattformen angestellt werden, sozial besser abgesichert und besser geschult sein werden und die Plattformen die volle Kontrolle über die Qualität ihrer Dienste übernehmen.

Für den öffentlichen Sektor ist die Entwicklung und Einführung des Zertifizierungsverfahrens mit Kosten verbunden. Auch durch die Zunahme von Gerichtsverfahren werden kurz- bis mittelfristig Kosten entstehen. Auf der Nutzenseite ist anzumerken, dass die beiden Optionen zusammen die Arbeit von Behörden erleichtern werden, wenn es darum geht, falsche Klassifizierung zu überwachen. Die voraussichtlichen zusätzlichen Einnahmen für staatliche Haushalte, die sich aus der Neuklassifizierung von Plattformarbeitern ergeben, werden zwischen 1.67 und 3.98 Milliarden Euro pro Jahr betragen.

## Politikbereich B: Algorithmische Verwaltung

Bei der Kosten-Nutzen-Analyse der einzelnen Politikoptionen von Politikbereich B stellte sich die Unteroption B2b als beste heraus, und zwar die Einführung von Rechten hinsichtlich Transparenz, Anhörung, menschlicher Kontrolle und Entschädigung sowohl für angestellte Plattformarbeiter als auch für Personen, die als selbstständige Unternehmer mittels Plattformen arbeiten. Während alle Politikoptionen im Einklang mit den Werten und Zielsetzungen der EU stehen, erweist sich die Unteroption B2b als am besten geeignet, um die Ziele der geplanten Initiative zu erreichen.

Betrachtet man den Anwendungsbereich, so wird diese Politikoption sämtliche Plattformarbeiter betreffen (bis zu 28.3 Millionen, EU-27), d. h. sowohl Angestellte als auch selbstständige Unternehmer, die mittels Plattformen arbeiten. Hierbei können mehr Personen erreicht werden als mit der Unteroption B2a, bei der nur Angestellte von Plattformen betroffen wären. Die Unteroption B2b ist auch zielgerichteter als die Unteroption B2c, die auf Angestellte von Plattformen und Angestellte im Allgemeinen ausgerichtet ist, die von algorithmischer Verwaltung betroffen sind, und dabei selbstständige Unternehmer – die Mehrheit der Plattformarbeiter – ausschließt. Die

bevorzugte Maßnahme wird daher eher für einen fairen Wettbewerb bei Plattformarbeit sorgen und Plattformen keinen negativen Anreiz geben, den Angestelltenstatus zu meiden.

Plattformunternehmen werden die meisten Kosten der Politikoptionen tragen. Hierzu zählen technische und strukturelle Änderungen, die die Plattformunternehmen vornehmen müssten, um die menschliche Kontrolle von wichtigen Entscheidungen durch Algorithmen sicherzustellen, schriftliche Erläuterungen bereitzustellen, das Verfahren für die Handhabung von schriftlichen Beschwerden einzurichten, Plattformarbeiter anzuhören und weiteren Pflichten nachzukommen. Diese Kosten sind aller Voraussicht nach nicht so hoch, dass sie das Plattformgeschäft stark beeinträchtigen werden.

Vor diesem Hintergrund ist die Unteroption B2b effizienter als die anderen Politikoptionen. Da hierbei spezifische Rechte auf EU-Ebene formuliert werden, wird sie wirksamer als eine nicht bindende Handlungsempfehlung wie B1 sein. Verbindliche Rechte auf EU-Ebene werden in den Mitgliedstaaten eher übernommen und umgesetzt. Während die Kosten der Aufstellung aller notwendigen Änderungen bei den Unteroptionen B2a (betrifft nur Angestellte von Plattformen) und B2b im Wesentlichen gleich hoch sind, wäre die Zielgruppe bei B2b viel größer. Dagegen wären die Gesamtkosten der Unteroption B2c (betrifft Angestellte von Plattformen und traditionellen Unternehmen, die von algorithmischer Verwaltung betroffen sind) viel höher als bei B2b, da hierbei eine viel größere Gruppe von Unternehmen betroffen wäre. Im Vergleich ist B2b insgesamt effizienter, da sie zielgerichteter ist als B2c. Bei Letzterer würde nämlich die Mehrheit der Plattformarbeiter ausgeschlossen, d. h. Personen, die heute und auch in Zukunft als selbstständige Unternehmer arbeiten.

Schließlich ist die von den Unteroptionen B3a und B3b abgedeckte Übertragbarkeit von Daten ein bedeutender Aspekt, wenn es um Fairness, Transparenz und die Machtposition der Arbeiter gegenüber den Plattformen geht. B3b ist dabei wirksamer als B3a, da die Übertragbarkeit von Daten sowohl angestellten als selbstständigen Plattformarbeitern ermöglicht wird. Insbesondere für Letztere ist dies wichtig. Beide Politikoptionen sind allerdings sehr schwer in der Praxis umzusetzen. Dabei wäre eine beispiellose Zusammenarbeit einer großen Zahl konkurrierender Plattformen erforderlich, um sich auf gemeinsame Bewertungs- und Beurteilungsstandards zu einigen und das Back-End and Front-End ihrer Anwendungen entsprechend anzupassen. Die Kosten wären bei B3a und B3b viel zu hoch. Fraglich sind darüber hinaus Nutzen und weiterreichende Auswirkungen für Plattformarbeiter (z. B. Risiko von Bewertungsbetrug, Schutz persönlicher Daten) und Plattformen (z. B. für kleinere Plattformen könnten die benötigten Ressourcen, um den neuen Industriestandards für Interoperabilität zu entsprechen, unverhältnismäßig sein).

## Politikbereich C: Grenzüberschreitende Transparenz

Während alle Politikoptionen in diesem Politikbereich im Einklang mit den Werten und Zielsetzungen der EU stehen, ergab die Analyse, dass eine Kombination aus Politikoption C1 (Handlungsempfehlungen) und Politikoption C2 (Veröffentlichungspflicht für Plattformen) am wirksamsten und effizientesten ist. Die Politikoption C3 könnte auch wirksam sein, ist jedoch aufgrund ihrer potenziell hohen Kosten für den öffentlichen Sektor am wenigsten effizient. Es könnten Kosten bis in den sechsstelligen Bereich für die staatlichen Haushalte anfallen, will man ein Register für die Mehrheit der Plattformen, die in jedem EU-Mitgliedstaat operieren, einführen und regelmäßig aktualisieren.

Die Einhaltung der neuen Veröffentlichungspflicht wird mit einmaligen und wiederkehrenden Kosten für die Plattformen einhergehen. Diese werden jedoch überschaubar bleiben. Schätzungen zufolge werden die einmaligen Kosten für die Einführung von Strukturen zur Berichterstattung mehrere hundert Euro pro Plattform ausmachen und die wiederkehrenden Kosten ähnlich hoch sein. Auch auf den öffentlichen Sektor kommen hierbei Kosten zu, und zwar in Form von personellen Ressourcen für die Sicherstellung der Pflichteinhaltung und Überprüfung der berichteten Informationen. Der Nutzen, der sich aus dem Zugang zu sachdienlichen Informationen ergibt und so die Arbeit der politischen Entscheidungsträger und Durchsetzungsbehörden erleichtert, wird die Kosten deutlich überwiegen.

# 1. Introduction

The aim of this study is to support the impact assessment of an EU initiative to improve the working conditions in platform work. To implement this, we focused on a series of research questions outlined in the Better Regulation Toolkit (Tool #12):

1. What is the problem, and why is it a problem?
2. Why should the EU act?
3. What should be achieved?
4. What are the various options to achieve the objectives?
5. What are the impacts of the different policy options, and who will be affected?
6. How do the options compare? What is the preferred option?

This report presents the results of an extensive analysis conducted to answer these research questions in the context of the relatively new, dynamic and complex phenomenon of platform work. The report is structured as follows. The next sections of this introductory chapter present the methodological and conceptual approaches applied throughout the study. Chapter 2 then presents the rich evidence supporting the definition of the problem, including its external and internal drivers. Chapter 3 outlines the premises for the EU action, while Chapter 4 outlines the various policy measures that were assessed. These correspond to the three core policy areas highlighted in the problem definition and covered by the new initiative: misclassification of employment status in platform work; insufficient transparency in algorithmic management; and lack of enforcement, transparency and traceability, including in cross-border platform work. Chapters 5, 6 and 7 which follow provide in-depth analysis of the impacts of the policy options in these three policy areas, compared with the baseline situation. Chapter 8 then presents a comparative analysis of the effectiveness, efficiency and coherence of each of the policy options analysed. Lastly, Chapter 9 details the policy measures that the analysis showed to be most beneficial.

## 1.1. Methodological approach

A diverse set of methodological approaches was employed for data collection and analysis, in order to answer the key research questions. While the initial scoping activities covered all EU-27 Member States, as well as several non-EU countries, the in-depth analysis focuses on a selection of Member States, which represent broader geographical regions and economic clusters: Denmark, France, Germany, Italy, Lithuania, the Netherlands, Poland, Romania and Spain. The methodology used for country selection is presented in Annex 4F.

The data collection phase included both qualitative and quantitative approaches, resulting in a rich depository of data used for further analysis. This consisted of:

- A broad review of national policies and measures implemented in the areas of platform work in the EU-27 and seven non-EU countries. The methodology for this is provided in Annex 4C, and key national policies and measures tackling platform work are provided in Annex 1.
- An online panel survey of people working through platforms, as well as those in traditional jobs, who are exposed to algorithmic management at work. The survey

was conducted in nine selected Member States. Its detailed methodology and questionnaires in all survey languages are provided in Annex 4F.

- An interview programme involving platforms, representatives of people working through platforms, trade unions and employers' associations, as well as national policy makers in the nine selected Member States. Details of the programme, together with questionnaires and summary of results, are presented in Annex 2 and Annex 4E.
- Automated data collection from the web regarding people from the nine selected Member States who are engaged in online platform work via Upwork, Freelancer.com, PeoplePerHour and Guru.com. The methodology applied to compose the datasets and analysis of the general findings is presented in Annex 4B.
- A wide and exhaustive review of the relevant literature and existing data sources, including academic and grey literature, surveys, national statistics and other relevant data. The full list of sources is presented in Annex 4A.

Data from the various different sources was combined and triangulated to develop an analysis addressing each key research question. This data analysis involved extensive analysis of qualitative sources, descriptive statistics, time-series forecasting, econometric modelling, and a range of calculation methods and techniques. These are detailed in Annex 4.

## 1.2. The concept of platform work

**Platform work** – the focus of this study – emerged within the phenomenon of the collaborative economy, in which platforms play the role of efficiently matching supply and demand and establishing trust between market players through a combination of decentralised information networks, big data analytics, and mobile digital devices. Digital platforms have introduced new ways to coordinate economic activities by incorporating elements of firms and markets (they bring together supply and demand for a certain service, and can also directly manage the transaction), but also transcending them (e.g. they can provide more transparency and efficiency, expand the range of economic activity and introduce new models of work organisation).<sup>1</sup>

Various definitions from policy papers (such as the European Agenda for the Collaborative Economy)<sup>2</sup> and other research allow several defining elements of collaborative platforms to be identified:

- they are open marketplaces;
- allowing for the temporary **use of goods or services**;
- which are often provided by **private individuals**;<sup>3</sup>
- who are, in turn, **paid** for these goods and services;<sup>4</sup>
- and the transactions are coordinated in by **algorithmic means**;<sup>5</sup>

<sup>1</sup> Pesole, A., Urzì Brancati, M.C., Fernández-Macias, E., Biagi, F., González Vázquez, I. (2018). Platform workers in Europe, EUR 29275 EN, Publications Office of the European Union, Luxembourg.

<sup>2</sup> European Commission (2016). A European Agenda for the Collaborative Economy. Communication from the Commission. COM (2016) 356 final.

<sup>3</sup> European Commission (2016). A European Agenda for the Collaborative Economy. Communication from the Commission. COM (2016) 356 final.

<sup>4</sup> Eurofound (2018). Employment and Working Conditions of Selected Types of Platform Work. Luxembourg: Publications Office of the European Union.

<sup>5</sup> Fernández-Macias, E. (2017). Automation, Digitization and Platforms: Implications for Work and Employment. Eurofound Working Paper, Luxembourg: Publications Office of the European Union.

- generally, at least **three parties** are involved: the digital platform, the client and the provider of the service/good.

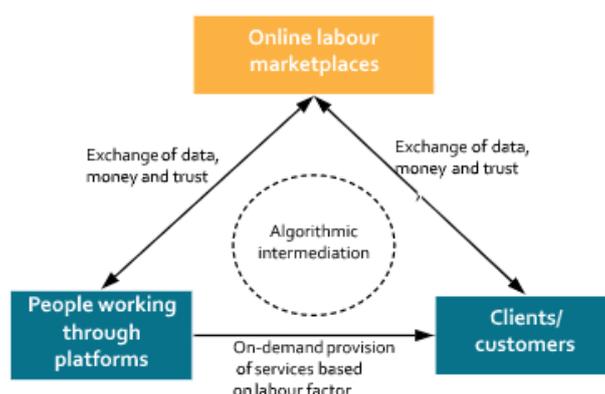
Although these criteria clearly apply to digital labour platforms, it is important to note that the definition above covers a broader spectrum, encompassing various different types of online markets. In a similar way to the regular economy, the flow of capital and labour are the two key elements of the collaborative economy and online markets, which also allow us to distinguish between two types of platform marketplaces:<sup>6</sup>

- **digital capital platforms** that connect costumers with providers who lend money, lease assets or sell goods (e.g. Airbnb, HomeAway, Etsy, Amazon, eBay);
- **digital labour platforms** that connect customers with professional (freelancers) or people who carry out specific projects or assignments (e.g. TaskRabbit, Freelancer, Deliveroo, Uber).

This study focuses specifically on digital **labour** platforms and people working through them; therefore, digital capital platforms fall outside the scope of this assignment. The issues that are pertinent to digital capital platforms (which are addressed in the P2B Regulation, as well as in the DSA and DMA packages) are very different, in that these platforms do not intermediate the work of the people working through the platforms. **Digital labour platforms** can be defined as private internet-based companies that intermediate, with a greater or lesser extent of control, on-demand services requested by individual or corporate customers, and provided directly or indirectly by individuals.

Digital labour platforms enable three-party interactions and exchanges in an algorithmically managed setting, involving the platform, the person performing the task and the client/ consumer (see the figure below). These interactions are essential to what is referred to in this study as platform work. More specifically, **platform work** is defined as the work performed on demand and for remuneration by people working through digital labour platforms, regardless of their employment status (worker, self-employed or any third-category status), of the type of platforms (on-location vs online) or the level of skills required.

Figure 1. Conceptualisation of platform work



**Several dimensions** allow us to further classify and systematise the variety within platform work. First, **two broad types of platform work** exist (see also the table below).

<sup>6</sup> Farrell, D. & Greig, F. (2016). Paychecks, Paydays, and the Online Platform Economy. Big Data on Income Volatility. JPMorgan Chase & Co. Institute.

These are based on whether people can work remotely online, or must meet the client/go to a specific physical location in order to implement the task:

- **Online remote services:** remote delivery of electronically transmittable services (e.g. via freelance marketplaces). This is also referred to, in various sources, as cloud work, crowd work,<sup>7</sup> online freelancing,<sup>8</sup> remote platform work or global-reach platform work.<sup>9</sup>
- **On-location services:** delivery of services is physical, although matching and administration services between customers and service providers are digital (e.g. transportation, cleaning or delivery services). This is also referred to in various studies as app work,<sup>10</sup> location-based digital labour or mobile labour markets.<sup>11</sup>

**Table 1. Main categories of platform work**

	Online	On-location
High-skill	<ul style="list-style-type: none"> <li>— Online professional services (e.g., accounting, legal, teaching, consultations, project management and similar).</li> <li>— Online creative and multimedia work (e.g., animation, graphic design, photo editing and similar).</li> <li>— Online sales and marketing support work (e.g., lead generation, posting ads, social media management, search engine optimisation and similar).</li> <li>— Online software development and technology work (e.g., data science, game development, mobile development and similar).</li> <li>— Online writing and translation work (e.g., article writing, copywriting, proofreading, translation and similar).</li> </ul>	<ul style="list-style-type: none"> <li>— Construction and repair services.</li> <li>— At-home beauty services.</li> <li>— On-demand sports and health services.</li> <li>— On-demand photography services.</li> <li>— On-demand teaching and counselling services.</li> <li>— Tourism and gastronomy services.</li> <li>—</li> </ul>
Low-skill	<ul style="list-style-type: none"> <li>— Online clerical and data-entry tasks (e.g., customer services, data entry, transcription)</li> <li>— Online microtasks (e.g., object classification, tagging, content review, website feedback and similar).</li> </ul>	<ul style="list-style-type: none"> <li>— Transportation services (e.g., services similar to taxi, moving).</li> <li>— Delivery services (e.g., courier and food delivery services, grocery delivery).</li> <li>— Housekeeping and other home services.</li> <li>— On-demand pet care services (e.g., dog walking).</li> <li>— On-demand childcare and elderly care services.</li> <li>— Temporary ancillary work.</li> <li>— Mystery shopper activities.</li> </ul>

<sup>7</sup> Duggan, J., Sherman, U., Carbery, R. & McDonnell, A. (2020). Algorithmic management and app-work in the gig economy: A research agenda for employment relations and HRM. *Human Resource Management Journal*, 30(1), 114-132.

<sup>8</sup> Popiel, P. (2017). 'Boundaryless' in the creative economy: assessing freelancing on Upwork. *Critical Studies in Media Communication*, 34(3), 220-233.

<sup>9</sup> World Economic Forum. Platform for Shaping the Future of the New Economy and Society (2020). The promise of platform work: understanding the ecosystem. World Economic Forum, Geneva, Switzerland. Available [here](#).

<sup>10</sup> Duggan, J., Sherman, U., Carbery, R. & McDonnell, A. (2020). Algorithmic management and app-work in the gig economy: A research agenda for employment relations and HRM. *Human Resource Management Journal*, 30(1), 114-132.

<sup>11</sup> Schmidt, F.A. (2017). Digital labour markets in the platform economy: Mapping the political challenges of crowd work and gig work. Bonn: Friedrich-Ebert-Stiftung.

Source: Developed by PPMI, based on the iLabour project of the Oxford Internet Institute and the desk review of online work platforms.

Second, the degree of control exerted by platforms through **algorithmic management** – and, relatedly, in the form of **worker-client matching** – differ notably between platforms and types of platform work. This can vary from a highly controlled working environment that creates a *de facto* relationship of subordination between a platform and the people working through it, to a pure marketplace model with low levels of algorithmic control. Higher levels of algorithmic control can be found in certain types of on-location services (e.g. ride-hailing, delivery), where an algorithm identifies and offers tasks to a person, linking service providers and clients without their intervention, and then monitoring both parties using mobile applications while the service is being provided (e.g., a journey via Uber, food delivery). Similar situations can be found in online microtasking (e.g., on platforms such as Appen), where the level of pay for a specific task is usually set by the platform.

Meanwhile, more complex on-location services (e.g. on-location consultancy, teaching, photography services), as well as high-skill online platform work are usually provided via a marketplace model: the customer decides and selects whose services they wish to pay for (e.g. specific translators, programmers, designers and other online freelancers) on the basis of service providers' profiles, ratings, rankings or other relevant information. The service providers and clients may interact and negotiate terms before they decide to proceed with the transaction, meaning that the people working through such platforms enjoy a high degree of autonomy.

Overall, the **matching processes and the underlying level of algorithmic management and control** have a great deal of influence over the **autonomy** and other working conditions of people working through platforms. This also tends to correlate with skills and pay levels, as well as the complexity of tasks: tasks that require lower levels of skill to complete tend to be associated with higher algorithmic control by the platform.

**Skills level and task complexity** is therefore the third important dimension involved in classifying platform work. Although on-location platform work is more often associated with lower levels of skill than online platform work, this is not necessarily true in all cases. While the latter can involve carrying out low-complexity tasks that do not require any additional skills beyond basic digital literacy, on-location work may involve highly complex tasks such as teaching, consultancy and similar.

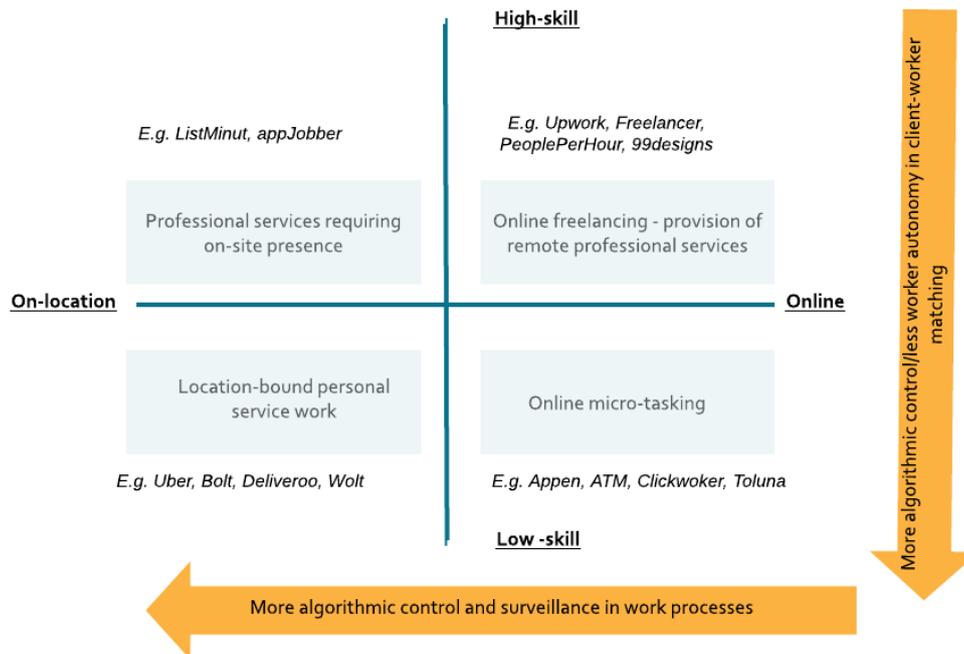
These three dimensions of platform work constitute the conceptual framework for this impact assessment (see the figure below). The terminology of this conceptual framework is used in this study to establish consistency, which is often lacking in various sources, or in the public discourse on platform work (e.g. the terms 'gig work', 'crowd work'<sup>12</sup> or 'on-demand services'<sup>13</sup> are often used inconsistently to cover either a specific type of platform work, or both on-location and online work of various levels of complexity and algorithmic control or forms of worker-client matching).

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<sup>12</sup> Schmidt, F.A. (2017). Digital labour markets in the platform economy: Mapping the political challenges of crowd work and gig work. Bonn: Friedrich-Ebert-Stiftung.

<sup>13</sup> Berg, J. (2016). Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers, *Comparative Labor Law & Policy Journal*, 37(3).

Figure 2. Dimensions of platform work



Source: developed by PPMI, based on Eurofound, WEF and additional desk research.

Furthermore, it is important to note another aspect that contributes to the heterogeneity of the phenomenon of platform work, and which is especially relevant when considering regulation: the wide variety of labour platform companies and their business models. The main distinction, which has already been made in the earliest research on platform work, is based on the type of tasks they intermediate: **on-location** and **online labour platforms**. While the first type intermediates services that are solely or mostly performed in the physical world, e.g. ride-hailing, food delivery, household tasks (cleaning, plumbing, caring, etc.), the second type intermediates services that are solely or mostly performed in the online world (e.g. AI training, image tagging, design projects, translations and editing work, software development).

Within these broader categories, sub-types exist which also relate to the types of platform work intermediated. The distinctions between platforms are, in many cases, not clear-cut. For instance, a classification of platforms proposed by Eurofound<sup>14</sup> (which distinguishes between 10 categories of platforms), also distinguishes between the following elements:

- Skill level required to perform the task that the platform intermediates or organises (low, low-medium, medium, medium-high, high, all).
- Type of service delivered through the platform (online, on-location).
- Selection process on the platform (decision made primarily by platform, client, person performing the task or combinations).
- Form of client-service provider matching on the platform (offer, contest).

However, many platforms exist that may fall under more than one category on all of these dimensions. For example, many platforms intermediate both online and on-location work, requiring different levels of skills. Selection process and forms of matching may also vary within a single platform (for example, although Upwork mostly operates as an online

<sup>14</sup> Eurofound (2018). Employment and Working Conditions of Selected Types of Platform Work. Luxembourg: Publications Office of the European Union.

freelance marketplace in which people working through the platform and clients negotiate, for larger clients the platform may select the service providers itself). This entails varying approaches to management, remuneration and algorithmic control within a single platform.

Even platforms that fall within the same category may provide different opportunities for people working through them to earn money. While some may offer people enough tasks for platform work to become a full-time job, others may be very limited in this regard. For example, some platforms specifically in microtasks, human intelligence tasks (HIT) or software testing may offer registered users a task only very sporadically, and therefore do not provide a chance for this to become a significant source of income. Other platforms have intentionally introduced a cap on the maximum income (examples exist of EUR 500 per month or EUR 3,000 per year) that a single person working through them can earn. People working through platforms often use multiple platforms (i.e. multi-homing<sup>15</sup>) to secure a sufficient number of tasks.

In addition to this, variations between the different business models used by platforms are heightened by differences in:

- primary revenue source (commission fees, subscription, advertising, etc.);
- the employment status of people working through the platform (self-employed, employed, on payroll through third parties);
- activities besides operating the digital labour platform (marketplace, software, car sharing, etc.);
- additional parties involved besides the digital labour platform (DLP), people working through platform and clients (e.g. temporary employment agencies, escrow service providers, companies that lease work tools, restaurants, etc.);
- types of clients (primarily natural persons, primarily businesses, both, undetermined).

While some companies operate purely as digital labour platforms, for other companies this may be just a small share of revenues in their overall business model.

Furthermore, the ambiguities in defining what labour platforms *are* were highlighted in our interview programme. Some stakeholders referred to “platform business model” as a type of business model characterised by identifying themselves with the ICT sector. Such platforms mostly identify themselves as **information society service providers** rather than employers or providers in specific sectors (even though national courts or regulators sometimes rule otherwise). According to platforms, the people working through them are mostly considered to be users of the digital intermediation services, while the people working through platforms are self-employed, independent contractors. As a result, platforms attempt to differentiate themselves from more traditional companies operating in sectors of the economy that are already regulated, and which use websites or digital applications to match service providers with clients (such as taxi firms, translation bureaus or temporary employment agencies).

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<sup>15</sup> In the context of platform work, multi-homing happens when people work through multiple platforms at the same time. This generally occurs when the cost of entering an additional platform is low.

## 2. Problem definition

Platform work, as defined above, provides numerous opportunities for people working through digital platforms. It is considered to be an easily accessible source of (extra) income, a low-barrier entry point to employment for disadvantaged groups, and an alternative to regular employment that offers a high level of flexibility. However, at the same time, platform work is associated with a number of challenges in terms of working conditions, which are difficult to address within existing legal frameworks. Three core problem areas stand out:

- Misclassification of the employment status of people working through platforms, resulting in poor working conditions and inadequate access to social security.
- High levels of control exerted by platforms through algorithmic management, which contributes to creating a *de facto* relationship of subordination between the platforms and the people working through them.
- Lack of traceability, transparency and general information regarding platform practices and the people working through platforms, which complicates the identification of abusive practices and enforcement, particularly in cross-border situations.

These challenges are conditional on and driven by both external factors (such as the growth of platform work, global economic and societal megatrends and the increased digitisation of the working lives) and internal factors. An overview of these is presented in the sections below.

### 2.1. External drivers

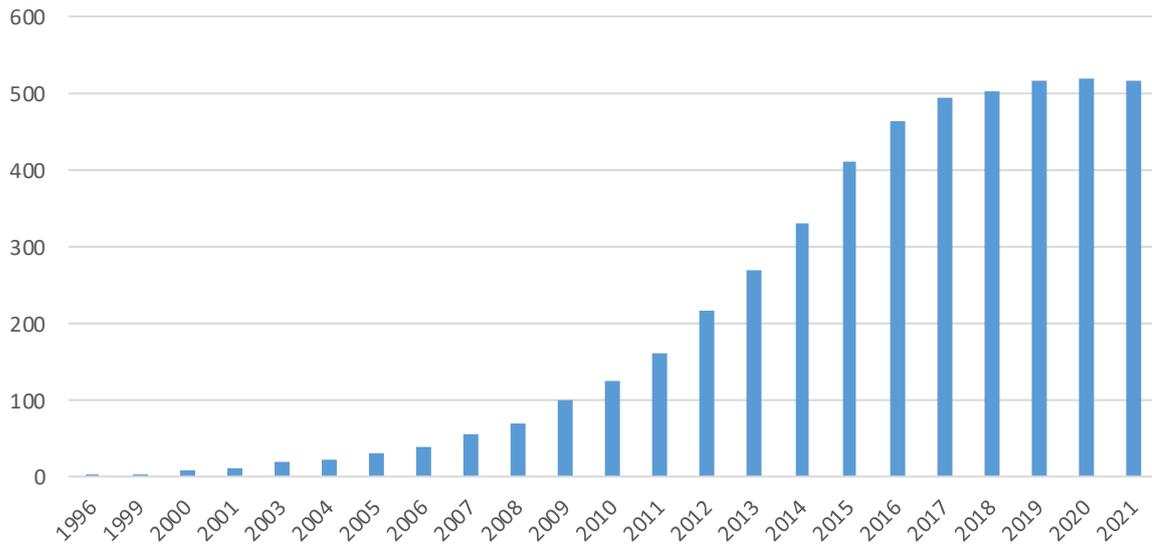
Two broad external drivers of these issues stand out. First, the platform work economy has grown significantly in recent years, which has also increased the numbers of people who face issues relating to working conditions on platforms. Second, several broader factors exist that have contributed both to the growth of the platform economy, and to the reasons why it is becoming increasingly problematic. These are overviewed in the following subsections.

#### 2.1.1. Growth of the platform economy in Europe

There is a lack of systematised and comprehensive data on the size of the European platform economy and on people working through platforms. However, a variety of existing sources, while somewhat fragmented, show that the European platform economy has evolved rapidly over the past decade. To begin with, the growth of the platform economy can be illustrated by the **proliferation of labour platforms** over the past decade. One recent study<sup>16</sup> by CEPS identified over 500 labour platforms operating within the EU and/or used to generate income by EU citizens in early 2021. The majority of these have begun their operations since 2014, and the overall number has grown – particularly between 2014 and 2016 (see the figure below).

<sup>16</sup> CEPS (2020). Digital platforms in the EU: mapping and business models.

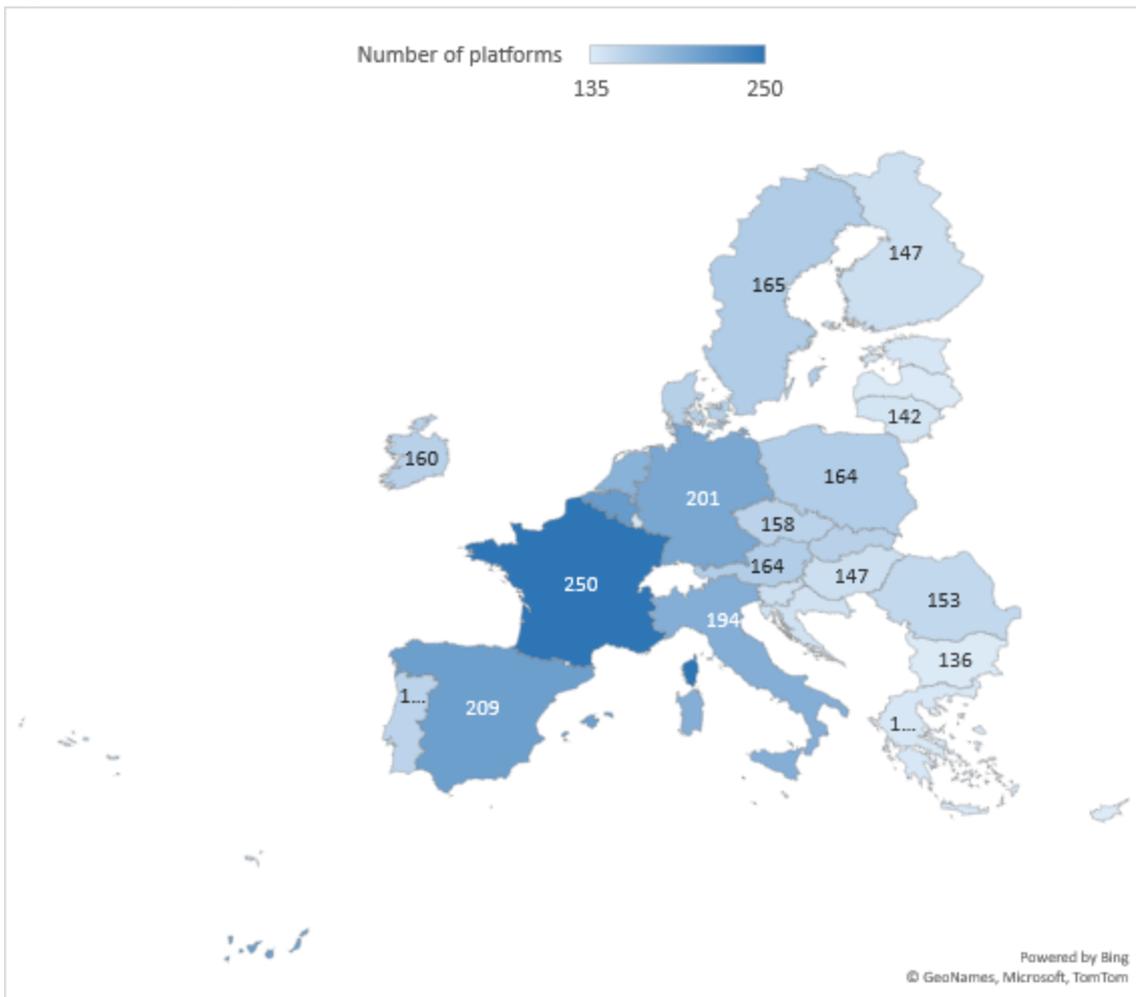
**Figure 3. Total number of labour platforms active in the EU**



Source: PPMI based on CEPS (2021). Active platforms minus deactivated platforms by year. N=590.

Data from the same study on the countries in which each platform operates also show that most platforms are active in larger Western European countries, as opposed to Central and Eastern Europe and in small countries – although notable numbers of platforms are active in these countries as well.

Figure 4. Number of platforms active in each EU Member State



Source: PPML based on CEPS (2021).

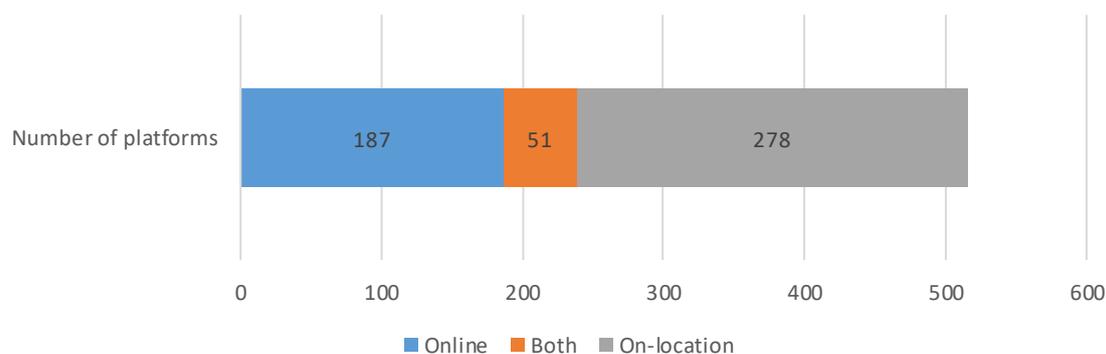
Of these platforms, the majority operate within the sector of on-location work (see the figure below). According to the study, on-location platforms also generate a larger share of earnings for people working through them than platforms for online work. Another study by the ILO shows that on-location platforms generate significantly more global revenues than platforms for online work.<sup>17</sup> However, looking at the available data on the average number of people working through online and on-location platforms in the EU (see the sections below and Section 5.1), significantly more people appear to work through online platforms.<sup>18</sup> This discrepancy can be explained by several factors. First, the earnings data provided by the CEPS study is incomplete and does not cover the major online labour platforms. It does not therefore allow for quality comparisons between different types of platform work. Second, the available ILO data on the volume of revenues by type of platform does not necessarily reflect the number of people working through them, as the business models and revenues sources differ significantly according to the type of platform. For example, while delivery platforms collect considerable commission fees from both restaurants and riders, and ride-hailing platforms collect commission from drivers, online work marketplaces charge a relatively small share of the revenues generated by the most successful freelancers. For example,

<sup>17</sup> ILO (2021). World Employment and Social Outlook. Available [here](#). p.66

<sup>18</sup> CEPS (2021): The data on the people working through platforms cover a minority of platforms. This existing (though incomplete) information does, however, show that the average number of people working through an online platform is ~280 times higher than the average number of people working through an on-location platform.

while Uber and Bolt may take 30-40% commission from the price paid by the client<sup>19</sup>, Upwork takes only 5% from its most successful freelancers (see more details in Annex 4B). Third, as the data automatically collected from online platforms shows, many people who work through online platforms tend to do so more sporadically and in an intermittent way. The very type of work allows this, as the re-entry and re-entry costs are considerably smaller than for on-location platforms (e.g. you only need a computer with internet access for online work, as compared to a smartphone with internet access, means of transport, protective gear, etc. for on-location work). In addition, irregular and intermittent work is permitted to a lesser extent by the terms and conditions of on-location platforms (for example, penalties may apply if a rider or driver rejects a task, does not log in for some time, etc.), compared with platforms for online work.

**Figure 5. Platforms operating in the EU: areas of service**



Source: PPMI, based on CEPS (2021).

The numbers of people working through platforms also appears to have grown over the past decade. Given that the COVID-19 pandemic created a sizeable shock to the platform economy, significant differences can be seen pre- and post-pandemic. We provide an overview of these below.

To begin with, the existing data sources provide a picture of somewhat **varying prevalence across the EU up to 2018**<sup>20</sup>. Estimates of the prevalence within the EU of platform work pre-pandemic vary according to the data source, as well as by the type and pattern of platform work:

- According to various surveys, in 2018 between 6%<sup>21</sup> and 11%<sup>22</sup> of Europeans aged 15-74 had 'ever' (at least once) provided services through digital labour platforms. This could amount to between 20 million and 37 million people<sup>23</sup> across the EU.

<sup>19</sup> Kummer, S. (2020), Wirtschaftlichkeit und Preise im Beförderungsgewerbe mit Personenkraftwagen – Grundlagen für eine nachhaltige Personenbeförderung in Österreich. Institut für Transportwirtschaft und Logistik Wirtschaftsuniversität Wien.

<sup>20</sup> At least in part, this variation can be also attributed to differences in the methodologies for data collection and the definitions applied to platform work/services provided by platforms.

<sup>21</sup> Directorate-General for Communication (2018). Flash Eurobarometer 467: The use of the collaborative economy. Available [here](#).

<sup>22</sup> Urzi Brancati, M.C., Pesole, A. & Fernández-Macías, E. (2020). New evidence on platform workers in Europe. Results from the second COLLEEM survey, JRC Science for Policy report.

<sup>23</sup> Estimated using 2020 Eurostat data (TPS00001, DEMO\_PJANGROUP) on the EU-27 population (i.e. excluding the UK, although it was covered in the surveys) aged 15-74: 335,573,933 x [estimated prevalence rate].

- Within this group, between 3%<sup>24</sup> and 7.2%<sup>25</sup> of Europeans aged 15-74 had engaged in platform more often than sporadically<sup>26</sup>. This could amount to between 10 million and 24 million Europeans.
- To drill down further to people for whom platform work was the main activity or source of income, the estimate provided by COLLEEM 2018 – which was somewhat less conservative than other surveys in specific Member States<sup>27</sup> – stood at 1.4%, amounting to up to 4.7 million people across the EU.

Country-level estimates, meanwhile, also vary widely. Given that very few EU-level surveys exist that cover this topic across all Member States, some of these variations may also stem from differences in the methodology used. Although these data are often not comparable, the table below provides an attempt to group the Member States into low- and high-prevalence countries, based on the fragmented country-level information.

**Table 2. Prevalence of platform work in EU Member States, based on different sources**

Source	Low prevalence (05%) <sup>28</sup>	Medium prevalence (5.01-10%)	High prevalence (>10%)
<b>Eurobarometer, 2018</b>	CY, LT, PT, EL, DE, EE, SE, IT, CZ, MT	FI, BG, PL, AT, IE, BE, HR, LU, ES, DK, RO, SI, HU, NL, SK	FR, LV
<b>COLLEEM (2018)</b>		CZ, SK, HU, FI, FR, IT	ES, NL, PT, IE, DE, LT, HR, RO, SE
<b>Huws et al. (2018)</b>		EE, NL, SE, FI, ES, AT, FR	CZ, SI, ES, IT
<b>ETUI (2019)</b>	PL, BG, LV	SK, HU	
<b>2021 survey</b>			DK, DE, FR, IT, LT, NL, PL, RO, ES

Note on the reference periods: Huws et al. (2018) – weekly platform work; Eurobarometer 2018, COLLEEM 2018, ETUI 2019 – platform work 'ever'; 2021 survey – platform work in the past six months.

Nevertheless, the findings on the profiles of Europeans working through platforms are more consistent across surveys than estimations of the prevalence of platform work.<sup>29</sup> First, they were more likely to be **young** (although with some variations between countries). Second, in most European countries the platform labour market was dominated by **men**.<sup>30</sup> The proportion of women working through platforms decreased as the intensity of platform work increased. However, the share of women working through platforms has grown more recently<sup>31</sup>. Third, most surveys found that people working through platforms were, on average, **more educated** than the general population, with tertiary level education (although their tasks do not necessarily require this; in general,

<sup>24</sup> Directorate-General for Communication (2018). Flash Eurobarometer 467: The use of the collaborative economy. Available [here](#).

<sup>25</sup> Urzi Brancati, M.C., Pesole, A. & Fernández-Macías, E. (2020). New evidence on platform workers in Europe. Results from the second COLLEEM survey, JRC Science for Policy report

<sup>26</sup> Definitions are provided in Annex 4.

<sup>27</sup> Piasna, A. & Drahokoupil, J. (2019). Digital labour in central and eastern Europe: evidence from the ETUI Internet and Platform Work Survey. ETUI Research Paper-Working Paper.

<sup>28</sup> Of respondents who had carried out platform work 'ever'. The exception is the data from Huws et al., which reported weekly platform work. However, the figures of at least weekly platform work appear to be over-estimated, and are higher than the incidence of platform work 'ever' measured in other surveys.

<sup>29</sup> Eurofound (2018). Employment and Working Conditions of Selected Types of Platform Work. Luxembourg: Publications Office of the European Union.

<sup>30</sup> Directorate-General for Communication (2016). Flash Eurobarometer 438: The use of collaborative platforms; Joint Research Centre (2018). COLLEEM survey on platform workers.

<sup>31</sup> EIGE (2021, forthcoming). Artificial intelligence, platform work and gender equality.

people with a wide range of skills levels – from basic to sophisticated consultants – can be found on digital labour platforms).

Furthermore, evidence from the surveys above has shown that most people engage in platform work as a **secondary occupation** in addition to regular employment.<sup>32</sup> As mentioned above, they also engaged in platform work with different frequencies: although a significant share of people performed platform work at least once, only a fraction of them worked through platforms regularly and/or frequently. For example, the results of the COLLEEM survey show that, on average, around 11% of the adult population had ‘ever’ used digital platforms for the provision of some type of labour services. However, less than 8% of the population did this kind of work with some frequency, and less than 6% spent a significant amount of time on it (at least 10 hours per week), or earned a significant amount of income (at least 25% of total income).

Nonetheless, the shares of people working through platforms appear to have increased in time. The results of the most recent **2021 survey** show that 17% of EU daily internet users have carried out platform work at least once during a six-month period. Of all daily internet users, 11% have worked at least once a month (amounting to roughly 28.3 million Europeans), and 3% have done so as their main occupation<sup>33</sup>. Over 70% of all the people who engage in platform work indicated online platform work as their main occupation.

#### Box 1. Note on methodological aspects of the survey

It is important to note that the online survey data presented above (including the COLLEEM surveys, the Huws et al. survey, and the 2021 survey) is likely to overestimate the prevalence of platform work, especially specific types of it. For example, some bias towards people who work through online platforms could be inherent to the sampling approach, which uses opt-in internet panels. For some respondents, taking such surveys is part of online microtasking, which we classify as low-skilled online platform work (see Annex 4F for more details).

Additional data sources were therefore used, with the aim of identifying the shares of people who worked through platforms online and on-location. Overall, however, triangulation with other sources of evidence (namely, the earlier COLLEEM surveys, administrative data from France and Lithuania, the CEPS study, and other online sources) does not unequivocally contradict the survey’s findings with regard to **on-location platform** work. Indications also exist in the other sources that **online platform work** is more widespread than on-location.

For example, the Online Labour Index (OLI),<sup>34</sup> developed by the Oxford Internet Institute as part of the iLabour project, presents the **online** labour economy equivalent of conventional labour market statistics. It measures the use of online labour across countries and occupations by tracking the number of projects and tasks posted on platforms in near-real time. Its algorithms take into account all projects/tasks posted on the four largest English-language digital online labour platforms, representing at least 70% of the market by traffic. As Figure 6 illustrates, online platform work in the EU-27 has had an upward trend since 2016. PPMI analysis of the publicly available OLI dataset<sup>35</sup> also shows that the COVID-19 crisis, after an initial shock, led to a stable recovery in the online labour supply, in particular in the fields of software development and creative work.

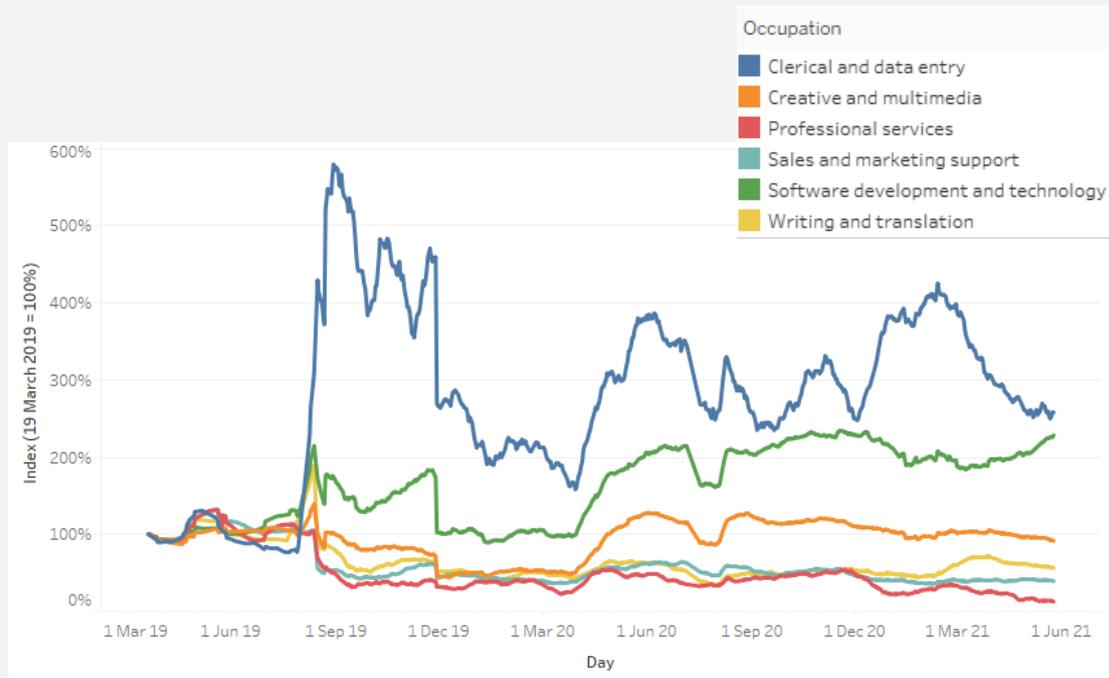
<sup>32</sup> Huws U., Spencer, N.H., Syrdal, D.S. & Holts, K. (2017). *Work in the European Gig Economy*. Published by FEPS, UNI Europa and University of Hertfordshire; Joint Research Centre (2018). COLLEEM survey on platform workers; Codagnone, C., Abadie, F. & Biagi, F. (2016). *The future of work in the ‘sharing economy’. Market efficiency and equitable opportunities or unfair precarisation?* Institute for Prospective Technological Studies, Science for Policy report by the Joint Research Centre.

<sup>33</sup> For more details, see Section 5.1.1.

<sup>34</sup> Kässi, O. & Lehdonvirta, V. (2018). *Online labour index: Measuring the online gig economy for policy and research*, *Technological Forecasting and Social Change*, 137, 241-248. Available [here](#).

<sup>35</sup> Publicly available [here](#).

**Figure 6. Online platform labour supply: daily active EU-27 people working through the four largest freelancing platforms**



Source: PPMI, based on OLI dataset.

Note: the data on people working through platforms focuses on four major online labour platforms: Fiverr, Freelancer, Guru, and PeoplePerHour. Each platform is sampled every day for each person's home country, occupation category, and when they last completed a project. These samples are then weighted by the number of registered people who provide services on each platform, to calculate the total number of those currently active on all platforms. The datasets are shared publicly. The 'currently active' person working through the platform is anyone who has completed a project during the last 28 days.

However, data automatically collected from four platforms for online work (mostly remote professional services; see Annex 4B for methodology) shows that these OLI numbers of people actively working through platforms constitute only a very small share of the total pool of people seeking jobs through platforms. For example, out of all the people registered on Upwork, Guru, PeoplePerHour and Freelancer in the EU, less than 20% had completed at least one assignment. Therefore, the figures of people attempting to do platform work could be significantly higher. This also reveals a large supply of labour and strong competition among people working through platforms, contributing to the precariousness of such work.

A number of factors may have contributed to the growth of platform work over recent years. For example, some companies have reportedly considered the platform economy as part of their workforce planning strategy,<sup>36</sup> thus increasing the demand for full-time freelance work. In other sectors, the demand for services organised through platforms – from software development to home delivery – has increased. There is also evidence that platform work in particular boomed **during the COVID-19 crisis**.

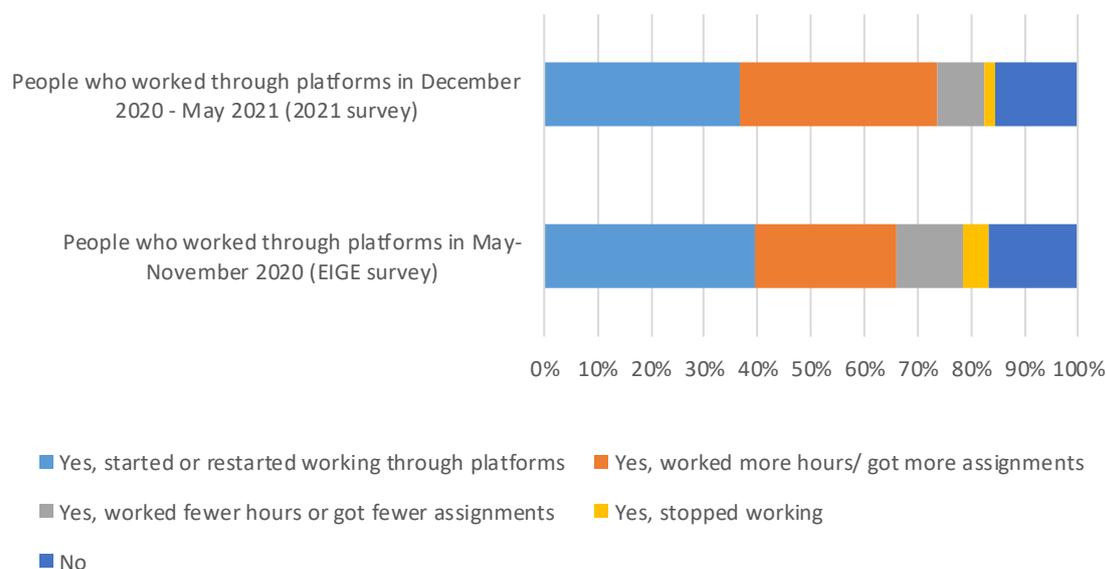
**Before the pandemic**, the size of the global platform economy had been projected to almost double between 2018 to 2023.<sup>37</sup> However, the coronavirus crisis may have further encouraged its growth. For example, based on data from the 2021 survey of people working through platforms, more than 38% of people working through platforms first began working via platforms in 2020 or 2021. Moreover, almost 37% reported that they had started or restarted platform work due to COVID-19, while another 37% said they worked more hours via platforms than before due to the pandemic (see the figure below).

<sup>36</sup> Gasca, L. (2020). Strategic Workforce Planning in the Gig Economy Era. Available [here](#).

<sup>37</sup> Bacchi, U. & Asher-Schapiro, A. (2020). The gig workers taking legal action to regain control of their data. Reuters. Available [here](#).

This is in line with the findings of the EIGE study on platform work, conducted in late 2020<sup>38</sup>.

**Figure 7. Impacts of the COVID-19 pandemic and related policy measures (e.g. lockdowns, quarantine, closures of businesses, schools, etc.) on work via platforms (% of people who worked through platforms in the preceding 6 months)**



Sources: 2020 EIGE survey;<sup>39</sup> 2021 survey of people working through platforms conducted for this impact assessment. The same question formulation was used in both surveys.

COVID-19 has also intensified social stratification among people working through platforms. Some types of on-location services (e.g. driving, home-based services) were almost completely halted during lockdowns. For example, the volumes of ride-hailing service provision dropped by over 80% and up to 100% in different Member States, although they bounced back immediately after the lockdowns were lifted.<sup>40</sup> The effect on delivery services was the opposite: the market expanded significantly, mostly due to the unprecedented demand for deliveries under lockdown conditions. Meanwhile, online platform work also experienced a boom: some platforms experienced sustained and notable growth throughout 2020, and expect the trend to continue.<sup>41</sup> Overall, as shown in the figure below, people providing on-location services were more likely to be affected by the pandemic, especially in terms of having to stop working through platforms.

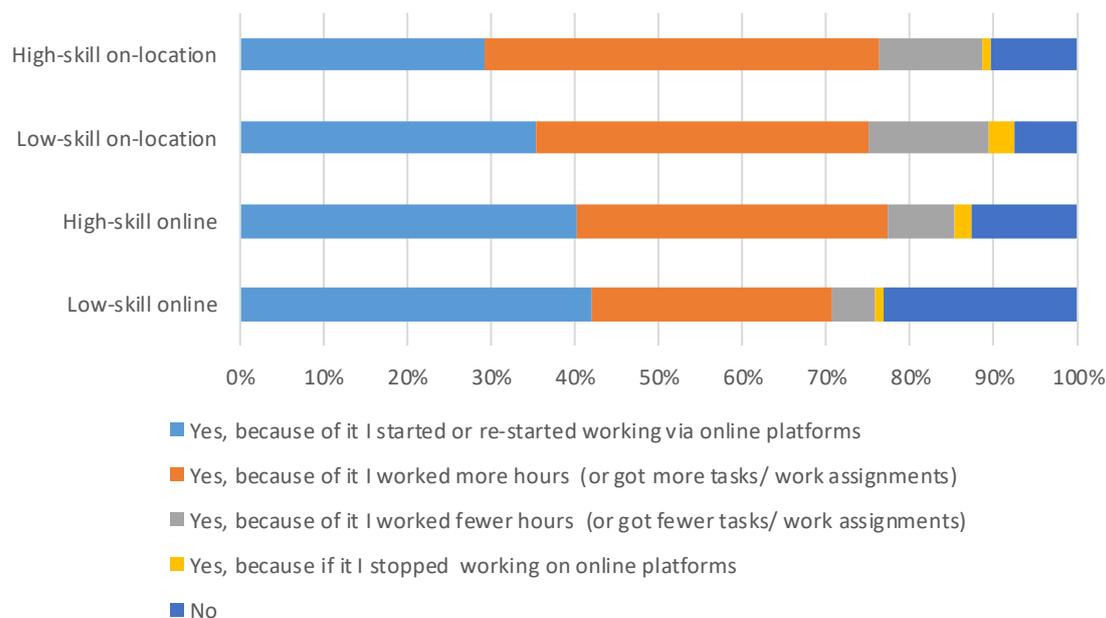
<sup>38</sup> EIGE (2021, forthcoming). Artificial intelligence, platform work and gender equality.

<sup>39</sup> A survey was conducted by PPMI in 10 EU countries, and responses were collected from 5,000 people who reported ever having generated income via digital labour platforms. Data was weighted using Eurostat statistics on EU internet users.

<sup>40</sup> Interview with a ride-hailing platform.

<sup>41</sup> Interview with a high-skill online work platform.

**Figure 8. Was engagement in platform work impacted by the COVID-19 pandemic or related policy measures? (% of people who worked through platforms in the period December 2020-May 2021)**



Source: 2021 panel survey of people working through platforms.

Furthermore, certain demographic groups were affected more than others. For instance, a substantial proportion of women work for platforms that offer care work, domestic work and beauty services – services that could not operate during lockdown, due to government restrictions. Many working women were also forced to remain at home in order to care for their own families during the closure of schools and childcare facilities. This is also reflected in the data from the survey conducted for the EIGE in 2020<sup>42</sup>.

Related to this, the outbreak of COVID-19 may have resulted in a drop in earnings for some people working through platforms, due to increased labour supply (in the cases of online work or delivery services) or dramatically reduced workload (in cases of passenger transportation and home-based services). For example, in an ILO survey carried out in 2020 in Chile, India, Mexico and Kenya found that 9 out of 10 people providing ride-hailing services through on-location platforms, and 7 out of 10 people providing delivery services, reported a decline in their earnings.<sup>43</sup> Although comparable data is not available for EU countries, similar trends may be expected in the Union as well.

According to Cedefop<sup>44</sup>, the pandemic also showed more companies the potential of a digital workforce, which may further drive companies to re-evaluate their traditional offline working methods and focus more on online labour marketplaces. For people working through online labour platforms, platform work is often a solitary experience, thus reducing the risk of COVID-19 infection through social distancing. This may become an attractive factor for businesses when deciding on their staffing needs as they navigate the pandemic. At the same time, these changes further expose the precariousness of platform work and insufficient work protections, discussed in the following sections.

<sup>42</sup> EIGE (2021, forthcoming). Artificial intelligence, platform work and gender equality.

<sup>43</sup> ILO (2021). 2021 World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work.

<sup>44</sup> Cedefop (2020). Online working and learning in the coronavirus era. Briefing note.

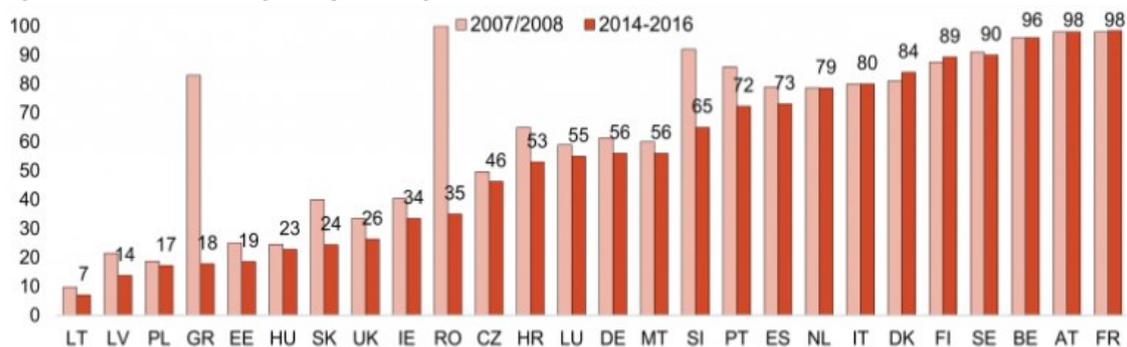
## 2.1.2. Global megatrends and digitalisation in the workplace

Other external drivers of the problem – which have driven both the development of platform work and the challenges that relate to it – include globalisation, digitalisation and societal challenges, as well as the increasing use of algorithmic management in workplaces.

The key features of **globalisation** include a reduction in barriers to international economic activities and increasing mobility, particularly with regard to goods and capital. The economically motivated mobility of people has also increased, but to nowhere near the extent of the rise in trade and capital mobility. Globalisation has contributed to structural changes in the economy such as deindustrialisation and the growth of the service economy. Some businesses responded to competitive pressures by lowering costs through investment abroad and by outsourcing. This has reduced the power and influence of collective bargaining in developed industrial countries (including the EU), and increased pressure to lower labour market protections in these countries.

**Collective bargaining systems** and the influence of social partners remain highly diverse across the EU. Despite this diversity, there is a clear division between the Nordic and Western EU Member States (plus Slovenia), which show higher levels of collective bargaining coverage and industrial democracy<sup>45</sup> (i.e. opportunities for workers' participation at company level) and other EU member states.<sup>46</sup> While collective bargaining coverage has remained mostly stable in the Nordic and continental member states (plus Italy), there has been a continuous decline in collective bargaining coverage (affecting wage levels and distribution) in the other Member States. The most significant declines can be found in Greece, Romania and Slovenia (see the figure below). The financial crisis that began in 2008 has also contributed to a decline in collective bargaining coverage, and the decentralisation of wage bargaining.<sup>47</sup> This, in turn, has resulted in the weakening of protection for worker rights, potentially opening up avenues for the greater exploitation of workers.

**Figure 9. Collective bargaining coverage before and after the world financial crisis, % of workforce**



Sources: OECD collective bargaining database; for Croatia: Bagić (2019); for Malta: Debono and Baldacchino (2019); for Romania: Trif and Paolucci (2019); no data available for this time period for Bulgaria and Cyprus. \* pre-crisis data for Croatia, Malta and Romania from 2000.

Source: ETUI (2019). What's happening to collective bargaining in Europe? Available [here](#).

<sup>45</sup> More information about the industrial relations index is available [here](#).

<sup>46</sup> Eurofound (2020). New forms of employment: 2020 update. Available [here](#).

<sup>47</sup> Guardiancich, I. & Molina, O. (eds.) (2017). Talking through the Crisis: Social dialogue and industrial relations trends in selected EU countries, Genf: ILO; Waddington, J., Müller, T. & Vandaele, K. (2019). Setting the Scene: Collective Bargaining under Neoliberalism, in Müller, T., Vandaele, K. & Waddington, J. (eds) Collective Bargaining in Europe: Towards an Endgame, Brussels: ETUI, 1-32.

Furthermore, since the 2000s many countries have introduced legislation that allows greater flexibility in the labour markets. Non-standard work relationships have proliferated, e.g. through the increased use of short-term contracts or temporary work agencies (TWAs). Although standard employment (i.e. full-time and permanent, based on employment contracts that are governed by labour law) remains the dominant type of employment across the EU, new employment relationships or work patterns, linked to aspects such as place of work, working time or use of ICT, are increasingly prevalent.<sup>48</sup> Non-standard work accounts for 41% of total employment in the EU-27.<sup>49</sup> These trends are linked to, among other things, the growth of online platform economy. For example, online platforms have been used for outsourcing and for engaging freelancers or people under self-employment contracts to carry out work that has previously been done under traditional work contracts. Such trends challenge the existing framework of employment legislation and, more broadly, of welfare policy – which remains structured around the concept of the standard employment contract.

In parallel to globalisation, **digitalisation** has also been an important development for companies and economies more generally. According to the European Enterprise Survey, 42% of enterprises in the EU had used at least one of AI-related technologies about which they were asked.<sup>50</sup> Some of these technologies relate to the increasing use of workforce analytics, surveillance and algorithmic management, which are transforming traditional approaches to the organisation of production and the workforce. Algorithms are increasingly used to make decisions that used to fall within the remit of managers and HR professionals.<sup>51</sup> According to ESENER 2019, machines are used for employee management or surveillance in 12% of EU companies.<sup>52</sup> The increasing use of **AI at workplaces** also allows for the breaking up of work activities themselves, which can now be implemented by a multitude of people (a ‘crowd’), who together create value by responding to tasks offered by algorithms.<sup>53</sup> This could lead to the further ‘platformisation’ of companies that are currently traditional employers.

The growth of platform work, as described above, is a notable manifestation of these developments. Algorithms are used to match customers or those requesting services with service providers. Automated processes evaluate the performance of service providers and, in some cases, manage labour and organise the delivery process for each task. Indeed, many of the characteristics of algorithmic management, such as consumer-sourced rating systems and automated ‘nudges’, which are being increasingly applied in workplaces, were developed by companies in the labour platform economy. Algorithmic management allows companies to track, discipline and set expectations for workers without human supervision or recourse.<sup>54</sup> These mechanisms of control can result in low pay, social isolation, working unsocial or irregular hours, overwork, sleep deprivation and exhaustion.<sup>55</sup>

The **COVID-19 crisis** has further contributed to the digitalisation of workplaces, as well as the increasing use of new arrangements instead of traditional forms of work and contracts. This trend has been especially evident in certain sectors of platform work,

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<sup>48</sup> Eurofound (2020). New forms of employment: 2020 update. Available [here](#).

<sup>49</sup> Eurofound (2020). New forms of employment: 2020 update. Available [here](#).

<sup>50</sup> EU Fundamental Rights Agency (EU FRA) (2020). Getting the Future Right. Artificial Intelligence and Fundamental Rights. December 2020. Available [here](#).

<sup>51</sup> Duggan, J., Sherman, U., Carbery, R. & McDonnell, A. (2020). Algorithmic management and app-work in the gig economy: A research agenda for employment relations and HRM. *Human Resource Management Journal*, 30(1), 114-132.

<sup>52</sup> EU-OSHA (2020). ESENER 2019. Luxembourg: Publications Office of the European Union. Available [here](#).

<sup>53</sup> Gramano, E. (2020). Digitalisation and work: challenges from the platform-economy. *Contemporary Social Science*, 15(4), 476-488.

<sup>54</sup> Vandaele, K. (2018). Will trade unions survive in the platform economy? Emerging patterns of platform workers' collective voice and representation in Europe. Working Paper, European Trade Union Institute.

<sup>55</sup> Wood, A.J., Graham, M., Lehdonvirta, V. & Hjorth, I. (2019). Good gig, bad gig: Autonomy and algorithmic control in the global gig economy. *Work, Employment and Society*, 33(1), 56-75.

such as delivery and online professional IT services. While platform companies have responded flexibly to demand for specific services and provided jobs for many, these changes have been associated with irregular salaries, precarious health and safety at work, and lower social security.

The final megatrend that is pertinent to platform work concerns social and demographic changes, which are **creating significant societal challenges**. The number of international migrants to the EU has been growing for several decades, including both economic migrants and refugees. Since the 2010s, on-location platform work has been one of the entry points for immigrants into the labour markets in EU countries. On the one hand, this is due to lower barriers to entry. On the other hand, it also relates to the prevalence of undeclared work and illegal arrangements (e.g. the practice of renting out the accounts of people working through platforms who are formally registered to people without work permits)<sup>56</sup>. According to the second COLLEEM survey, around 13% of people working through platforms in Europe had a migrant background,<sup>57</sup> but this figure is likely to represent only those migrants working through platforms who are legal residents of their respective EU countries.

In the meantime, the population of the EU has been ageing rapidly. Ageing populations are putting financial pressure on social security systems across Europe, both in terms of expenditure (e.g. increasing costs of healthcare, pensions) and in terms of financing these costs, due to the shrinking workforce. Platform work has played a role in this financial squeeze, in that it has encouraged a growth in non-standard work relationships that are taxed less (if at all), and therefore bring less revenue into public budgets.

## 2.2. Internal drivers and consequences

In this section, we provide an overview of existing evidence on the three internal drivers of the problems relating to platform work: misclassification of the employment status of people working through platforms, issues concerning algorithmic management by platforms, and transparency issues relating to the cross-border nature of platform work. We also look at current regulatory frameworks, which leave important gaps in addressing these problems.

### 2.2.1. The risk of misclassification of the employment status of people working through platforms

Due to its rapid evolution, diverse nature and ambiguous effects, platform work presents a significant challenge to policy makers and legislators around the world. At the core of the majority of these discussions is the **employment status of people working through platforms**. Traditional regulation divides the labour market into a binary system consisting of the categories of employee and self-employed, to which rights and duties are then attached (although intermediate or third statuses are also present in some countries). Most people who work through platforms are treated by the majority of platforms as **self-employed, independent contractors**. They work on the basis of service contracts. According to the CEPS 2021 study, 92% of *active digital labour platforms* use service contracts.<sup>58</sup>

<sup>56</sup> Bryan, K. (2019). Deliveroo and Uber Eats takeaway riders rent jobs to 'illegal immigrants'. *The Times*. Available here.

<sup>57</sup> Urzi Brancati, M.C., Pesole, A. & Fernandez Macias, E. (2020). New evidence on platform workers in Europe. Results from the second COLLEEM survey, JRC Science for Policy report.

<sup>58</sup> De Groen, W.P., Kilhoffer, Z., Westhoff, L., Postica, D. & Shamsfakhr, F. (2021). Digital labour platforms in the EU: mapping and business models. Final report for the European Commission.

The practice of treating the workforce as independent contractors relates to the tendency of the majority of online platforms to see themselves as technology companies that connect clients (consumers) with persons who provide services to them.<sup>59</sup> The platforms argue that the core of their business model is intermediation, which allows service providers to find and work for clients while remaining in full control of the timing and duration of their work. According to platforms, such a business model creates value by facilitating interactions between service providers and their customers (or consumers), and helps to address fluctuations in demand in an agile and flexible way. It offers benefits to customers (or consumers), due to offering them relatively low prices and a better choice of on-demand service providers. Service providers, in turn, benefit from easy access to flexible ways of earning income.

Nevertheless, the digital platform economy is highly diverse and covers different types of relationships between people who use platforms to earn income and their clients. The self-employment status can be considered genuine in cases where people working through platforms can choose the timing and duration of their work, are in charge of finding their clients, and may negotiate their prices or refuse to work with specific clients. However, in certain segments of the platform economy (primarily low-skilled on-location and online work) the working relationships between platforms and people working through platforms are such that they exhibit many characteristics of what is usually considered an employer-employee relationship. For example, some people working through platforms are in a situation of significant economic dependence on a single platform, and are subject to control and surveillance by that platform. The terms and conditions that people working through platforms must accept often unilaterally define the pay rates, working time, customer service protocols, dispute resolution procedures and other features of their work. Platforms may also assess the work performance of people working through them, and may use this as an input when setting the availability of work and pay levels in the future.

Situations in which people working through platforms are **classified as self-employed**, despite key characteristics of their work including a degree of subordination to the platform, may constitute a case of **misclassification**. Misclassified people working through platforms have neither the rights and protections enjoyed by employees, nor the autonomy and work relationships enjoyed by the genuinely self-employed.

## 2.2.2. Issues relating to algorithmic management

Algorithmic management is present on all digital labour platforms and is part of their business model, which allows them to efficiently match clients with service providers and to respond to fluctuations in supply and demand. It is especially prominent in low-skill on-location platform work, although specific practices vary according to the platform.<sup>60</sup> Platforms use algorithms to match clients with people working through platforms, adjust prices in response to changing demand, 'nudge' people working through platforms to take on additional work, and monitor the work performed and assess performance,<sup>61</sup> among other functions. This ensures unprecedented efficiency of work organisation and service provision. Nevertheless, some of these practices are potentially harmful to the people working through platforms.

<sup>59</sup> This finding was corroborated by interviews with 20 platforms active in the EU, in May-June 2021.

<sup>60</sup> Griesbach, K., Reich, A., Elliott-Negri, L. & Milkman, R. (2019). Algorithmic control in platform food delivery work. *Socius*, 5, 2378023119870041; Lehdonvirta, V. (2018). Flexibility in the gig economy: Managing time on three online piecework platforms. *New Technology, Work and Employment*, 33, 13–29.

<sup>61</sup> Meijerink, J. & Keegan, A. (2019). Conceptualizing human resource management in the gig economy: Toward a platform ecosystem perspective. *Journal of Managerial Psychology*, 34(4), 214–232.

The algorithms may use a variety of signals as an input, from the education and demographic characteristics of the people providing services, to ratings and reviews by clients. Machine learning is used extensively to process these signals, take advantage of patterns that could optimise service provision, and assign work and prices in the most efficient manner. Biases in these signals or data, including those present in the client reviews used by the algorithms, may apply to gender, ethnicity or other factors, and can lead to discrimination.

Although platforms tend to provide some indication as to which inputs are most important when, for instance, tasks are being assigned, more specific information is usually guarded as an important trade secret. From the perspective of people working through platforms, therefore, it often feels as if platform algorithms operate as black boxes, leading to unclear or seemingly arbitrary practices.

People working through platforms also indicate that they have few options or redress mechanisms available to respond to decisions which they feel are arbitrary and unfavourable. Formal channels are available for people working through platforms to raise complaints and ask the platform to remedy discriminatory practices, but the burden of proof is often their responsibility. However, algorithmic decisions are difficult to challenge without access to specific information concerning how such systems work. People working through platforms, and the organisations that represent them, lack sufficient resources and expertise to adequately assess algorithmic decisions. In some cases, the courts may become involved.

Algorithmic management is also pertinent to discussions surrounding **employment status**, and can be seen as one of the drivers of the problem. In certain segments of the platform economy, the level of oversight and control exercised by algorithms is such that it can be considered as altering or even taking over the role of traditional managers in such a way that it resembles the relationship between employers and employees.<sup>62</sup> Meanwhile, platform companies classify people working through platforms as self-employed contractors, even though they use technology to monitor people's performance and provide directions. People working through platforms also indicate algorithmic control and surveillance as being incompatible with their self-employment status,<sup>63</sup> although information to prove this is not easily accessible, due to a lack of transparency.

Lastly, customer reviews are an important input used by ranking algorithms (on online labour platforms) and work allocation algorithms (on on-location platforms)<sup>64</sup>. Among other impacts, customer reviews create lock-in effects. In other words, if a person working through a platform wishes to move to another platform, they would have to invest time and effort in building their reputation on the new platform. The inability to transfer or display records relating to their past labour, their reputation, or client relationships built on a platform, also prevents people working through platforms from investing in a career that is independent of the platform.<sup>65</sup> Issues regarding access to and portability of personal data relate partly to a lack of awareness of GDPR-related rights, and to a lack of initiatives for platforms to ensure data portability. In the 2021 survey, 67.8% of people

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<sup>62</sup> Kellogg, K.C., Valentine, M.A. & Christin, A. (2020). Algorithms at work: The new contested terrain of control. *Academy of Management Annals*, 14(1), 366-410.

<sup>63</sup> Bacchi, U. & Asher-Schapiro, A. (2020). The gig workers taking legal action to regain control of their data. Reuters. Available [here](#).

<sup>64</sup> Möhlmann, M. & Zalmanson, L. (2017). Hands on the wheel: Navigating algorithmic management and Uber drivers'. 38th ICIS Proceedings.

<sup>65</sup> Choudary, S.P. (2018). The architecture of digital labour platforms: Policy recommendations on platform design for worker well-being. ILO Future of work Research paper series, 3.

working through platforms more than sporadically expressed the opinion that client ratings should have less impact on their work.<sup>66</sup>

### 2.2.3. Issues relating to enforcement, traceability and transparency, including in cross-border situations

Issues relating to the enforcement, traceability and transparency of platform work further exacerbate the problem of poor working conditions and inadequate access to social protection for people working through platforms. National authorities do not have easy access to data on platforms and the people working through them, e.g. regarding their employment status, the share of them who are active on platforms, and on platform terms and conditions, as well as the contractual relationships between platforms and the people working through them. The problem of traceability is especially relevant when platforms operate in several Member States, making it unclear where platform work is performed, and by whom.

The digital nature of platform work – especially online platform work – increases the opportunities for people working through platforms to get in contact with platforms and clients on a global scale.<sup>67</sup> Such interactions constitute the cross-border and international dimensions of platform work – situations in which at least one of the actors involved in the platform-mediated work is situated in or moving to another country.<sup>68</sup> Various scenarios exist in which platform work has a cross-border character.<sup>69</sup> First, people working through platforms may physically move to another country in order to perform services – a situation that is most likely to occur in the case of on-location platform work. Secondly, people working through platforms may perform work in their home country, but a platform or/ and end user may be located in a different state. This can be driven by the competitive advantages of Europeans working through platforms in the global markets, stemming from both their skills and the geographic locations.<sup>70</sup>

Yet another variant, and the one that is the most complex in practice, is when people working through platforms perform services simultaneously in different countries and/or for different platforms, or for end users located in different countries. At least two constellations of this kind can be distinguished. People working through a platform may have a permanent job (as a dependent worker or self-employed person) in one country, and at the same time, as a secondary activity, they may perform platform work for an end user in different location. Alternatively, they may be simultaneously engaged in various work arrangements with clients located in different countries.

According to COLLEEM 2017 data, 36.1% of people working through platforms have provided services to clients based in countries other than their country of residence. Among those people engaged in providing only online services through platforms, the figure was 32.5%; among people engaged only in on-location services, it was 25.6% (while among people engaged in both types of platform work, the figure was 44.2%). The new data from 2021 survey show that 59% of people working through platforms at least

<sup>66</sup> Q23.5, Strongly agree or rather agree with the statement.

<sup>67</sup> European Commission (2020). Study to gather evidence on the working conditions of platform workers. VT/2018/032 Final Report. Luxembourg: Publications Office of the European Union. Available [here](#).

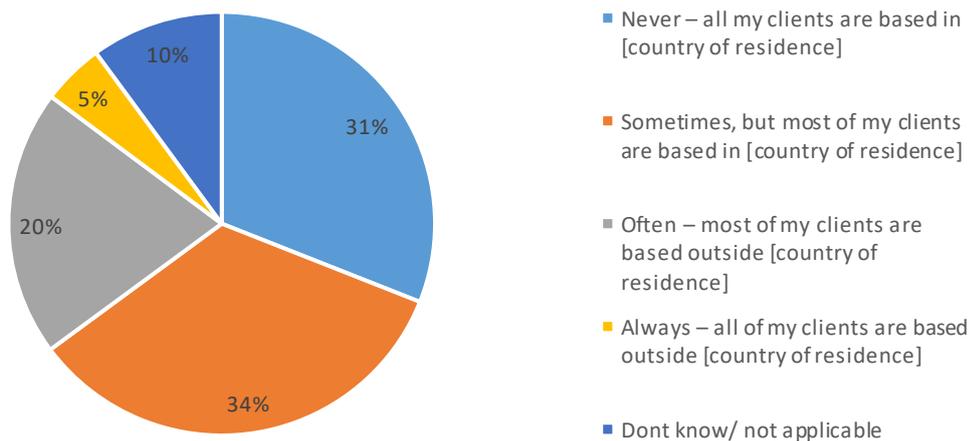
<sup>68</sup> Vukorepa, I. (2020). Cross-Border Platform Work: Riddles for Free Movement of Workers and Social Security Coordination, *Zbornik Pravnog Fakulteta u Zagrebu* 70, no. 4: 481–512.

<sup>69</sup> For a more detailed distinction between the possible scenarios for cross-border platform work, see Vukorepa, I. (2020). Cross-Border Platform Work: Riddles for Free Movement of Workers and Social Security Coordination, *Zbornik Pravnog Fakulteta u Zagrebu* 70, no. 4: 481–512.; Lhemould, J. (2020). Intra-EU Cross-Border Platform Work: Hiding Issues of Undeclared Work. *Zbornik Pravnog Fakulteta u Zagrebu* 70, no. 4 (2020): 455–480.

<sup>70</sup> For example, online workers from Europe may be chosen by US and Asian clients seeking to ensure that their work continues 24/7 across time zones

once a month engage in tasks for clients from other countries (see the figure below),<sup>71</sup> and 39% for clients outside the EU.<sup>72</sup> While the vast majority of them reported that they served clients in other EU countries, the US was also indicated as a major market.<sup>73</sup> Unsurprisingly, cross-border platform work is more prevalent among people working through online platforms compared to on-location: only 16% of people providing services through on-location platforms said that they had clients outside the EU (including countries such as Norway, Switzerland, the UK and others); 38% of people working online through platforms mentioned non-EU clients.<sup>74</sup>

**Figure 10. 2021 survey: when working via online platforms, how often have you worked for clients based in countries other than [country of residence]?**



Note: Q19. Share of people working through platforms more than sporadically on all types of platform.

The situation of cross-border working raises opportunities and challenges for both people working through digital platforms and for policy makers. The nature of digital platform work allows for the creation of truly global labour markets and the better use of skills. However, cross-border and international aspects further increase the complexity of already complicated work relationships that involve multiple parties and rely on the use of digital technologies and algorithms. Cross-border work poses challenges with regard to the application of EU law on freedom of movement, with uncertainty as to which EU rules are at stake (i.e. movement of workers or movement of services). Other challenges concern the determination of jurisdiction and applicable law (potentially leading to issues of undeclared work and enforcement), as well as social security coordination. In turn, there are risks of fraud, abuse and social dumping if platforms are used to outsource services to non-EU countries where social costs are lower.

<sup>71</sup> Q19.

<sup>72</sup> Q20.

<sup>73</sup> Q20.

<sup>74</sup> Q20. The figures refer to people who work at least once a month.

## 2.2.4. Gaps in existing and forthcoming legislation

### 2.2.4.1. EU-level responses

Over the past few years, the European Commission and the European Parliament have engaged actively in developing the legislative framework for the digital single market, including several key regulations that are relevant to platform work. Nevertheless, as demonstrated in the discussion concerning problem definition, issues continue to arise in connection with platform work, despite the existing regulations.

Subject to the principles of subsidiarity and proportionality, **employment and social policies** are a shared competence, but only for aspects specifically defined in the Treaty on the Functioning of the European Union. The EU has, over the years, taken legislative action – primarily by means of directives in the field of employment and ‘softer’ policy measures. Several of these are especially relevant in the context of digital platform work:

- The European Pillar of Social Rights;<sup>75</sup>
- The Directive on transparent and predictable working conditions across the EU (TPWC; Directive 2019/1152, replacing the Written Statement Directive);
- The Council Recommendation on access to social protection for workers and the self-employed;<sup>76</sup>
- The 2019 Council Conclusions ‘The changing world of work: reflections on new forms of work and implications for the safety and health of workers’;<sup>77</sup>
- In March 2020, the European Commission published a Communication on A New Industrial Strategy for Europe;<sup>78</sup>
- The Communication ‘A Strong Social Europe for Just Transitions’;<sup>79</sup>
- The European Social Partners’ Framework Agreement on Digitalisation of June 2020.<sup>80</sup>

Despite earlier actions with regard to employment and social protection, gaps remain in addressing the challenges for people working through platforms. Most notably, Directive 2019/1152 covers workers only, whereas the majority of people working through platforms are self-employed. As per the Council Recommendation on access to social protection for workers and the self-employed, in many – though not all – EU countries, social protection for the self-employed is available on the basis of either mandatory or voluntary contributions. Nevertheless, the rights and benefits applicable to the self-employed are often lower than those for employees, due to different eligibility rules and lower levels of taxation. This lack of rights and benefits has a negative effect on people who gain a significant proportion of their income by working platforms.

Furthermore, despite the CJEU’s interpretation of what constitutes a ‘worker’, there is no single definition of ‘worker’ in EU-27, leading to contradictory court decisions in similar platform work cases (see Annex 1 for examples). Similarly, although those who are falsely self-employed are entitled to collective bargaining rights as per the CJEU’s decision, people working through platforms have to go to court to prove that their work

<sup>75</sup> Available [here](#).

<sup>76</sup> Available [here](#).

<sup>77</sup> Available [here](#).

<sup>78</sup> COM (2020) 102 final. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions A New Industrial Strategy for Europe. Available [here](#).

<sup>79</sup> Available [here](#).

<sup>80</sup> Available [here](#).

constitutes employment, which prevents many from accessing collective bargaining rights and protections regarding their working conditions.

Given the digitalised nature of platform work, as well as the nature of platform-driven markets and competition, a number of EU-level **economic and digital policies** do, however, exist that also concern the working conditions of people working through platforms.

To begin with, in 2016, the Commission published a communication on ‘**Online Platforms and the Digital Single Market Opportunities and Challenges for Europe**’, which presented the key policy principles that the Commission would follow in developing a regulatory approach for digital platforms.<sup>81</sup> Later that year, the Commission issued a Communication on ‘**The European Agenda for the Collaborative Economy**’. This included guidance on how existing EU law should be applied to the collaborative economy.<sup>82</sup> The Communication stressed the importance of “ensuring a high level of consumer protection, fully upholding workers’ rights and of ensuring tax compliance”, and provided some guidance on the employment status of people working through digital platforms while requiring Member States to assess the adequacy of their national employment rules and to provide guidance on their application. As is evident from the continuing divergence of court decisions regarding the employment status of people working through platforms (see Annex 1 and the following section for details), this guidance has not resolved the issue.

An important step towards specific regulation in the area of digital platforms is the EU **Regulation on platform-to-business relations** (P2B regulation, 2019/1150), which entered into force in July 2019. This defined a set of rules for creating a fair, transparent and predictable business environment for smaller businesses and traders on platforms. It also defined rules regarding platform behaviour towards businesses operating on these platforms – **including, in some cases, natural persons working through platforms**. It covers issues such as rankings, complaint handling, mediation, differentiated treatment on the platform, and terms and conditions. Nonetheless, to fall within the scope of the P2B, labour platforms must be considered ‘online intermediary services’. This is also often up to courts to determine. For example, the Court of Justice of the European Union (the CJEU) recently held that Airbnb falls within this definition, and is not merely an ‘accommodation service’ (Case C 390/18). In another recent case in Romania,<sup>83</sup> the CJEU ruled that a ride-hailing app (Star Taxi, whose business model differs significantly from that of Uber and similar digital platforms) could be classified as online intermediary service (C 62/19).

Furthermore, the **GDPR**<sup>84</sup> grants people working through platforms a set of important rights (access to personal data, rights to data portability concerning their provided or observed data<sup>85</sup>). Nevertheless, as demonstrated by the 2020 case against Uber in the Netherlands,<sup>86</sup> people working through platforms may struggle to provide a legal basis

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<sup>81</sup> European Commission (2016). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *Online Platforms and the Digital Single Market Opportunities and Challenges for Europe*, 288 final.

<sup>82</sup> European Commission (2016). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *A European agenda for the collaborative Economy*.

<sup>83</sup> Available [here](#).

<sup>84</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>85</sup> Data that is ‘inferred’ or generated by the platform itself is not covered.

<sup>86</sup> Ekker, A. (2020). Verzoekschrift ex artikel 15 lid 1 AVG. Available [here](#).

on which to access information about algorithms, and little information exists about how to transfer ratings from one platform to another.

New initiatives are also on their way to being adopted that extend, through their personal scope, the rights of people working through platforms. However, these are likely to address the problems of platform work in a somewhat fragmented manner.

Notably, the **Digital Services Act (DSA)**<sup>87</sup> proposal, published in December 2020, aims to define a clear set of responsibilities for platforms and ensure accountability. Aspects relevant to platform work include transparency measures that apply to platforms with regard to the algorithms used for recommendations, as well as obligations on very large platforms to prevent the misuse of their systems. The **Digital Markets Act (DMA)** proposal also refers to the portability of data generated on platforms through the activities of a business user. This is potentially a very important feature for people working through platforms, possibly enabling them to port their reputation data from platform to platform.<sup>88</sup>

Furthermore, the Commission's 2020 **White Paper on Artificial Intelligence (AI)**<sup>89</sup> launched a discussion concerning accountability, transparency, traceability and human oversight in the digital world – including on digital platforms. It was followed in 2021 by the proposal for the **Artificial Intelligence Act**.<sup>90</sup> It proposes to classify certain AI systems used in *employment*, *worker management* and *access to self-employment* as high-risk. Such systems will be subject to strict obligations before they can be put on the market. These obligations relate to the quality of datasets, transparency and robustness, and human oversight. Together with the **Data Strategy**,<sup>91</sup> the Artificial Intelligence Act are pillars of the Commission's new digital strategy. Both focus on the need to put people first in developing technology, as well as on the need to defend and promote European values and rights in the way we design, make and deploy technology in the economy.

Lastly, the Commission has also announced its position on the area of competition law, which seeks to ensure that competition law is not an obstacle to improving working conditions through **collective agreements** not only for employees, but also for those **solo self-employed who need protection**.<sup>92</sup> This should improve access on the part of people working through platforms to collective representation of their interests, but its actual impacts will depend on the strength of the instrument adopted.

In summary, **regulatory uncertainty** in relation to working conditions in platform work is high. The key issues can be summarised as follows:

- Overall, EU-level responses only partially address most of the challenges faced by people working through platforms in relation to work and employment. Most EU regulatory measures in the fields of employment and social protection concern workers rather than the self-employed.
- Some legal acts, including the Council Recommendation on access to social protection for workers and the self-employed,<sup>93</sup> the GDPR, and the Commission proposals for the DSA and DMA, and the proposal for the Artificial Intelligence Act, do address issues that are pertinent to all people who work through platforms. Yet the recommendation is not a legally binding document.

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<sup>87</sup> Available [here](#).

<sup>88</sup> See more information about the role of reputation data in platform worker 'careers' and importance of its portability in Cedefop's CrowdLearn study. Available [here](#).

<sup>89</sup> Available [here](#).

<sup>90</sup> Available [here](#).

<sup>91</sup> Available [here](#).

<sup>92</sup> Espinoza, J. (2019). Vestager says gig economy workers should 'team up' on wages. *Financial Times*. Available [here](#).

<sup>93</sup> European Commission (2018). Proposal for a Council Recommendation on access to social protection for workers and the self-employed COM/2018/0132 final - 2018/059 (NLE). Available [here](#).

Meanwhile, the other regulations cover only certain aspects of the working conditions of people working through platforms, and other initiatives are only at the stage of legislative proposals, and may change in the process.

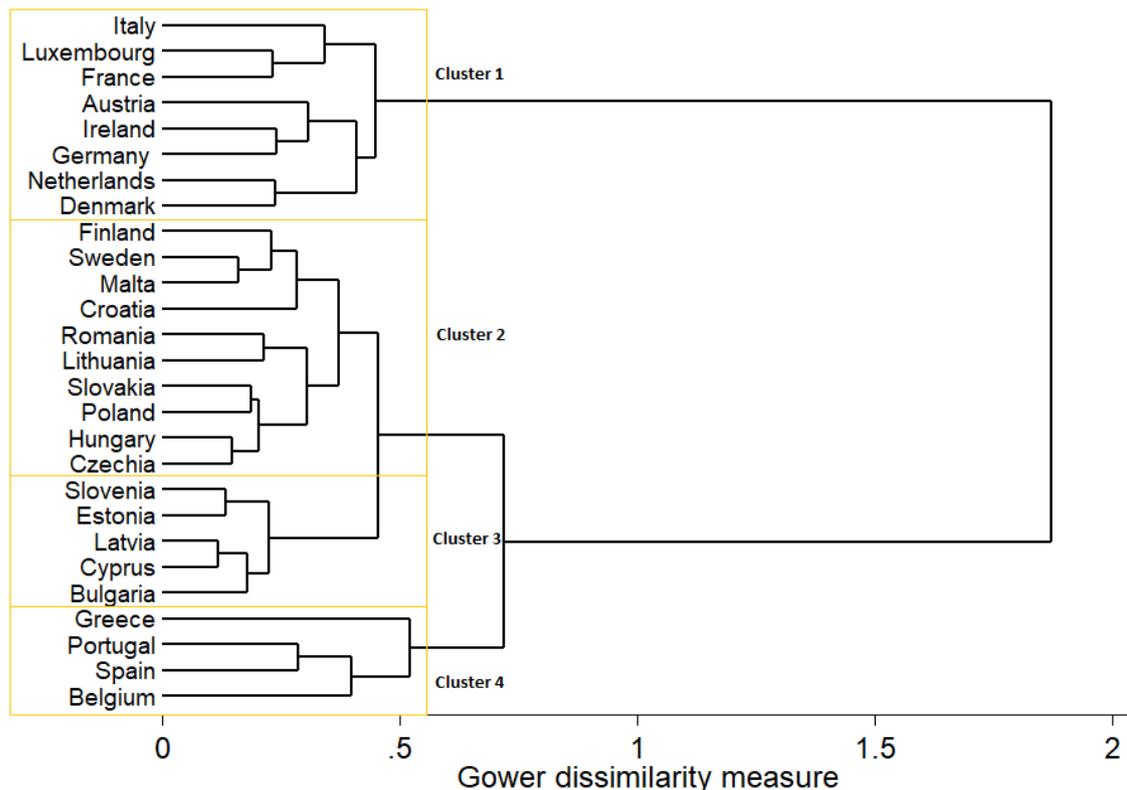
- Different regulatory frameworks may apply, depending on the modality of service provision via platforms – for example, based on whether the clients are individuals or companies, even for a similar type of work.

### 2.2.4.2. National-level responses

A number of EU countries have introduced measures or plans to address issues relating to platform work. The national *status quo* of platform labour regulation is continuously evolving through legislation, court decisions, soft measures and the activities of stakeholders<sup>94</sup>. The data collected on national policy developments points to wide variations in the national policy landscapes and responses to the problems of platform work.

To make sense of the diversity of responses to the challenges presented by platform work in the Member States, we clustered them into four groups (see the figure below), based on an extensive analysis of national regulatory and policy landscapes, as well as relevant statistics.<sup>95</sup> Each cluster is reviewed in further detail.

**Figure 11. Results of the hierarchical cluster analysis regarding responses to platform work challenges in the EU-27**



Source: PPMI

<sup>94</sup> We provide examples of the most pertinent and recent developments in the Member States in Annex 1.

<sup>95</sup> The specific variables used, together with the dataset, are presented in Annex 4D. The methodology used for this exercise (hierarchical cluster analysis) is outlined in full in Annex 4C. The summary results of the clustering exercise are provided in the dendrogram below, illustrating the countries assigned to each cluster, based on the selected criteria.

The countries falling into cluster 1 (IT, LU, FR, AT, IE, DE, NL, DK) are the **most active in terms of regulating platform work**, including both top-down and bottom-up initiatives. Through various measures, these countries have already tackled, at least in part, the question regarding the classification of the employment status of people working through platforms. A number of court cases addressing the employment status of people working through platforms have been identified in Italy, Luxembourg, France, Ireland, Germany, the Netherlands and Denmark<sup>96</sup>.

Cluster 2 countries (FI, SE, MT, HR, RO, LT, SK, PL, HU, CZ) contrast sharply with the countries in Cluster 1 in terms of their approaches to regulating platform work. In these countries, **discussion regarding the employment status of people who work through platforms is limited**. This is either because misclassification is not perceived as a priority by many stakeholders (including policy makers) or because the existing regulatory framework is considered sufficient to address this issue.

As illustrated in the figure above, Cluster 3 countries (SI, EE, LV, CY, BG) belong to the same branch as Cluster 2, meaning that the two clusters are much more similar to each other than they are to Cluster 1. Similarly, as in Cluster 2, **no initiatives were identified regarding the employment status of people working through platforms**. In fact, in 2019 Estonia made it easier – not more difficult – for platforms to contract independent contractors through the introduction of an ‘entrepreneur’ account. The new status simplifies part-time or side self-employment via on-request services such as transportation, accommodation and food delivery, and applies a lower tax rate for income up to EUR 25,000 annually.<sup>97</sup> Furthermore, only a few small-scale initiatives were found in terms of collective action. What distinguishes Cluster 3 from Cluster 2 is the fact that in the former, initiatives to improve the working conditions of people working through platforms are almost non-existent, except for measures that tackle the informal sector or vulnerable workers in general, whereas a number of platform-specific initiatives were identified in Cluster 2 countries.

Finally, Cluster 4 countries (EL, PT, ES, BE) can be characterised as occupying the **middle ground** between Cluster 1 and Clusters 2/3. As illustrated by the recent Riders’ Law<sup>98</sup> in Spain, these countries are active in terms of tackling the issue of misclassification; however, compared with Cluster 1, fewer other initiatives aimed at improving the working conditions of people who work through platforms have been identified in these countries. Furthermore, the prevalence of platform work in these countries is notably lower, while labour markets in general experience higher levels of unemployment.

The summary of policy developments in the Member States points to several issues:

- Few national and regional policy responses target platform work and the working conditions and social protection for people working through platforms specifically (as opposed to other forms of non-standard work, and employment more generally). Most existing responses address certain types of on-location platform work<sup>99</sup>.
- No Member State has so far comprehensively addressed the risk of misclassification in platform work and the problems that stem from algorithmic management.

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<sup>96</sup> See Annex 1 for details.

<sup>97</sup> Masso, M., Melesk, K. & Kadarik, I. (2021). European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies. Thematic Review 2021 on Platform Work: Estonia. Luxembourg: Publications Office of the European Union.

<sup>98</sup> The law requires digital labour platforms to employ couriers. Disposición 7840 del BOE núm. 113 de 2021 (mites.gob.es).

<sup>99</sup> See Annex 1 for detailed information.

- Overall, regulatory and policy responses vary greatly between Member States, resulting in fragmented labour markets and creating various issues for competition and market players. For example, according to our interviews with multinational platforms, regulatory fragmentation is an obstacle to them in introducing social protection packages for the people who work through them, such as long-term savings products or discounted insurance – which they would otherwise be willing to do.<sup>100</sup>
- A few Member States have implemented legislative initiatives that specifically address algorithmic management in the workplace, (IT, ES). Meanwhile, a number of Member States (AT, BE, CY, CZ, DK, EE, FI, DE, IE, LV, LT, LU, NL, SV) address algorithmic management by undertaking measures within the framework of privacy, data protection and non-discrimination policies. Pertinent court decisions have been made in several countries (FR, IT, NL, PL and LU). More detailed examples are provided in Annex 1.

## 2.3. Why is it a problem?

### 2.3.1. Consequences for people working through platforms

#### 2.3.1.1. Flexibility and low barriers to entry

On the positive side, many of the people working through platforms as self-employed enjoy the flexibility of working arrangements and additional income. This is especially true for people who would otherwise encounter difficulties in accessing the labour market, such as migrants,<sup>101</sup> people with care responsibilities, students – and, during the pandemic, those left without a main source of income. Even some of those platform workers who are potentially misclassified (which, as we show above, are a minority among all people working through platforms in the EU), gain the opportunity to:

- Supplement their income from other jobs: according to the results of 2021 survey, 71.3% of people working through platforms more often than sporadically have another job. For 82.6%, the opportunity to earn extra income without commitment to platforms or clients was moderately to strongly important<sup>102</sup>. Similarly, in 2020 EIGE survey, 42.3% of people working through platforms indicated, among their main motivations to engage in this type of work, that platform work was a good way to earn (additional) income<sup>103</sup>.
- Work through multiple platforms at the same time, which enables them to access more clients and ensure more stable access to tasks. Representatives of platforms from all sectors who were interviewed argued that the people working through them also use competing platforms to secure tasks or work assignments. The results of the 2021 survey indicate that 76.3% of people working through platforms more than sporadically use more than one platform (among people working through low-skill on-location platforms, this figure is 72.1%). The median number of platforms used by people in all types of platform work<sup>104</sup> is 2. Several important benefits of platform work are linked to this:

<sup>100</sup> Interviews with representatives of platforms May-June 2021.

<sup>101</sup> ILO (2021). 2021 World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work.

<sup>102</sup> Q22\_9, values 6-10 (from a scale of 1-10, where 1 is not important at all, and 10 - extremely important)

<sup>103</sup> Each respondent was asked to select up to three key motivations for a list of 10 items.

<sup>104</sup> Low- and high-skill; on-location and online

- The opportunity to expand their entrepreneurial activity and acquire new clients: according to the results of the EIGE 2020 survey, for 24.1% of people working through platforms, the opportunity to develop skills and build professional portfolio is one of the main motivations to engage in platform work; 18% reported this with regard to the opportunity to work globally or gain more clients from different countries.
- The possibility of gaining access to a variety of job opportunities: digital labour platforms offer tasks in a wide range of skill categories and levels of complexity. For example, online platform work marketplaces such as Upwork or Freelancer allow people working through them to offer tens of thousands of different skills. The variety of on-location platforms available can provide opportunities to work in tens of different areas, ranging from ride-hailing and delivery to teaching, consulting or gastronomy services (see Section 1.2).
- The opportunity to optimise the supply of paid tasks and reduce periods of unpaid working time for people working on location – due to being logged in to several platform apps simultaneously, and choosing between tasks offered by different apps.
- Access to the labour market: platform work can also be an entry point for groups who would otherwise have difficulties in accessing the labour market, such as the long-term unemployed, migrants, youth without prior work experience,<sup>105</sup> people with care responsibilities, or people with disabilities.<sup>106</sup> The 2021 survey data shows that at least 16.3%<sup>107</sup> of people working through platforms more than sporadically were born outside their countries of residence. According to the 2020 EIGE survey, 12.8% of people working through platforms said that one of their main motivations for engaging in this type of work was the lack of regular job opportunities, while 8.4% said it was the fact that they had been laid off from their jobs. Moreover, 31.2% (mostly women) reported the opportunity to combine platform work with household chores and/or family commitments as being one of their key motivations.
- Work under flexible conditions: 81.2% of people working through platforms more than sporadically indicated in the 2021 survey that they were satisfied or very satisfied with the flexibility of working times and hours in platform work; 83.7% said they were happy with the flexibility of working locations. In the EIGE survey, 38.2% reported that the opportunity to choose when and where they worked was one of their main reasons for engaging in platform work.

However, the **existence of an employment relationship remains a gateway to stronger labour and social protection**, both at Member State and at EU level. People working through platforms on the basis of bogus self-employment do not, therefore, have the rights and benefits to which correctly classified people in similar employment situations are entitled. In particular, this concerns those working in low-skill on-location platform jobs organised in an algorithmic way who are (falsely) treated by platforms as independent contractors.

### 2.3.1.2. Precarious working conditions, including health and safety

The working conditions of people working through platforms may vary significantly depending whether work is carried out on-location or online, whether it requires high or

<sup>105</sup> Uber (2021). A Better Deal. Partnering to Improve Platform Work for All. Available [here](#).

<sup>106</sup> ILO Office (2021), Section 4.1.4.

<sup>107</sup> The survey was carried out only in the official languages of the target country, so it did not capture immigrants who do not speak the country languages. We therefore consider these figures to be the lower limit.

low levels of skill, or comprises routine, monotonous work or creative tasks.<sup>108</sup> While variations in working conditions are natural given the variety of types of platform work, some of these may become especially problematic in cases of misclassified employment status.

To begin with, most people working through platforms face the issue of **variability and unpredictability of income**. According to the 2020 EIGE survey, unpredictable income and low or unfair pay were important drawbacks for people working through platforms (30.4% and 21.2% of respondents, respectively). Similarly, in the 2021 survey, 28.8% of people working through platforms more than sporadically reported that they were 'unsatisfied' with their pay levels on platforms. This issue is most pertinent to those people for whom platform work constitutes a significant part of their income, and who are classified by platforms as self-employed/partners/contractors.

This issue relates to the fact that **work is paid at a piece rate and not guaranteed**: people working through platforms must wait for clients' orders or participate in contests at their own expense to secure paid work. Data from the EIGE survey shows that 38.2% of people working through platforms were often or always able to secure tasks/work assignments via online platforms according to their plans or schedules. Similarly, 35.3% of them were able to do so sometimes, whereas the remaining 26.5% said that they were able to do so never or rarely. In the 2021 survey, 27% of people working through platforms more than sporadically reported that they were 'very unsatisfied' or 'rather unsatisfied' with the availability of tasks or work assignments on platforms. In the EIGE survey, 38% reported that they could always or often plan well in advance how much work they would carry out through platforms.

Furthermore, according to both the EIGE 2020 survey and the 2021 survey carried out for this impact assessment, the amount of **unpaid time** spent waiting for or securing tasks is similar to the amount of time spent actually implementing those tasks (see the table below). The number of unpaid hours is the highest among people in high-skill online platform work (see the table below). These findings are broadly in line with the 2021 ILO report, which claims that people working on digital labour platforms spend around one-third of their time on unpaid work.<sup>109</sup>

**Table 3. Average number of hours per week spent on paid and unpaid platform work**

	Unpaid tasks	Paid tasks
<b>Total</b>	<b>8.9</b>	<b>12.6</b>
Low-skill on-location	8.7	11.8
High-skill on-location	8.3	12.9
Low-skill online	7.8	10.6
High-skill online	9.7	15.1

Source: 2021 survey of people working through platforms. Data on people working through platforms more than sporadically.

<sup>108</sup> Gomez-Herrera, E., Martens, B. & Mueller-Langer, F. (2017). Trade, Competition and Welfare in Global Online Labour Markets: A 'Gig Economy' Case Study; Hall, J.V. & Krueger, A.B. (2015). An Analysis of the Labor Market for Uber's Driver-Partners in the United States. Working Paper 58. Princeton, N.J.: Princeton University, Industrial Relations Section; Gandini, A., Pais, I. & Beraldo, D. (2016). Reputation and trust on online labour markets: the reputation economy of Elance. *Work Organisation, Labour & Globalisation*. 10 (1): 27-43.

<sup>109</sup> ILO (2021). 2021 World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work.

Furthermore, despite the flexibility over working time that is emphasised by both platforms<sup>110</sup> and people working through them as the key benefit of their self-employed status, the effects of algorithmic control may limit this in various ways. For instance, the use of algorithms to allocate tasks and optimise supply during surges in demand (e.g. temporary price surges, bonuses for completing tasks quickly) could force people working through certain types of platforms to be hyper-vigilant, spending many hours sifting through or waiting for tasks and being on call during unsocial hours, as many platforms for low-skill work only allow people to pick up jobs on a first come, first served basis.<sup>111</sup>

As a result, people working through platforms (both on-location and online) for whom platform work is an important source of income may **face long, irregular working hours and/or work during unsociable hours**. Many such people work more hours than regular workers in order to earn a similar income<sup>112</sup>. For example, data provided by a multinational food delivery platform shows that delivery riders work an average of 18-33 hours per week in most countries in which the platform operates. Within these data, however, some countries were outliers. For example, in Cyprus, the average number of hours for a courier working on the platform was over 50 hours per week. Given that the platform indicated that 41% of its riders in the EU work less than 7.5 hours per week, these average figures indicate that some individual riders may work extremely long hours through the platform in order to make a living.

Meanwhile, the results of the 2020 EIGE survey show that 38.5% of people working through platforms often or always work at night and/or on weekends, indicating unsociable working times. According to COLLEEM, 56.5% of people working through platforms worked more than 10 hours per day either ‘often’ or ‘sometimes’. However, in the 2021 survey, only 13.8% of people working through platforms at least sporadically reported that they were unsatisfied with their work and rest schedules – despite the lack of protected rest times and right to paid leave.

Meanwhile, people’s flexibility, autonomy and control, and work satisfaction are related to the **types of work or tasks performed**. Highly skilled professionals working through platforms (e.g. software engineers or qualified personal service providers) have a direct relationship with their clients, resulting in a greater degree of control over how and when they work. They also tend to carry out more creative tasks, and generate higher earnings. Creative and professional platform work is also more likely to provide motivation and **on-the-job learning** opportunities. However, people in these occupations constitute a minority of the people working through platforms. The most common types of services provided by people working through platforms, according to the COLLEEM survey, were online clerical and data-entry tasks, which – like other types of low-skilled platform work – are organised with low degrees of worker autonomy. This survey also found that many people working through platforms have to work to tight deadlines and face stressful situations. Standardised, low-skilled and micro tasks are also widely considered **monotonous** and possibly related to frustration and **deskilling**.<sup>113</sup>

Furthermore, on-location platform work is associated with **health and safety risks**. In the COLLEEM II survey, around half (47.2%) of people working through platforms strongly agreed or agreed that this work put their health or safety at risk. In the 2021 survey, 14.8% of people working through platforms more than sporadically across all

<sup>110</sup> In the interviews with platform representatives.

<sup>111</sup> Heiland, H. (2021). Neither timeless, nor placeless: Control of food delivery gig work via place-based working time regimes. Human Relations, 00187267211025283.

<sup>112</sup> ILO (2021). 2021 World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work.

<sup>113</sup> Eurofound (2018). Employment and Working Conditions of Selected Types of Platform Work. Luxembourg: Publications Office of the European Union.

sectors said that they were unsatisfied with health and safety in platform work. This rate was higher among those people engaged in on-location tasks (21%).

Many of the health and safety risks faced by people working through platforms are similar to those faced by people in similar occupations<sup>114</sup> (cleaning, delivery, transport, graphic design, information technology [IT] work, etc.). However, the application of algorithmic management and surveillance in platform work introduces an additional layer of risks by encouraging competitive behaviours, higher work intensity and risk taking. Moreover, the provision of such services through platforms under conditions of self-employment is not regulated or controlled by institutions to the extent that is applied to employees. People working through platforms are assumed to take care of their working conditions as well as health and safety. Self-employed people working through platforms remain responsible for acquiring and using their own working tools and protective equipment. Platforms, in turn, do not assume liability for accidents at work. It is true that certain platforms have introduced accident insurance or insurance against damage to equipment. During the COVID-19 pandemic, some platforms also offered support to compensate for income lost due to contracting the virus or being required to quarantine after contact with an infected person. However, these are isolated cases rather than an industry-wide practice.

The **social and professional isolation** of those working through platforms is another negative aspect that limits such people's opportunities for personal and professional interaction. Platform work tasks are generally performed individually, without contact with fellow workers, and thereby result in a lack of workplace social support and difficulties in establishing a consistent professional identity. This is further reinforced by algorithmic management and digital surveillance, which contribute to an increasingly hectic pace of work, a lack of trust towards the platform, and pronounced power asymmetries. Behavioural nudges enabled by algorithmic management and surveillance, such as gamification and surge pricing, limit workers' ability to make informed decisions, as well as increasing competition among them and leading to emotional challenges.<sup>115</sup>

Indeed, an emerging body of literature deals with the **emotional challenges** faced by people working through platforms, including stress and anxiety.<sup>116</sup> People working through platforms tend to struggle with anxiety linked to precariousness and volatile income flows, leading to what has been described as emotional oscillation.<sup>117</sup> Challenges that can contribute to such emotions include poor communication with the platform when issues occur (related to a lack of redress mechanisms), career uncertainty, fear of losing work assignments,<sup>118</sup> as well as a lack of the socialisation that typically comes from traditional workplaces. In the COLLEEM II survey, around half (49.8%) of people working through platforms agreed or strongly agreed that they experience stress in this work. High levels of competition for tasks or work assignments – which is at least in part encouraged by platforms, using behavioural nudges – was cited by 21.1% of respondents in the EIGE 2020 survey as being among the main drawbacks of working on digital platforms.

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<sup>114</sup> Garben, S. (2017). Protecting workers in the Online Platform Economy: An Overview of Regulatory and Policy Developments in the EU. European Risk Observatory Discussion paper EU-Osha. Luxembourg: Publications Office of the European Union, doi, 10, 918187.

<sup>115</sup> Bérastégui, P. (2021). Exposure to Psychosocial Risk Factors in the Gig Economy: A Systematic Review. ETUI Research Paper-Report.

<sup>116</sup> Gandini, A. (2018). Labour process theory and the gig economy. *Human Relations* 72: 1039–1056.

<sup>117</sup> Petriglieri, G., Ashford, S.J. & Wrzesniewski, A. (2019). Agony and ecstasy in the gig economy: Cultivating holding environments for precarious and personalized work identities. *Administrative Science Quarterly* 64: 124–170.

<sup>118</sup> Kaine, S. & Josserand, E. (2019). The organisation and experience of work in the gig economy. *Journal of Industrial Relations*, 61(4), 479-501.

### 2.3.1.3. Inadequate social protection

The majority of people working through platforms use platform work as a source of supplementary income.<sup>119</sup> Their main income source is often a regular full-time or part-time job, based on a standard employment contract, which entitles them to social rights and benefits, including family benefits, sickness leave, incapacity benefits, old-age benefits, unemployment benefits, vacation and others.

Nevertheless, for over 2.7%<sup>120</sup> of European daily internet users, platform work is the main source of their income and/or their main economic activity. Most of these people, like the majority of people working through platforms, are likely to be classified as self-employed. In most EU countries, self-employed persons and non-standard employees working through platforms generally have lower access and coverage under national social security schemes than traditional employees.<sup>121</sup> Although in some Member States, certain social security benefits are universal,<sup>122</sup> other benefits such as unemployment schemes are limited to employees and are tightly linked to social security contributions<sup>123</sup> (see the table below), which may be optional for the self-employed.

**Table 4. Lack of formal social security coverage for the self-employed**

Social security branch	Member States in which such benefits do not apply to all self-employed persons
Unemployment benefits	BE <sup>a</sup> , BG, CY, DE, FR, IE, IT, LV, MT <sup>b</sup> , NL, LT
Sickness benefit	MT <sup>b</sup> , NL
Accident and occupational injuries	BE, BG, CY, CZ, IE, LT, LV, NL, SK

Source: European Commission (2018), Impact assessment accompanying the Proposal for a Council recommendation on access to social protection for workers and the self-employed.

Note: The table reports in which branches and in which Member States at least one sub-group of the self-employed is excluded from formal coverage in the sense that they have no mandatory coverage and cannot opt into voluntary schemes. a) Only one or more sub-groups of the self-employed are not formally covered; b) In these Member States, only means-tested benefits are available to the self-employed, while they are excluded from contributory schemes.

Effective access to benefits such as pensions may be limited in practice as well.<sup>124</sup> This is because self-employed persons face more frequent career interruptions and job changes, and may therefore encounter difficulties in proving they have worked a minimum number of hours during a certain period to qualify for a particular social benefit.<sup>125</sup> Lower social security coverage then results in higher levels of social risk in the event of unemployment, long-term work inability or disability, poorer access to (employer-promoted) healthcare, as well as a higher risk of poverty in old age.

Furthermore, people working through platforms are responsible for declaring their income to the relevant authorities and paying taxes on a monthly or annual basis. This

<sup>119</sup> Data from 2021 survey on people working through platforms conducted by PPMI.

<sup>120</sup> Based on the 2021 survey data. See Section 5.1.1 for the methodology used for estimation.

<sup>121</sup> Based on ECE reports (2021). European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies. Luxembourg: Publications Office of the European Union.; See also European Social Policy Network (ESPN) thematic report (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe - A study of national policies. Available [here](#); Spasova, S., Bouget, D., Ghailani, D. & Vanhercke, B. (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe. A study of national policies, European Social Policy Network (ESPN), Brussels, European Commission.

<sup>122</sup> For example, Austria has a mandatory social security system that covers all forms of employment when it comes to health insurance, old age and invalidity pension insurance, and workplace accident insurance. However, gaps exist for self-employed workers with regard to sick leave and unemployment insurance.

<sup>123</sup> Based on ECE reports (2021). European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies. Luxembourg: Publications Office of the European Union.

<sup>124</sup> ESPN (2017). Access to social protection for people working on non-standard contracts and as self-employed in Europe - A study of national policies. Available [here](#).

<sup>125</sup> European Commission (2020). Study to gather evidence on the working conditions of platform workers. VT/2018/032 Final Report. Luxembourg: Publications Office of the European Union. Available [here](#).

provides an opportunity for them to under-declare their income in order to pay less taxes, which ultimately reduces their entitlement to social rights and benefits.

Meanwhile, platforms (specifically those for low-skill on-location services) are deterred from voluntarily providing additional platform-funded benefits for people working through platforms, such as private health insurance, paid leave or pension contributions. In the interviews, the majority of platforms expressed concerns that this could be used against them in reclassification cases, as proof of the existence of labour relationships (an outcome that the vast majority of platforms would like to avoid).

The **COVID-19 crisis** further highlighted the importance of access to social services and cash support. For example, given that platforms see people working through them as independent service providers, they do not usually offer provisions for those who have to take time off sick.<sup>126</sup> The EIGE 2021 survey showed that around 78% of people engaged in platform work experienced some negative effects at some point that were related to COVID-19 or lockdowns, and which affected the ability of them or their partner to work (e.g. they or their partners lost their job, encountered financial difficulties, got sick, had to take leave, needed to take care of infirm children or the elderly). However, less than half of people engaged in platform work (46.4%<sup>127</sup>) received government support (sickness or unemployment benefits, or wage support). Only a few on-location platforms voluntarily offered compensation for lost income to people working through them who became sick with COVID-19 or were required to quarantine due to coming into contact with an infected person.

#### 2.3.1.4. Limited access to collective bargaining

From the perspective of competition law, self-employed people are considered 'undertakings'. Any agreement between undertakings that affects the conditions under which these undertakings compete with one another may fall within the terms of the cartel prohibition under Article 101 TFEU, as it may be detrimental to other businesses and consumers. This limits the options available to people working through platforms for acting collectively<sup>128</sup>. The situation is partly addressed by the actions of trade unions that have opened their membership to non-standard workers and started campaigning for their rights.<sup>129</sup> Several collective agreements have been signed between trade unions and digital labour platforms, covering certain segments of online platform work in Denmark, Germany, Italy and other countries, but these remain relatively limited, and the status of these agreements with regard to competition law is still uncertain.

According to the case law of the CJEU, competition law is not infringed if collective action is undertaken by people who are falsely classified as self-employed. As previously noted, the *de facto* situation of certain groups of people working through platforms has features of an employment relationship, although they are formally classified as self-employed independent contractors. However, in order to take advantage of collective bargaining rights, such people must individually initiate a court procedure in order to become recognised as employees. This is a lengthy and cumbersome process, which means that people who have potentially been misclassified face difficulties and lengthy procedures

<sup>126</sup> The Fairwork Project (2020). The Gig Economy and Covid-19: Looking Ahead. Available [here](#).

<sup>127</sup> This refers to all the people engaged in platform work. If we look into those who experienced negative effects only, 53.8% received some kind of support.

<sup>128</sup> It is important to note that in 2020, the European Commission launched an initiative "to ensure that EU competition law does not stand in the way of initiatives to improve working conditions through collective agreements for solo self-employed where they choose to conclude such agreements, while guaranteeing that consumers and SMEs continue to benefit from competitive prices and innovative business models, including in the digital economy." The draft initiative will be published by the end of 2021.

<sup>129</sup> For example, IG Metall (Germany); Unión General de Trabajadores (UGT) (Spain); Confederazione Italiana Sindacati Lavoratori (CISL) (Italy); Federatie Nederlandse Vakbeweging (FNV) (the Netherlands) and others.

before they can take advantage of the right to bargain collectively. Furthermore, high turnover among people working through platforms, and a high degree of anonymity between them, mean that people working through platforms generally have little or no contact with colleagues on the platform,<sup>130</sup> which makes it even more difficult to take collective action aimed at of improving working conditions.

#### 2.3.1.5. Limited access to training and professional development

People working through platforms have limited access to training opportunities. Some platforms provide courses that are mostly platform-specific, for example, on how to use the various functionalities of their applications. A few platforms also offer training or provide advice on self-marketing, reputation building, and working with clients. During the COVID-19 pandemic, several platforms also provided training on how to reduce the risk of infection. Most training of this sort is, however, unlikely to improve the qualifications of people working through platforms. Platforms do not consider themselves employers, and thus do not invest in the professional development of the people who work through them (aside from the basic skills that are necessary to operate on the platform).

Self-employed people working through platforms may also find it difficult to enrol in training programmes supported by public authorities. These include active labour market policies operated by the Public Employment Services (PES), as such policies target the unemployed and/ or have other criteria for enrolment that people working through platforms may find difficult to fulfil, due to intermittent nature of the platform work.

As shown by the data from the surveys reviewed, some people – especially those carrying out on-location and online low-skill jobs, are overqualified for these tasks. They tend to have technical or university degrees and undertake such jobs due to the difficulty of finding a regular job and the need to earn extra income. Such people run the risk of finding themselves in a low-skilled 'trap': if the low-skilled platform work takes up significant share of their working time, their expertise may deteriorate, and they find may it difficult to enter more highly paid regular jobs afterwards.

#### 2.3.1.6. Barriers to claiming rights in courts

The only available options for people working through platforms as bogus self-employed to clarify their employment status are either to bring legal action in the courts (labour arbitrages), or to rely on the jurisdiction of labour inspectorates in their respective Member States. Given that the courts decide on a person's employment status on a case-by-case basis, and in light of labour inspectorates' often limited resources and powers, these courses of action may not always bring about legal clarity and often require a long time before they reach a conclusion.

Furthermore, litigation in courts is costly for the workers. These costs vary greatly between Member States, as do judicial systems. For example, variation exists as to whether such cases are litigated in labour or civil courts, whether the plaintiff needs a lawyer, whether subsidies are available for these costs, and so on (see the box below). However, in most cases, the approximate levels of legal fees amount to thousands of euros. People working through platforms may therefore be discouraged from bringing a

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<sup>130</sup> For example, 40% of people working through platforms reported never having been in contact with other online service providers on a platform through which they worked. COLLEEM survey on platform workers (2018). Joint Research Centre.

claim in the first place: either due to financial difficulties or due to practical challenges, such as when platforms require claims to be brought within a particular jurisdiction.

### Box 2. Costs of litigation in Member States: examples

**Germany:** classification of a person's status as an employee takes place before labour courts, where the plaintiff does not need a lawyer in the first instance. Because of the social function of labour courts, the legal fees of these proceedings are lower than in civil courts. In general, court costs for processes that are solely directed at determining employee status are calculated on the basis of three months of the person's salary. If a person earns EUR 2,000 gross per month, the fees would amount to EUR 364. The party that loses the proceedings must bear these costs. Should the parties settle, then they do not have to pay these costs. The costs only have to be paid after the end of the process and unlike cases in civil courts, no payment is required in advance. It is also possible to obtain subsidies for these costs (*Prozesskostenhilfe*) if the plaintiff is unable to pay these fees from their own pocket. However, the intended proceeding must have a prospect of success, and may not appear to be wanton or unjustified.

**Poland:** the Code of Civil procedure, as of 17 November 1964, with further amendments (O.J. No 43, position 296) – art. 189 – which regulates the 'action for establishment', states that the claimant may bring a case to court to establish the existence or non-existence of a legal relationship or right if he has a legal interest in doing so. It is a formal legal ground to confirm that a given legal relationship has been established. To prove the existence of an employment relationship (criteria defined in art. 22(1) of the labour code), a platform worker must confirm that his work was controlled as to the time and place, as well as being subordinated, and that they received remuneration. The reasoning is the same as in the UK courts with regard to Uber.<sup>131</sup>

In terms of costs, as a rule a statement of claim for the determination of a right or legal relationship is subject to court fee. However, the employee bringing the action is not obliged to pay the court costs (including the fee) if the value of the object of litigation does not exceed PLN 50,000 (Article 96(1)(4), in conjunction with Article 35(1) of law on the civil fees). In cases related to the determination of an employment relationship, the value of the object in dispute is the amount of remuneration for the disputed period – which may not exceed one year (Article 23(1) of the Code of Civil Procedure).

**Ireland:** Multiple methods exist whereby a platform worker may establish his or her employment status. First, the issue may be raised with the SCOPE section of the Department of Social Protection. No fee is involved, and legal representation is not required. A Deciding Officer then makes a decision, having reviewed the documentation submitted and, perhaps, having interviewed the parties. That decision may be appealed to the Social Welfare Appeals Office, but the parties to the appeal will be the Deciding Officer and the employer. The worker has the status of a witness, so there is no need for legal representation.

The second option is for the worker to bring a claim before the Workplace Relations Commission (WRC) under a piece of legislation such as the Organisation of Working Time Act 1997, which requires the worker to be an 'employee', as defined. There are no fees and charges for bringing such a claim and legal representation is not required. The WRC, however, is a cost-neutral forum so, if lawyers are engaged, the worker must pay his/her lawyers – subject to whatever agreement he/she may have with them – win or lose. Depending on the nature and complexity of the claim, the length of the hearing, whether a barrister as well as a solicitor is engaged, etc., a worker can expect legal fees of up to EUR 5,000. All WRC decisions may be appealed to the Labour Court, which is also a cost-neutral forum, but one in which the legal costs would be higher than in the WRC.

<sup>131</sup> Mishel, L. & McNicholas, C. (2021). What we learned from the UK case rendering Uber drivers employees. Economic Policy Institute. Available [here](#).

### 2.3.1.7. Asymmetries in relations between platforms and people working through them strengthened by algorithmic management

The accelerating trend towards algorithmic management in the workplace further **shifts the existing power dynamics of employment relationships** in terms of several elements.<sup>132</sup>

First, it enables platforms to carry out **surveillance and control** over service providers. Algorithmic systems may use a variety of methods to structure and control people's behaviour (even when the platforms hosting those systems are 'flexible' or voluntary). The resulting technology-enabled surveillance can generate new pressures for service providers with regard to speed and efficiency, as well as locking workers out of important aspects of decision making, such as being able to use their personal discretion. Algorithmic management practices and automated behavioural nudges (such as surge pricing, bonuses for quickly completed tasks) create incentives for stronger competition between people working through platforms, and result in abusive labour standards in terms of working time, wages, health and safety, psychosocial risks, and so on. Furthermore, platform-specific reputation systems, which involve the various metrics and indicators that digital labour platforms use to rate their users, can **have lock-in effects on specific platforms**, due to the high cost of switching to another platform and building one's reputation again from scratch.

The second major issue that negatively affects people working through platforms is **lack of transparency**. Algorithmic management creates power imbalances that may be difficult to challenge without access to information about how these systems work, as well as the resources and expertise to adequately assess them. As a result, people working through platforms are often left to gather information in piecemeal ways. For example, a review of online groups and forums shows that ride-hailing drivers are routinely unable to see how their pay rates are calculated, while delivery riders are unable to determine on what basis their rates change. People working through platforms therefore 'crowdsource' evidence of pay discrepancies and new pricing policies by discussing personal experiences or comparing screenshots in online communities. Furthermore, as the platforms' terms and conditions are implemented algorithmically, this contributes to limiting access to information regarding work organisation. This, in turn, can lead to further imbalances of power and create obstacles to the reclassification of false self-employed people, who may struggle to prove subordination. Overall, in the 2021 survey, only 20.7% of people working through platforms more than sporadically reported that they felt fully informed about how platforms make decisions related to their work.<sup>133</sup> Meanwhile, 79% of people working through platforms more than sporadically think that platforms should be more transparent about how they allocate tasks and set pay levels.<sup>134</sup>

Lack of algorithmic transparency also has negative implications for workers in 'traditional' jobs. For example, those assigned shifts through automated scheduling software may not have an insight into what data is being used to make decisions about their schedules, or why they might be assigned fewer or more erratic hours than their colleagues. In the 2021 survey, only 25.4% people in traditional jobs who reported being algorithmically managed in at least one area of their work, felt that they are sufficiently well informed as to how software or algorithms make decisions relating to their work in all areas that are applicable to them.<sup>135</sup>

<sup>132</sup> Mateescu, A. & Nguyen, A. (2019). Algorithmic management in the workplace. Data & Society, 1-15. Available [here](#).

<sup>133</sup> Q18 of the 2021 survey, share of respondents reporting "Yes".

<sup>134</sup> Strongly agree or tend to agree to statement Q23.4.

<sup>135</sup> Q43 and Q42 of the 2021 survey.

Algorithmic management also has consequences on workers in terms of **bias and discrimination**. The increasing use of rating and review systems within work contexts raises the potential for a disparate impact in employment outcomes. In the EIGE 2020 survey, 62.4% of people who had ever worked through platforms reported having experienced some kind of unfair treatment while carrying out platform work. Some of this sentiment could be attributed to algorithmic management and to a lack of fairness in the rating and ranking systems,<sup>136</sup> which were identified as problematic by 11.2% of people working through platforms. Existing research shows that customer ratings on platforms such as Uber can function as a vehicle for bias, concluding that these systems can serve as a ‘backdoor to employment discrimination.’ Drivers can, in turn, experience ratings as a source of anxiety, as a result of having little insight into how particular ratings correspond to specific platform behaviours. Because bias is introduced by consumers rather than the tech companies themselves, ratings systems potentially create an environment in which “companies may perpetuate bias without being liable for it.”<sup>137</sup>

Finally, **platforms lack accountability** for the working conditions that algorithms shape. Platform companies tend to claim that business practices implemented by computational systems are qualitatively different from management decisions made by humans. This can help to bolster their claims that workers are not employees as such, but rather networked users of a service, accessing the output of an algorithmic system.<sup>138</sup> This situation therefore contributes to the issue of misclassification: platform companies avoid traditional employer-employee accountability, or mask discrimination by hiding it behind an opaque algorithm.<sup>139</sup> Lack of change in this area may further complicate the process of addressing the issue of misclassification in the courts.

### 2.3.2. Consequences for businesses, markets and consumers

Currently, multinational platforms operate under increased legal uncertainty. Compliance with national legislation in areas of employment, as well as data and AI, entails administrative costs, due to the need to adapt to a number of different rules, which may not be coherent. According to interviews with multinational on-location platforms, this regulatory fragmentation is also an obstacle for them to introduce initiatives aimed at improving the situation of people working through platforms, such as long-term savings products or discounted insurance – which they say they would otherwise be willing to do.<sup>140</sup> Meanwhile, compliance with such a regulatory patchwork (e.g. with regard to tax obligations, the application of local minimum pay rates across jurisdictions, contributions to social security systems, compliance with procedural or administrative rules) creates an extra administrative burden for platform companies.<sup>141</sup>

The determination of jurisdiction and applicable law on the basis of a person’s habitual place of work through a platform means that platforms which operate globally need to comply with multiple regulatory regimes. Platforms can be sued in all jurisdictions in which a service provider habitually works. This will become increasingly problematic for platforms as more and more national regulations are put in place.<sup>142</sup>

<sup>136</sup> Toxtli, C., Richmond-Fuller, A. & Savage, S. (2020). Reputation Agent: Prompting Fair Reviews in Gig Markets. In Proceedings of the Web Conference 2020 (pp. 1228-1240).

<sup>137</sup> Rosenblat, A., Levy, K., Barocas, S. & Hwang, T. (2016). Discriminating Tastes: Customer Ratings as Vehicles for Bias, Data & Society: 1. Available [here](#).

<sup>138</sup> Lobel, O. (2016). The law of the platform. Minn. L. Rev. 101: 87

<sup>139</sup> Rosenblat, A., Levy, K., Barocas, S. & Hwang, T. (2016). Discriminating Tastes: Customer Ratings as Vehicles for Bias, Data & Society: 1. Available [here](#).

<sup>140</sup> Interview with representatives of online platforms.

<sup>141</sup> ILO (2019). Policy responses to new forms of work: International governance of digital labour platforms. Available [here](#), p. 6.

<sup>142</sup> Cherry, M.A. (2019). Regulatory Options for Conflicts of Law and Jurisdictional Issues in the On-Demand Economy, Working paper. Available [here](#), p. 27.

This fragmentation also creates obstacles for smaller and younger European platforms in scaling up and expanding within the EU. Entry to new markets within the EU is more difficult, due to the additional administrative and compliance efforts required. As one European platform noted in interviews, the lack of a European approach to the formalisation of platform work relationships produces difficulties in ensuring that the work carried out through platforms is declared and taxed.<sup>143</sup>

However, many large platforms appear to use this lack of legal certainty to their advantage. The misclassification of workers is common among platforms in specific sectors, and provides them with an unfair competitive advantage against platforms that employ their workers. As some platforms are not considered employers, they do not pay employment-related taxes and are not required to offer 'standard' benefits to employees such as sick days, paid leave, and so on.<sup>144</sup> This allows them to offer lower prices to end users, mostly at the expense of the labour force, who are not protected under the rights provided by labour law.

Such behaviour has broader consequences for markets, competition and consumers. Digital labour platforms, as two-sided platforms, exhibit network effects: their value to workers and consumers increases as the number of users on both sides increases.<sup>145</sup> The underlying principles of network effects imply that the platform with the highest market share will be more successful in the long run, and its market share is likely to grow more substantially. For this reason, markets in which network effects play a major role are often referred to as 'winner takes all' markets. This has already been witnessed in many EU cities and countries, as the numbers of competing platforms in certain sectors (e.g. delivery and passenger transportation) have decreased, while the platforms that remain have expanded their market shares. To achieve this, some platforms tend to compete fiercely by maintaining unreasonably low prices for their consumers, and high rewards for the people working through them, in order to 'stay in the game long enough'.<sup>146</sup> Concentration of the market in the hands of a dwindling number of competitors may, in turn, gradually result in lower worker remuneration and increasing prices of services, accompanied by shrinking consumer choice – even if currently many consumers benefit greatly from these platform services.

As presented above, competition between platforms sometimes relies on reducing the labour-related costs faced by employers, who treat workers as independent contractors. In these cases, platforms officially operate as mere 'information society service providers' to the people who work through them, and lack control over, and responsibility for, the quality of these services. They also tend not to invest in the skills and training of workers to the same extent as traditional companies. This also introduces risks to consumers – particularly in the sectors of passenger transportation, home services and delivery.

Meanwhile, the 'traditional' companies that do comply with sector-specific obligations are faced with unfair competition from labour platforms that insist they merely provide digital society services. This is of particular concern for traditional companies that compete against platforms that treat their workers as self-employed, and thereby reduce their operational costs. This allows such platforms to offer lower prices to end users/consumers. Such a situation in the market creates incentives for a 'race to the bottom' in terms of working conditions and employment practices.

The fragmented regulatory landscape across the Member States contributes to additional challenges in markets. First, this situation may create more favourable

<sup>143</sup> Interview with an online platform, June 2021.

<sup>144</sup> European Commission (2021). Consultation document: First phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work. Available [here](#), p. 22.

<sup>145</sup> Li, S., Liu, Y. & Bandyopadhyay, S. (2010). Network effects in online two-sided market platforms: A research note. *Decision Support Systems*, 49(2), 245-249.

<sup>146</sup> Interview with a stakeholder 2021-06-03.

conditions for platforms to operate in certain countries than in others, which drives labour outsourcing and offshoring. The potential for Member States to lower (or not to improve) labour standards in order to attract large multinational platform companies creates the risk of a race to the bottom in regulatory standards within the EU. Second, in the context of such fragmentation, the EU may be a less attractive location for establishing platforms than other, non-EU countries.

All aspects relating to regulatory fragmentation and existing platform practices represent a serious challenge to the scaling up of European platforms that are still at the stage of SMEs and start-ups.

### 2.3.3. Consequences for Member States

The issues presented above, which are linked to the rise of the platform labour economy, inevitably have consequences for the Member States more broadly.

To begin with, Member States lose potential income from taxes and social security contributions due to several aspects of the current *status quo*. First, people working through platforms are in a position (or have an incentive) to under-report their taxable income in income declarations, since platforms typically do not take responsibility for paying payroll taxes and value-added taxes; neither do they assume responsibility for reporting the income of people working through platforms to national authorities. Second, even among those workers who declare their platform income accurately, many operate as independent contractors and are therefore subject to lower social contributions and other taxes than employees. The resulting loss of income and increased fiscal costs are likely to become even more problematic in the longer term, due to ongoing demographic changes.

Furthermore, cross-border platform work introduces additional risks. First, in the absence of reporting obligations and systems, platform work may be undeclared and under-declared. Second, while no empirical research has been carried out to evaluate the scale of this phenomenon, it can be assumed that the lack of clarity regarding the applicable social security rules may incentivise people working through platforms to select the country in which they are to be insured (e.g. where social security contributions are lower), for the purpose and/or with the result of evading the law of another country (which would be competent under the Regulation 883/2004 on the coordination of social security systems). Third, the cross-border operation of platforms exacerbates problems relating to the identification of which party is responsible for contributing to social insurance and complying with tax obligations. Lastly, cross-border situations also give rise to problems with the monitoring and enforcement of local regulations, e.g. payment of the local minimum wage by foreign clients for whom the services are provided.

In the absence of unambiguous EU regulation, people working through platforms often have no choice but to take legal action to clarify their employment status and improve their working conditions. This leads to the courts making policy: without regulation, it is left to court decisions to determine how platform work, platforms or services are classified. Such a situation not only creates additional costs for judicial systems, but can also create difficulties in jurisprudential enforcement – particularly in cases when courts arrive at conflicting decisions in similar cases. Meanwhile, as presented in the tables below, the number of reclassification cases brought before courts has grown significantly

in during 2019 and 2020, and have increasingly resulted in the reclassification of people working through platforms.

**Table 5. Number of reclassification cases, by country and outcome**

Country	Decision to reclassify	Decision confirming self-employment status	Mixed: third status or two possible statuses	No decision/pending decision	Overruled*	Total number of court cases**
BE	2	2	0	1	1	6
DE	1	3	0	0	1	5
DK	0	1	0	0	0	1
ES	36	1	3	0	5	45
FR	9	11	0	1	3	24
IE	2	0	0	0	0	2
IT	2	1	5	0	1	9
LU	0	0	0	1	0	1
NL	2	2	0	2	0	6
SE	2	2	0	0	0	4
<b>Total</b>	<b>56</b>	<b>23</b>	<b>8</b>	<b>5</b>	<b>11</b>	<b>103</b>

Source: Compiled by PPMI, based on data from Hießl, C. (2021). European Centre of Expertise in the field of labour law, employment and labour market policies (ECE). Jurisprudence of national courts confronted with cases of alleged misclassification of platform workers: comparative analysis and tentative conclusions. Luxembourg: Publications Office of the European Union.

Note\*: 9 out of 11 decisions that were overruled resulted in the previous decision (which either confirmed self-employment or conferred a third category status) being changed to that of employee status; one decision was overruled, changing the previous decision confirming self-employment to that of a third category status; 1 appeal case is still pending.

Note\*\*: The total number of court cases clarifying the status of people working through platforms or addressing their working conditions.

Table 6. Decisions in misclassification cases, by year and outcome

Year	Decision to reclassify	Decision confirming self-employment status	Mixed: third status or two possible statuses	No decision/pending decision	Overruled*	Total number of court cases**
2015	0	2	0	0	0	2
2016	2	3	0	1	0	6
2017	2	5	0	0	1	8
2018	7	5	1	0	4	17
2019	17	6	3	1	6	33
2020	26	1	1	2	0	30
2021	2	1	3	1	0	7
<b>Total</b>	<b>56</b>	<b>23</b>	<b>8</b>	<b>5</b>	<b>11</b>	<b>103</b>

Source: Compiled by PPMI, based on data from Hießl, C. (2021). European Centre of Expertise in the field of labour law, employment and labour market policies (ECE). Jurisprudence of national courts confronted with cases of alleged misclassification of platform workers: comparative analysis and tentative conclusions. Luxembourg: Publications Office of the European Union.

Meanwhile, policy making in the area of platform work, as well as the enforcement of existing regulation, is further complicated by insufficient access to data and information on platforms and the people working through them. Because most labour platforms are not considered employers, they are not bound by the corresponding reporting obligations to national authorities. In addition, because platform business models are built around data, they tend to protect it as a business secret, and do not share such information with workers or the authorities.

As previously mentioned, platform-mediated transactions are often invisible to national tax authorities. Furthermore, a lack of efficient information-sharing processes between countries impedes the collection of income data for the purposes of social contributions. Overall, obtaining data from international platforms operating from other Member States or from outside the EU presents more problems than obtaining such data from locally registered platforms, as does bringing such platforms into compliance with local tax and social security regulations.

### 3. Why should the EU act?

#### 3.1. The legal basis for EU action

Based on the EU's principles regarding the division of competences,<sup>147</sup> Article 151 of the TFEU provides that the Union and the Member States should have as their objectives “the promotion of employment, improved living and working conditions, to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a

<sup>147</sup> Available [here](#).

view to lasting high employment and the combating of exclusion". To achieve these aims, Article 153 TFEU establishes that:

- "with a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: (b) working conditions" (Article 153(1)(b));
- to this end, the European Parliament and the Council "may adopt...by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings." (Article 153(2)(b)).

This legal basis enables the EU to set minimum standards for the working conditions of people working through platforms, under which they are regarded as being in an employment relationship and are thus considered *workers*. The CJEU, in turn, has ruled that "the classification of a 'self-employed person' under national law does not prevent that person being classified as a worker within the meaning of EU law if his independence is merely notional, thereby disguising an employment relationship". Falsely self-employed people would thus also be covered by EU labour legislation.<sup>148</sup>

Hence the measures in the initiative relating to the issue of the employment status of people working through platforms, as well as their working conditions (including those determined by algorithms), would rest on the basis of Article 153 of the TFEU. This states that, to adopt such a type of Directive, "the European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions."

With regard to the challenges relating to platform work for people in genuine self-employment, Union action can also be pursued on the basis of Article 352 of the TFEU, which contains a provision that allows the Council to adopt appropriate measures to attain objectives laid down by the Treaties, where the Treaties themselves have not provided the necessary powers. In addition, Article 53(1) of the TFEU empowers the Union to issue Directives to coordinate national provisions concerning the taking-up and pursuit of activities under the status of self-employment. Meanwhile, a legal instrument relating to cross-border platform work, which would include in its personal scope the self-employed, could use as its basis Article 114 of the TFEU, on the adoption of initiatives/measures aimed at improving the functioning of the internal market.

Overall, the initiative on improving the working conditions of people working through platforms will support the Union's aims recognised in Art. 3(3) of the Treaty on the EU: namely, to ensure that the internal market "shall work for the sustainable development of Europe based on balanced economic growth and price stability", as well as "a highly competitive social market economy, aiming at full employment and social progress". It will also serve to "combat social exclusion and discrimination, and shall promote social justice and protection".

Furthermore, the initiative will respond to Art. 9 of the TFEU, which states that "In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health".

<sup>148</sup> CJEU, cases C-256/01, Allonby, and C-413/13, FNV Kunsten Informatie en Media.

In addition to this, the initiative will promote the aims of the Charter of Fundamental Rights of the European Union, as reflected in Article 27, dedicated to workers' rights to information and consultation within the undertaking, and Article 31 on fair and just working conditions.

### 3.2. Subsidiarity: necessity and added value of EU action

As outlined above, problems relating to the misclassification of the employment status of people working through platforms, as problems with their working conditions that relate to algorithmic management and cross-border work, are widespread across the Member States. Regulators struggle to keep up with the rapid developments in the platform economy, which create new forms of economic activities and often result in regulatory grey areas. As a result, lower levels of regulation of the platform economy, when compared with the corresponding sectors of the 'traditional' economy, can lead to unfair competition at the expense of the labour force.

Individual Member States can – and have – taken measures to improve this situation. Several countries have passed regulations; national court rulings have reclassified people as employees, and a number of Member States are in the process of national debates on the subject. However, some of the national measures and court decisions in individual member States have gone in different directions. The ongoing debates in a number of Member States also do not mean that they necessarily plan to take action. In many countries, this policy area has received little attention in general. Individual Member States may hesitate to regulate in this area on their own, as they may experience pressure from platform companies and other interest groups, or may fear disadvantaging their consumers or the competitiveness of their companies and workers. As a result, legal protections and rights for people working through platforms often hinge on the classification of their employment status. Thus, their position in the labour market differs between one Member State and another – even where labour law minimum standards set by Directives apply to all workers in the EU.

The fragmentation of existing regulation within the EU also leaves digital labour platforms operating in different countries subject to different regulations. Platforms operate in different Member States under different jurisdictions, while case law is likely to direct countries into increasingly different directions. These differences in national regulation could prevent the potential of digital labour platforms operating across borders within the EU from being fully explored. Interviews with platforms confirmed that regulatory fragmentation raises issues in most sectors of platform work. The current situation results in increased administrative burden, stifles innovation, as well as posing a barrier to scaling up European-based platforms – and thus hindering their international competitiveness. Given the flexible, mobile and rapidly evolving nature of the platform economy, this lack of a common approach will create difficulties in maintaining a level playing field among the Member States.

EU action is therefore desirable to ensure that growth and innovation in the digital labour platform economy develops together with adequate labour standards for the people who work through platforms. Action at EU level would provide an opportunity to build on the good practices developed in some Member States, and to create momentum for the Member States to advance together towards better outcomes, supporting upward convergence. Moreover, since national approaches to the question of algorithmic management at work are scant and divergent, European leadership in the digital economy can help to support market innovation and entrepreneurship by building upon

ongoing digital initiatives (notably the Digital Services Act, Artificial Intelligence Act and the General Data Protection Regulation).

Furthermore, since an estimated one-third of EU-based platform work is performed across borders,<sup>149</sup> action at EU level is the most appropriate means to determine the minimum levels of protection for workers across the EU, no matter which country they physically conduct their work activities in. Otherwise, the CJEU will continue to be faced with the difficult balancing exercise between the two fundamental Treaty principles – economic freedom and social rights – as well as establishing the extent of competition that is possible among the labour law systems of the Member States.<sup>150</sup>

Action at EU level would add value in terms of establishing minimum standards below which Member States cannot compete, as well as providing a framework for national policy measures and ensuring that actions are aligned across the Member States. This would contribute to creating a level playing field in the internal market. EU action could also help to avoid distortions of competition and ensure that all Member States move in the same direction.

Besides maintaining a well-functioning Single Market and creating legal certainty for platforms, Member States and other stakeholders, EU-level action would help to prevent a ‘race to the bottom’ with regard to the minimum labour and social rights for all workers in the EU and social dumping, as well as unfair competition based on social costs. It would therefore support upward convergence and the implementation of a number of principles of the European Pillar of Social Rights, including in the areas of fair working conditions, and social protection and inclusion.

### 3.3. Objectives: what is to be achieved?

The initiative on improving working conditions in platform work aims to contribute to the implementation of the EU’s principles and objectives in several policy areas.

First, the initiative is intended to address, through EU-level action, challenges that directly relate to several of the principles set out in the **European Pillar of the Social Rights**. Most importantly:

- **Principle 5 on ‘Secure and adaptable employment’**, which provides that “regardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training... Innovative forms of work that ensure quality working conditions shall be fostered. Entrepreneurship and self-employment shall be encouraged. Occupational mobility shall be facilitated... Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts...’.
- **Principle 7 on ‘Information about employment conditions and protection in case of dismissals’**, which proclaims that “Workers have the right to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including on probation period”. It also provides that they have “the right to be informed of the reasons and be granted a reasonable period of notice”, as well as “the right to access to effective and

<sup>149</sup> *Ad hoc* calculations based on JRC (2018).

<sup>150</sup> Carinci, M.T. & Henke, A. (2020). Employment Relations via the Web with International Elements: Issues and proposals as to the applicable law and determination of jurisdiction in light of EU rules and principles. *European Labour Law Journal*. Sage journals. p. 13.

impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation”.

- **Principle 10 on ‘Healthy, safe and well-adapted work environment and data protection’**, which provides that “workers have the right to a high level of protection of their health and safety at work [and]... a working environment adapted to their professional needs and which enables them to prolong their participation in the labour market. Workers have the right to have their personal data protected in the employment context”.
- **Principle 12 on ‘Social Protection’**, which states that “regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection”.

Second, the initiative relates to the EU’s ambition to be **digitally sovereign in an open and interconnected world**, and to pursue digital policies that empower people and businesses to seize a human-centred, sustainable and more prosperous digital future. This vision is outlined in the Communications on ‘**2030 Digital Compass: the European way for the Digital Decade**’<sup>151</sup> and ‘**Shaping Europe’s Digital Future**’,<sup>152</sup> which laid down a framework of digital rights and principles that will help to promote and uphold EU values in the digital space.

The **general objectives** of the initiative are therefore to:

1. Improve the working conditions and social rights of people working through platforms, with aim of supporting conditions for the sustainable growth of digital labour platforms in the European Union.

The **specific objectives** through which the general objectives will be addressed are to:

1. Ensure that people working through platforms have – or can obtain – the correct legal employment status in light of their relationship with the platform, and gain access to the labour and social protection rights thereof.
2. Ensure fairness, transparency and responsibility in algorithmic management in the context of platform work.
3. Enhance transparency, traceability and knowledge of developments in platform work and improve enforcement of the applicable rules for all people working through platforms, including those operating across borders.

## 4. What are the available policy measures?

The list of policy options assessed in this assignment focuses on addressing three core issues relating to the current *status quo* of platform work:

- **Misclassification of employment status** of people working through platforms who operate as independent contractors, but are in a *de facto* subordinate employment relationship. The goal is to ensure the correct classification of

<sup>151</sup> European Commission (2021). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2030 Digital Compass: the European way for the Digital Decade*. Available [here](#).

<sup>152</sup> European Commission (2020). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Shaping Europe’s digital future*. Available [here](#).

workers and reduce the grey area between dependent employment and self-employment.

- Fairness and transparency of the **algorithmic management practices** applied by labour platforms. The goal is to provide workers with the necessary information about how their work and assignments are allocated, how accounts are ranked or terminated, and other important aspects, as well as ensuring human oversight in decisions that are important for platform workers, and in redress mechanisms.
- **Enforcement, transparency and traceability of platform work, including in cross-border situations.** The goal is to increase the transparency and facilitate easier access to information for regulators, enforcement authorities, platform workers, and other relevant stakeholders.

The policy measures considered vary in terms of their **material and personal scope** (wider or narrower), coverage of different **platform types**, as well as the **strength** (binding or non-binding in nature) of the new rights and obligations. Regarding the last of these aspects, the specific instruments could range from legislative action based on Art. 153 of the TFEU (i.e. directives), to non-legislative instruments such as, for example, monitoring within the framework of the European Semester, guidance on ensuring fair platform work, or reinforced mutual learning between Member States. The various combinations of measures in each of the core areas of intervention constitute several policy areas. Here, we present these policy options in further detail.

#### 4.1. Policy options addressing the risk of misclassification (Policy Area A)

An employment relationship, or absence thereof, determines entitlements to many existing rights and protections, both at Member State and EU level. Only people who are classified as workers have access to the full set of labour rights, which relate to collective bargaining, working time, paid annual leave, maternity, paternity and parental leave, and occupational health and safety. Workers have easier access to social protection, although gaps remain for non-standard workers.

The policy options for the initiative to address Policy Area A – the misclassification of employment status in platform work – range from ‘softer’ measures such as guidance, to legally binding instruments, (directives). More specifically, the following measures will be assessed:

- **A1: Interpretation and guidance** of national (and EU) case law on the concept of the worker<sup>3</sup>; in particular, reclassification litigation in the platform economy. **Non-binding guidance** on the approach to reclassification claims and on possible criteria or indicators determining the existence of an employment relationship (or of self-employed activity) in platform work.
- **A2: Shift in the burden of proof and measures to improve legal certainty.** This option would introduce legally binding **procedural facilitations**, both for misclassified self-employed people working through platforms to challenge their employment status, and for digital labour platforms to ascertain the correct employment status for a given business model. These would include:
  - **Shift in the burden of proof.** To contest their self-employed status in legal proceedings, persons performing platform work would only have to establish basic facts indicating the existence of an employment relationship (*prima facie* evidence). Once this is established, it would be for the platform operator to prove that the person is in fact self-employed.

- **Certification procedure** for work-related contracts, carried out at the request of either party by labour authorities or by independent bodies.
- **Clarification** that insurance, social benefits and training measures voluntarily provided or paid for by platforms should not be considered as indicating the existence of an employment relationship.
- **A3: Rebuttable presumption** of the existence of an employment relationship. The person would have to establish that they have a contract with the platform to provide services. This would suffice in order for the burden of proof to shift to the platform operator, which – to counter the claim – would then have to establish that the person is in fact self-employed.

The measures considered under this policy area may differ in terms of personal scope. They are summarised in the table below.

**Table 7. Policy Area A: employment status of people working through platforms**

	Scope		Measures
	Workers	Platforms	
Option A1			Interpretation and guidance
Option A2	All platform workers (i.e. people working through platforms, except the genuinely self-employed)	All digital labour platforms	Procedural facilitations (including a shift in burden of proof, certification procedure and clarification on benefits provided by platforms to the self-employed)
Option A3a	All platform workers engaged in the provision of on-location services	Digital labour platforms for on-location services	Rebuttable presumption applied to on-location platforms
Option A3b	All people working through platforms who are exposed to a certain level of platform control	All digital labour platforms that exercise a certain degree of control	Rebuttable presumption applied to platforms that exercise a certain degree of control
Option A3c	All people working through platforms	All digital labour platforms	Rebuttable presumption applied to all digital labour platforms

## 4.2. Policy options addressing algorithmic management (Policy Area B)

To promote an EU-level approach to fairness and transparency in automated decision making, the new initiative could build upon existing instruments (labour law, GDPR, P2B) and proposed ones (AI Act, DSA) to introduce new rights in this area. The Commission is considering several alternative sets of rights for people working through platforms, ranging from basic to advanced:

- **B1: Guidance.** Introducing non-binding **guidelines** regarding possible Member State actions to strengthen platform workers' rights regarding algorithmic management.

- **B2: Transparency, consultation, human oversight and redress.** Building on existing data protection legislation by creating new labour rights and obligations for digital labour platforms [/employers] with regard to:
  - **transparency** of automated monitoring and decision-making systems towards the people affected by them, their representatives and labour inspectorates;
  - **information and consultation** with worker representatives regarding substantial changes to work organisation or in contractual relations linked to algorithmic management;
  - **human oversight**/review of significant individual decisions taken by algorithms (e.g. termination and suspension of accounts or decisions with similar effects); protection against undue repercussions for human supervisors;
  - **review of significant decisions** taken by algorithms in individual cases (e.g. restriction, termination and suspension of accounts or decisions with similar effects): obligation for platforms to provide a statement of reasons, to ensure access to a contact person, and to respond to requests to reconsider such decisions within a reasonable time period (e.g. one week, possibly longer for SMEs);
  - internal **complaint-handling procedures** to address complaints and settle disputes;
  - conducting **risk assessments** on the impact of algorithmic management on the safety and health of workers.
  
- **B3:** Expanding the package of rights presented under B2 with the portability of reputational data. Digital labour platforms would need to make their reputational systems interoperable to ensure that such data could be transferred easily.

The measures considered under this policy area may also differ in terms of personal scope. They are summarised in the table below.

**Table 8. Policy Area B: algorithmic management**

	Scope		Measures
	Workers	Platforms	
Option B1	Platform workers and platform self-employed	All platforms	Guidance
Option B2a	Platform workers in employment relationship	All platforms	New labour rights regarding transparency, consultation, human oversight and redress
Option B2b	Platform workers and platform self-employed	All platforms	
Option B2c	Employed platform workers and all employed workers subject to algorithmic management	All platforms and companies applying algorithmic management	
Option B3a	Platform workers in an employment relationship	All platforms	New labour rights regarding transparency, consultation, human oversight, redress AND the portability of reputational data
Option B3b	Employed platform workers and platform self-employed	All platforms	

### 4.3. Policy options on enforcement, transparency and traceability, including in cross-border situations (Policy Area C)

Cross-border platform work creates additional challenges for national authorities, related to verifying platforms' compliance with existing laws and their enforcement. The initiative will therefore consider measures to increase the transparency of platform operations. The policy options aimed at improving the cross-border fairness and transparency in platform work include several types of guidance and reporting requirements for platforms:

- **C1: Guidance.** Introducing **non-binding guidelines** with regard to possible Member State actions to introduce **information requirements or registers of platforms**, as well as providing interpretation and guidance for platforms and workers regarding existing EU legislation (labour law, social security coordination, rules regarding jurisdiction and applicable law) and its implications for cross-border platform work.
- **C2:** Introducing **requirements for platforms to publish** (via their websites, or otherwise make publicly available) their active terms and conditions, as well as information on how many people work through them, and under what employment status. Such information would have to be published on a regular basis or provided to relevant authorities and stakeholders upon their request. Such obligations could concern platforms of a specified size.
- **C3:** Establishing a **central register at national level** that would include all platforms active within the respective Member State. This register could also include the active terms and conditions of each platform, and the number of people working through it and under what status, thereby bringing greater transparency and easier access to information for regulators, enforcement authorities, platform workers and other relevant stakeholders. Provisions could also be made for the possibility of platforms sharing more detailed information with enforcement authorities upon request.

**Table 9. Policy Area C: cross-border transparency**

	Scope	Measures
Option C1	All platforms	Guidance
Option C2		Publication requirement for platforms
Option C3		National register of platforms

### 4.4. Accompanying measures

All policy options within the three issue areas presented above can be introduced in combination with several accompanying measures. The accompanying measures considered include:

- **Establishing enforcement provisions**, such as the right to redress, procedures on behalf or in support of workers (e.g. by trade unions), the right to

compensation, protection from dismissal for claiming rights, access to evidence and penalties.

- **Providing advice and guidance to people working through platforms** on the tax, social security and/or labour law obligations of their platform activity via information websites and hotlines.
- **Supporting social dialogue and capacity building for social partners in platform work**, including the establishment of communication channels allowing worker representatives to provide information to people working through platforms.
- **Encouraging the establishment of ombudsman institutions** at national level to mediate between platforms and the people working through them.

## 5. Assessment of the impacts of Policy Area A: policy options addressing the risk of misclassification

### 5.1. The baseline

#### 5.1.1. Number of people working through platforms

The first step in defining the direct and indirect costs and benefits of Policy Area A in relation to the baseline is to **determine the baseline number of people working through platforms across the EU who are currently misclassified and would be affected by the reclassification of their employment status.**

This task is complicated by the fact that, unlike some other types of non-standard work, no comparable EU-level statistics exist regarding the number of people engaged in this type of labour activity post-COVID-19, covering all Member States. The relevant indicators are not measured in the EU-wide Eurostat surveys, nor are they collected by national statistics offices using comparable methodologies. We therefore apply a combination of sources (and assumptions concerning similarities between the countries covered and not covered by the surveys) to estimate the share of people working through platforms that would be affected by Policy Area A.

We began by using the **2021 survey of people working through platforms** carried out for this study to support the impact assessment, to estimate the prevalence rates. This methodology used in this survey allowed it to be compared with earlier surveys such as COLLEEM 2018. This comparison indicates a notable growth in platformwork during the COVID-19 pandemic (for more details, see Section 2.1.1). The findings of the 2021 survey also indicate that a large share of people who worked through platforms between December 2020 and May 2021 began these activities in the period 2019-2021 (57.7%). If we view the COLLEEM figures in the light of this new information (assuming that some people who worked back then ceased their activities, and many new ones started), the six-month prevalence rates of the 2021 survey seem reasonable.

The **country selection** for the survey followed a specific methodology, according to which the survey countries represent, on several indicators, broader regions/ clusters of countries similar in terms of the selection criteria (geography, use of internet, use of

platforms, labour market indicators; see Annex 4F). Due to its quota sampling design and the application of weights, our survey sample in the selected countries technically represents 201 million EU-27 daily internet users (out of total of 265 million). Based on this, we assume that **the prevalence rate in the survey countries approximates to the prevalence rate across the EU-27.**

While the survey provided data on **how many people worked through platforms at least once during a period of six months**, this definition is too broad to capture the numbers of people who would be directly affected by the initiative. As in the COLLEEM analysis,<sup>153</sup> we therefore use frequency, hours and income generated from platform work to narrow down the definition and categorise the intensity of platform work (also see the table below):

- Those who had provided labour services via platforms, but had last done so more than a month ago<sup>154</sup> (therefore, those working less than once a month) were classified as people in **sporadic** platform work. This category is not included in most of the analysis.
- Those who had worked through platforms in the month prior to the survey, but who spent less than 10 hours a week on platforms and earned less than 25%<sup>155</sup> of their income via platforms, were classified as people in **marginal** platform work.
- Those who worked through platforms in the month prior to the survey, and spent between 10 and 19 hours per week or earned between 25% and 50% of their income via platforms, were classified as people in **secondary** platform work. Like the COLLEEM researchers, we also included in this category those platform workers who provided inconsistent information in terms of income and hours: those who spend more than 20 hours a week doing platform work but said they earn less than 25% of their personal income via platforms; and those who report that they earn more than 50% of their income via platforms, but say they spend less than 10 hours a week on platform work.
- Those who provided labour services via platforms during the previous month, and who worked through platforms at least 20 hours a week or earned at least 50% of their income (excluding the cases mentioned above) were classified as people in **main** platform work.

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<sup>153</sup> Brancati, U., Pesole, A. & Fernández-Macías, E. (2020). New evidence on platform workers in Europe. Results from the second COLLEEM survey; p 15.

<sup>154</sup> According to Q7 of the 2021 survey.

<sup>155</sup> Q11 and Q51 of the 2021 survey.

**Table 10. Classification of platform work, by time and income**

	Less than 10 hours a week	Between 10 and 19 hours a week	More than 20 hours a week	No answer
Less than 25% of monthly income	Marginal	Secondary	Secondary	Marginal
25-50% of monthly income	Secondary	Secondary	Main	Secondary
More than 50% of monthly income	Secondary	Main	Main	Main
No answer	Marginal	Secondary	Main	N/A

Source: Brancati, U., Pesole, A. & Fernández-Macías, E. (2020).

The prevalence of each category of platform work was estimated in the survey dataset, and was multiplied by the number of people aged 16-74<sup>156</sup> and the share of daily internet users<sup>157</sup> in the EU-27, to estimate the total number of people potentially affected by the initiative. In total, we estimate that **28.3 million people in EU-27 worked via platforms more than sporadically** (i.e. as their main, secondary or marginal job) between December 2020 and May 2021.

It is important to note that these estimates are upper-bound figures, based on triangulation with available administrative data. For example, as we discuss below, during Q2 2020, 141,000 micro-entrepreneurs in France were registered as working in transport and delivery sectors.<sup>158</sup> The equivalent figure, based on PPMI 2021 survey data, stands at 505,000 people. While the survey is likely to over-estimate people generating income through platforms, the figure based on administrative data is likely to be an underestimate. The true number might be higher because the figure does not take into account those who are employed by platforms, or those who work through platforms without registering with public authorities. Furthermore, the delivery sector grew substantially during the pandemic. This growth is captured by the data reported in the survey, given that it was collected in 2021, but is missing from the administrative data. Finally, the practice of renting out one's account to a number of third-country nationals, prevalent in ride-hailing and delivery work, would again increase the true number of people working through these platforms.<sup>159</sup>

Another major issue concerning data availability relates to the more specific question of the **extent to which the employment status of people working through platforms is misclassified**. Several factors contribute to this. First, determining the employment status of people working through platforms is in general a complicated question, which – as many cases identified in the Member States show<sup>160</sup> – is brought before the courts in individual cases. Therefore, the actual extent of misclassification is very difficult to estimate. Neither EU-level nor consistent national level data exists on misclassification. Moreover, no unified criteria for determining employment status exist across the EU. Individual Member States may regard people in identical employment situations differently in terms of their employment status. Therefore, determining the possible extent of misclassification using a self-administered online survey that relies on self-reporting by respondents, may not produce the most reliable information even if we examine a large number of indicators that might serve as criteria. We therefore apply the

<sup>156</sup> Eurostat, [DEMO\_PJANGROUP]

<sup>157</sup> As this was the target population of the survey; Eurostat [isoc\_ci\_ifp\_fu].

<sup>158</sup> The figure relates to those administratively active. URSSAF (2021). Auto-entrepreneurs, par secteur d'activité.

Available [here](#).

<sup>159</sup> Alderman, Liz (2019). Food-Delivery Couriers Exploit Desperate Migrants in France. *The New York Times*. Available [here](#).

<sup>160</sup> See Annex 1.

approach of using a number of indicators in the survey to narrow down the numbers of people who are most at risk of misclassification:

- To begin with, these are people who **work through platforms more than just sporadically** (including both paid and unpaid working time).<sup>161</sup> This group is then broken down into the narrower categories defined above, upon whom the policy options may have different impacts.
- Furthermore, as discussed in Section 2.2.1, certain sectors (or **types of work**) within the labour platform economy are more likely to suffer the issue of misclassification than others. This is related in particular to low-skill, on-location work, such as ride hailing, delivery services (the estimated number of people for whom this is a non-sporadic platform activity is around 2.78 million in the EU-27). However, the different policy options considered may affect different types of platform work, so the table below (and the tables that follow) provide estimates for each.

**Table 11. Estimated numbers of people working through platforms in the EU-27, by type and intensity of work**

	Main	Secondary	Marginal	Total
Low-skill on-location	1,043,000	1,993,000	1,148,000	4,184,000
...of these transportation or delivery	768,000	1,370,000	639,000	2,777,000
High-skill on-location	471,000	1,058,000	311,000	1,840,000
Low-skill online	1,810,000	4,563,000	3,380,000	9,753,000
High-skill online	3,762,000	6,492,000	2,257,000	12,511,000
<b>Total</b>	<b>7,086,000</b>	<b>14,106,000</b>	<b>7,096,000</b>	<b>28,288,000</b>

Source: estimates based on 2021 survey.

- Although, as mentioned above, different Member States define the criteria for an employment relationship in various ways, some of the principal indicators aimed at determining **subordination** are mostly consistent (e.g. autonomy or lack thereof in choosing tasks/projects, timeframes and setting costs, etc.) At the same time, however, they are difficult to capture, particularly using survey self-reports. We therefore include two indicators from the survey as proxies to determine groups of people in which relationships of subordination are most likely: situations in which platforms set working schedules or minimum work periods;<sup>162</sup> and in which workers cannot set their own prices.<sup>163</sup> We also assume that platforms set pay rates for all people who work through transportation and delivery platforms, based on observed business practices. Estimates of the size of this group, based on the 2021 survey data, are presented by type and intensity of platform work in the table below.

<sup>161</sup> This threshold allows us to avoid inflating the numbers of people actually working through platforms, which, as explained above, tends to be overestimated in one-off, online surveys.

<sup>162</sup> Q15\_1 = "Yes".

<sup>163</sup> Q15\_9 = "No".

**Table 12. Estimated numbers of people working through platforms in the EU-27 who cannot set their schedules or pay rates, by type and intensity of work**

	Main	Secondary & Marginal	Total
Low-skill on-location	764,000	1,244,000	2,008,000
...of these transportation or delivery	574,000	967,000	1,541,000
High-skill on-location	***	280,000*	339,000*
Low-skill online	402,000	847,000	1,249,000
High-skill online	497,000	1,414,000	1,911,000
<b>Total</b>	<b>1,723,000</b>	<b>3,785,000</b>	<b>5,508,000</b>

Source: estimates based on 2021 survey. \*Estimates are based on a small sample size. \*\*\*Sample size is too small to display values.

It is important to note that the criteria listed above (and the resulting figures) denote those groups of people in various modes of platform work within which **misclassification is more likely**. In other words, not all of the people who fall within each of these groups may be misclassified, because this depends both on national legislation and the actual circumstances of specific employees. Nevertheless, we consider these criteria as a useful proxy for estimating the possible upper limit of the numbers of people at risk of misclassification.

These figures may also include people who are already in formal employment relationships with the platforms they work for, or with relevant third parties. The latter may vary from fleet companies (particularly in the ride-hailing and delivery sectors) and temporary work agencies, to freelancer cooperatives. Didaxis<sup>164</sup> and the SMART<sup>165</sup> cooperative are examples of third parties that provide employment contracts to people working through platforms as freelancers. Unfortunately, insufficient data exist to estimate the numbers of such people.

### 5.1.2. Projected growth of the platform economy and platform work

It can be expected that without EU-level intervention, the absolute numbers of people working through platforms will grow, and so will the numbers of people at risk of (or in the situation of) misclassification of their employment status. More people and companies, therefore, will experience the costs and benefits of platform work, presented in detail in the sections above.

In the sections that follow, we estimate the projected growth in the number of platforms in EU-27, as well as the likely growth in the number of people working through on-location and online platforms. For on-location platforms, the analysis is limited to the transport sector because reliable administrative data are available for this sector of the platform economy. Nevertheless, the section ends with a projection that takes into account both online and on-location work at EU-27 level.

In brief, the projections highlight **several key messages** concerning the outlook for platform work:

<sup>164</sup> See more: <https://www.didaxis.fr/>

<sup>165</sup> See more: <https://smart.coop/>

- First, the number of digital labour platforms has grown incrementally and is likely to continue doing so over the next few years, though we ultimately expect the number of platforms to decrease as platforms consolidate and less competitive ones are pushed out of the market – although the revenues of the platform economy will continue to grow.
- Furthermore, we estimate that the number of people working through transportation platforms will more than double between 2020 and 2024, and to quadruple by 2030. Some evidence exists that this rapid growth is characteristic not only of the transportation sector, but the on-location platform economy overall. Meanwhile, the estimated growth in the number of freelancers working through online platforms is somewhat lower compared with transportation platforms, based on the trends observed in historical data.

### 5.1.2.1. Platforms and their revenues

The number of **on-location** platforms grew rapidly between 2010 and 2017, but their growth has slowed in the last three years. As a result, we expect the number of on-location platforms to continue growing in the near future, but at a slower pace than was observed in the first half of the last decade, and ultimately beginning to decline (see the figure below).

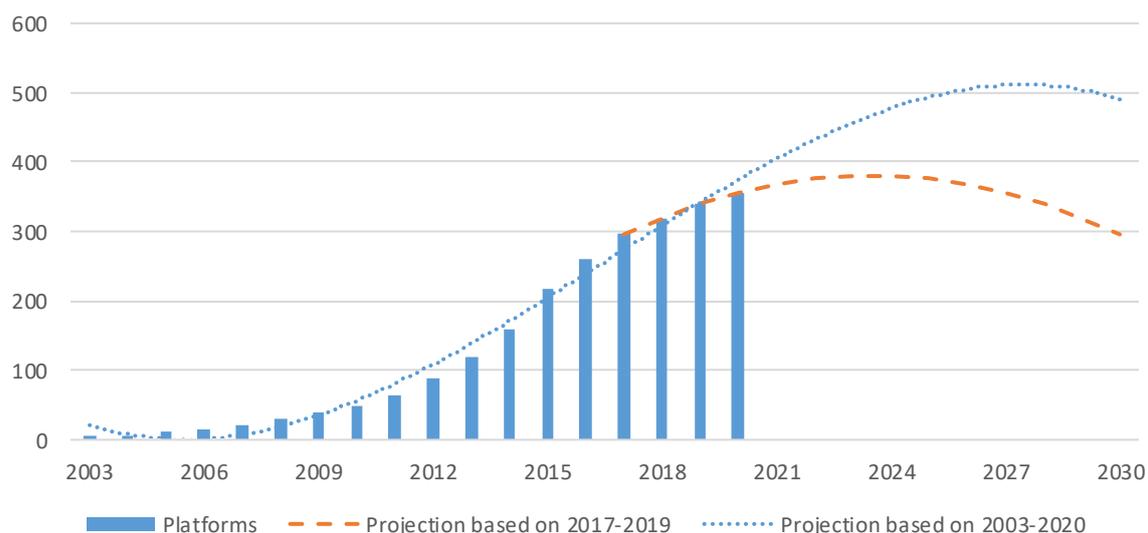
The decline in the number of platforms will be influenced by multiple factors. **Larger platforms are already merging with or buying smaller ones.**<sup>166</sup> This may in turn force the less successful platforms to exit the market, as it becomes increasingly difficult to compete with the largest market players. Second, **legal fragmentation** in the regulation of platform work results in non-compliance costs (i.e. fines issued to platforms in misclassification cases). These range from tens to hundreds of millions euros per year.<sup>167</sup> These costs are likely to grow in the future, given the increasing trend observed over recent years.<sup>168</sup> This will encourage platforms to **exit more stringent markets**, while growing where the regulation is more lax. However, only large platforms will be able to grow their businesses in an environment of such legal uncertainty, once again leading to market concentration and an overall decline in the number of platforms.

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<sup>166</sup> De Groen, W.P., Kilhoffer, Z., Westhoff, L., Postica, D. & Shamsfakhr, F. (2021). Digital labour platforms in the EU: mapping and business models. Final report for the European Commission.

<sup>167</sup> See Table 18, Section 5.1.5.

<sup>168</sup> See Figure 21, Section 5.1.5.

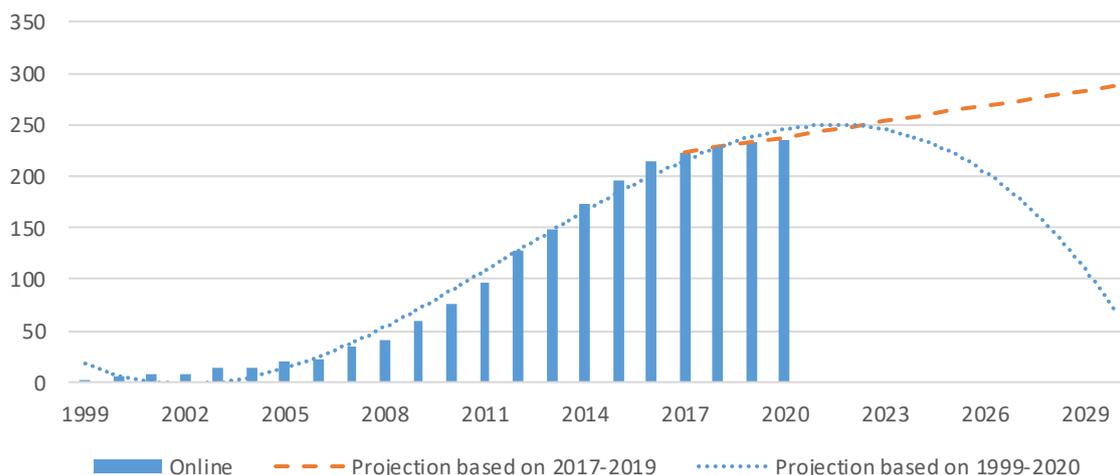
**Figure 12. Number of active on-location platforms in the EU-27, including projected trends**

Source: PPMI elaboration of the dataset compiled by de Groen, W.P. & Killhofer, Z. (2021) for the project 'Digital Labour Platforms in the EU: Mapping and business models'.

Note: The platforms were classified as on-location following the ILO 2021 typology, as modified in CEPS (2021). 'Digital Labour Platforms in the EU: Mapping and business models'. Luxembourg: Publications Office of the European Union, 2021. The figure includes on-location platforms active in EU-27 between 2016 and 2021, by the year in which they entered the market, taking into account platforms that have been deactivated during this time period.

The growth in the number of **online platforms** follows a similar trend, though on-location platforms have outpaced online platforms during the last five years on which the projections are based. Online platforms constituted a larger share of all platforms until 2015; since then, however, their proliferation has been far surpassed by on-location platforms. In 2020, for example, there were 235 active online platforms compared with 355 on-location platforms in EU27. With regard to future growth, the figure below follows the same reasoning as presented with respect to on-location platforms above. Nevertheless, it is important to note that the line representing the higher growth of online platforms is flatter than the equivalent projection for on-location platforms. This means that in the near future **online platforms are likely to continue growing, but at a slower pace than businesses intermediating on-location services**, prior to declining in a similar fashion.

**Figure 13. Number of active online platforms in the EU-27, including projected trends**

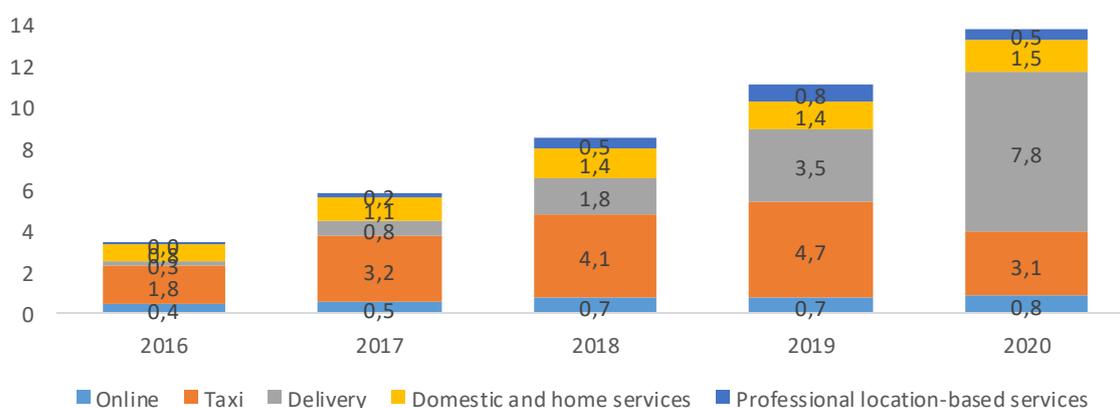


Source: PPMI elaboration of the dataset compiled by de Groen, W. P. & Killhofer, Z. (2021) for the project ‘Digital Labour Platforms in the EU: Mapping and business models’.

Note: The platforms were classified as online following the ILO 2021 typology, as modified in CEPS (2021). ‘Digital Labour Platforms in the EU: Mapping and business models’. Luxembourg: Publications Office of the European Union.

The consolidation argument is supported by the fact that **the size of the platform economy, in terms of total revenue, has continued to grow even during the pandemic**, reaching EUR 13.7 billion in 2020. As illustrated in the figure below, the size of the EU platform economy in the taxi sector declined in 2020, but this was more than compensated by the growth in the delivery sector, as platforms such as Uber and Bolt shifted focus from passenger transport to food deliveries. The revenues of the platforms that intermediate online work have also continued to grow, albeit at a slower pace, from EUR 0.7 billion in 2019 to EUR 0.8 billion in 2020. It is thus reasonable to expect that **the revenues of the platforms intermediating both online and on-location work, will continue to grow despite a decline in the overall number of platforms**. Note that the figures below are underestimates, as they are based on information from a limited number of platforms.

**Figure 14. Size of the digital labour platform economy in the EU-27 (EUR billions)**



Source: PPMI elaboration of CEPS (2021).

Note: The size of the platform economy reflects the consolidated revenues of the parties involved, including the platforms, people working through platforms, and fourth parties. The figure was produced from data modelled using a sample of 26 large platforms. For more details, see CEPS (2021), Annex II.

This information is corroborated by other sources. According to estimates by Mastercard, the global gig economy was worth USD 204 billion in 2018, and is expected to rise to USD 455 billion in 2023, resulting in a Compound Annual Growth Rate (CAGR) of 17.4%.<sup>169</sup> This global growth will mostly be driven by North America and Europe. Although the definition of the gig economy used by Mastercard differs from the one used by this study,<sup>170</sup> it does provide some breakdowns by sector as well. According to the report:

- Transportation-based services in the global gig economy were valued at USD 117.8 billion in 2018, and are expected to reach USD 264.4 billion by 2023.
- The handmade goods, household and miscellaneous services sector is expected to grow from USD 16.7 billion in 2018, to USD 29.8 in 2023.
- The professional services sector is expected to grow from USD 7.7 billion in 2018 to USD 17.4 billion in 2023.<sup>171</sup>

Some of the existing figures also illustrate a clear upward trend in very specific service sectors of platform labour. For example, the global ride-hailing market was valued at USD 113 billion in 2020, and was anticipated to reach a value of USD 230 billion by 2026, registering a CAGR of 8.75% during the forecast period of 2021-2026.<sup>172</sup>

#### 5.1.2.2. Number of people working through platforms

Given the fragmentation of the available data needed to project growth in the numbers of people working through platforms, we attempt to present the overall outlook by analysing data on the passenger transportation sector, online platform work and the survey data separately.

##### a) Platform work in the passenger transportation sector

The analysis shows that the number of people working through transportation platforms is likely to more than double between 2020 and 2024, and to quadruple by 2030.

To develop this insight, we relied primarily on the number of people working through transportation platforms in France and Lithuania given the availability of historical administrative data, which is more reliable than other sources. While various platform work surveys covering both individual and multiple EU countries have been carried out over the last few years,<sup>173</sup> they mostly capture information at a single point in time, providing too little data to deduce a trend. Furthermore, even where multiple surveys exist in the same country, they often follow different sampling methodologies or define platform work in different ways. As a result, they cannot be used to project the likely

<sup>169</sup> Mastercard and Kaiser Associates (2019). Mastercard Gig Economy Industry Outlook and Needs Assessment. Available [here](#).

<sup>170</sup> The gig economy, as defined by Mastercard in its report, consists of four sectors: 1) Asset-Sharing Services: home-sharing, car-sharing, boat-sharing, parking space sharing, P2P equipment sharing, etc., which is outside our definition of platform work. 2) Handmade Goods, Household & Miscellaneous Services: home-services, babysitting, handmade crafts, tutoring, pet services and miscellaneous services (DJ, events, etc.) – most of which fall under our definition of on-location services, except for the handmade goods sold on platforms such as Etsy. 3) Transportation-Based Services: ride sharing, carpooling, restaurant delivery and goods delivery, which fall under the low-skill on-location work in our definition. 4) Professional Services: business work, microwork, design, tech/coding, writing/translation, administrative, which fall under the online platform work category in our definition.

<sup>171</sup> Mastercard and Kaiser Associates (2019). Mastercard Gig Economy Industry Outlook and Needs Assessment. Available [here](#).

<sup>172</sup> Mordor Intelligence (2021). Ride-hailing market - growth, trends, Covid-19 impact, and forecasts (2021-2026). Available [here](#).

<sup>173</sup> For an in-depth summary, please see ILO (2021). World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work, Annex 1, Table A1.2. Geneva: International Labour Office.

future developments in the particular country. Following the discussion of people working through transportation platforms, we then consider whether the same trends apply to the on-location platform economy as a whole.

No country within the EU systematically tracks the number of people working through platforms.<sup>174</sup> Nevertheless, in France and Lithuania, the research team has found indirect ways of measuring the growth in the number of people who work through transportation platforms, which are connected to registration requirements for the self-employed. It is important to note that these estimates are subject to limitations, outlined below.

In France, most people working through platforms perform such activities under the self-employed status of 'micro-entrepreneur'. Popular platforms such as Uber require drivers to register as micro-entrepreneurs prior to commencing work through the platform. According to a report from the French Senate,<sup>175</sup> even though no precise data are available, it is safe to assume that a substantial share of micro-entrepreneurs in the transport sector perform their activity through platforms. Using statistics on the number of micro-entrepreneurs in the transport sector,<sup>176</sup> we can deduce how quickly their number is growing.

Based on the available information, the number of drivers and couriers earning income through platforms in France is projected to increase by 2.5 times between 2020 and 2024, and by 4.3 times by 2030. The blue bars in the figure below illustrate the number of economically active micro-entrepreneurs in the transport sector<sup>177</sup> in France from 2015 until the second quarter of 2020. Being 'economically active' means that these people not only registered as micro-entrepreneurs, but they also declared having received income from this activity. In the second quarter of 2020, there were 32,000 such individuals – up from just over 2,000 at the beginning of 2015. This indicates a sharp overall increase over the last five years, even though the number dropped slightly at the beginning of the pandemic (from 34,000 at the end of 2019). Based on the higher growth scenario (illustrated by the orange dashed line, using data from Q1 2018 to Q4 2019), the number of economically active drivers and couriers is projected to rise to 97,000 by the end of 2024. This means that the number will have tripled from Q2 2020.

Nevertheless, it may be unrealistic to expect the number of people working through platforms to continue growing along the same trajectory as it did before 2020. Some may have found other avenues of work during the pandemic, which may partly explain the ongoing difficulty experienced by Uber and other platforms in ensuring a sufficient supply of drivers as COVID-19 restrictions ease.<sup>178</sup> The lower-growth scenario takes into consideration the drop in the number of drivers during the pandemic. As illustrated by the blue dotted line, using data from 2015 to Q2 2020, the number of people working through transportation platforms is still projected to rise even in the lower-growth scenario, although less dramatically. By Q4 2024, we expect 64,000 people in France to be working through platforms as couriers or drivers – a two-fold increase from Q2 2020. Given that the real-life scenario is likely to fall in-between the dashed blue and dotted orange lines, we conclude that the number of people earning (and declaring) income through platforms is likely to increase by 2.5 times by the end of 2024. The same growth would result in an increase of more than quadruple between 2020 and 2030.

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<sup>174</sup> This statement is based on the review of European Centre for Expertise (ECE) 2021 Thematic Review 2021 on Platform Work, as well as the data collection exercise carried out for this study. Both of these exercises covered the EU-27.

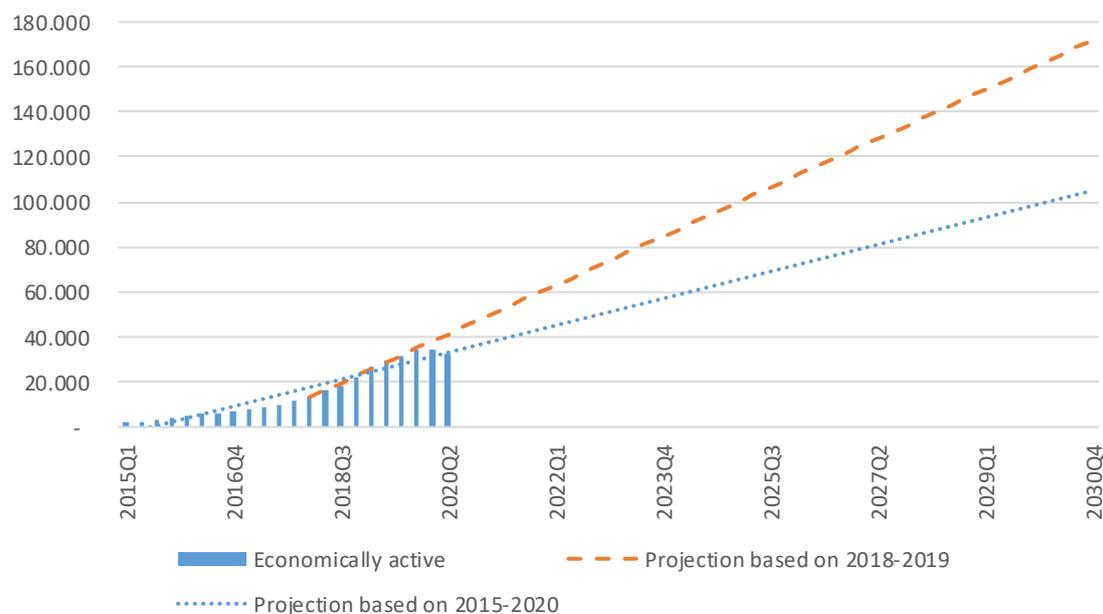
<sup>175</sup> Forissier, M., Fournier C. & Puissat, F. (2020) *Travailleurs des plateformes : au-delà de la question du statut, quelles protections?* French Senate Report. Available [here](#).

<sup>176</sup> URSSAF (2021). *Auto-entrepreneurs, par secteur d'activité*. Available [here](#).

<sup>177</sup> Two types of activities were taken into account in this exercise, based on the classification by the Social Affairs Commission of France (ACOSS): 'HZ1 - Taxis - VTC', which refers to taxi services, as well as 'HZ3 - Activités de poste et de courrier', which refers to postal and courier services.

<sup>178</sup> Siddiqui, F. (2021). *Where have all the Uber drivers gone?* *The Washington Post*, May 7, 2021. Available [here](#).

**Figure 15. Number of economically active micro-entrepreneurs in the transport sector in France, including projected trends**



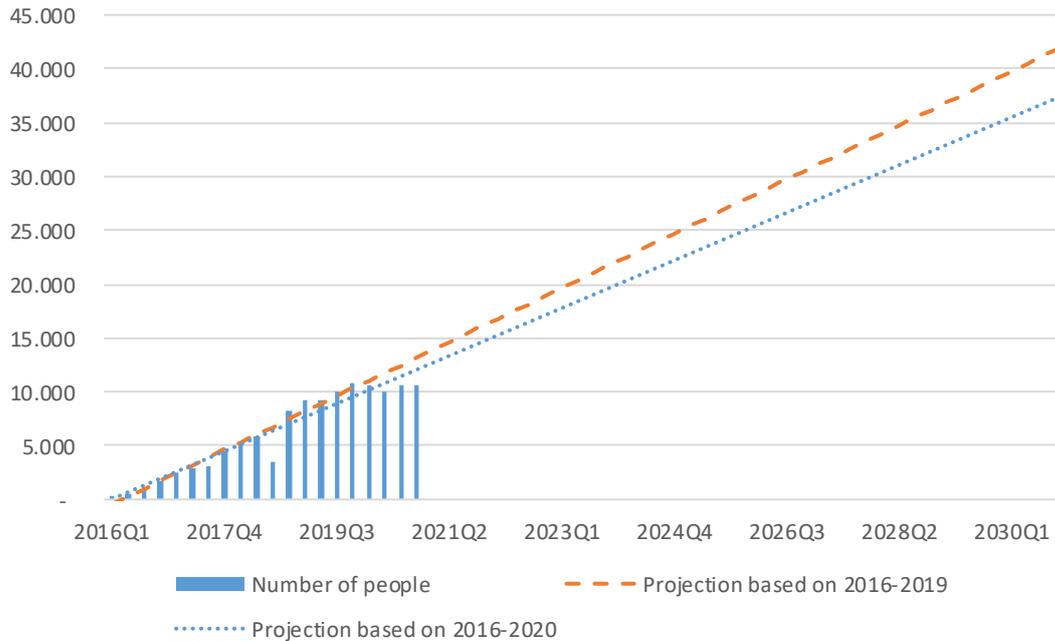
Source: PPMI elaboration, based on data on micro-entrepreneurs (URSSAF, 2021).

In **Lithuania**, people who wish to work through transportation platforms such as Bolt, Yandex or Uber must acquire individual activity certificates (IACs) from the tax authorities during the process of registering on the app. The tax inspectorate provides guidance for people wishing to provide ride-hailing services (but not food delivery) to register using a unique code 493900, which means that they provide 'Other, nowhere else indicated, transport services'. Since this IAC code has been little used prior to the proliferation of platforms in Lithuania, it is safe to assume that the vast majority of people registered under this IAC code provide ride-hailing services via platforms. It thus serves as the basis for us to analyse the growth in the number of people working through transportation platforms.

The growth in the number of people working through transportation platforms in Lithuania follows a starkly similar trend to that in France. The figure below demonstrates the number of people holding IACs with the activity code 493900 who also said that this was their primary economic activity. As illustrated in the figure, this number grew rapidly from 400 in Q1 2016 to 10,800 in Q4 2019, levelling off during the pandemic.<sup>179</sup> Disregarding the data from 2020, we would expect the number of people providing ride-hailing services as their primary activity to increase by 2.3 times from 2020 by Q4 2024, to reach 24,700 people (see the orange dashed line). If the pandemic is taken into consideration, the number of people providing ride-hailing services is still projected to grow, reaching 22,200 in Q4 2024 (the blue dotted line). As discussed in relation to the projections for France, the most likely scenario falls in-between the two lines, which suggests that the number of people working through transportation platforms in Lithuania might increase by roughly 2.2 times between Q2 2020 and the end of 2024. By 2030, the same rate of growth would yield an increase of 3.7 times compared with 2020.

<sup>179</sup> State Tax Inspectorate of Lithuania (2021). Statistiniai duomenys. Duomenys apie gyventojų, vykdančių individualią veiklą pagal pažymą, pagrindines vykdomas veiklas. 2016-2020. Available [here](#).

**Figure 16. Number of people in Lithuania holding individual activity certificates indicating that they provide ride-hailing services as their primary activity, including projected trends**



Source: PPMI elaboration of data from the State Tax Inspectorate (2021).

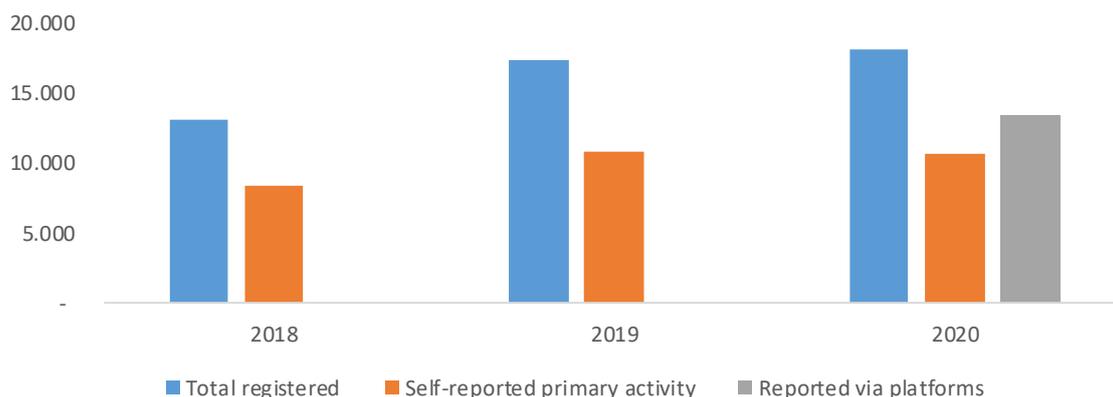
The total number of people who work through transportation platforms in Lithuania is somewhat higher than illustrated above. This is because some provide ride-hailing services not as their primary economic activity.<sup>180</sup> As shown in the figure below, the number of people in 2020 for whom ride-hailing was a primary economic activity (as self-declared by people applying for IACs) was 10,700, compared with a total of 18,000 who held IACs with the activity code 493900. Nevertheless, the figure of 18,000 is likely to be an overestimate because some people who register to provide services via platforms never complete a ride. As of 2020, ride-hailing platforms in Lithuania are required to report to the State Tax Inspectorate the number of people providing services via their platforms, including their individual earnings. The grey bar in the figure below – equivalent to 13,200 people – represents the true number of people who worked via ride-hailing platforms in Lithuania in 2020 and made at least some income through them, as reported by platforms to the State Tax Inspectorate. This amounts to 21% of total employment in the land transportation sector,<sup>181</sup> or 1% of total employment.<sup>182</sup>

<sup>180</sup> The data on the total number of people providing ride-hailing services in Lithuania is less detailed, which is why it was not used to project future growth.

<sup>181</sup> In 2020, the number of people working in 'land transport and transport via pipelines' in Lithuania was 63,300. This figure includes only those aged 15-64. Eurostat (2021). Employment by sex, age and detailed economic activity (from 2008 onwards, NACE Rev. 2 two-digit level) - 1 000. Table LFSA\_EGAN22D. Available [here](#).

<sup>182</sup> This is based on the fact that there were 1.3 million 15- to 64-year-old people employed in Lithuania in 2020. Eurostat table LFSI\_EMP\_A. Available [here](#).

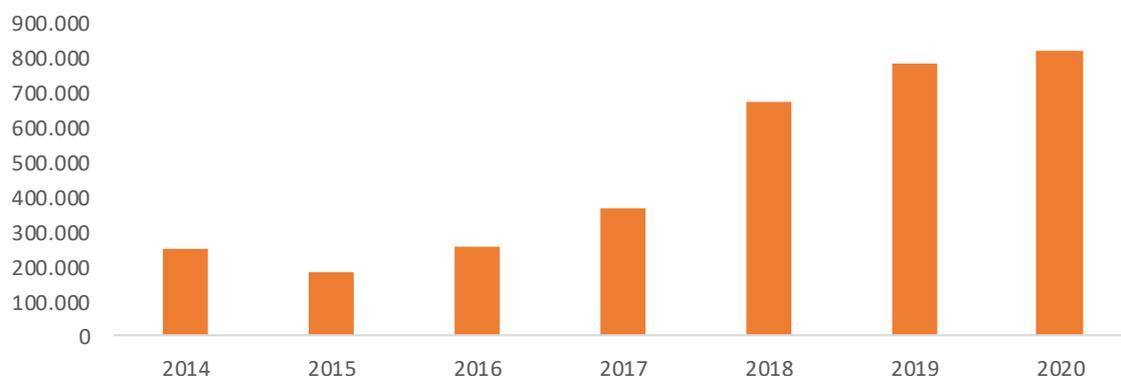
**Figure 17. Number of people in Lithuania holding individual activity certificates, indicating that they provide ride-hailing services**



Source: Data on the total number of people registered as working through ride-hailing platforms, as well as data on the number of people as reported by the platforms, was obtained via an official request to the State Tax Inspectorate, 24 May 2021. Data on the number of people for whom the provision of ride-hailing services is their primary activity was obtained from the State Tax Inspectorate of Lithuania (2021).

Although information on the growth in the number of people providing services other than ride hailing or food delivery through on-location platforms is extremely limited, there is some evidence that the rapid growth observed in these sectors in France and Lithuania applies to on-location platforms as a whole, including in other EU countries. The figure below demonstrates the number of people in 10 selected EU countries who worked regularly through on-location platforms in 2020, grouped according to the year in which they started platform work.<sup>183</sup> As shown in the figure, the majority of people who were still providing services in 2020 had started platform work within the last three years. Take-up has particularly increased between 2015 and 2018, with growth each year of between 138% and 184%, although the year-on-year change has been lower since 2018. If a similar trend holds true in the future, we expect the number of people working through on-location platforms to continue growing after the pandemic. Nevertheless, we refrain from estimating future growth using these data because they are limited to those people who were still active in 2020.

**Figure 18. Number of people regularly providing on-location services in 2020 in 10 EU Member States, by year they started platform work**



Source: 2020 PPMI panel survey of people working through platforms, implemented by PPMI for EIGE.

Note: The number of people who started platform work in each year is likely to be overestimated because the survey targeted people most likely to provide services via platforms.

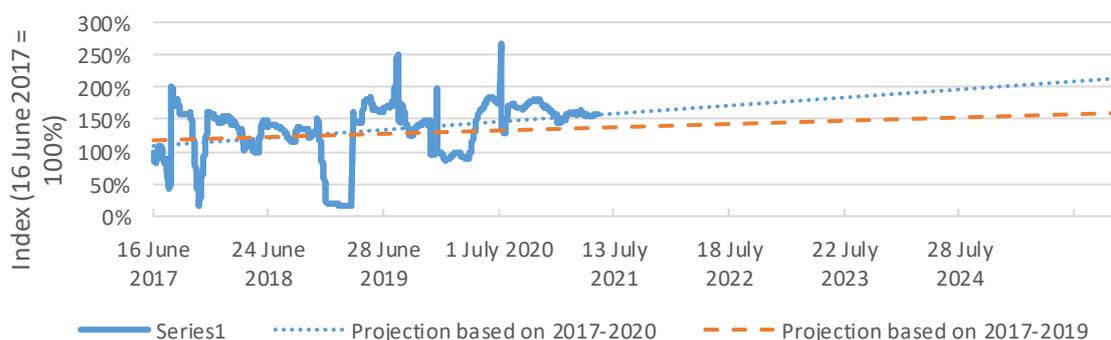
<sup>183</sup> 2020 PPMI panel survey of people working through platforms, implemented by PPMI for EIGE. Countries covered: Denmark, Spain, France, Latvia, the Netherlands, Poland, Romania, Slovenia, Slovakia, and Finland.

## b) Online platform work

The number of people working through online platforms will continue to grow, albeit at a slower pace than those working through on-location platforms.

While the number of people working through on-location platforms appears to be rising, accompanied by a growth in the number of on-location platforms, **growth is less pronounced among those working through online platforms**. As shown by the blue dotted line in the figure below, the supply of people working through selected online platforms has increased overall since 2017, although the available data are subject to spikes that are difficult to explain. The trend is also somewhat impacted by the uptick in labour supply during the pandemic – as shown by the dashed orange line, the growth appears flatter when data from 2020 are ignored. Furthermore, the ILO notes that demand for web-based services globally has remained relatively constant over recent years.<sup>184</sup> This means that even if more people are attempting to work through web-based platforms, wages may be pressed downward by the increasing supply, which calls into question whether the number of freelancers will continue to grow as it has in the past. In particular, the availability of work might be negatively impacted in Europe, given that overall income levels are higher than in many other countries where freelance work is popular, such as India or China. All in all, we would expect the number of people working through web-based platforms to increase during the coming years, although to a lesser extent than among those working through on-location platforms. Specifically, the number is estimated to increase by roughly 1.75 times by the end of 2024. This appears to be supported by the fact that 42% of companies surveyed by the World Economic Forum expect to “expand [the] use of contractors doing task-specialised work” by 2025.<sup>185</sup>

**Figure 19. Online platform labour supply: daily active EU-27 workers on the main freelancing platforms, including projected trends**



Source: PPMI, based on OLI dataset.

Note: the data on workers focuses on four major online labour platforms: Fiverr, Freelancer, Guru and PeoplePerHour. Each platform is sampled every day for each worker’s home country, occupation category, and when they last completed a project. These samples are then weighted by the number of registered workers on each platform, to calculate the total number of currently active workers on all platforms. The datasets are shared publicly. The ‘currently active’ worker is anyone who has completed a project during the last 28 days.

<sup>184</sup> ILO (2021). World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work, Geneva: ILO.

<sup>185</sup> World Economic Forum (2020). The Future of Jobs Report 2020. Available [here](#), p. 29.

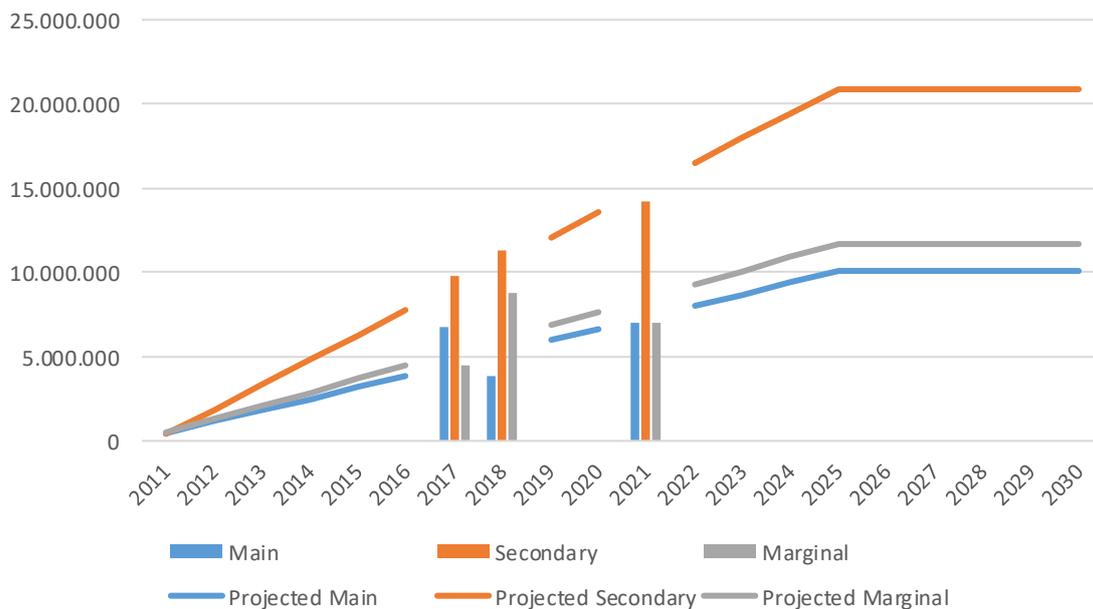
**c) Overall trends in the number of people working through platforms**

Overall, the number of people working through both on-location and online platforms is expected to increase by 1.5 times by 2025, after which its growth is expected to slow.

Projections based on the PPMI 2021 survey, as well as the COLLEEM I and COLLEEM II surveys, show that the overall number of people working through platforms is expected to increase by 1.5 times between 2021 and 2025 (excluding those working only sporadically; see the figure below) and would double by 2030 if the trend continued in a linear fashion. For 2021, the total number of people working through platforms more often than monthly is estimated at 28.3 million, and is projected to reach 43 million by 2025. These findings are in line with the trends discussed above: although on-location work is projected to grow more quickly, the surveys estimate that there are more people working through online platforms than on-location ones, which is why the overall trend is closer to the projections concerning the growth of labour supply to online platforms.

The figure below shows the projections broken down according to whether people engage in platform work as a main, secondary or marginal activity (for the definitions of each, see Section 5.1.1). A flat line is assumed from 2025 onwards, based on the historical evolution of temporary agency workers, the number of whom rapidly grew during the period 1985-2002, before levelling off.<sup>186</sup> To determine the trendline, the prevalence of platform work was assumed to be zero in 2011, given that the platforms that have attracted the most people in recent years did not exist at the time.

**Figure 20. Projected trends regarding the number of people working through on-location and online digital labour platforms, by type of work**



Source: Elaborated by PPMI, based on COLLEEM I, COLEEM II, and PPMI 2021 surveys.

Note: Given that only daily internet users were sampled in the PPMI 2021 survey, only this group was considered in relation to the 2017 and 2018 estimates from the COLLEEM I and COLLEEM II surveys. Marginal population is not directly comparable between 2017/8 and 2021. The figure excludes people who work sporadically (less often than monthly).

<sup>186</sup> For an in-depth discussion, please see the forthcoming Ecorys study supporting the impact assessment of the initiative to expand collective bargaining rights for the self-employed.

The actual numbers of people from the projection above are presented in the table below.

**Table 13. Projected number of people working through on-location and online digital labour platforms, 2012-2030**

Year	Main	Secondary	Marginal	Total
2012	1,136,784	1,880,869	1,301,379	4,319,032
2013	1,825,528	3,341,769	2,100,209	7,267,505
2014	2,514,272	4,802,669	2,899,038	10,215,979
2015	3,203,016	6,263,569	3,697,867	13,164,452
2016	3,891,760	7,724,469	4,496,697	16,112,926
2017	6,786,468	9,768,756	4,508,657	21,063,881
2018	3,821,428	11,268,314	8,818,681	23,908,423
2019	5,957,992	12,107,169	6,893,184	24,958,346
2020	6,646,736	13,568,069	7,692,014	27,906,819
2021	7,025,375	14,243,506	7,055,937	28,288,000
2022	8,024,224	16,489,870	9,289,672	33,803,766
2023	8,712,968	17,950,770	10,088,502	36,752,239
2024	9,401,712	19,411,670	10,887,331	39,700,713
2025	10,090,456	20,872,570	11,686,160	42,649,186
2026	10,090,456	20,872,570	11,686,160	42,649,186
2027	10,090,456	20,872,570	11,686,160	42,649,186
2028	10,090,456	20,872,570	11,686,160	42,649,186
2029	10,090,456	20,872,570	11,686,160	42,649,186
2030	10,090,456	20,872,570	11,686,160	42,649,186

Source: Estimates based on COLLEM I survey for 2017; COLLEM II survey for 2018, and PPMI 2021 survey for 2021. The remaining years are estimated using a linear trendline.

Note: the figure excludes people who engage in platform work sporadically, i.e. less often than monthly. The total figure for 2021 (28,288,000) differs slightly from the actual sum for the row (28,324,817) in order to keep figures consistent with those in Table 11, which were derived using a different method of extrapolation. Given that only daily internet users were sampled in the PPMI 2021 survey, only this group was considered in relation to the 2017 and 2018 estimates from the COLLEEM I and COLLEEM II surveys. Marginal population is not directly comparable between 2017/8 and 2021.

Finally, we break down the numbers by EU Member State for 2021 in the table below.

**Table 14. Projected number of people working through on-location and online digital labour platforms by EU-27 Member State, 2021**

Country	Main	Secondary	Marginal	Total
EU	7,025,375	14,243,506	7,055,937	28,288,000
Austria	94,104	169,180	99,509	362,775
Belgium	157,685	283,967	165,764	607,417
Bulgaria	95,535	259,608	141,144	496,288

Country	Main	Secondary	Marginal	Total
Cyprus	21,065	37,953	18,130	77,149
Croatia	50,409	90,779	52,991	194,179
Czechia	138,930	256,516	150,449	545,895
Denmark	65,188	121,928	67,350	254,440
Estonia	17,849	32,956	19,329	70,133
Finland	120,960	236,053	77,627	434,639
France	804,189	1,448,221	845,390	3,097,800
Germany	1,008,407	1,741,480	1,090,201	3,840,088
Greece	168,110	302,836	155,007	625,953
Hungary	163,277	515,936	217,911	897,124
Ireland	48,751	91,184	50,368	190,284
Italy	1,116,982	1,885,604	1,129,792	4,132,378
Latvia	32,634	88,679	48,213	169,525
Lithuania	33,544	61,935	36,325	131,805
Luxembourg	7,653	13,759	8,093	29,504
Malta	7,319	13,514	7,926	28,760
Netherlands	383,047	747,513	245,822	1,376,381
Poland	580,723	1,835,021	775,042	3,190,786
Portugal	190,769	343,705	164,185	698,658
Romania	263,692	716,556	389,579	1,369,827
Slovakia	93,284	294,767	124,498	512,549
Slovenia	33,115	104,639	44,195	181,949
Spain	1,107,859	2,119,312	789,721	4,016,892
Sweden	220,295	429,904	141,375	791,575

Source: Estimates based on the PPMI 2021 survey for 2021.

Note: the figure excludes people who engage in platform work sporadically, i.e. less often than monthly. The total figure for the EU (28,288,000) differs slightly from the actual sum for the row (28,324,817) to keep figures consistent with those in Table 11, which were derived using a different method of extrapolation. The extrapolation was carried out using the clustering exercise performed for survey country selection and described in detail in Annex 4F. The same prevalence rate from surveyed countries was assigned to non-surveyed countries in the same cluster. If more than one country from a cluster was surveyed, their average prevalence rate was used for extrapolation to non-surveyed countries.

### 5.1.3. Expected policy developments

We have identified a variety of initiatives that are currently being discussed by stakeholders and which may eventually lead to legislative action in the EU Member States (see the table below and Annex 1).

**Table 15. Initiatives in development that may lead to legislative action**

Country	Year	Initiative
Malta	Jan 2021	The Prime Minister announced that action should be taken with regard to recruitment agencies and platforms, to address illegal practices relating to food delivery couriers.
Netherlands	Nov 2020	Responding to demands made by the Committee on the Regulation of Work (the Borstlap Committee) to reduce the differences between work protection for the employed and self-employed, the Minister announced that alternatives would be explored to improve the position of platform people working through platforms. One of these alternatives is the introduction of a rebuttable legal presumption of employment, which could be used to counter bogus self-employment in the platform sector. At the same time, genuine self-employment should remain a possibility in the platform economy. The government will start to explore whether and how such legal measures can be adopted, so that it can offer support to people working through platforms.
Portugal	Nov 2020	The first version of the 'Green book on the Future of Work' was presented to social partners. This suggests a legal framework for platform work. The document aims to bring together data on people working through platforms and to clarify the employment status of such workers. It proposes to adopt the presumption of employment in relation to platform work. Furthermore, it aims to improve social protection for the self-employed and to give people working through platforms access to collective bargaining rights. The document also explores the creation of a regulatory regime for algorithmic management in the workplace.

While some other Member States are likely to propose similar measures, the overall variation in national responses to the issue of misclassification (discussed in Section 2.2.4.2) is likely to remain, and even widen, in the baseline scenario. National-level initiatives and measures to address platform work face a number of challenges, which are outlined below. Member States are affected unevenly by these challenges, and in the absence of EU-level rules or guidance, tend to opt for different measures.

- The phenomenon is heterogeneous, fluid and constantly evolving; new platform business models emerge, as well as new types of work and working arrangements. This constant change makes platform work a 'moving target' for policy makers.
- Related to this, the ambiguous employment status of people working through platforms, as well as the economic classification of the activities of specific platforms (e.g. whether Uber is a transportation service company or an online intermediary) has become the subject of multiple court cases. National courts tend to arrive at different conclusions for workers using the same labour platforms or working in the same sectors, in different countries; or different conclusions for similar platforms working in the same sectors. Meanwhile, the numbers of court cases are likely to increase further with the expansion of platform economy.
- Digital platforms themselves lobby actively for light regulation or self-regulation,<sup>187</sup> emphasising the potential for job creation and innovation provided by the platform work model.

<sup>187</sup> Heikkilä, M. (2019). Uber plots reconquest of Europe — via smaller countries. POLITICO. Available [here](#).

- Many responses to the issues relating to platform work in various Member States are driven by grassroots organisations of platform workers or social partners. Such modes of action have an inherent risk of introducing new gaps and fragmentation, especially given that self-employed platform workers face more barriers to organising and acting collectively.<sup>188</sup>
- Some of the national responses remain narrow in scope, targeting specific sectors in which platform work is most 'visible', such as ride-hailing and delivery services, especially food delivery. Meanwhile, no notable changes are being introduced for workers engaged in digital platform work.

#### 5.1.4. Costs of the baseline situation for people working through platforms

The misclassification of employment status in platform work has numerous negative impacts on workers, as described in Section 2.3.1. Without policy action, the number of people working through platforms who suffer poor working conditions and who are without adequate access to social protection will continue to increase, in parallel with the growth of the platform economy as a whole. Some of the consequences at baseline for people working through platforms, such as negative impacts on earnings and occupational health and safety, also have clear monetary costs that are important for this impact assessment. Here, we provide a further overview of these impacts.

##### a) Impacts in terms of earnings

As previously mentioned, **earnings** on digital labour platforms are often unpredictable, due to the lack of minimum wage protections associated with employment status, as well as uncertain access to tasks/ work assignments and competition for tasks. Furthermore, the levels of earnings of people working through platforms varies notably according to the type and complexity of the work, and the overall picture among digital labour platforms is rather fragmented (see the table below).

Freelancers on online platforms for highly skilled work may earn EUR 20-30 per hour on average in different countries (after platform fees, before taxes).<sup>189</sup> Furthermore, in some cases, the earnings of people working through on-location platforms approximate to those in higher skill segments and surpass not only minimum but also average country earnings. Some ride-hailing platforms claim that drivers earn significantly more per hour than the minimum wage in all EU countries where they operate. For example, Uber claimed that its drivers in France, earned an average EUR 24.81 per hour in 2018 while logged into its app,<sup>190</sup> which represents an estimate of EUR 9.15 per hour net of costs and tax, or a monthly net income of EUR 1,617 (after all vehicle and tax costs have been deducted). This was over EUR 200 a month higher than the average earnings for self-employed workers in the transportation sector.<sup>191</sup> However, in such cases, the net income of people working through platforms as self-employed might be higher in comparison to employees due to lower tax and social contribution rates.

Earnings in food delivery seem to be considerably lower, and are accompanied by the unpredictability and instability of work. For example, according to Spanish media reports, earning a decent wage in food delivery through platforms may require people to work as

<sup>188</sup> Kilhoffer, Z., De Groen, W. P., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., ... & Robin-Olivier, S. (2019). Study to gather evidence on the working conditions of platform workers VT/2018/032 Final Report 13 December 2019.

<sup>189</sup> Estimation based on automatically collected data from the web, see Annex 4B.

<sup>190</sup> Uber (2019). Étude sur les revenus des chauffeurs en 2018. Available [here](#), p.5

<sup>191</sup> Uber (2021). A Better Deal. Partnering to Improve Platform Work for All. [Available here](#).

many as 70 hours per week.<sup>192</sup> Data from the UK also shows very low earnings in this sector: an analysis by the Independent Workers' Union of Great Britain of invoices from the food delivery platform Deliveroo reveals that some Deliveroo drivers earn around GBP 2 per hour.<sup>193</sup> While Deliveroo states that the average pay of its drivers is GBP 10 per hour, the analysis of invoices found that more than half of Deliveroo drivers earn less than this amount.<sup>194</sup> The table below also illustrates that delivery is likely to be among the lowest paid sectors in the platform economy, at least in some Member States.

**Table 16. Comparison of average hourly earnings by sector of the platform economy within countries, after platforms fees and before taxes**

Average earnings per hour (EUR)	HR	CZ	DK	EE	FR	DE	HU	LV	LT	MT	PL	RO	SI	SE
Delivery	6.2	11.8	23.7	11.5	NA	13.5	6.18	8.9	9.4	8.6	5.4	NA	10.7	11.6
Online freelancing	NA	NA	28.4	NA	25.3	28.1	NA	NA	20.8	NA	20.9	19.1	NA	NA
Ride-hailing	8	12	NA	13	22	NA	16	9	9	17	6	8	13	24

Sources and notes: Online freelancing – estimated on the basis on data scraped from Upwork, PeoplePerHour, Guru and Freelancer. Food delivery and Ride-hailing: provided by interviewed platforms. It is important to note that figures from delivery platforms include waiting time, while figures from online and ride-hailing platforms do not.

Moreover, estimates based on the 2021 survey data show that the mean hourly earnings of people working through **low-skill on-location platforms** (including both paid and unpaid working time – for more detail, see the breakdown in the next section) are lower than the minimum wage in several Western European countries.

<sup>192</sup> Baldrich, P. (2019). El drama de Glovo: dejarse la vida "por hacer un pedido más". Metropoli. Available [here](#).

<sup>193</sup> National Minimum Wage in the UK as of April 2021: persons aged 23 and over: £8.91; aged 21-22: £8.36; aged 18-20: £6.56; aged below 18: £4.62. Details available [here](#).

<sup>194</sup> Independent Workers' Union of Great Britain. (2021). REVEALED: Many Deliveroo riders paid less than minimum wage - Questions raised ahead of IPO. IWGB. Available [here](#).

**Table 17. Estimated average and median hourly earnings of people working in low-skill on-location tasks through platforms, compared with national minimum wages**

Country	Mean hourly earnings in low-skill on-location platform work, net (EUR)	Median hourly earnings in low-skill on-location platform work, net (EUR)	Minimum hourly wage after income tax and social security contributions (EUR)
Denmark	10.50	3.78	NA
France	6.43	4.17	7.7
Germany	7.12	6.60	6.29
Italy	9.03*	7.14*	NA
Lithuania	4.18	2.73	2.52
Netherlands	10.38	7.13	5.69
Poland	3.64	1.89	2.96
Romania	3.55	2.34	1.46
Spain	7.23	4.52	5.28

\*Estimate is based on a small sample size.

Source: PPMI estimations based on 2021 survey (based on Q52, converted to EUR for DK, PL, RO; and Q11<sup>195</sup>), taking into account time spent waiting and implementing tasks; and Eurostat [EARN\_MW\_CUR], OECD.Stat (Table III.1. Employee social security contribution rates), and OECD, Taxing wages 2021 (3.4 Income tax, as a percentage of gross wage earnings, by household type and wage level).

However, the average figures for hourly earnings in platform work might conceal the fact that considerable numbers of people working through platforms receive notably lower hourly earnings – especially in situations of low demand, when securing tasks requires more time spent in unpaid work. For example, the aforementioned study conducted in Austria shows that net earnings per hour for Uber and Bolt drivers can differ significantly between periods of high and low workload (EUR 3.58 vs EUR 6.11 on Bolt and EUR 3.99 vs EUR 6.81 on Uber). During low-workload periods, driver earnings may be 40-50% below the Austrian minimum wage.<sup>196</sup>

Indeed, analysis of the 2021 survey data **on all types of platform work** shows that while a small share of people working through platforms (Table 11) generate considerably higher hourly net earnings, 55% (around 15.9 million<sup>197</sup>) receive hourly earnings that are **below the net minimum wage** when both paid tasks and unpaid working time on platforms are taken into consideration. When evaluating the impacts of the policy options, we therefore consider how overall earnings will change if people working through platforms were to earn at least minimum wage, if they do not do so currently.

In addition to this, due to misclassification, people working through platforms lose entitlement to **paid annual leave**, which can be translated into around one month of pay not received per year.

<sup>195</sup> The estimate is based on indicators that relate to issues of respondent cognitive processes and related measurement errors in self-reported surveys. The main issue concern the differing reference periods for Q11 and Q52 used for these estimations. These worked best in terms of respondent memory and estimation during questionnaire cognitive tests; however, they do not allow for the very precise estimation of hourly rates, as additional assumptions need to be made.

<sup>196</sup> Kummer, S. (2020), Wirtschaftlichkeit und Preise im Beförderungsgewerbe mit Personenkraftwagen – Grundlagen für eine nachhaltige Personenbeförderung in Österreich. Institut für Transportwirtschaft und Logistik Wirtschaftsuniversität Wien.

<sup>197</sup> The estimated share of people for whom net hourly earnings from platform work (estimated using 2021 survey data, and considering both paid and unpaid time, Q11, Q50, Q51) are lower than the national minimum wage (estimated using minimum wages from Eurostat (gross), adjusted using data on tax rates and social contributions from the OECD to obtain net figures).

Furthermore, the indicator of wages does not necessarily take into account the **other expenses related to platform work without the status of employee**<sup>198</sup>. First, these include the provision of the means and instruments for work (e.g. car, bike, fuel, maintenance). To illustrate, according to a study conducted in Austria, 40-50% of the cost of a ride-hailing trip consists of maintenance, amortisation and fuel costs – all of which are, in many cases, covered by the drivers.<sup>199</sup>

Further costs experienced by people working through on-location platforms as (falsely) self-employed relate to protective equipment. According to a study from the UK,<sup>200</sup> 65% of ride-hailing drivers and delivery riders interviewed said that they were not provided with any safety equipment such as a high-visibility vest, and over 70% resorted to providing their own. If we extrapolate the latter share to the estimated numbers of ride-hailing drivers and delivery riders (2.78 million; see Table 11), up to 1.94 million people working through platforms may be buying their own safety equipment. The fact that many people working through on-location platforms are indeed responsible (at least in part) for their own protective gear is also supported by a number of media articles.<sup>201</sup>

- In the context of the pandemic, masks and sanitizers alone could cost an individual around EUR 40<sup>202</sup> per month. Multiplied by the number of people working through ride-hailing and delivery platforms who are at risk of misclassification (1.54 million, see Table 12), this could result in annual costs of **EUR 104 million** being borne by people working through platforms, or **EUR 36.6 million** if we consider only those who are in main platform work. If we assume that all people working through on-location platforms face similar expenditures (2.35 million, see Table 12), this figure could be between **EUR 42.4 million and EUR 121 million per year**.
- When we consider only delivery riders who are at risk of misclassification (an estimated 1.22 million people<sup>203</sup>), the one-off costs of high-visibility vests (~EUR 10<sup>204</sup>) and helmets (~EUR 50<sup>205</sup>) could amount to up to EUR 73.2 million in costs that are currently being shifted on to misclassified workers.

## b) Costs in terms of occupational health and safety

Practices of platform work organisation that modify behaviour (e.g. bonuses for the quick completion of tasks, incentives to working unsociable hours, and the long working hours required to earn a decent income),<sup>206</sup> are also associated with occupational safety and health (OSH) risks. Several sources of information exist that allow us to further quantify these OSH costs, mostly focusing on people working through platforms who provide on-location services.

- Data from Spain shows that workers in the food and beverage sector have been subject to an increasingly high rate of accidents during the working day (with the incidence rate ranking third among various sectors). In 2018, 27% of all traffic

<sup>198</sup> Data on additional expenses was not collected in the survey.

<sup>199</sup> Kummer, S. (2020), Wirtschaftlichkeit und Preise im Beförderungsgewerbe mit Personenkraftwagen – Grundlagen für eine nachhaltige Personenbeförderung in Österreich. Institut für Transportwirtschaft und Logistik Wirtschaftsuniversität Wien.

<sup>200</sup> UCL (2018). Gig economy drivers and riders at heightened risk of traffic collisions. Available [here](#).

<sup>201</sup> Several media articles are available here: [\[1\]](#); [\[2\]](#); [\[3\]](#).

<sup>202</sup> Assuming a box of 50 masks, each of which is recommended for up to 4 hours' use, costs EUR 15 (see [here](#)); and 1.2 litre of hand sanitizer (3 ml per use, 20 uses per day, 20 days per month), costs EUR 25 (see [here](#)).

<sup>203</sup> 2021 survey of people working through platforms.

<sup>204</sup> Available [here](#).

<sup>205</sup> Available [here](#).

<sup>206</sup> Baldrich, P. (2019). El drama de Glovo: dejarse la vida "por hacer un pedido más". Metropoli. Available [here](#).

accidents were suffered by **delivery riders** (3,528 people). As a result of these, 125 riders ended up in hospital, 55 of them with serious injuries. Cases of fatal accidents have also been reported in the media.<sup>207</sup> The accident rate has doubled within a period of six years<sup>208</sup> – a period coinciding with the notable growth of platforms in the food delivery sector. The situation is worsened by the fact that without the platform taking responsibility for the health and safety of workers and providing compensation for safety equipment, few workers take precautions voluntarily. For example, according to one university study, only 18% of riders in Valencia (Spain) use a helmet.<sup>209</sup>

- Meanwhile, a small-sample study of **ride-hailing drivers** and riders in the UK also showed that among other traffic participants, they are at heightened risk of traffic collisions. Over 42% of ride-hailing drivers and riders reported that their vehicle had been damaged as a result of a collision while working, while 10% reported that someone had been injured.<sup>210</sup>
- In the US, the Bureau of Labour Statistics estimated that independent workers – defined as people who are likely to be self-employed and performing short-term jobs with “no guarantee of future work beyond the task” (which closely matches the definition of **platform work**) – accounted for 12.3% of worker fatalities in 2016 and 2017.<sup>211</sup> Independent workers were considered to be an at-risk group due to their fluid employment situation, which potentially puts them at greater risk of poorer workplace safety and health outcomes.
- Another study from the US estimates that **ride hailing** via platforms such as Uber and Lyft has led to an annual increase of 3% (or 987 people in the US) in overall fatalities from car accidents.<sup>212</sup>

No detailed data exist on accident rates among people working through platforms in the EU-27. However, some extrapolations can be made using the figures presented above.

- In 2019, there were a total of 935,216 road accidents resulting in injuries or death<sup>213</sup> in the EU-27. Meanwhile, based on the data from Spain, 0.96%<sup>214</sup> of all traffic accidents were experienced by riders who ended up in hospital as a result. Applying this share to the EU-27,<sup>215</sup> the estimated number of injured **delivery workers may be as high as 8,978 per year.**
- In 2019, there were 22,756 road fatalities in the EU-27 (of which 2,046 were bicycle fatalities).<sup>216</sup> If we assume that, as in the US, that ride-hailing contributes an increase of 3% to the total number of accident fatalities in the EU, the number of fatalities related to **ride-hailing could be as many as 683 deaths per year.**
- If we assume that the figures on accidents from the UK can be applied to the estimated number of people in the EU working through **ride-hailing and delivery** platforms more than sporadically, who cannot set their schedules and pay rates

<sup>207</sup> TeleMadrid (2021). Muere un repartidor de Glovo en Madrid tras un accidente en la A-3. Available [here](#).

<sup>208</sup> Insst (n.d.) ¡Hazte visible!. Available [here](#).

<sup>209</sup> Gaibar, L. (2021). Cuando ser rider es un riesgo para la salud. El Salto. Available [here](#).

<sup>210</sup> UCL (2018). Gig economy drivers and riders at heightened risk of traffic collisions. Available [here](#).

<sup>211</sup> Safety and Health Magazine (2019). Gig workers make up nearly 1 in 8 on-the-job deaths: BLS. Available [here](#).

<sup>212</sup> Barrios, J.M., Hochberg, Y.V. & Yi, H. (2020). The cost of convenience: ridesharing and traffic fatalities. 2018. Available [here](#).

<sup>213</sup> European Commission (2021). Road safety thematic report – Fatigue. European. Road Safety Observatory. Brussels, European Commission, Directorate General for Transport. Available [here](#).

<sup>214</sup> 125/(3,528/27%)

<sup>215</sup> The prevalence of low-skill on location work in Spain was very similar to that estimated for the EU-27 as a whole.

<sup>216</sup> Online data code: TRAN\_SF\_ROADSE

(1.54 million; see Table 12), **up to 210,000<sup>217</sup> of these people may have been involved in accidents** in which at least one person was injured.<sup>218</sup>

- Furthermore, according to Eurostat, there were 3,332 fatal<sup>219</sup> **accidents at work** in the EU-27 during 2018.<sup>220</sup> If we apply the statistics on fatalities among independent workers in the US (i.e., 12.3% of all fatalities) to the case of the EU, **people working through platforms may have accounted for up to 410 of these deaths per year.** Non-fatal accidents, meanwhile, amounted to 3.12 million in EU-27.<sup>221</sup> However, no data are available on the possible share of these accidents suffered by people working in the labour platform economy. If we assume that the share is similar to that for fatal accidents, this could amount to **384,354 non-fatal accidents** among people working through platforms per year.

Several sources exist to assign a monetary value to these figures:

- The European Chemicals Agency estimates that the cost of premature death in 2012 ranged between EUR 3.5 million to EUR 5 million.<sup>222</sup> Adjusted for inflation, this range represents a current cost of between EUR 3.8 million and EUR 5.4 million.<sup>223</sup>
  - If we apply these monetary values to the estimated figure for additional **fatalities due to ride-hailing** (683, see above), these costs could reach **between EUR 2.6 billion and EUR 3.7 billion per year.**
- A more conservative estimate is provided by a 2017 study of **road crash costs** in EU countries,<sup>224</sup> according to which the monetary valuation of preventing a fatality is between EUR 0.7 million and EUR 3 million (taking into account medical, administrative human and other costs, loss of productivity, property damage), while the total costs of road crashes are equivalent to between 0.4% and 4.1% of GDP.
  - Applied to the estimated figure of additional **fatalities due to ride-hailing** (683), the costs could reach **between EUR 478.1 million and EUR 2.05 billion per year.**
- Meanwhile, a 2019 study by EU-OSHA<sup>225</sup> estimated the costs of accidents at work, as well as work-related health problems and work-related deaths in Europe, based on estimates of disability-adjusted life years. According to this, **work-related accidents and illnesses** (both fatal and non-fatal) cost the EU at least EUR 476 billion every year, which equates to 3.3% of the EU's GDP. While the majority of these were caused by cancer and circulatory illnesses (which are more difficult to relate directly to platform work), 11.35% were related to injuries

<sup>217</sup> Triangulation of this figure with the number of the total of 935,216 road accidents resulting in injuries or death in the EU, it would mean that 41.5% of all road accidents are experienced by people working through platforms in either delivery or ride-hailing. Looking at the figures in Spain showing that 27% of accidents exclusively involved delivery personnel, the figure seems feasible.

<sup>218</sup> 3.926 million \* 0.1 (share of people who participated in traffic collision and reported injuries, according to the study in the UK). Available [here](#).

<sup>219</sup> Non-fatal accidents, meanwhile, amounted to 3,124,828 across the EU-27. However, no data are available on the possible share of these accidents suffered by people working in the labour platform economy.

<sup>220</sup> Data table [hsw\_n2\_02]

<sup>221</sup> Eurostat (2021). Non-fatal accidents at work by NACE Rev. 2 activity and sex. Available [here](#).

<sup>222</sup> Better Regulation Guidelines Tool #31 Health Impacts, p. 245. Available [here](#).

<sup>223</sup> Using inflation tool available [here](#).

<sup>224</sup> Wijnen, W., Weijermars, W., Schoeters, A., van den Berghe, W., Bauer, R., Camis, L., ... & Martensen, H. (2019). An analysis of official road crash cost estimates in European countries. *Safety science*, 113, 318-327.

<sup>225</sup> Elsler, D., Takala, J. & Remes, J. (2017). An international comparison of the cost of work-related accidents and illnesses. European Agency for Safety and Health at Work. Available [here](#).

(the category closest to the figures discussed in this section). This would amount to EUR 54.03 billion annually, or 0.37% of Europe's GDP. **The average<sup>226</sup> cost per occupational injury/ disease was EUR 51,882.<sup>227</sup>**

- Applied to the estimated number of **fatal and non-fatal accidents** at work among people working through platforms in the EU (384,764, see above), the total costs could reach **EUR 20 billion per year**.

### 5.1.5. Costs of the baseline situation on platforms

As discussed in Section 5.1.2, platforms have experienced rapid growth over the last decade, suggesting that the baseline situation has benefitted their expansion. Nevertheless, legal fragmentation brings uncertainty to their business operations as well. Below, we discuss the key metrics that will be used to assess the impacts on platforms of the various policy options, relative to the effects of the baseline situation.

**Earnings and social security contributions.** Based on PPMI 2021 survey data, the annual gross earnings of people working through platforms who are at risk of misclassification amount to **EUR 13.3 billion.<sup>228</sup>** This figure includes income taxes and social security contributions paid by the self-employed. In the chapters that follow, this figure will serve as a reference point to compare whether the amount that platforms spend on their workforces will increase or decrease under the various policy options.

**Non-compliance costs.** At baseline, the platforms face costs for failing to comply with the labour laws of EU Member States. The table below provides examples of fines in cases relating to the employment status of people working through platforms. It shows that such fines can reach hundreds of millions of euros. Please note that the table does not include decisions in cases that were initiated by people working through platforms, and hence underestimates the total cost of non-compliance.

The examples in the table below come from decisions in Italy and Spain, only because authorities in these countries have so far imposed the largest fines received by on-location platforms. However, given the growing number of cases brought to the courts by people working through platforms in other countries (see Figure 21 below), it is reasonable to expect that labour inspectorates or other authorities may initiate similar cases in other EU Member States, too. Hence, these costs may be sustained in the near future unless platforms adapt by changing their business models, although the precise level of such costs is impossible to estimate.

<sup>226</sup> Average of estimated costs in the countries analysed: FI, DE, NL, IT and PL.

<sup>227</sup> Tompa, E., Mofidi, A., Heuvel, S., Bree, T.V., Michaelsen, F., Jung, Y., ... & Emmerik, M.V. (2019). The value of OSH: Estimating the societal costs of work-related injuries and diseases. Available [here](#).

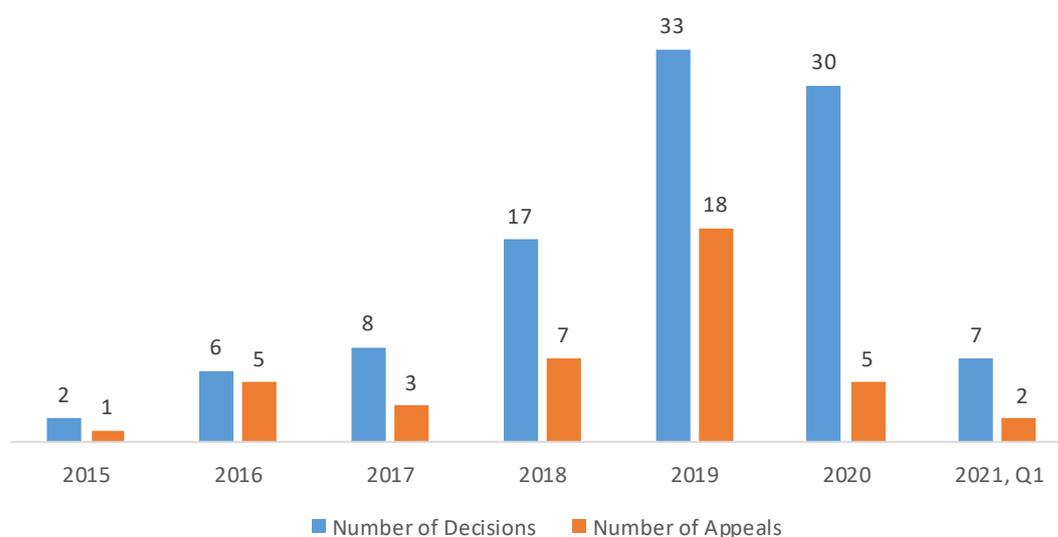
<sup>228</sup> See Annex 4 for the methodology used.

**Table 18. Examples of fines incurred by on-location platforms in labour law cases in the EU-27**

Country	Year	Fine, EUR	Platform	Issue
Italy	2021	733,000,000	Just Eat, Glovo, Uber Eats Italy and Deliveroo	Misclassification
Italy	2021	2,600,000	Foodinho	Violation of privacy and labour laws
Spain	2021	1,300,000	Deliveroo	Misclassification
Spain	2020	16,200,000	Glovo	Misclassification
Spain	2020	6,000,000	Amazon Flex	Misclassification

Source: compiled by PPMI, based on Annex 1.

**Legal fees.** In relation to the above, platforms incur legal costs whenever they are taken to court by labour inspectorates or people working through platforms. These are difficult to estimate, given that attorney fees may vary significantly depending on the complexity of the case, the length of proceedings, the country in which the case is brought to court, etc. Nevertheless, for the purposes of comparing the impact of policy options, we will consider the number of cases brought against platforms in recent years (see the figure below). Since 2015, a total of 103 court decisions have been made in misclassification cases (this figure does not include the cost of settlements) in the EU-27. A further 41 decisions have been appealed. Importantly, **no misclassification cases were identified with regard to online platforms; all the decisions illustrated below fall within the category of low-skill on-location work.** Regarding the impacts of the policy options, we will consider whether the options are likely to result in an increase or decrease in litigation.

**Figure 21. Court decisions in misclassification cases involving platforms in the EU-27, 2015- Q1 2021**

Source: Elaborated by PPMI, based on European Centre of Expertise (ECE) review of cases in Europe, as well as Annex 1.

**The cost of adapting to different EU employment and self-employment rules.** Another source of administrative burden in the baseline scenario concerns the need for platforms to adapt to differing rules across the EU-27 concerning the contracting and employment of individuals. To measure this cost, we rely on information from an

interview with one of the on-location platforms. Originally operating in Germany only, this platform has recently expanded into the Netherlands. The representative interviewed noted that it took 50 hours of legal research before internationalisation to the Netherlands. The platform employs the people who work through it, so 90% of the research focused on labour law, while 10% was on civil law. We assume that a paralegal is qualified to carry out such research. The average hourly rate for legal associate professionals in the EU-27 is EUR 14.25, according to the Structure of Earnings Survey.<sup>229</sup> Thus, the average cost of legal research for each platform that employs workers and expands into another EU country is estimated at **EUR 712.5 per platform, per expansion to one country**<sup>230</sup>.

This estimate will be used to discuss the impacts of the policy options in later sections. Note that the estimate is lower-bound, as the platform interviewed also conducted research into social security contributions, but the specific number of hours for this research could not be specified. Similarly, the cost does not include the time taken to update the platform's Terms & Conditions, etc.

We assume that these costs are negligible for online platforms because people all over the world can instantly sign up to work through them, meaning that online platforms do not need to consider the regulations for every country in which freelancers are based.

**Reputation.** An indirect cost to platforms concerns their reputation, which suffers as a result of court decisions that bring negative publicity and fines. Thus, some platforms might lose out on potential clients and investments, although reputational effects on demand or availability of investment are impossible to quantify.

**Revenues.** Despite the legal uncertainty in the baseline scenario, the current situation is clearly beneficial to platforms, given the rapid growth they have experienced since entering European markets, and their growing revenues (see Section 5.1.2.1).

### 5.1.6. Costs of the baseline situation on the public sector

In the baseline situation, the public sector is likely to continue experiencing administrative costs, as well as losing revenues from taxes and social security contributions.

#### a) Administrative costs

It is impossible to provide an aggregate cost estimate with regard to the cost at baseline of legislative initiatives, actions taken by labour inspectorates or other authorities, as well as court cases. The initiatives taken are very different, ranging from broad packages that encompass the platform economy as a whole, to cases that are specific to, for example, the food delivery sector.

With regard to the costs of court proceedings, we identified 103 court decisions in the EU during the period 2015-2021 that concern issues pertinent to the employment status of people working through platforms, and 41 cases of appeals (see Figure 21 above). Given the very different scopes and lengths of these cases, it is not feasible to estimate the specific baseline cost to the public sector of an individual court case. However, the table below shows that given the total number of court cases brought to court or resolved

<sup>229</sup> Estimated using the Salary calculator based on the Structure of Earnings survey (2018). Available [here](#). Estimates were retrieved separately for men and women legal, social, cultural and related associate professionals working at companies of different sizes. These were then averaged for SMEs and larger firms. The employee is assumed to be 35 years old, working full-time in a capital region and having spent three years with the company.

<sup>230</sup> 50 x 14.25.

each year, the baseline cost to the public sector of court cases dealing with issues of misclassification is not significant.

**Table 19. Number of court cases in selected countries and government expenditure on law courts**

	Number of civil and/or commercial legal cases brought to court	Total number of all legal cases* that were brought to court	Number of civil and/or commercial legal cases – all legal statuses**	Total number of all legal cases – all legal statuses**	General government total expenditure on law courts (EUR millions)
<b>DE</b>	1,497,271	3,057,800	4,555,071	8,053,485	13,465
<b>DK</b>	52,931	752,664	805,595	1,676,149	502
<b>ES</b>	2,315,283	2,813,763	5,129,046	7,496,818	4,227 (p)
<b>FR</b>	2,255,753	6,787,645	9,043,398	9,884,371	5,674 (p)
<b>IT</b>	3,136,332	4,478,526	7,614,858	13,963,593	5,981
<b>LT</b>	159,655	214,078	373,733	460,591	126
<b>PL</b>	13,357,350	16,436,689	29,794,039	36,167,951	2,743
<b>RO</b>	1,139,611	1,789,532	2,929,143	4,243,906	925

\* The types of legal cases include criminal, civil and/or commercial, administrative and other legal cases. All types of legal cases are combined in this row.

\*\* The legal statuses include: brought to court, resolved and pending. This row combines all these legal statuses.

(p): provisional

Source: Eurostat (2021), Legal cases processed in courts of first instance by legal status of the court process; Eurostat (2021), General government total expenditure on law courts.

Without a coordinated initiative at EU level, the number and scope of actions by public authorities, as well as the number of court cases, is likely to grow. This will involve costs as different countries proceed to develop their own policy frameworks aimed at addressing the issue of misclassification.

#### b) Cost in terms of tax income and social security contributions

Misclassification (bogus self-employment) result in potentially lower tax incomes for public budgets (including social security budgets). People working through platforms under the status of self-employment bear the costs of social protection and are responsible for paying such costs on a monthly or annual basis. Overall, the self-employed tend to pay less into public budgets than employees, due to several reasons:

- their tax and social contributions rates tend to be lower;
- they may opt out of, or are not subject to, certain types of insurance (mainly unemployment and accident insurance);
- they are in a position to under-declare their taxable income in income declarations (or they may operate in the grey economy and not pay any taxes at all), since platforms typically do not take responsibility for paying payroll taxes or value-added taxes, and neither do they report workers' income to national authorities.

Our assumptions and estimates concerning the levels of net and gross earnings of people who are most at risk of being misclassified are presented in Annex 4. The

estimate of the contributions currently paid into public budgets through personal income and social security-related taxes ranges from **EUR 1.6 billion** (persons at risk of misclassification in main platform work) to **EUR 3.7 billion** (all persons at risk of misclassification) per year. This estimate assumes, however, that all those who are currently at risk of misclassification can be classified as employees without any negative effect on the demand for such employees. In reality, as demonstrated in the analysis of specific policy options below, reclassification is likely to lead to a decrease in the number of people working through platforms. This may, however, be counter-balanced by an increase in working hours per person among those people who will be employed.

## 5.2. Assumptions and general impacts of Policy Area A

### 5.2.1. Assumptions on responses from platforms

The core direct benefits of Policy Area A would be improved access to and an easier litigation process to address the misclassification of platform workers, as well as greater clarity and transparency concerning the criteria used to differentiate employees from the genuinely self-employed. The result – increasingly successful reclassification cases – will influence, directly or indirectly, changes in platform business models, behaviours and practices. Such changes may come as a result of losing court cases, or with the objective of avoiding litigation altogether, as well as through certification procedures or due to national-level regulations supported by the initiative. It is assumed that if the pressure to reconsider the classification of people working through platforms becomes strong (due to any of the above reasons), labour platforms may go in **one of four directions, each of which we now explore**.

The first direction is for platforms to **employ** (some of) the people working through them, so that all remaining service providers become employees. Platforms that change to an employment model will be likely to offer minimum wage (plus bonuses) in some countries; in other countries and in specific sectors, wages may be fixed through collective bargaining. To organise work, it is likely that platforms will introduce shifts to deal with peaks in demand. People working through platforms may be employed:

- a) by platforms themselves; or
- b) through third parties such as temporary work agencies (TWAs), which would allow the platforms to externalise the risks.

We assume that the direction of employment will be taken by platforms whose relationships with people working through them resemble subordination and dependency, and where this is the key premise for their operations (e.g. in terms of efficient work organisation, task specificity, etc.). In the overall labour platform economy, these platforms (or parts of larger platforms) tend to come from specific sectors (primarily, although not limited to, ride hailing and delivery), and constitute a minority of all labour platforms operating in the EU. Some platforms may try to externalise the risks relating to employment by using TWAs, but this option will be legally limited to types of work that are consistent with the regulation of temporary work agencies (i.e. work that is temporary and irregular). For example, this option appears not to work for food delivery companies in Spain, which abandoned this option, after initially considering it as a

response to the Spanish Riders' Law.<sup>231</sup> Meanwhile, Cabify was fined by the Spanish Labour Inspectorate<sup>232</sup> for a similar practice: if the subcontracted companies (TWAs) only provide the labour, but the digital platform continues to organise and control the riders using its application and algorithm, this may qualify as illegal work, as it is the platform and not the TWA that is the real employer. Other platforms will avoid switching to the employment model altogether and will look for other solutions, as illustrated by numerous interviews with platforms, both online and on-location.

The second direction is to ensure that people working through platforms are **genuinely self-employed** (i.e. they can set their pay rates and schedules, and do not depend economically on the platforms, etc.). During the interviews and in the consultation with social partners, the platforms expressed the need for greater clarity and a more unified approach across Europe concerning the interpretation of the status of people working through platforms, in order to guide their policies. Most platforms continuously update their Terms & Conditions in response to policy initiatives and court cases in the Member States, to ensure they are not found to be employers by the courts. It is likely that the new initiative will have similar effects.

The actual scope of this trend will depend on at least two factors:

- whether, under the various policy options, the criteria used to differentiate between employees and the genuinely self-employed are specific and actionable enough and can be interpreted unequivocally by the stakeholders;
- whether the platforms have reasons to believe that by following these criteria they are likely to reduce the risk of litigation – in other words, if companies following the criteria are as likely to be challenged in the courts as companies that do not follow the criteria, the incentive to adhere to them *ex-ante* will decrease.

We assume that the direction of ensuring genuine self-employment will mostly be attractive to online platforms and on-location platforms on which workers are not managed as tightly by algorithms and whose business model is closer to that of a pure marketplace (e.g. for home services, on-location professional services, etc.). A number of platforms already apply this logic to limit economic dependence of people working through them, e.g. by introducing a cap on monthly income or hours worked. Enabling people to set their own prices is another important criterion. For some platforms offering low-skill on-location work, this might be a less feasible option – for example, a delivery platform explained in an interview that allowing delivery riders to set their own rates would not only be too difficult to implement technically, but would also bring adverse effects (such as increased price competition between workers, as well as a loss of efficiency in the organisation of work). However, another delivery platform is considering such a system in response to the Spanish Riders' Law.<sup>233</sup> In the ride-hailing sector, the implications are similar. For example, when Uber tested a function that allowed drivers to set their own prices in California, it resulted in a 117% increase in passenger cancellations due to higher prices,<sup>234</sup> while drivers noted that higher competition between them led to a 'race to the bottom' in their rates.<sup>235</sup>

<sup>231</sup> Jiménez, M. (2021). Glovo contratará 2.000 repartidores para cumplir la ley de 'riders'. Cincodías. El País. [Available here.](#)

<sup>232</sup> Todolí, A. (2021). Argumentos de la sanción a Cabify por cesión ilegal de la Inspección de trabajo - aplicables a muchas de las plataformas digitales. Argumentos en Derecho Laboral. [Available here.](#)

<sup>233</sup> In late July 2021, Glovo was reportedly planning to introduce this in Spain, in response to the Rider Law. It is said to be set up as a bidding system in which a rider sets a price for their services and consumers can choose between different riders. See [here](#) and [here](#).

<sup>234</sup> Sandler, R. (2021). Uber Won't Let California Drivers Set Their Own Prices Anymore After Rider Cancellations Increased 117%. *Forbes*. Available [here](#).

<sup>235</sup> Interview with Uber.

The third direction in which platforms may be expected to move is to apply a **hybrid/dual model**, with the core workforce necessary to effectively satisfy demand being employed by the platform, plus a pool of workers to cover peaks and surplus workloads, who are either:

- a) independent contractors in genuine self-employment,<sup>236</sup> or
- b) employed through TWAs or similar third parties.

Currently such hybrid models are fairly rare, and are likely to be difficult to implement (e.g. they would require dual accounting systems, technical solutions and measures to ensure fair conditions for both groups of workers). Few examples of such models currently exist.<sup>237</sup> We therefore assume that this would be a preferred option for platforms that cannot organise work under genuine conditions of self-employment, if they are pushed by *binding* regulation or court decisions to reclassify their workers as employees. This outcome could be achieved, for instance, by applying a time threshold to the requirement to conclude an employment contract (e.g. workers with weekly working hours over a certain limit must be employed) or specific conditions relating to the type of work and level of subordination involved. Such a model would provide greater choice for workers, some of whom may wish to retain the flexibility of choosing their working hours, while others may prefer more dependable income and social protection.

The fourth and the most radical direction of action for platforms would be to **leave the market** or cease operations altogether. In the interview programme, a number of platforms said that they would not be able to continue operating in EU countries if they were required to reclassify the people working through them as employees. A recent real-life case of this is Deliveroo's plan to leave Spain by the end of 2021 in response to the Spanish Riders' Law.<sup>238</sup> Such moves have already occurred in other countries. For example, Foodora discontinued operations in Canada two months after a court ruling that classified its drivers as dependent contractors<sup>239</sup>. In Luxembourg, some platforms were forced to exit the market after the labour inspectorate found that the initial qualification of riders as independent contractors was in reality an employment relationship<sup>240</sup>. As declared by one of the founders of the food-delivery platform Foostix from Luxemburg, which left the market: "respecting the law [which obliges platforms to employ delivery riders] does not allow to make the business profitable, as we should have asked more than EUR 5, plus 30% of commission, for each delivery."<sup>241</sup>

It can therefore be expected that this direction would mostly be taken by platforms for which operating under the new model would no longer be economically viable. An example might be high-skill online work platforms, if they were obliged to employ the people working through them, although such an option might also concern on-location platforms.

<sup>236</sup> One example of this planned is that of Glovo in Spain, which plans to employ 2,000 riders (out of the current 12,000), and to provide sufficient autonomy for the other riders, without making many redundant. Jiménez M. (2021). Glovo contratará 2.000 repartidores para cumplir la ley de 'riders'. Cincodías. El País. Available [here](#).

<sup>237</sup> e.g., Just Eat Takeaway operates both employment and independent courier models. This dual system was inherited after a merger between two companies: Takeaway.com, with directly and indirectly employed couriers; and Just Eat, which engages independent contractors as couriers. Some markets also still use third-party delivery companies.

<sup>238</sup> Mcloughlin, M. (2021). Sindicatos y Just Eat preparan el primer convenio colectivo de 'riders' de España. Available [here](#).

<sup>239</sup> GlobeNewswire (2020). Foodora Canada announces plans to close business while assuring support for employees [online]. GlobeNewswire News Room. Available [here](#).

<sup>240</sup> Ratti, L. (2021). European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies. Thematic Review 2021 on Platform Work: Luxembourg. Luxembourg: Publications Office of the European Union.

<sup>241</sup> Ratti, L. (2021). European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies. Thematic Review 2021 on Platform Work: Luxembourg. Luxembourg: Publications Office of the European Union.

## 5.2.2. General social impacts

Several directions are possible for people working through platforms, as platforms react to policy options under Policy Area A. In the short term,<sup>242</sup> these options may divide the people currently working through platforms into five groups:

- a) People working through platforms who are reclassified as employees and employed by platforms or through temporary work agencies (TWAs).
- b) People working through platforms who become genuinely self-employed.
- c) People working through platforms who lose the opportunity to carry out such work.
- d) People working through platforms as self-employed, who see their working conditions or social security improved.
- e) People working through platforms who are not affected, and who continue to work through platforms under the same model as they currently do (employed, genuinely self-employed, or bogus self-employed).

We assume that the main factors determining which group a person working through platforms will fall into under the various policy options will depend on the type of work, and the presence of subordination to/control by the platform.

While the main social impacts on the people falling into groups (d) and (e) are rather clear, for people in the groups (a), (b) and (c) above, the costs and benefits of policy options would vary and differ, as summarised in the table below.

**Table 20. Impacts of options under Policy Area A on people working through platforms**

Group	Costs	Benefits
<b>People who are reclassified as employees and employed by platforms or TWAs</b>	<ul style="list-style-type: none"> <li>- Increased social security contributions</li> <li>- Reduced flexibility in relation to self-employment (in terms of working times, selection of tasks, working locations, etc.)</li> <li>- For freelancers – competitive disadvantage compared with non-EU workers</li> <li>- Loss of opportunity to work through multiple platforms simultaneously to secure an uninterrupted flow of assignments</li> </ul>	<ul style="list-style-type: none"> <li>- More stable and predictable income</li> <li>- Higher wages for those who did not previously receive minimum wage</li> <li>- Fairer compensation for the working time spent waiting for/securing tasks, for overtime; paid leave</li> <li>- Improvements to working conditions, better health and safety</li> <li>- Access to social protection, fairer distribution of social security contribution costs between workers and employers</li> <li>- Better opportunities for collective bargaining</li> </ul>
<b>People who become genuinely self-employed</b>	<ul style="list-style-type: none"> <li>- For some – fewer opportunities to earn via platform work, as platforms introduce caps on working time or income /fewer</li> </ul>	<ul style="list-style-type: none"> <li>- Greater flexibility and real autonomy if platforms revise their terms and conditions to</li> </ul>

<sup>242</sup> In the longer term, many of these people may choose to quit this form of work. For example, Uber's internal survey of newly reclassified workers in Geneva showed that 50% of converted couriers did not intend to continue working as employees in the long run after trying it out. (Stein, A. (2020). Independent couriers' reaction to employee reclassification: learnings from Geneva. Available [here](#)).

	opportunities to earn through platform work	remove the provisions relating to subordination
<b>People who lose the opportunity to work through platforms</b>	- Loss of a potential source of additional income	- For some – the incentive to look for more stable employment

Over the forthcoming paragraphs, we elaborate on these social costs and benefits in more detail. However, the strength and nature of each policy option considered differs in terms of how many people will be affected and how. The quantification of these effects and the people affected is provided in the following sections of this chapter, which focusing on the various policy options, as well as being summarised in Section 5.6. Overall, the stronger the policy option (in terms of its difference from the baseline), the more difficult it is to predict which paths will be taken by different platforms, and therefore the numbers of people that will be affected in various ways.

**a) Costs**

**Flexibility**

Most people working through platforms report being satisfied with their current levels of flexibility in platform work. Many of them emphasise the importance they place on the opportunity to set their own working schedules, to decide on working locations, and to work for selected or multiple platforms and/or for multiple clients. Flexibility is also frequently emphasised by platforms as a key factor for many of their workers, often supported by data from their company-wide worker surveys<sup>243</sup> – particularly with regard to public discussions on possible regulation in relation to their employment status on labour platforms.

In independent research, flexibility has also been found to relate to subjective well-being in the context of platform work. For example, a recent study argues that some workers who left regular jobs to drive for Uber reported higher life satisfaction, due to increased flexibility and autonomy.<sup>244</sup> Loss of the opportunity to work flexibly is therefore likely to negatively affect workers who have chosen platform work because of such working conditions.

To illustrate, a survey conducted by Uber<sup>245</sup> to understand how Uber Eats’ newly employed couriers felt about the shift away from independent work in Geneva showed that 72% of the couriers hired as employees reported that they preferred working independently. Their dissatisfaction stemmed from the loss of flexibility that came with the new employment model. Of these “converted” couriers who were dissatisfied with the change, 62% cited no longer being able to choose their own schedules.<sup>246</sup>

Evidence from Delivery Hero in Norway and Austria, whose riders can choose for themselves between a freelance model and employment, and subsequently switch if they want to, provide additional insights. In Norway, around 60% of riders choose the more flexible model, while 40% are employed. In addition, most riders (75%) in Norway who changed their employment status, decided to change from employment to a more flexible option, not vice versa. In Austria, around 95% of riders work under service contracts, and

<sup>243</sup> Some platforms provided the researchers with data from internal their surveys after their interviews (Wolt, Bolt).

<sup>244</sup> Berger, T., Frey, C.B., Levin, G. & Danda, S.R. (2019). Uber happy? Work and well-being in the ‘gig economy’. *Economic Policy*, 34(99), 429-477.

<sup>245</sup> The results may therefore be understood as somewhat biased, but no additional data exists to triangulate.

<sup>246</sup> Stein, A (2020). Independent couriers’ reaction to employee reclassification: learnings from Geneva. Available [here](#).

around 5% of riders have an employment contract. Internal surveys carried out by the platform show<sup>247</sup> that this is in line with the main reasons why riders in Austria work with Delivery Hero – namely, flexible shifts.

However, actual flexibility in platform work may be more limited than people perceive. People working through pure freelancing marketplaces can, in many cases, enjoy real autonomy in deciding when and where to work, and for how much (although often at the cost of increased anxiety).<sup>248</sup> Flexibility in terms of working time is also pronounced among low-skill online platform work (microtasking). However, in both cases people's effective control over scheduling is more limited in practice due to the availability of work and the degree of the worker's dependence upon it.<sup>249</sup> Moreover, some platforms for online work already apply caps on the number of hours worked or earnings per month, with the goal of reducing freelancers' dependence on them. This practice can be expected to spread as a result of this initiative.

Meanwhile, for many low-skill on-location jobs, the possibility of flexible work is even more fragile. Actual working times depend on the current demand for services, the supply of workers on the platform, and other factors on the platform side. App-based misclassified workers may also be 'deactivated' from the digital labour platform, based on a decision by the platform.

For these reasons, most people working through platforms, besides expressing their vocal appreciation for flexibility (especially in the context of some of the recent debates on regulation), also prefer having a guaranteed workload and/or working hours. In the 2021 survey, 65.2% of people working through platforms more than sporadically evaluated this as being very important.<sup>250</sup> Therefore, for many of those who are reclassified due to the initiative, the loss of flexibility may be largely compensated with other important benefits.

### **Loss of opportunities of platform work**

Interviews with platforms and real-life examples show that if platforms are obliged to change their business model to employ the people providing services through them, they will employ only a portion of the people who currently work through them. Although different platforms provided different estimates and assumptions regarding what share of their current workforce this might be, it is most likely to consist of those people who work longer hours through the platform, who would be sufficient for platforms to satisfy average demand. The remaining, mostly sporadic, irregular or part-time workers (most of whom have other jobs), might become redundant after platforms reorganise the work, and will thus lose their opportunity for additional earnings. Some real-life examples of this already exist: the immediate effect of Geneva's decision to prohibit Uber Eats couriers from working as independent contractors was that 77% of existing couriers (1,000 people) were put out of work on the platform.<sup>251</sup> Glovo has indicated that after Spain's Riders' Law comes into force, it plans to hire just 2,000 out of its existing 12,000 riders by the end of 2021. However, the remaining Glovo couriers will be able to continue working as (genuinely) self-employed.<sup>252</sup>

From the service provider's perspective, the opportunity to earn extra income without entering into an employment relationship with platforms or clients – which might be

<sup>247</sup> According to Delivery Hero.

<sup>248</sup> Hermosillo, A. & Deng, X. N. (2021). Flexibility in Disguise: Crowdwork Risks from the Worker Perspective.

<sup>249</sup> Lehdonvirta, V. (2018). Flexibility in the gig economy: managing time on three online piecework platforms. *New Technology, Work and Employment*, 33(1), 13-29.

<sup>250</sup> Q22.8, 7-10 on a scale from 1 to 10, where 1 is not important at all, and 10 is extremely important.

<sup>251</sup> Stein, A (2020). Independent couriers' reaction to employee reclassification: learnings from Geneva. Available [here](#).

<sup>252</sup> Lizarraga, C.H. (2021). Gig Economy Crackdowns Are Off to a Bad Start in Spain, Bloomberg, 13 August 2021.

reduced as a result of the options in Policy Area A – was reported to be ‘very important’ or ‘extremely important’ by 71.7% of people working through platforms more than sporadically.<sup>253</sup> According to interviews with platforms, the groups mostly disadvantaged by the reclassification would be students and migrants, who cannot work in regular employment; as well as people who have difficulties in integrating into the labour markets. According to Uber, more than 25% of couriers working through Uber Eats in Europe (and around half in Spain and Italy) were long-term unemployed before they began earning income through the platform. In most EU countries, a considerable share of people working through the platform come from minority backgrounds.<sup>254</sup> Similarly, according to the Spanish Association of Digital Economy (Adigital), 25% of delivery riders in Spain were unemployed before starting to work through platforms, and another 5% were inactive.<sup>255</sup>

It is important to note, however, that some of the experts interviewed questioned the validity of these arguments, claiming that platforms do not create jobs, but rather ‘intermediate’ existing ones.

## b) Benefits

Most of the benefits of reclassification relate to the fact that reclassified workers would fall under the protections of national labour codes and EU labour acquis. Therefore, the total impacts of each initiative would largely depend on the **numbers of people** reclassified.

Furthermore, changes in the **net earnings** of people who are reclassified as employees will depend on several factors:

- Their current net income, which varies by sector and by country. As described above, the best paid form of platform work is online freelance work. Ride-hailing drivers can earn decent wages in several EU countries (although this depends on demand), while food delivery seems to be the worst paid, especially in Western European countries.
- Increase/decrease in the levels of taxes and contributions. In most EU countries, taxes and social security contributions will increase for those workers who are reclassified.
- The presence of collective agreements setting wage levels. These are more likely in countries with higher levels of trade union representation and a deeper tradition of dialogue between employers’ associations and the labour unions (e.g. Denmark).

In certain sectors and countries (e.g. food delivery in Western Europe), guaranteed minimum wages could significantly improve the working and living conditions of many workers. In the 2021 survey, 67.2% of people working through platforms more than sporadically reported that a guaranteed minimum wage would be very important or extremely important to them when working through platforms, which could indicate that their current earnings do not reach the minimum wage.<sup>256</sup> This share was higher among people in low-skill platform occupations.

<sup>253</sup> 2021 survey of people working through platforms, analysis of Q22.9, values 7-10 (from a scale of 1-10, where 1 is not important at all, and 10 is extremely important).

<sup>254</sup> Uber (2021). A Better Deal. Partnering to Improve Platform Work for All. Available [here](#).

<sup>255</sup> Adigital (2020). Las plataformas digitales de delivery aportan más de 708 millones de euros al PIB español. Available [here](#).

<sup>256</sup> Q22.3, share of people who reported 7-10, on a scale from 1 to 10, where 1 is not important at all, and 10 is extremely important.

Furthermore, stability and predictability of income (which is currently a concern for many people working through platforms, as mentioned above) would improve. In addition to this, overall incomes would be supplemented by paid holidays, coverage of the costs of working equipment and protective materials, and the fairer allocation of social security contributions.

On the other hand, the implementation of a dual model (under which some workers are employed and others are self-employed) by platforms that currently allow workers to set their own pay rates, might lead to unfair competition between workers within a platform, as those working as independent contractors might be able to offer lower prices. This is what happened in the case of Danish cleaning services platform Hilfr, after a share of cleaners became employees following an initial trial agreement with a trade union (while the others remained self-employed). At the same time, however, those who were employed – despite their higher rates – still accounted for more than half of work carried out through the platform.

With regard to **working time**, those workers who become employed will probably have to work shifts and schedules that are set by platforms, rather than following their own personal preferences and platform incentive systems. For example, this is how the work of employed Wolt couriers in Germany is organised. As discussed above, this results in a loss of flexibility. At the same time, worker protections in relation to working time are likely to ensure a better work-life balance, fairer compensation for overtime and unsociable working hours, and will introduce paid leave.

Furthermore, the coverage of workers by **occupational health and safety rules** is likely to be especially important in the food delivery sector. As presented above, based on the available data, these workers are increasingly likely to be involved in traffic accidents. Their reclassification as employees will help to address this issue in several ways:

- As emphasised by several interviewees who represented people working through platforms, accident rates are related to the practices that platforms employ to ‘nudge’ workers into completing their routes more quickly, to a lack of oversight with regard to worker safety, and to the fact that platforms do not bear responsibility for accident insurance. If the people working through platforms became employees, platforms would be incentivised to implement measures preventing occupational accidents.
- The long working hours required to earn a decent income further contributes to this issue.<sup>257</sup> Working time and minimum wage regulation might help to address this issue among the most vulnerable workers.
- A longitudinal study of workers in the US also found that pay-per-task (‘piece rate’) – a pay model designed to promote efficiency, and which is used by platforms – has important negative impacts on worker health, especially for vulnerable workers. Piece rate significantly increases the odds of self-reported health limitations compared with salaried work among low-wage, female, and minority workers.<sup>258</sup> Assuming that employment contracts will include hourly, monthly or weekly salaries, negative health effects could thereby be further reduced among the most vulnerable.
- As mentioned above, a notable share of workers report that platforms provide neither health and safety training nor protective gear to people working through them. As employers, platforms would become responsible for this, thus

<sup>257</sup> Publico (2021). Los riders, más expuestos a accidentes laborales por el trabajo a destajo, el estrés o la incertidumbre sobre sus ingresos. Available [here](#).

<sup>258</sup> Davis, M.E. & Hoyt, E. (2020). A longitudinal study of piece rate and health: evidence and implications for workers in the US gig economy. *Public health*, 180, 1-9.

increasing the potential to reduce accidents and fatalities relating to platform work.

The improvement of **social protection for workers** who become employees is another important benefit of reclassification, in terms of (higher) eligibility for unemployment benefits, old-age pensions, as well sickness benefits and accident insurance. In addition, those reclassified will be entitled to labour law protections against dismissal, and compensation in the event of dismissal.

### 5.2.3. General economic impacts

The economic impacts of the policy options will be most relevant to platforms, the consumers of platform services, other businesses, and the economy at large. These impacts will generally grow in magnitude depending on how many people are reclassified under each policy option, which we will discuss later.

#### a) Impacts on consumers

The reclassification of people working through platforms as employees is likely to increase prices for consumers. The extent of this would depend on the strength of the reclassification measures, other revenue sources available to the platforms, and overall market conditions (i.e. companies might hesitate to pass costs down to consumers in more competitive markets). The available data suggest that increases in prices could range from 0 to 40%, with the most likely estimate being 24%:

- The lower-bound estimate of 0% is based on the case of the UK. Uber denied that it had increased its prices following the decision of the UK's Supreme Court that Uber drivers should be classified as workers.<sup>259</sup> Nevertheless, this is likely to be a short-term strategy, given that the Supreme Court decision applies only to Uber rather than all platforms, as in the examples mentioned above. In other words, prices are expected to rise once the other platforms are obliged to classify their drivers as workers as well.
- The upper-bound estimate was provided by one of the platforms in an interview, where it stated that delivery costs would go up by 30-40%.
- The realistic scenario estimate of 24% is based on the fact that in response to new minimum wage floor rules in Seattle and New York City, Uber officially announced an increase in the prices customers would have to pay for their trips.<sup>260, 261</sup> In Seattle, this increase was reported to be 24% compared to pre-regulation prices.<sup>262</sup> There is no evidence such a move has been made by rival ride-hailing platform Lyft, but the company has mentioned in the past it might increase prices in the future as a result of the minimum wage floor measures.<sup>263</sup>
- Furthermore, following the passing of Proposition 22 in California, it was reported that platform companies charged higher rates to their customers: for instance, Uber-owned food delivery platform Postmates increased its charge to diners by

<sup>259</sup> Martin, H. (2021). Uber denies prices are rising as increased costs are put down to greater surge charges because of increased demand at end of lockdown. *Daily Mail*. Available [here](#).

<sup>260</sup> Lane, M. (2020). Regulating platform work in the digital age. Going Digital Toolkit Policy Note, (1), 23.

<sup>261</sup> Eidelson, J. (2019). Uber and Lyft Raise Prices in New York City, Citing Wage Law, Bloomberg [online]. Available [here](#). [Accessed 26 May 2021].

<sup>262</sup> Schlosser, K. (2020). Uber raising trip prices 24% in new year in response to Seattle's new minimum wage law for drivers [online]. GeekWire. Available [here](#).

<sup>263</sup> Schlosser, K. (2020). Uber raising trip prices 24% in new year in response to Seattle's new minimum wage law for drivers [online]. GeekWire. Available [here](#).

USD 2.5 per order.<sup>264</sup> Uber announced that customers could expect an increase in ride rates of up to USD 0.30 per ride and USD 2 per food delivery.<sup>265</sup> Lyft followed suit, announcing increased fees for its riders ranging from 30 cents to USD 1.50 per ride, depending on location, to cover the protection costs associated with Proposition 22.<sup>266</sup>

- The hourly wages of cleaners employed by the Hilfr platform in Denmark following the collective agreement with 3F were 9.4% higher compared with cleaners who remained self-employed.<sup>267</sup>

Most of the people interviewed for the impact assessment also said that they expected to increase consumer prices in the event of reclassification:

- 25 out of the 28 interviewees who spoke about impacts on consumers also agreed that consumers would bear higher prices if people working through platforms were reclassified as employees. If we look at these opinions by stakeholder type:
  - all of the interviewed experts and academics, employers' organisations, and associations of people working through platforms who spoke about impacts on consumers agreed that prices to consumers would increase to compensate for the increase in costs to platforms. Nevertheless, according to the experts interviewed, current prices are subsidised by investors. Interviewees argued that platforms deliberately keep their prices low in order to take over a share of the market from traditional businesses.<sup>268</sup> This means that traditional services may lose out on customers even if their services are of higher quality, but cannot compete on price. This means that consumers will potentially suffer lower-quality services. Thus, increased prices would represent the real cost of the services.
  - 7 out of 8 platform representatives argued that prices would increase. Those who dissented stressed that the policy options would encourage some platforms to move closer to genuine self-employment rather than, for example, reclassifying workers by allowing people to set their own rates. Interviewees argued that the latter move would result in a 'race to the bottom' in terms of prices.
  - 4 out of 5 trade unions, and 2 out of 3 representatives of Member State governments, agreed that prices to consumers would increase. Others argued that the effect on consumer prices is uncertain, and would depend on the profit margins of platforms and how much of a hit they can withstand in terms of increased costs before passing these costs on to consumers. This is exemplified by the Just Eat platform, which is profitable and competes on price with other platforms, despite offering employment contracts in many of its markets.

Please note that the available information concerns on-location platforms only, and could thus be interpreted as the impact of Policy Option A3a (see Section 5.5).

<sup>264</sup> Batey, E. (2021). Following Prop 22 Victory, Postmates Slaps California Customers With Biggest Fees Yet [online]. *Eater SF*. Available [here](#).

<sup>265</sup> Graf, C. (2020). Uber rolls out fee for California customers as Prop. 22 takes effect [online]. *The San Francisco Examiner*. Available [here](#).

<sup>266</sup> Graf, C. (2021). Lyft announces additional fee for California riders to cover cost of Prop. 22 driver benefits [online]. *The San Francisco Examiner*. Available [here](#).

<sup>267</sup> Information obtained from Hilfr. The average hourly rate of employed cleaners on the platform in 2020 was DKK 163.99/hr, compared with DKK 149.93 for self-employed cleaners.

<sup>268</sup> Dean, S. (2019). Uber fares are cheap, thanks to venture capital. But is that free ride ending? *Los Angeles Times*. Available [here](#).

Meanwhile, **the availability of platform services is likely to decrease.** This expectation is supported by a number of recent cases in various EU Member States and third countries. Examples from Spain, Canada and Luxembourg show that some platforms might discontinue their operations in specific markets following an obligation to employ the people who work through them (see Annex 1 for details).

Adigital also argues that, following the introduction of the Riders' Law in Spain, platform services will no longer be offered in cities with populations of less than 100,000, or in farthest reaches of large cities.<sup>269</sup> According to one platform interviewed, a few couriers who currently work through multiple platforms at once can fully satisfy the demand for services in areas with low population density. If these people had to be employed, the platform would need to ensure that there would be enough deliveries in the area to justify paying a fixed salary. This would be made more difficult by the fact that people would no longer be able to work simultaneously through multiple platforms, and hence would receive a more limited number of orders. Adigital estimates that 11 million people will be left without access to home food deliveries provided by digital platforms, a figure that represents 18% of the current market in Spain, while 13 million people (38% of the current total market) will experience reduced hours of service.

Nevertheless, platforms are likely to exit only the least profitable markets, rather than all of the EU. Furthermore, some of the platforms that exit might be replaced by their more established rivals, meaning that services will still be available to consumers, albeit from different providers. Lastly, new entrants to the market are likely to fill at least some of the gap in areas with few inhabitants. News articles have already noted that the Spanish Riders' Law is "causing the emergence of new businesses that want to fill those last-mile delivery gaps for restaurants."<sup>270</sup> One of them – Atajo – not only employs couriers, but operates in areas with up to 150,000 inhabitants – precisely those areas that are projected to be left without service according to Adigital.

**The effects on the quality of services will be mixed.** On the one hand, improvements can be expected. The trade unions interviewed, as well as some of the experts, argued that the quality of services provided to customers would increase due to reclassification, as platforms would become fully responsible for the quality of their services. As a result, platform workers are expected to receive more **training** on how to perform their work. For example, people employed by Hilfr, a cleaning services platform in Denmark which signed a collective agreement with trade union 3F, are now eligible to receive training on the safe use of chemicals. Platforms would also engage more in the monitoring and supervision of workers, and exercise greater control over the allocation of work, while the current reliance on the self-employed model does not always allow them to ensure this benefit for consumers. For example, a cleaning services platform that relies on self-employed workers cannot ensure that the same person will show up to do the cleaning, even if the client hires the same person through the platform – which also poses **safety** concerns. This may explain why 60% of Hilfr's revenues come from cleaners employed by the platform,<sup>271</sup> even though customers through the platform can also choose to hire self-employed cleaners who provide services at a lower price. Furthermore, some aspects of the current self-employment model, such as surge pricing and piece rate for tasks completed, might create incentives for people working through platforms to sacrifice quality in order to earn more. One study has shown that Uber drivers are prone

<sup>269</sup> Adigital (2021). Análisis del impacto económico de la laboralización de repartidores. Available [here](#).

<sup>270</sup> Translated by the authors. Moreno, M.A. (2021). La ley de 'riders' impulsa las franquicias de esta empresa de repartidores con contrato laboral: 'Cada vez tenemos más peticiones de restaurantes por miedo a que las plataformas no respondan'. Business Insider. Available [here](#).

<sup>271</sup> Information obtained from Hilfr on June 18, 2021.

to taking detours during surcharge pricing<sup>272</sup>. Such incentives would effectively disappear if drivers were paid an hourly rate rather than per ride.

On the other hand, some aspects of the policy options could lead to a deterioration in the quality of services. First, platforms argued that consumers would suffer a reduction in the quality of services due to **longer delivery/arrival times**. These would increase simply because there would be fewer people working to provide services through the platforms. According to Uber, in Geneva delivery times increased by an average of 6 minutes following reclassification.<sup>273</sup> While this applies to the ride hailing and delivery sectors only, service quality in general might suffer due to a lower supply of workers and hence lower competition for tasks. Second, the presence of ratings also motivates better-quality service, as shown by empirical research,<sup>274</sup> yet platforms may be expected to move away from rating systems in order to establish that the people working through them are genuinely self-employed. This is because poor ratings often lead to penalties for people working through platforms in terms of fewer clients being assigned to them, etc. Lastly, one study has shown that traditional taxi drivers drive at higher speeds overall than Uber drivers,<sup>275</sup> meaning that passengers' safety might also suffer if more people are encouraged to switch back to traditional taxi services.

In the context of **online platforms**, their consumers are mostly businesses that outsource various tasks to freelancers. The effect on these businesses is likely to be negligible under all of the options in Policy Area A. Even if all freelance services provided through platforms were discontinued across the EU-27, these businesses could still rely on freelancers in other parts of the world. Nevertheless, businesses that currently rely on freelancers for tasks that require a local language or other expertise (e.g. translation services) are likely to face increased service fees similarly as consumers of on-location services. This is of the additional costs online platforms would incur in the process of hiring service providers (e.g. translators).

In a similar way to on-location platforms, effects on the quality of online services are also likely to be mixed. Service quality may improve due to training being provided to employees and the switch in remuneration to pay per hour instead of per task. On the other hand, if fewer people providing online services are hired as employees, the lower level of competition might negatively impact service quality.

#### b) Impacts on traditional businesses

Two types of traditional (i.e. non-platform) businesses will be affected by the initiative: **businesses that compete with platforms, and businesses that rely on platforms in their operations**. Examples of the first group include traditional taxi services, nanny agencies or other businesses that provide similar services to those provided by platforms (e.g., data entry, clerical work, etc.). The second group consists of companies such as restaurants that partner with delivery platforms, businesses that outsource various tasks to freelancers, fleet operators that rent cars and provide accounting support to self-employed drivers, or temporary work agencies that supply some of the workers to platforms (as in the model used by Just Eat).

<sup>272</sup> Liu, M., Brynjolfsson, E., & Dowlatabadi, J. (2018). Technology, Incentives, and Service Quality: the Case of Taxis and Uber. NBER Working Paper 25015.

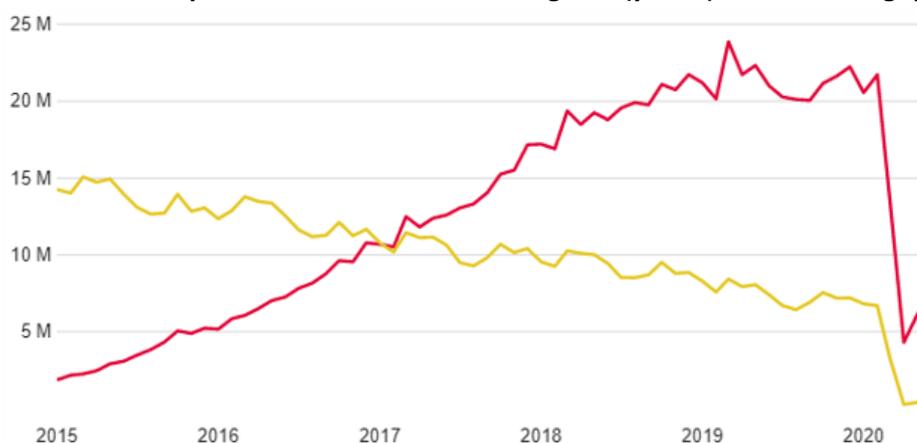
<sup>273</sup> Uber (2021). A Better Deal: Partnering to improve platform work for all. Available [here](#), p. 29.

<sup>274</sup> Available [here](#).

<sup>275</sup> Liu, M., Brynjolfsson, E. & Dowlatabadi, J. (2018). Technology, Incentives, and Service Quality: the Case of Taxis and Uber. NBER Working Paper 25015.

**Businesses that compete with platforms** will benefit from the initiative because it will at least in part level out the playing field between platforms and these companies. Companies that employ workers on average face 24.5% higher labour costs compared with platforms that rely on those who are self-employed.<sup>276</sup> This is due to the social security contributions that are payable by the employer, as well as recruitment costs, training costs, the cost of providing tools, etc. In addition, traditional taxi companies are often subject to industry-wide collective agreements or other laws that regulate the pay rates and working conditions of taxi drivers. In Austria, for example, a study found that Uber and Bolt's prices were 25% to 50% lower than those of traditional taxi companies.<sup>277</sup> It is unsurprising, therefore, that traditional taxi companies have lost market share to ride-hailing services, as illustrated in the figure below. Another study has found that the number of Yellow Taxi trips taken each day in New York had been increasing right up until the point when Uber entered the market in the city, following which the average daily number of Yellow Taxi trips declined. The study points to a causal relationship.<sup>278</sup> Ensuring that the same regulations apply to both traditional businesses and digital labour platforms would therefore help to ensure fair competition within the EU.

**Figure 22. Number of trips each month in New York using taxis (yellow) and ride-hailing apps (red)**



Source: Calcea (2020).<sup>279</sup>

Nonetheless, the impact that the initiative under consideration will have on traditional taxi companies should not be exaggerated, even if the most impactful policy options are ultimately chosen. This is because traditional taxi companies face a number of requirements other than those relating to labour relations. For example, in various countries and cities these include the requirement to carry a licence and a taximeter; to pass a city topography test; to carry a special sign identifying the vehicle, etc. Fulfilling these requirements add to the costs faced by traditional taxi companies, making them less competitive *vis-à-vis* ride-hailing platforms. This means that even if all drivers working through ride-hailing platforms were reclassified as employees, the playing field between traditional taxi companies and digital labour platforms would still not be even, unless governments took steps to unify the requirements for ride-hailing platforms and traditional taxi companies. Examples at such regulations include the recent amendment

<sup>276</sup> Eurostat (2021). Wages and labour costs. Available [here](#).

<sup>277</sup> Kummer, S. (n.d.). Wirtschaftlichkeit und Preise im Beförderungsgewerbe mit Personenkraftwagen – Grundlagen für eine nachhaltige Personenbeförderung in Österreich. Presentation shared with the research team on 27 July 2021.

<sup>278</sup> Willis, G. & Tranos, E. (2020). Using 'Big Data' to understand the impacts of Uber on taxis in New York City. *Travel Behaviour and Society*. Figure 3.

<sup>279</sup> Calcea, N. (2020). Uber and Lyft are cutting even further into the taxi market during the pandemic. CityMonitor. Available [here](#).

to the Road Transport Act in Poland,<sup>280</sup> as well as government's Emergency Ordinance no. 49/2019 in Romania.<sup>281</sup>

**The initiative would similarly benefit platforms that already employ workers** by ensuring that other platforms follow the same regulations. In response to the Riders' law in Spain, Just Eat said it would “celebrate the new regulation, since it generates the necessary legal certainty to operate with two fundamental principles: [to] guarantee the rights of the distributors by giving them an employment contract and ensure that all operators in the sector carry out their activity under the same rules.”<sup>282</sup>

Meanwhile, according to platforms, **businesses that rely on platforms in their operations** may experience a strong negative impact, because platform services may become more limited as a result of the initiative (see the sections on consumers). Adigital, for example, estimates that restaurants will lose EUR 250 million during the first year after the Riders' law comes into force in Spain.<sup>283</sup> The revenues of the Spanish restaurant industry in 2019 stood at EUR 25.34 billion,<sup>284</sup> meaning that a drop of EUR 250 million would constitute **1.0% of total restaurant revenue**. In 2018, food and beverage service activities in EU-27 had a turnover of EUR 380.9 billion.<sup>285</sup> A 1% drop would translate into a loss of EUR 3.8 billion.

Importantly, this is likely to be an **overestimate**. While the assumptions behind Adigital's estimates are not disclosed, they probably fail to consider that new businesses might emerge to substitute platforms that limit or cease to provide services in all or parts of Spain, which they are doing already (see the previous section regarding the example of Atajo).

Restaurants are incentivised to sign up with these start-ups either because platforms plan to discontinue their service where such restaurants are located, or simply because the new entrants charge less commission. Nevertheless, customers are less familiar with these start-ups, meaning that turning to a newly established delivery service might be more of an option for large chains compared with SME restaurants. The latter might be less well known and may need the visibility afforded by an established platform in order to reach a wider customer base. Hence, SME restaurants also stand to lose more if a number of delivery platforms discontinue their services in all or certain areas as a result of the initiative.

Bearing in mind that the restaurants themselves may choose to provide deliveries, or that new businesses will emerge to replace some of the platforms that will no longer provide services in remote areas (or will provide services during limited hours only), we estimate that the true impact on restaurants in Spain may be closer to a drop of **EUR 40.2 million**<sup>286</sup> in revenues, which would constitute 0.16% of total restaurant revenue. At the level of the EU-27, this would translate into a decrease of EUR 609 million.

<sup>280</sup> Polkowska, D. (2021). European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies. Thematic Review 2021 on Platform Work: Poland. Publications Office of the European Union.

<sup>281</sup> Matei, M. (2021). European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies. Thematic Review 2021 on Platform Work: Romania.

<sup>282</sup> Translated by the authors. Varela, A.F. (2021). La ley de 'riders' dibuja una nueva normalidad para Glovo, Deliveroo o Uber Eats: qué puede pasar a partir de ahora según repartidores, sindicatos y empresarios. Business Insider. Available [here](#).

<sup>283</sup> Adigital (2021). Análisis del impacto económico de la laboralización de repartidores. Available [here](#).

<sup>284</sup> Statistics for 2020 are not available. Statista (2021). Revenue of the restaurant industry in Spain from 2015 to 2019. Available [here](#).

<sup>285</sup> Eurostat table SBS\_NA\_1A\_SE\_R2, Available [here](#).

<sup>286</sup> Adigital estimates that restaurants will suffer a EUR 250 million drop in revenues because: 1) services will no longer be available in areas with fewer than 100,000 residents, which constitutes 10% of the delivery market; 2) services will only be provided during peak hours in areas with between 100,000 and 250,000 inhabitants, which constitute 15% of the delivery market; 3) services will no longer be available in the most remote parts of cities with more than 250,000

Another group of businesses that would suffer include fleet operators that rent cars and provide accounting support services to self-employed drivers. In Poland alone, examples of such companies include City Drive, Saltexpress, MB Partner, Natviol and Evelstar. If all drivers working through ride-hailing platforms were to become employees, the services of such companies would become obsolete. Nevertheless, as mentioned earlier, some of the policy options are likely to result in a dual model, in which platforms employ a share of their workforce while business models will be adapted to bring a pool of people currently working through platforms closer to genuine self-employment. In this case, the services of fleet operators would still be needed.

Finally, temporary work agencies (TWAs) like those that currently have contracts with the Just Eat platform, stand to gain from the initiative if platforms turn to them to help deal with surges in demand for platform services. According to the media, in Spain these agencies charge platform companies roughly EUR 1 per hour in commission, in addition to the courier's hourly rate, for each TWA employee who works through delivery platforms.<sup>287</sup>

### c) Impacts on platforms

The sections that follow lay out the impacts on platforms of each policy option. To help in comparing the options, a summary is provided in Section 5.6 of the various impacts of each option that would be experienced by platforms.

As an illustration of the effects that such changes can have on individual platforms, Pinar Ozcan, professor of entrepreneurship and innovation at Oxford University's Saïd Business School, estimates that in places where Uber cannot avoid giving employment benefits to its drivers following the UK Supreme Court's decision, Uber's costs could increase up to 30%.<sup>288</sup> Bank of America provides a lower estimate of a 9% increase in total costs,<sup>289</sup> although the assumptions behind this estimate are not disclosed.

Throughout the narrative that follows, we stress that platforms that are SMEs may struggle more than large platform companies in dealing with the administrative costs that the initiative under consideration would entail. In light of this, it is useful to understand how many of the platforms operating within the EU are SMEs.

At EU level, SMEs are defined as companies that fulfil two criteria: they have fewer than 250 employees, and a turnover of up to EUR 50 million, or a total balance sheet of up to EUR 43 million<sup>290</sup>. However, since digital labour platforms tend to use independent contractors, the headcount criterion is far less important than the turnover or balance sheet criteria when identifying companies that should, for example, benefit from exemptions *vis-à-vis* reporting obligations. Given the available information, we therefore consider only the criterion of revenues in order to establish how many digital labour

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inhabitants, which constitute 8% of the delivery market; and 4) only limited service will be provided in suburbs of cities with more than 250,000 inhabitants, which constitute 23% of the market. Given that companies such as Atajo are already emerging in cities of up to 150,000 inhabitants, we assume that the impact in remote areas will be half as strong as that projected by Adigital, hence 5% of the market will be lost in towns with up to 100,000 residents, and 4% in the most remote areas of cities with 250,000+ inhabitants. In this way, we recognise that the delivery business may not be viable in the most remote areas (hence, only partial replacement of platform delivery services is assumed). Furthermore, we assume that restaurants themselves or the companies that emerge to replace platforms will provide deliveries at all hours in areas with between 100,000 and 250,000 inhabitants, and in the suburbs (hence, the effect in terms of the drop in orders is assumed to be 0%). This translates to a 9% drop in the delivery market overall, which would reduce restaurant revenues in Spain by a total of EUR 40.2 million.

<sup>287</sup> Jiménez M. (2021). Glovo, Deliveroo y Uber Eats negocian contra reloj acuerdos de subcontratación de 'riders'. CincoDías. El País. Available [here](#).

<sup>288</sup> Browne, R. (2021). Uber employment rights setback is a 'gut punch' to its prospects in the UK. CNBC. Available [here](#).

<sup>289</sup> Williams-Grut, O. (2021). Uber's UK driver changes could cost company \$500m. Yahoo! Finance. Available [here](#).

<sup>290</sup> Available [here](#).

platforms operating in the EU are SMEs. Based on the CEPS database of platforms,<sup>291</sup> we could identify revenues for 132 out of the 516 platforms active in the EU. Of these, 92% had revenues equal to or below EUR 50 million, and only 8% had revenues above this figure. If we assume that the same ratio applies to the total number of platforms (516), we estimate that the number of SME digital labour platforms operating in EU would be 477, while the number of larger platforms would be 39.

Nevertheless, the earnings of people who work through platforms is often not included in the total revenues reported by the platforms. Including these earnings makes sense in the context of the initiative, because they would effectively become part of platforms' revenues if the people working through the platform were to be reclassified as employees. If these earnings are added to the platforms' revenues, SMEs would constitute 70% of all platforms for which we have data. Applying the same proportion to the total number of platforms, we estimate that there are roughly 361 SME platforms in Europe, compared with 155 larger ones. Thus, we conclude that between 70% and 92% of all digital labour platforms operating in the EU are SMEs.

#### 5.2.4. General public sector impacts

The measures under Policy Area A will incur administrative costs to the public sector (both at EU and national levels), due to the fact that the public sector will have to introduce new procedures and/or change existing procedures in order to apply and implement such measures. Furthermore, the policy options are likely to have budgetary implications in terms of the extra income that may be collected in the event of reclassification, given that the level of taxation applicable to employees is higher than the level of taxation applicable to self-employed independent contractors.

#### 5.2.5. Other general impacts

The measures considered under Policy Area A are also likely to have broad indirect impacts in a variety of areas. In this section, we provide a brief overview of the main impacts.

##### a) Sustainability and resilience of social protection systems

Bringing people who work through platforms effectively within the scope of employee social protection would broaden the tax and social contribution base, at least in some Member States. This, in turn, should help to adjust the social protection systems to changes in the economy and the world of work, improving the adequacy, sustainability and resilience of these systems in the long term. However, the longer-term impacts of the initiative in this area will largely depend on which option under Policy Area A is the selected, as well as developments relating to the social protection and bargaining rights (which will be addressed by a separate new initiative) of those people who are self-employed.

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<sup>291</sup> Note that the CEPS dataset does not include all digital labour platforms in the EU, but it covers the majority. Hence, the true numbers of SME and non-SME platforms is somewhat higher.

## b) Environmental impacts

Platform work, as well as the general trend towards the ‘platformisation’ of work, may have either positive or negative effects on the environment. Researchers and various stakeholders do not always agree as to whether the net effects of platform work on environment will ultimately be positive or negative, as these effects can differ significantly according to the type of platform work (just as they differ in different sectors of the traditional economy).

For example, online platform work potentially increases the number of people working from home. This reduced need to commute, in turn, contributes to a reduction in CO<sub>2</sub> emissions. Policy measures that do not impede the growth of online platform work can therefore contribute to improved environmental outcomes. Working from home also has implications on the need for office spaces, etc., which may ultimately translate into negative environmental effects.

Meanwhile, the environmental impacts of on-location platform work, especially ride hailing, are more contentious. Platforms tend to argue that ride-hailing trips substitute trips made using a personal car, and thus contribute to a sustainable mobility solution by promoting large-scale car sharing. The main global ride-hailing platforms, including Uber, have experimented with ride-sharing solutions (the transportation of several passengers at a time). Such solutions could, indeed, reduce traffic congestion, vehicle emissions<sup>292</sup> and the space devoted to parking. However, such ride-sharing functionality is not even active in many European cities. Meanwhile, research has shown that long waiting times, circuitous routes and privacy concerns lead most consumers to choose exclusive-ride services over shared services, thus increasing rather than decreasing vehicle mileage.<sup>293</sup>

As a number of studies have shown, many of the trips that ride hailing replaces are those made using public transport, bikes or walking (studies have found this to be the case in the US and France)<sup>294</sup>. One study conducted in the US<sup>295</sup> estimates that the average ride-hailing trip produces an estimated 69% more emissions than the trips it replaces. This increase is related to several factors, including ‘deadheading’ (the distances travelled by drivers without passengers), which cause a ride-hailing trip to produce on average 47% more carbon emissions than the same trip made using a private car.

Another recent study from the US<sup>296</sup> also found that ride-hailing companies’ net impacts on urban mobility are negative in a number of dimensions including increased road congestion, in terms of both intensity (by 0.9%) and duration (by 4.5%), as well as an 8.9% decline in transit ridership – all contributing negatively to environmental issues. Moreover, an experimental study conducted in Denver estimated that ride hailing led to an 83.5% increase in vehicle miles travelled, and reduced transportation efficiency in terms of deadheading, vehicle occupancy and mode replacement.<sup>297</sup>

However, it is important to note that Uber and other ride-hailing platforms have announced the goal of switching to electric fleets.<sup>298</sup> According to estimates by the

<sup>292</sup> Anair, D., Martin, J., Pinto de Moura, M.C. & Goldman, J. (2020). Ride-Hailing's Climate Risks. Steering a Growing Industry. Toward a Clean Transportation Future. Available [here](#).

<sup>293</sup> Schaller, B. (2021). Can sharing a ride make for less traffic? Evidence from Uber and Lyft and implications for cities. *Transport policy*, 102, 1-10.

<sup>294</sup> Stacian (2021). Le marché des taxis et VTC parisiens et la pandémie Covid-19. Available [here](#).

<sup>295</sup> Anair, D., Martin, J., Pinto de Moura, M.C. & Goldman, J. (2020). Ride-Hailing's Climate Risks: Steering a Growing Industry toward a Clean Transportation Future. Cambridge, MA: Union of Concerned Scientists. Available [here](#).

<sup>296</sup> Diao, M., Kong, H. & Zhao, J. (2021). Impacts of transportation network companies on urban mobility. *Nature Sustainability*, 4(6), 494-500.

<sup>297</sup> Henao, A. & Marshall, W. E. (2019). The impact of ride-hailing on vehicle miles travelled. *Transportation*, 46(6), 2173-2194.

<sup>298</sup> Bannon, E. (2020). EVs three times better for environment when ride-hailing. *Transport & Environment*. Available [here](#).

European Federation for Transport and Environment,<sup>299</sup> the environmental benefits of ride hailing can triple if ride-hailing drivers use electric vehicles. It is therefore likely that environmental effects will be reduced in the baseline scenario.

Overall, policy options that affect the size of the ride-hailing market are likely to have important environmental effects. Transforming the business models of such platforms into ones involving the employment of workers (resulting in paid standby periods and pay per time worked, rather than pay per task) would incentivise platforms to optimise trips in order to minimise deadheading. This would also be beneficial to the environment.

### c) Technological sovereignty

By clarifying the obligations of digital labour platforms in the EU, the considered policy options contribute to fostering a transparent, rules-based digital single market, underpinned by a level playing field for all businesses and strong social rights for the people working within it. This has implications for the EU's international partners, as it strengthens the Union's values-based approach to the digital transition.

The policy options considered under the initiative would demand that all digital labour platforms active within the EU, regardless of where they are based or originate from, comply with European principles. Hence, the EU would be pursuing its technological sovereignty by setting global digital standards on algorithmic management and the digitalisation of the world of work.

## 5.3. Option A1: Interpretation and guidance

### 5.3.1. Assumptions for Option A1

Option A1, as explained in Section 4.1, would provide **non-binding guidance** to economic actors, policy makers and legal institutions on the interpretation of national (and EU) case law regarding the concept of the 'worker'; in particular, jurisprudence regarding misclassification in the platform economy. The European Commission would be in charge of developing such guidance and, afterwards, providing advice on the use of such guidance by Member States and other stakeholders, as well as updating the guidance on the regular basis, and reporting on its take-up and implementation.

With regard to the effects of policy instruments that relate to such interpretation and guidance, a lot can be learned from previous EU initiatives that provided guidelines or recommendations to Member States, and whose implementation has already been monitored or evaluated. These include:

- Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed<sup>300</sup>
- Council Recommendation of 15 February 2016 on the integration of the long-term unemployed into the labour market<sup>301</sup>

<sup>299</sup> Le Petit, Y. & Mathieu, L. (2020). Why Uber Should Go Electric. June 2020 © 2020 European Federation for Transport and Environment AISBL. Available [here](#).

<sup>300</sup> European Commission (2020). Monitoring of the Council Recommendation on access to social protection for workers and the self-employed.

<sup>301</sup> European Commission (2019). Evaluation of the Council Recommendation on the integration of the long-term unemployed into the labour market. Report from the Commission to the Council. Brussels, 11.4.2019, COM(2019) 169 final.

- Council Recommendation of 22 April 2013 on establishing a Youth Guarantee
- Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning<sup>302</sup>
- EU Youth Strategy and the Council Recommendation of 20 November 2008 on the Mobility of Young Volunteers<sup>303</sup>

The evaluations of these initiatives show that a certain number of Member States<sup>304</sup> have implemented a specific measure or set of measures suggested in the Recommendation document. In some cases, the pertinent measures already existed in the national law before the Recommendation; in others, such measures were taken after the Recommendation was adopted. The evaluations indicate that causal links are difficult to establish, due to the non-mandatory nature of the policy instrument and many intervening factors. Nevertheless, the changes tend to be most visible in Member States that previously lacked the measures suggested in the Recommendation. In other words, it can be concluded that guidelines, interpretation and similar elements have a sensitising effect on stakeholders, especially in those countries that previously had not used the suggested measures. It is very likely that after a recommendation is adopted, a number of Member States will use it as one of their sources in pursuing policy change.

It can be expected that Option A1 would highlight platform work as an issue area on national policy agendas, **particularly in Member States** in which no policy measures relating to platform work have yet been considered, either by policy makers or by other actors (e.g. Bulgaria, Czechia, Cyprus, Latvia, Hungary, Poland and Slovakia – see Cluster 3 in Section 2.2.4.2). In countries where the policy or social partner discussions are already ongoing, Option A1 might provide a more unified direction for various Member States.

### 5.3.2. Impacts on people working through platforms

Drawing on the assumptions presented above, we would expect that the impacts of Policy Option A1 will be limited in terms of the numbers of people reclassified. In the short term, we do not expect the impacts to differ significantly from the baseline. Nevertheless, the effect will be **higher than zero** for the following reasons:

- **People working through platforms** may refer to the guidelines in their reclassification claims. Therefore, there could be a slight increase in litigation being brought by people working through on-location platforms. However, we do not expect this factor on its own to be significant enough to increase the number of court cases or court decisions mandating reclassification above the trend in the baseline.
- Interview data shows that both **digital labour platforms** and policy makers from the Member States would welcome policy decisions that could introduce clarity with regard to the employment status of people working through such platforms.

<sup>302</sup> European Commission (2020) Study supporting the evaluation of the Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning. Final Report.

<sup>303</sup> European Commission (2016). Evaluation of the EU Youth Strategy and the Council Recommendation on the mobility of young volunteers across the EU.

<sup>304</sup> For example, '15 Member States have improved the quality of their measures encouraging registration with the Public Employment Services': European Commission (2019) Evaluation of the Council Recommendation on the integration of the long-term unemployed into the labour market. Report from the Commission to the Council. Brussels, 11.4.2019, COM(2019) 169 final; European Commission (2019) Evaluation of the Council Recommendation on the integration of the long-term unemployed into the labour market. Report from the Commission to the Council. Brussels, 11.4.2019, COM(2019) 169 final; 'Within the labour market (LM) area, validation arrangements were in place in 9 Member States in 2016... by 2018 this number increased to 18 Member States': European Commission (2020) Study supporting the evaluation of the Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning. Final Report.

Digital labour platforms could use the guidance to adjust their terms and conditions to ensure that people working through them comply as far as possible with the criteria for being genuinely self-employed. This would **bring benefits** to those people working through platforms who are currently at risk of being misclassified, and whose working arrangements will change in such a way as to make them clearly and genuinely self-employed.

- Table 12 indicates that around 2.25 million people currently undertake high-skilled platform work more than sporadically while platforms set their work schedules and pay rates. Such a situation places this group of people at risk of being misclassified. Nevertheless, we assume that the business models that draw on the highly skilled are easier to combine with the status of self-employment.<sup>305</sup> We therefore assume that guidance will be welcomed and used both by platforms and people working through them who wish to make sure that their working relationship conforms to that of being genuinely self-employed.
- Some **national or regional authorities** may use the interpretation and guidance alongside examples from other Member States (such as the Riders’ Law in Spain) as sources for changing their policies in a direction that assumes that certain business models are incompatible with the status of self-employment. In the medium or long term, this will lead to a reclassification of a certain number of people working through platforms. This trend is most likely to affect the ride-hailing and food delivery sectors, due to high level of control exercised by these platforms. Nevertheless, the extent of reclassification is impossible to estimate, due to the long chain of causation and a multiplicity of intervening factors.

**Table 21. Option A1: effects on employment**

	Low-skill on location	High skill on-location	Low-skill online	High-skill online
<b>(i) Employed after reclassification</b>	No change from the baseline in the short term, above the baseline in medium to long term			
<b>(ii) Other outcomes (including retaining current status, genuine self-employment, no longer working through platforms, better social security or working conditions in self-employment)*</b>	No change from the baseline in the short term. In the longer term, the number of people at risk of misclassification is likely to decrease due to reclassification or genuine self-employment.			
<b>(iii) (within ii) People at risk of misclassification who become genuinely self-employed*</b>	People who are currently at risk of being misclassified will have their working arrangements revised and clarified so that they become clearly and genuinely self-employed. This will be pertinent to at least 2.25 million high-skilled online and on-location people working through platforms, who are currently at risk of being misclassified.			

\* More people within the ‘Other’ category may become genuinely self-employed, in addition to those indicated in the line iii; however, the data are insufficient to make a more precise estimate.

Given the very small number of people affected, the net social benefits and costs relating to the reclassification of employment status will be the smallest in Policy Area A1, compared with the other policy areas. As explained in the previous section, the changes from baseline in terms of the numbers of people reclassified as employees will be negligible in the short term. It is therefore impossible to provide monetary figures on the

<sup>305</sup> For example, the tasks implemented are much more diverse than those implemented by low-qualified online and on-location people; the highly qualified also tend to enjoy greater independence and much more direct relationships with their customers and clients.

effects of the option. Meanwhile, the costs and benefits for the larger numbers of people who will become genuinely self-employed are summarised in the sub-section on social impacts in Section 5.2.2.

### 5.3.3. Impacts on platforms

**Number of platforms affected.** The guidelines would bring greater clarity to virtually all digital labour platforms regarding how they should contract the people working through them. Platforms would furthermore be able to refer to the guidelines if they are taken to court for misclassifying workers. According to the CEPS dataset, 516 digital labour platforms are currently active in the EU.<sup>306</sup> To the extent possible, the table below presents details of their size, the services they provide, the countries in which they operate, as well as their origin (EU vs non-EU).

**Table 22. Characteristics of the platforms affected by Option A1**

Platforms affected	516	
<b>Type</b>	Online	36%
	On-location	54%
	Both	10%
<b>Services</b>	Contest-based	4.3%
	Delivery	19.2%
	Domestic work	13.0%
	Freelance	27.2%
	Home services	17.5%
	Medical consultation	0.2%
	Microtask	10.7%
	Professional services	2.5%
	Taxi	5.4%
<b>Countries of operation</b>	54% operate in a single EU country only; 46% in more than one EU country.	
<b>Origin</b>	77% originate from the EU; 23% from outside the EU.	
<b>Turnover</b>	If the earnings of people working through platforms are excluded, data are available for 132 platforms. Of these, 122 (92%) had a turnover of less than EUR 50 million.  If the earnings of people working through platforms are included, data are available for 123 platforms. Of these, 86 (70%) had a turnover of less than EUR 50 million.	

Source: CEPS dataset.

Note: the typology of services and their definitions are outlined in the CEPS study<sup>307</sup> and do not follow the same definitions as presented in Table 1. The true number of platforms affected may be slightly higher.

**Earnings and non-wage costs.** Guidelines could have a modest effect on platforms in terms of the money spent to hire workers. This is because, according to Eurostat, the labour cost of employees is on average 24.5% higher compared to that of independent contractors in the EU-27.<sup>308</sup> This difference derives primarily from non-wage costs such as the social security contributions payable by the employer, as well as other costs such as training and recruitment costs, and the cost of tools provided by the employer to the

<sup>306</sup> Note that the true number is probably slightly higher, because not all platforms have been captured, particularly micro platforms.

<sup>307</sup> Available [here](#).

<sup>308</sup> Eurostat (2021). Wages and labour costs. Available [here](#).

employee. Thus – if, as a result of the guidelines, a number of Member States adopt laws similar to Spain’s Riders’ Law, the platforms affected would face higher non-wage costs. However, it is impossible to estimate the impact with precision, without knowing more about the level of change the guidelines could bring with regard to earnings.

Note that the 24.5% figure includes additional **charges** – such as employer contributions paid to social security funds – that platforms would incur if they employed the workers, as well as **administrative costs** associated with hiring HR specialists, signing contracts, allocating shifts, etc. In interviews, platforms stressed that such administrative costs will be felt disproportionately by **SMEs**: for example, the GDPR required considerable resources in order to comply with its terms (lawyers, personnel to monitor and supervise the data practices at companies, etc.). While larger companies adapted quite well, smaller companies with poorer resources struggle to comply.

**Non-compliance costs.** The number of court cases to which platforms would be subjected is likely **increase due to the guidelines in the short term**. This is because the guidelines might encourage individuals, trade unions and labour inspectorates to bring claims against the platforms. Nevertheless, the **number of court cases is expected to decrease in the longer term, below the levels of litigation observed in the baseline scenario**. This is because the guidelines will also help platforms adapt their business models to enable genuine self-employment. This would be a key benefit to the platforms, as it would help them to avoid penalties from labour inspectorates and court decisions, which can range in the hundreds of millions, as demonstrated in Table 18. However, this might only be the case for platforms whose business models are compatible with genuine self-employment (i.e. those platforms that do not set pay rates, schedules, monitor their workforce, etc.).

**The cost of adapting to different EU employment rules.** Since the guidelines are not expected to have a strong effect in terms of encouraging platforms to employ workers, the cost of adapting to different EU employment and self-employment rules is likely to be similar to that in the baseline scenario.

**Reputation.** The reputations of platforms that are unable to bring their business models closer to allowing genuine self-employment will suffer somewhat, due to the increase in litigation. On the other hand, those that do adapt and provide genuine opportunities for self-employment are likely to benefit from a better public image.

**Revenues.** The guideline is not expected to substantially affect the revenues of digital labour platforms in the short run, although negative effects can be expected in the long run if select Member States adopt laws similar to Spain’s Riders’ Law in response to the guideline.

### 5.3.4. Impacts on the public sector

**Administrative costs to public authorities.** Given the complex and rapidly changing nature of this policy field, we assume that the European Commission would require several FTEs for the development of guidance during the first year after the adoption of the instrument, and to provide support after it is adopted. An additional budget of between EUR 0.5 million and EUR 1 million might be envisioned to collect and systematise information from the Member States and other countries (for evaluation and monitoring).

**Increased tax and social security contributions.** Increases in tax and social security contributions will depend on the number of people reclassified. As presented above, the

effect of the guidelines on reclassification is likely to be limited, although it is expected to be above the baseline trend in the medium to long term. It is impossible to estimate specific number due to the long chain of causation and many intervening factors – for example, the extent to which the guidelines will influence the adoption of more specific national-level instruments concerning the status of people working through platforms.

**Facilitation for tax authorities and/or labour inspections to detect and pursue cases of false self-employment.** The interpretation and guidance would make it easier for tax authorities and/or labour inspectorates to pursue cases of misclassification. We would not expect, however, that such guidance would induce such institutions to pursue significantly more cases (beyond what is already the usual practice and precedent in their respective countries); nor would it significantly reduce their current workload.

### 5.3.5. Impacts on the economy as a whole

The direct impact of Option A1 on gross domestic product (GDP), in terms of consumption, net exports, investment and government spending, is considered to be negligible, mostly due to the non-binding nature of the instrument.

## 5.4. Option A2: shift in the burden of proof and measures to improve legal certainty

### 5.4.1. Assumptions for Option A2

Option A2 would introduce procedural facilitations, both for self-employed people working through platforms who are misclassified to challenge their employment status, and for digital labour platforms to ascertain the correct employment status for a given business model. These include:

- A rule on **shifting the burden of proof** to contest the self-employed status of people working through platforms in legal proceedings.
- A **certification procedure** that would enable digital labour platforms, as well as those working through them (or their representatives), to obtain legal certainty as to their correct employment status on a specific platform, by requesting certification of that status. Several examples of such a procedure exist in Europe (see the box below). It is assumed that voluntary certification for platforms will be introduced under Option A2.<sup>309</sup> Its success would depend on whether or not the certification criteria are clear to the platforms, and if they are interpreted unequivocally by stakeholders. It will also depend on whether a certification decision is likely to reduce the potential risk of court cases, or whether it is likely to be challenged in the courts. We do not assume that Member States would establish a new institution to carry out such certification. Based on the examples of countries that already possess a procedure for evaluating and establishing the legal nature of the contractual labour relationship, such certification could be carried out by labour inspectorates, ministerial agencies or even universities. Certification should be ascertained for specific business models or types of contracts, rather than individual contracts.

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<sup>309</sup> More information available [here](#).

- A **clarification** to the effect that insurances, social benefits and training measures voluntarily provided or paid for by a platform should not be considered as indicating the existence of an employment relationship. We assume that such a clarification would be undertaken through a legal instrument at EU level. Once such clarification is issued, it would serve as guidance to the courts and other competent authorities.

**Box 3. Examples of countries using certification or similar procedure**

In Belgium, under the terms of the Labour Relations Act, two parties seeking legal certainty as to the nature of their relationship may request a social ruling from an Administrative Commission.

In Italy, based on Legislative Decree No 149 of 2015, certification may be carried out by labour authorities or independent bodies (e.g. universities). Certification establishes the legal nature of the relationship, which is recognised by the relevant authorities and may only be challenged in the courts. In most sectors, this is a voluntary legal procedure with main function of reducing legal disputes regarding the classification of employment contracts. Therefore, at its essence, it is a preventative procedure, funded privately by the interested party. However, it is most effective in sectors in which the procedure is compulsory (in Italy, these are sectors with dangerous working conditions: confined spaces and spaces with a risk of pollution).

In Malta, the Director of the Department of Industrial and Employment Relations (DIER) may be requested to exempt a legal relationship between two parties from the presumption of employment, and to convert an employment contract into a service contract.

Source: European Commission.

Several key effects of this policy option are assumed:

- The shift in the burden of proof rule will make reclassification claims easier, leading to an increase in the take-up of litigation (which is increasingly successful) against on-location platforms in the ride-hailing and delivery sectors in the short term. This assumption is based on the fact that, so far, most of the court cases challenging worker status have related to these two particular sectors. On-location and online platforms in other sectors are likely to be affected only to a very small extent. In the medium and long term, the number of court cases is expected to decrease, as the market players adjust their strategies and behaviours.
- Related to this, platforms will try to use the certification procedure to 'preserve' their current business models and prevent litigation. A number of platforms will succeed; others will not.

Due to these factors, we assume that some platforms will adapt their business models:

- Some on-location platforms (particularly in the ride-hailing and delivery sectors) will change to an employment model, employing workers either themselves or through TWAs.
- Some platforms will provide real autonomy to the self-employed, although this is a less viable option for many platforms with stronger algorithmic management, necessary for the efficient provision of services.
- Meanwhile, the clarification that certain worker benefits provided by platforms will not be used as indicators of an employment relationship is likely to improve working conditions and social protection for the self-employed on platforms.
- A few on-location platforms, under pressure to reclassify their workers (e.g. after court rulings), will apply a dual model.

- A very small number of online platforms may start to use (on-demand) employment contracts, most probably through TWAs. An example of this is the case of Upwork in California, which uses a third-party payroll company to provide employment contracts, allowing the platform to comply with the ABC Test.

These effects are expected to occur in the longer term and to be distributed **unevenly across the EU**. More extensive effects are expected in countries where labour inspectorates and/or trade unions play a more active role – for example, in Denmark, Spain, Belgium, Germany, France, Italy, the Netherlands and Sweden.<sup>310</sup>

#### 5.4.2. Impacts on people working through platforms

The people likely to be most affected by Policy Option A2 are those who are already more likely to turn to the courts with cases relating to employment status and its misclassification. These are people working through **ride-hailing and delivery platforms**. Up to **2.78 million** people across the EU are estimated to work in these occupations as their main, secondary or marginal activity (see Table 11). However, the characteristics of those workers who are more likely to turn to courts and be reclassified include being at risk of misclassification. In the ride-hailing and delivery sector, these people number **up to 1.54 million** (see Table 12). This estimate is very much an upper limit. It is much more likely that reclassification decisions will be initiated by and affect people for whom platform work is the main activity – around **0.57 million** people (Table 12).

Clarification regarding voluntarily funded insurance, social benefits and training measures will also prompt some platforms to improve the social protection and career opportunities of some self-employed platform workers. In the interviews, several platforms (including Bolt, Wolt, Delivery Hero, Free Now and others) said that the current lack of clarity prevents them from providing a better set of benefits to the people working through them. More specifically, they are concerned that providing such benefits could be used in reclassification cases as an argument for the existence of an employment relationship. The clarification would help to solve this problem, provided it is accepted and interpreted consistently by the courts across the EU. Overall, working conditions and social security may improve for a large number of people working through platforms. It is reasonable to assume that those most likely to be affected are **low-skilled on-location people in main or secondary platform work** (Table 11). This leaves out people in marginal platform work, as they might be expected to work for a certain amount of time in order for the benefits to become applicable. Therefore, the total number of people concerned is likely to be 3.04 million. Given that, between 0.57 and 1.54 million of these people are likely to be reclassified, as explained in the previous paragraph, it can be argued that the number of people for whom working conditions and social security are likely to improve is **between 1.5 and 2.47 million people**.<sup>311</sup>

As with Option A1, it can be assumed that the policy instruments under Option A2 will be used by platforms to ascertain whether the people working through them are genuinely self-employed. For example, platforms may consult with the certifying authorities or use precedents set by the certifying authorities to align their terms and conditions with the criteria for genuine self-employment, and then apply to have this status certificated. This could at least affect the **high-skilled on-location and online people (2.25 million**, see

<sup>310</sup> Based on ECE reports (2021). European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies. Luxembourg: Publications Office of the European Union.

<sup>311</sup> The lower estimate is not fully consistent, because the subtraction 3.04 million – 1.54 million includes within the 1.54 million people, those in secondary as well as marginal platform work. The sample size is not sufficient to differentiate between these categories.

Table 12) who are currently at risk of being misclassified, because the business models that draw upon the highly skilled are easier to combine with the status of self-employment.<sup>312</sup>

**Table 23. Number of people impacted by Policy Option A2**

	Low-skill on location	High skill on-location	Low-skill online	High-skill online	Total
(i) Employed after reclassification	Between 0.57 and 1.54 million	0	0	0	0.57 to 1.54 million
(ii) Other outcomes (including retaining current status, genuine self-employment, no longer working through platforms, better social security or working conditions in self-employment)*	Between 2.64 and 3.61 million	1.84 million	9.75 million	12.51 million	26.74 to 27.71 million
(iii) (within ii) People at risk of misclassification who become genuinely self-employed*	0	Up to 0.34 million	0	Up to 1.91 million	Up to 2.25 million
(iv) (within ii) Better working conditions or social security in self-employment*	Between 1.5 and 2.47 million	0	0	0	1.5 to 2.47 million

\* More people within the 'Other' category may become genuinely self-employed or receive better social security or working conditions, in addition to the numbers indicated in the lines iii and iv; however, the data are insufficient to make a more precise estimate.

The reclassified people working through platforms, who will come mostly from the low-skill on-location sector of the platform economy as explained above (between 0.57 and 1.54 million), will experience both costs and benefits, as discussed in the sub-section on social impacts in Section 5.3. With regard to the benefits:

- Reclassified delivery and ride-hailing workers will earn between EUR 82 million and EUR 221 million more in total per year in **net wages** compared with the baseline. This is based on the assumption that those currently earning below minimum wage would earn at least the minimum wage after reclassification. This translates to an average annual increase of EUR 144 per reclassified worker, varying from 0 for those workers who already earn minimum wage or more, to at most EUR 880 per year for those who make less than minimum wage and work an average number of hours and weeks. See Annex 4 for details.
- Given that reclassified workers will be entitled to **paid leave**, the monetised value of paid leave for those who are reclassified ranges from EUR 173 million to EUR 411 million per year. This is based on the assumption that an employed person gets around a month of paid holidays per year, so if there are 1,920<sup>313</sup> hours of paid work and 160<sup>314</sup> hours of paid leave per year, each hour worked generates 0.083<sup>315</sup> hours of paid leave. If we multiply this by: 1) the number of people that would be reclassified under A2; 2) their annual hours worked; and 3) the average hourly rate of pay (assuming that all reclassified workers earn at least minimum

<sup>312</sup> For example, the tasks implemented are much more diverse than those implemented by low-skill online and on-location people; the high-skilled also tend to have greater independence and much more direct relationships with their customers and clients.

<sup>313</sup> 40 hours per week, 48 weeks per year.

<sup>314</sup> 40 hours per week, four weeks per year.

<sup>315</sup> 160/1920

wage or their current wage, if this is higher than minimum wage), we arrive at the estimate presented above. Please see Annex 4 for details.

- Compensation for the costs of **COVID-19 protective materials** for reclassified delivery and ride-hailing workers could range between EUR 37 million and 104 million per year. This estimate is based on the average number of months worked by people who would be reclassified under Option A2, and the fact that the masks and sanitisers alone could cost around EUR 40<sup>316</sup> for each person per month.
- An additional one-off benefit for delivery workers in the form of a high-visibility vest and helmet (EUR 60 per person<sup>317</sup>), valued at EUR 73.2 million for all people reclassified under Option A2.

The monetary value of the benefits provided voluntarily by platforms to the people working through them under the status of self-employment is difficult to estimate, as the platforms did not provide any details regarding what specific benefits they would be willing to introduce, and what eligibility criteria would be applied for such benefits to the people working through the platforms.

The costs would largely come in terms of the loss of flexibility and opportunities to work through platforms if, for example, platforms employ only those people for whom such work is the main occupation. These people are discussed in further detail in Section 5.2.2.

The impacts on those people who would become genuinely self-employed are also described in the sub-section on social impacts in Section 5.2.2. On the positive side, they will experience less control by platforms, and gain the ability to set their own working time and pay rates. Negative side effects for those who do not have an employment contract with the platform company might include the following: platforms may prioritise orders to people working under employment contracts; platforms may sub-contract work agencies, which, in turn, might reduce the income of people working through platforms; and the ability to set rates might lead to the ‘race to the bottom’ between the people working through a platform.<sup>318</sup>

### 5.4.3. Impacts on platforms

**Number of platforms affected.** A shift in the burden of proof would make it easier for people to bring claims against all platforms. The clarification that the various benefits provided by platforms to people working through them do not constitute an employment relationship would also apply to all platforms. In addition, all platforms could use the certification procedure to ascertain whether they should employ people working through them, or contract them independently. Hence, details regarding the number and characteristics of the platforms affected would match those for Option A1, outlined in Table 22 in Section 5.3.3. Nevertheless, the costliest effects under Option A2 would be borne by ride-hailing and delivery platforms, because court decisions against these platforms are most likely to be successful, leading to reclassification. In the table below, we therefore present details regarding these types of digital labour platform exclusively.

<sup>316</sup> Assuming a box of 50 masks, each of which is recommended for up to 4 hours of use, for EUR 15 (see [here](#)); and 1.2 litre of hand sanitizer (3 ml per use, 20 uses per day, 20 days per month), for EUR 25 (see [here](#)).

<sup>317</sup> See pricing [here](#).

<sup>318</sup> Such effects are noticeable in Spain platform companies adapt to Spain’s Riders’ Law: Lizarraga, C. H. (2021) Gig Economy Crackdowns Are Off to a Bad Start in Spain, Bloomberg, August 13th.; see also Gig Economy Project by Brave New Europe. Available [here](#).

Table 24. Characteristics of platforms most affected by Option A2

<b>Platforms affected</b>	127
<b>Type</b>	On-location
<b>Services</b>	Delivery: 78% Taxi: 22%
<b>Countries of operation</b>	69% operate in a single EU country only; 31% operate in more than one EU country
<b>Origin</b>	90% originated in the EU; 10% from outside the EU
<b>Turnover</b>	If the earnings of people working through the platforms are excluded, data are available for 49 platforms. Of these, 43 (88%) had a turnover of less than EUR 50 million.  If the earnings of people working through the platforms are included, data are also available for 49 platforms. Of these, 35 (71%) had a turnover of less than EUR 50 million.

Source: CEPS dataset.

Note: the provisions of Option A2 (shift in the burden of proof, certification procedure, a clarification that insurance, social benefits and training measures voluntarily provided or paid for by the platforms should not be considered as indicating the existence of an employment relationship) apply to all digital labour platforms, but the table describes those platforms for which the effects of Option A2 would be the costliest, due to successful reclassification cases. The true number of platforms affected might be slightly higher.

**Earnings and social security costs.** As previously mentioned, the effects of this option would be felt most keenly by delivery and ride-hailing platforms, because these platforms currently face the greatest numbers of court cases regarding the misclassification of their workers. If ride-hailing and delivery platforms reclassify all of their workers who are at risk of misclassification, we estimate that the total costs for these platforms, in terms of increased annual earnings and social security contributions, would increase by **EUR 2.2 billion** compared with the baseline scenario. However, it possible that platforms would only reclassify those individuals who won court cases, rather than their entire workforce. For example, despite the March 2020 Supreme Court decision<sup>319</sup> in France that an Uber driver must be classified as an employee, Uber drivers in France generally remain self-employed – a notion supported by a January 2021 decision made by the Lyon Court of Appeal.<sup>320</sup> The people who are most likely to bring forward such cases are those who mainly work through platforms. Those whose relationship with platforms resembles subordination are most likely to win. As shown in Table 12, the number of such people in ride-hailing and food delivery services is estimated at 1.54 million. If we limit our focus to the earnings of just this group of people, the increase in costs as a result of Option A2 would amount to **EUR 0.8 billion**. See Annex 4 for the methodology used in these estimates.

With regard to the non-wage costs of platforms other than delivery and transportation, these will not change significantly from the baseline scenario. This is because high-skill on-location platforms, as well as online platforms, are most likely to adapt their models to ensure that their workforce can be classified as self-employed. Importantly, this will entail costs (updating their Terms of Service, changing their business model to some extent, etc.), although these are impossible to estimate given the multitude of different business models and services provided through platforms. Lastly, although a limited number of online platforms may start offering on-demand employment contracts, the impact of such individual cases on total non-wage costs is negligible.

**Non-compliance costs.** In the **short term** under Option A2, **the number of litigation cases** brought against platforms **would be likely to increase to an even greater extent**

<sup>319</sup> Cour de cassation [Supreme Court], Ruling of 4 March 2020, Arrêt n° 374 (19-13.316). Available [here](#).

<sup>320</sup> Cour d'Appel de Lyon chambre sociale b arrêt du 15 Janvier 2021.

**than under Option A1.** This is because not only would trade unions and labour inspectorates be encouraged to challenge misclassification, but doing so would be easier due to the shift in the burden of proof. However, **in the longer term, the non-compliance costs would shrink compared with both the baseline scenario and Option A1**, primarily due to the certification procedure and because platforms could offer additional benefits to the people working through them without increasing the risk of being sued. For platforms that are able to adapt their business models to allow genuine self-employment, the certification procedure would serve as a safeguard against future litigation. Meanwhile, those platforms whose business models rely on certain elements of subordination (such as setting pay rates, schedules, monitoring workers, etc.) will reclassify at least part of their workforces, resulting in the compliance costs described above.

**The cost of adapting to different EU employment rules.** Platforms that are mandated by courts to reclassify all or part of the people working through them would have to engage in legal research and find ways to adapt their business models to enable such a transition. As outlined in Section 5.1.5, the cost of legal research for each platform could amount to **EUR 712.5** for each Member State in which it operates. Thus, if all ride-hailing and delivery platforms were classified as employers through a mandatory certification procedure, **they would jointly incur a one-off legal research cost equivalent to roughly EUR 180,000.**<sup>321</sup> Following this, **recurring legal research costs** would amount to **EUR 712.5 per platform, per expansion to one country.**

These legal research costs, however, fail to take into account the work needed to adapt operations to the new legal requirements to which employers would be subject. For example, these costs would include negotiations with TWAs in cases where platforms resort to engaging them, or the cost of the platform shifting its business model to be closer to one involving genuine self-employment. According to the media, TWAs in Spain charge roughly EUR 1 in commission per hour per employee who works through the delivery platform.<sup>322</sup> Meanwhile, the cost of shifting the business model to be closer in line with genuine self-employment could be substantial, yet difficult to estimate with precision due to the various tactics platforms may adopt to achieve this goal. For example, each of the three major food delivery platforms in Spain is pursuing a different strategy in response to the Riders' Law:<sup>323</sup>

- Uber Eats has opted to outsource its couriers to a third party, which will inevitably lead to fees being paid to the third-party operator.
- Glovo has chosen to hire 2,000 couriers directly and to change how the algorithms operate for its remaining 8,000 self-employed couriers (i.e. allowing couriers to set their own rates, work schedules, eliminating the scoring system, etc.). It remains to be seen (1) whether this move will be challenged in courts by trade unions, which could potentially lead to both legal and non-compliance costs; and (2) how much it will cost Glovo to adapt its business model in this way. Even the feasibility of such a move was questioned by some of the interviewed

<sup>321</sup> As outlined in the baseline scenario, this is based on the fact that it took one of the interviewed platforms, which employs workers, 50 hours of legal research before expanding from Germany to the Netherlands; and the fact that 36 delivery/transportation platforms operate in more than one EU country, which in total cover 257 EU countries (discounting the country in which they are based). Hence the formula: 14.5eur/hr\*50hrs\*257.

<sup>322</sup> Jiménez M. (2021). Glovo, Deliveroo y Uber Eats negocian contra reloj acuerdos de subcontratación de 'riders'. *CincoDías. El País*. Available [here](#).

<sup>323</sup> García Alcalde, L.. (2021). Entra en vigor la Ley Rider: estas son las novedades, cambios y los distintos modelos laborales que han elegido Glovo, Uber Eats, Just Eat y Deliveroo frente a la nueva normativa. *Business Insider*. Available [here](#).

platforms, citing concerns about efficiency and a race to the bottom when couriers are allowed to choose their own rates.

- Deliveroo has announced plans to leave Spain by the end of 2021, which will entail costs in terms of forgone revenue.

**Other administrative costs include going through the certification procedure.** These are impossible to estimate because Member States may take different approaches in creating these procedures. Interviewees mentioned that the most business-friendly approach would be to **certify platforms online**. Nevertheless, they raised doubts about the **feasibility** of the certification procedure for their business models: while it is envisaged that government agencies could certify a ‘typical contract’, which would then apply to all people working under similar conditions, platforms questioned whether such a typical contract exists. This is perhaps less of a concern for on-location platforms that specialise in a limited number of services. However, online platforms argued that given the diversity of tasks and relationships between freelancers and their clients, the platform would have to individually interview each freelancer to understand the level of subordination to which the freelancer is subject, prior to presenting such facts to any certifying authority.

Platforms also stressed that if such a certification procedure is to be implemented, a **certificate acquired in one EU country should apply across the whole EU**, so as to avoid the multiplication of administrative costs. Nevertheless, given the different labour laws that exist across the EU, each Member State is under no obligation to recognise a classification adopted by another country. Hence, if platforms are subject to certification in each EU MS, the new administrative burden could be significant.

**Reputation.** Certification would ultimately help prevent litigation for platforms that successfully certify themselves as working with self-employed people. The reputation of such platforms would consequently benefit from this policy option. The reputation of other platforms is likely to suffer in the short run, due to an uptick in litigation, yet they may benefit in the long run as the number of court cases brought against them would subside if platforms reclassify all or part of their drivers/couriers.

**Revenues.** This option could negatively impact platform revenues, if delivery and ride-hailing platforms reclassified all or part of their workers in response to court decisions or due to the certification procedure. As mentioned in Section 5.2.3 regarding impacts on GDP, following the reclassification that took place in Geneva, orders for Uber services dropped by 30% due to increased prices and waiting time.<sup>324</sup> Using this information, we can estimate the maximum negative impact on all ride-hailing and delivery platforms if all of their workforces had to be reclassified as a result of court decisions or voluntary changes in business models. CEPS estimates that the current revenues of ride-hailing and delivery platforms stand at EUR 5.9 billion.<sup>325</sup> This is an underestimate because, although it includes the major players such as Uber, Deliveroo and Glovo, it is based on information from a limited number of identified platforms (44 out of 118, or 37%). If we assume that the actual revenues in the delivery and transport sectors are twice as high (EUR 11.8 billion), a 30% loss would amount to EUR 3.5 billion. On the other hand, it is questionable whether the Uber case applies to all ride-hailing and delivery platforms. In London, for example, Uber did not increase prices after reclassifying self-employed drivers as workers, which suggests that there was no impact on the level of orders. A representative from a platform that employs workers said that their “logistics business

<sup>324</sup> Stein, A. (2020). Independent couriers’ reaction to employee reclassification: learnings from Geneva. Available [here](#).

<sup>325</sup> This figure includes the estimated earnings of people working through the platform. Unlike in Section 5.2.3, which looks at impacts on the economy as a whole, here we exclude fourth party revenues and the earnings of people working through platforms, given that we are interested exclusively in the impact on platforms.

has continued to grow quickly, especially after implementing the employment model". These examples demonstrate that different platforms – or even the same platforms in different markets – can experience different effects on revenues as a result of reclassification.

**Indirect costs.** On-location platforms that were interviewed stressed that the indirect costs of reclassification might be more significant than the direct compliance or administrative costs discussed above. They argued that **reclassifying workers would reduce efficiency**. One of the food delivery platforms interviewed, for example, claimed that individual couriers consistently perform an average of 0.4 more deliveries per hour under the contractor model than under the employee model (which the platform operates in Germany). This is because contractors are paid for the tasks they choose to accept, whereas employees are compensated mostly on the basis of hourly pay. Based on the above, the platform estimated that the drop in efficiency (and hence rise in costs) is around 15-20%.

#### 5.4.4. Impacts on the public sector

**Administrative costs.** Shifting the burden of proof might have the effect of increasing the number of court cases in the short to medium term, given that it would become easier for people working through platforms to challenge their status in court. This would increase costs to the public sector compared with the baseline. We would, however, expect that the other two measures (the certification procedure and clarification with regard to the legal interpretation of benefits) will counter-balance this. In other words, the platforms would draw on these two measures to revisit their legal relationships with the people who earn income through them, in order to ensure that they are correctly classified.

Meanwhile, the **certification procedure** would incur certain costs to the Member States. As mentioned above, the 2021 CEPS study identified 516 active digital labour platforms operating in the EU (among which, 278 platforms provide location-based services).<sup>326</sup> Most of the on-location digital labour platforms are active in a single EU country (195 out of 278), and a notable share of other on-location DLPs are active in 2-5 countries.<sup>327</sup> As a result, the number of on-location DLPs (which are the platforms most likely to use the certification procedure) operating in one Member State may range from 14 in Bulgaria and Malta, to 97 in France. During the first 1-3 years after the certification procedure is introduced, we would expect it to be used actively by the platforms and people who work through them. Later, once the procedure and precedent have been established, we would expect the number of requests to range between 5 and 50 per year, per country. We therefore do not expect that the certification procedure would lead to a significant increase in administrative costs, particularly in the medium term.

We would not expect that the enforcement of the **clarification concerning insurance**, social benefits and training measures voluntarily provided or paid for by the platforms would incur significant costs to the public sector at either EU or national/regional level. This assumption depends on national courts recognising and following this clarification in legal cases concerning the misclassification of employment status in platform work.

**Increased tax and social security contributions.** Given the estimated number of people who currently work through platforms and could be reclassified, the likely

<sup>326</sup> CEPS (2021). Digital Labour Platforms in the EU: Mapping and business models. Luxembourg: Publications Office of the European Union.

<sup>327</sup> CEPS (2021). Digital Labour Platforms in the EU: Mapping and business models. Luxembourg: Publications Office of the European Union.

maximum effect in terms of increased tax and social security contributions ranges from EUR 0.73 billion to EUR 1.9 billion per year. This increase stems from two sources: first, reclassified people who do not currently make minimum wage would earn minimum wage post-reclassification. Thus, the tax base would increase. Second, combined employer and employee social security contributions are greater than those paid by the self-employed. For details regarding these estimates, please see Annex 4.

**Facilitation for tax authorities and/ or labour inspections in detecting and pursuing cases of false self-employment.** The certification procedure would make it easier for tax authorities and/or labour inspectorates to address cases of false self-employment, to the extent that they accept the decision of the certification authorities and would not pursue their own investigations.<sup>328</sup> The clarification concerning the benefits offered voluntarily by platforms to people working through them would also make it easier for these authorities to pursue their functions. We would not, however, expect that these procedural facilitations would be significant enough to lead to either an increase or decrease in the number of FTEs at these institutions.

#### 5.4.5. Impacts on the economy as a whole

GDP consists of four main components: consumption, net exports, investment, and government spending. Below, we discuss the impact of Option A2 on each of these, starting with consumption.

According to Uber, when the platform was required to reclassify workers in Geneva following court decisions, “the combined effects of a lack of available couriers, increased delivery prices and degradation of the delivery experience... led to a 30% reduction in orders in just three weeks”.<sup>329</sup> Using this information, Adigital estimates that the impact of the Riders’ Law in Spain would translate to EUR 300 million in of lost revenue, given the total market value in the country is close to EUR 1 billion.<sup>330</sup>

To understand the likely impact of Option A2, we can look at its effect on ride-hailing and delivery platforms alone. According to CEPS, the total revenue from these platforms in 2020 stood at EUR 10.9 billion.<sup>331</sup> Information is available only for half of platforms in the sector (64 out of 124), but it includes those platforms with the largest market shares. Thus, we assume that the true revenues stand at roughly EUR 18.2 billion. A 30% reduction translates to EUR 5.5<sup>332</sup> billion, which is the equivalent of 0.041% drop in GDP. If the revenues lost by restaurants (valued at a maximum of EUR 3.8 billion – see Section 5.2.3, b) are added to this figure, the downward effect on GDP would be equivalent to 0.070%.

However, a **countervailing positive effect** can be expected, as some of the people working through platforms will earn higher income, and are thus likely to consume more. In addition, in most Member States, the employee and employer taxes and contributions paid with respect to reclassified workers, will be higher than those previously paid under previous self-employment. Indeed, based on OECD data on self-employed,<sup>333</sup>

<sup>328</sup> In some countries, the labour authority would be the institution undertaking this certification; in such a case, the reasoning in the sub-section ‘Administrative costs to public authorities’ would apply.

<sup>329</sup> Jiménez M. (2021). Glovo, Deliveroo y Uber Eats negocian contra reloj acuerdos de subcontratación de ‘riders’. CincoDías. El País. Retrieved from: Available [here](#).

<sup>330</sup> Adigital (2021). Análisis del impacto económico de la laboralización de repartidores. Available [here](#).

<sup>331</sup> The estimate includes platform revenues, earnings of people working through platforms, and fourth-party earnings.

<sup>332</sup> The estimate includes platform revenues, earnings of people working through platforms, and fourth-party earnings

<sup>333</sup> Available [here](#).

employee<sup>334</sup> and employer<sup>335</sup> social contribution rates, the overall rate paid will increase by 10 percentage points<sup>336</sup> on average after reclassification. The additional taxes collected would increase public budgets, which could lead to greater government expenditure, resulting in a positive impact on GDP. Thus, we conclude that with regard to ride-hailing and delivery platforms, the effect of reclassification on consumption would be **ambiguous**.

Option A2 is not expected to affect net exports, given that ride-hailing and delivery work has a low risk of being outsourced.

With regard to **investment** (in the sense used to estimate GDP), reclassification will probably have a negligible effect in the short term, although the effect might be more apparent in the long term. Platforms purchase software, hardware, servers, office space, etc., but these purchases will already have been made prior to reclassification. Nevertheless, if demand for platform services falls by 30% as it did in Geneva, and this decrease is sustained over time, it would be reasonable to assume that business investment would shrink similarly. The precise impact on GDP is impossible to estimate this drop without knowing how much platforms currently spend on such purchases, but it is safe to assume that the effect would be lower than that from reduced consumption, as the latter comprises a much greater share of the GDP.

## 5.5. Option A3: rebuttable presumption

### 5.5.1. Assumptions for Option A3

Option A3 would introduce a rebuttable presumption of the existence of an employment relationship. It has three sub-options:

- A3a: Rebuttable presumption applying to on-location platforms.
- A3b: Rebuttable presumption applied to platforms that exercise a certain degree of control.
- A3c: Rebuttable presumption applying to all platforms.

If the instrument used to introduce the rebuttable presumption is a Directive, the Member States will transpose it in accordance with national labour laws. The platform operators then will choose which type of the legal relationship to enter with people working through platforms, depending on the characteristics of their business model. The platform operators would retain the possibility of countering the presumption by proving that the persons working through them are correctly classified as self-employed. The specific procedure will depend on the policy framework of each Member State.

Policy Option A3 will offer additional possibilities for litigation, because the legal relationship between platforms and the people working through them could be challenged not only by individual persons who are subject to potential misclassification, but also by a broader range of stakeholders, including:

- Trade unions, when organising collective representation, action or bargaining.
- Labour inspectorates, when conducting inspections or imposing sanctions.

<sup>334</sup> Available [here](#).

<sup>335</sup> Available [here](#).

<sup>336</sup> See Table 10, Annex 4 for details. The estimate is the difference between the average total A3b tax rate and the average total baseline tax rate.

- Social security or tax authorities, when collecting contributions or taxes.

In the short to medium term, the rebuttable presumption may lead to an increased number of legal actions (i.e. above the trend in the baseline) by various stakeholders. The success rate in the courts of these actions is also expected to be high. Moreover, compared with other options, the rebuttable presumption is expected to have **a stronger signalling effect** (including in the media and public opinion). This, in turn, can be expected to create a strong expectation for platforms to change the employment status of their workers in order to avoid litigation or to maintain their good reputation. As a result, as the market players adjust, the numbers of court cases will decrease in the medium and long term.

### **Sub-option A3a: Rebuttable presumption applying to on-location platforms**

If a rebuttable presumption is applied to on-location platforms, it is reasonable to assume that:

- This option would mainly affect platforms for low-skill jobs where algorithmic management is strong, and there is pronounced subordination of the people working through the platforms. On-location platforms operating as marketplaces will be only affected in cases where they exert strong control over their workers.
- Many on-location platforms will adapt their business models to employ the people working through them, either directly or through TWAs. While some of these platforms will be incentivised by the signalling effect of the options, others will reclassify after losing court cases.
- Some large platforms will implement a dual strategy, employing workers themselves, through temporary employment agencies and through service contracts, in various combinations.
- Some platforms will quit less profitable markets, at local (e.g. town, city, region) or national level.

### **Sub-option A3b: Rebuttable presumption applying to all platforms exerting a certain degree of control over the people working through them and their work**

This sub-option entails the application of the rebuttable presumption to platforms that exercise a certain degree of control over the people who work through them, and over the work they perform. Such control may, for example, consist of effectively determining, or setting upper limits for, the level of remuneration; restricting the communication between the person performing the platform work and the customer; requiring the person performing the platform work to respect specific rules with regard to their appearance, conduct towards the customer or performance of the work; or verifying the quality of the results of the work.

We assume that this sub-option will affect *on-location* platforms similarly to sub-option A3a. The following effects on and responses from *online* platforms are likely:

- A limited number of online platforms is likely to reclassify the people working through them – mainly those that exert a considerable level of control over workers (primarily platforms for micro-tasking). Pure marketplace-like platforms will not be affected, but other platforms for both high-skilled and low-skilled work

may be, as some of these do not operate as pure marketplaces, and do exert notable levels of control over workers, or operate in a similar manner to TWAs.<sup>337</sup>

- Some platforms will change their T&Cs in such a way that their relationship with the people working through them meets the criteria for genuine self-employment. This may be done by approximating the pure marketplace model (e.g. in terms of how schedules and prices are set), or ensuring that platform cannot be considered the primary source of work-related income (e.g. by setting caps on how many hours can be worked, or how much can be earned each month).
- Reclassified EU-based online workers may face reduced demand for their services due to increased costs and administrative burden. Therefore, only a small number of platforms – notably those where tasks require knowledge of local languages or access to local businesses, and are therefore difficult to move outside the EU – will adapt their business models and reclassify workers as employees. As with the case of on-location platforms, some large online platforms will implement a dual strategy, employing a certain number of workers themselves, through TWAs, cooperatives or service contracts, in various combinations. Other platforms that wish to avoid litigation and fines, or whose business models would be completely undermined by employment, will either go out of business or leave the markets. This would reduce opportunities for self-employment among EU freelancers.

### **Sub-option A3c: Rebuttable presumption applying to all platforms**

This sub-option assumes a broader scope for the rebuttable presumption. Eventually, the Member States will have to determine the definition of digital labour platforms, and set criteria concerning the degree of control over people working through platforms that would determine the existence of the employment relationship. This sub-option would entail that:

- Different Member States may set slightly different criteria, and thus even the minimum threshold for applying the rebuttable presumption may differ between Member States.
- Nevertheless, in the medium to long term, administrative decisions and court cases will lead to a situation in which the rebuttable presumption will apply to specific business models, and the number of platforms affected will be the same as under sub-options A3a and A3b.
- However, the number of such administrative decisions and court cases will be higher than under Options A3a and A3b, due to the broader scope of the initiative.

On the basis of this, it may be assumed that the impacts of this sub-option with regard to the number of people affected will be the same as under sub-option A3b.

## **5.5.2. Impacts on people working through platforms**

### **5.5.2.1. Sub-option A3a: rebuttable presumption applying to on-location platforms**

The impacts of this sub-option are expected to differ notably with regard to people working through high-skill and low skill on-location platforms. This is because these types

<sup>337</sup> Potocka-Sionek, N. (2020). The changing nature of labour intermediation. Do algorithms redefine temporary agency work, *New Forms of Employment*, 169-190.

of platforms currently employ very different practices in relation to work organisation, client-worker matching and worker control.

Low-skill on-location platforms are much more likely to exert control or subordination over people working through them. Table 11 and Table 12 show that 48% of those carrying out low-skill on-location work are likely to be at risk of misclassification; the same risk applies to just 18% of those in high-skill on-location work. It can be assumed as an **upper bound** that reclassification will apply to all those people at risk of being misclassified and who work more often than sporadically through low-skilled and high-skilled on-location platforms – **2.01 and 0.34 million** people, respectively (Table 12). As a **lower-bound** scenario, it would only affect those in main platform work (**0.82 million for low-skill and high-skill platforms combined**), as it is likely that the platforms would only employ those people who work more hours.

Given the different business practices of low-skilled vs. high-skilled platforms, it is also reasonable to assume that **the actual extent of reclassification** for low-skilled platforms is more likely to be in the mid- to higher range of the two bounds, whereas for high-skilled platforms it will be **much closer** to the lower bound. Additional sources of information allow us to triangulate these figures. The results are presented in the box below.

#### Box 4. Impacts in terms of reduction in platform work: other sources

##### Platform perspective

A number of ride-hailing and food delivery platforms indicated that if a new regulation places them in a position in which they must reclassify their workers, between **20% to 59%** of the people currently working through them would become employees. The platforms base these estimations on one of the following: a) real-life cases of reclassification (Uber Eats in Geneva, where 23% of workers were employed under the new model); estimates of 'maximum utilisation' models – the volume of workforce required to serve their current demand (Ride-hailing platform 1 estimated 33% would be employed); c) they provided theoretical estimations (Food delivery platform 1 estimated 20% would be employed); or d) they estimated the share of people working less than 7.5 hours per week who would become redundant in their view (Food delivery platform 2 estimated that 59% would be employed). The current workers on all platforms who are most likely to be reclassified are those who work regularly, frequently, and for many hours each day, while those working the most sporadically are most likely to not be employed by the platforms.<sup>338</sup>

For the purposes of this impact assessment, these estimations provided by the platforms refer to the group of people who currently work through low-skill on-location platforms as their main, secondary or marginal job in the EU. Based on the survey data, we estimate that the number of such people in low-skill on-location platform work could be up to 4.18 million (see Table 11 above). Applying the possible ranges of reductions detailed above, this number would be split into:<sup>339</sup>

- People across the EU who may be reclassified as employees and employed by platforms or TWAs, based on the estimates provided by the platforms and the survey data: between 0.84 million<sup>340</sup> and 2.47 million<sup>341</sup>.

<sup>338</sup> It is important to note, however, that this reduction in the 'number' of people would mean a reduction in the full-time equivalents worked.

<sup>339</sup> The estimates assumes that: (a) demand will remain unchanged, and that if certain platforms go out of business or leave the markets, their market shares will be taken over by other platforms, employing the workers of the platforms that leave. (b) All the remaining on-location platforms will have to employ (either themselves or through TWAs) at least some of their workers, either because of signalling effects or court decisions.

<sup>340</sup> 4.18 million estimated workers multiplied by 0.2.

<sup>341</sup> 4.18 million estimated workers multiplied by 0.59.

- People who currently work through platforms who face other outcomes: between 1.71 million<sup>342</sup> and 3.34 million<sup>343</sup>.

However, making generalisations in this way, based on figures from individual platforms, is complicated, given the limited data on the specificities of local markets.

#### The perspective of labour market equilibrium

To integrate both the market overview and the worker perspective (the labour supply side), labour market equilibrium models were estimated. These were based on the data on working patterns and worker preferences from the 2021 survey and data at company level from ORBIS<sup>344</sup>. The models focused on the number of hours that people would ideally like to work through platforms, which are generally higher than the actual time worked. The results show that if the people working through on-location platforms more than sporadically were to be employed on contracts of at least 10 hours per week, the **reduction in platform work could be avoided altogether**. People engaged in platform work as their main, secondary or marginal activity would opt for employment contracts. This option would be enabled by the fact that the demand for platform services, as estimated, could accommodate the increase in people working through platforms more than sporadically. Only those people working through platforms sporadically would face the consequence of no longer being able to work through platforms.

In the scenario when those at risk of being misclassified (Table 12) **are not** reclassified as employees (i.e. the lower bound scenario), they could either lose the opportunity to work via platforms altogether, or may become genuinely self-employed, as platforms opt for this alternative business model.<sup>345</sup> This is significantly easier to do for high-skill on-location platforms compared with low-skill on-location platforms, as the level of control exerted by high-skilled platforms over the people working through them is usually not as high as that exerted by low-skilled platforms.

However, in this context it is important to note that although the platforms would employ people to cover regular demand for services, this demand fluctuates according to the time of a day, week or month, weather conditions, and other factors. Platforms which, under the new conditions, will find the best model to address these fluctuations, are the ones most likely to succeed. Although all or most platforms are likely to address this by using work schedules and shifts for employees, this might not be sufficient in all cases. Therefore, the dual model, in which additional workers are hired via TWAs or as independent contractors to cover surges in demand, is likely to become more popular. This is especially likely among larger platforms. The numbers of people working through platforms who would serve as this flexible additional labour force are difficult to estimate due to a lack of data, given that such a model is currently rare. It may be safe to assume that they are covered under the upper limit of employed people indicated above.

The numbers of people who are likely to be affected overall, including both those who are engaged in high-skill and in low-skill on-location work, are presented in the table below.

<sup>342</sup> 4.18 million minus 2.47 million.

<sup>343</sup> 4.18 minus 0.84 million.

<sup>344</sup> Available [here](#).

<sup>345</sup> This is one of the plans reported by Glovo in July 2021: available [here](#).

Table 25. Number of people impacted by Policy Option A3a

	Low-skill on location	High skill on-location	Low-skill online	High-skill online	Total
(i) Employed after reclassification	Between 0.76 and 2.01 million	Between 0.06 and 0.34 million	0	0	0.82 to 2.35 million
(ii) Other outcomes (including retaining current status, genuine self-employment, no longer working through platforms, better social security or working conditions in self-employment)*	Between 2.18 and 3.42 million	Between 1.50 and 1.78 million	9.75 million	12.51 million	25.94 to 27.46 million
(iii) (within ii) People at risk of misclassification who become genuinely self-employed*	Up to 1.24 million	Up to 0.28 million	0	0	Up to 1.52 million

\* More people within the 'Other' category may become genuinely self-employed in addition to the numbers indicated in line iii; however, the data are insufficient to make a more precise estimate.

Similar reasoning to that outlined under Policy Option A2 was used to estimate the benefits for reclassified workers under sub-option A3a. The assumptions and methods used to calculate the following estimates are outlined in Annex 4.

- Reclassified on-location workers will earn between EUR 83 million and EUR 239 million more per year in **net wages** compared with the baseline. This translates to an average annual increase of EUR 94.5 per reclassified worker, varying from 0 for those workers who already earn minimum wage or more, to a maximum of EUR 675 per year for those who currently earn less than minimum wage and work an average number of hours and weeks. See Annex 4 for details.
- Given that reclassified workers will be entitled to **paid leave**, the monetised value of paid leave for those who are reclassified ranges between EUR 173 million and EUR 411 million per year.
- Compensation for the costs of **COVID-19 protective materials** for reclassified on-location workers could range between EUR 42 million and 121 million per year.
- The same one-off benefit for delivery workers in the form of a high-visibility vest and helmet (EUR 60 per person<sup>346</sup>) would be expected under A3a as under A2, valued at a total of EUR 73.2 million.

Positive impacts on people who become genuinely self-employed will include less control by platforms, the ability to set their own working time and pay rates. The negative side-effects will apply mostly to people who remain self-employed on platforms that combine this with an employment model. First, platforms may prioritise orders to people working under an employment contract, particularly during periods of lower demand. Second, the ability to set rates could lead to a 'race to the bottom'.<sup>347</sup>

<sup>346</sup> See pricing [here](#).

<sup>347</sup> Such effects are noticeable in Spain as platform companies adapt to the Spain's Riders' Law: Lizarraga, C.H. (2021). Gig Economy Crackdowns Are Off to a Bad Start in Spain, Bloomberg, 13 August 2021; see also Gig Economy Project by Brave New Europe. Available [here](#).

### 5.5.2.2. Sub-option A3b: rebuttable presumption applying to all platforms exerting a certain degree of control over the people working through them and over their work

The impacts on **on-location workers** are likely to be the same as those under sub-option A3a.

Impacts on **online workers** will vary notably, depending on the type and content of their work, as well as the specific platforms they use.

It is reasonable to assume that reclassification will apply only those people working through online platforms **who are controlled by the platforms to a notable degree** and are at risk of being misclassified.<sup>348</sup> The upper limit of people working through online platforms that may possibly be impacted by this policy option is **3.16 million** across the EU-27 (low skill online and high-skill online, Table 12). However, given the very different level of control that may be exercised by low-skill online platforms as compared to high-skill platforms, those working for high-skill online platforms and for whom platform work is secondary or marginal job, are unlikely to be reclassified under any circumstances. Therefore, as the upper-bound scenario, the extent of reclassification may reach **1.75 million people** working through online platforms.<sup>349</sup> **This is likely to be an extreme scenario, however. A more likely scenario** is reclassification only of those in **main platform work**. This would set the extent of reclassification at 0.9 million people.

Yet even this number **may turn out to be an overestimate**. As explained in Annex 4F, it is based on data from an online survey that is likely to overestimate the total number of people working through online platforms. Furthermore, this estimate does not consider how many people the online platforms would actually be willing to employ, as none of them could provide such figures during their interviews. Two platforms argued that they might cease operations in Europe in the event that they were asked to employ the people working through them. Following on this argument, one can reason that only those platforms for whom operations in Europe are essential **due to the specificity of service and the need for local expertise** would choose to employ people after reclassification. The overview of detailed skills data collected automatically from four platforms for online work (see Annex 4B) allows us to narrow down the list of such services to: writing and translation in EU languages, and professional services requiring knowledge of local requirements and regulations (e.g. architecture, legal advice, certain types of engineering). According to OLI data on worker countries by occupation, **only 10%** of European workers engage in these types of work.<sup>350</sup> On the basis of this, it may be assumed that the figures of workers actually employed would be reduced significantly, for example to around **0.04 million** and **0.05 million** in low-skill and high-skill online work, respectively (i.e. 10% of 0.4 million and 0.5 million, see Table 12).

Taking into consideration the estimate for the reclassification of people working through on-location and online platforms, the other possible outcomes (including retaining current status, genuine self-employment, no longer working through platforms, better social security or working conditions in self-employment) would concern people in low-skill and high-skill online work (Table 11) minus those potentially reclassified, which gives a range of **between 24.19 and 26.56 million**.

<sup>348</sup> The 2021 survey data on people working through platforms who cannot set their own pay rates and schedules.

<sup>349</sup> Table 12: low-skill online in main platform work + low-skill online in secondary and marginal platform work + high skill online in main platform work

<sup>350</sup> Available [here](#), data from 28 July 2021.

In line with the arguments presented for Options A1 and A2, it is reasonable to assume that it will be quite easy, particularly in the case of platforms for *high-skilled online work*, for platforms to review their T&Cs to ensure that the status of people working through them is that of genuine self-employment. According to the 2021 survey, the number of people working through such platforms more than sporadically was 1.91 million. Taking into consideration the highest assumed level of reclassification, the likely number of genuinely self-employed is **1.41 million**.<sup>351</sup> Furthermore, it can also be assumed that platforms will revise their T&Cs so that low-skilled online people (Table 12) who are not reclassified become genuinely self-employed. This would cover up to **0.85 million people**.<sup>352</sup>

The figures for on-location and online workers added together, illustrating the total numbers of people affected under Option A3b, are presented in the table below.

**Table 26. Number of people impacted by Policy Option A3b**

	Low-skill on-location	High-skill on-location	Low-skill online	High-skill online	Total
(i) Employed after reclassification	Between 0.76 and 2.01 million	Between 0.06 and 0.34 million	Between 0.4 and 1.25 million**	0.50 million**	1.72 to 4.1 million
(ii) Other outcomes (including retaining current status, genuine self-employment, no longer working through platforms, better social security or working conditions in self-employment)*	Between 2.18 and 3.42 million	Between 1.50 and 1.78 million	Between 8.5 and 9.35 million	12.01 million	24.19 to 26.56 million
(iii) (within ii) People at risk of misclassification who become genuinely self-employed*	Up to 1.24 million	Up to 0.28 million	Up to 0.85 million	Up to 1.41 million	Up to 3.78 million

\* More people within the 'Other' category may become genuinely self-employed in addition to those indicated in line ii; however, the data are insufficient to make a more precise estimate.

\*\* An even lower estimate of 0.04 to 0.05 million is possible, following the reasoning presented above the table, although this was not used to calculate the likely social and economic costs and benefits in the further chapters due to limitations in differentiating between people working through online platforms by occupation using the survey data.

Following a similar approach to that outlined in under Option A2 (and explained in detail in Annex 4), the benefits for people reclassified under the sub-option A3B would include:

- Increased **net wages** to workers: a total of between EUR 203 million and EUR 484 million per year (based on the assumption that those currently earning below minimum wage would earn at least minimum wage following reclassification). This translates to an average increase per person of EUR 121.07 per year, varying from 0 for those workers who already earn minimum wage or more, to a maximum of EUR 1,800 per year for those who earn less than minimum wage and work an average number of hours.

<sup>351</sup> 1.91 minus 0.5 million (Table 12).

<sup>352</sup> 1.25 minus 0.4 million (Table 12).

- The value of **paid leave** for those reclassified: between EUR 349 and EUR 830 million per year for all reclassified workers in the EU combined (average annual gain of EUR 178 per worker).
- Compensation for the costs of **COVID-19 protective materials** for on-location workers: between EUR 42 million and EUR 121 million per year.
- One-off benefit for delivery workers in the form of a high-visibility vest and helmet: total of EUR 73.2 million.

Similarly to A3a, negative side-effects are likely for people in low-skill on-location jobs who remain self-employed, as platform companies may direct orders primarily to workers on employment contracts.

#### 5.5.2.3. Sub-option A3c: rebuttable presumption applying to all platforms

We assume that the impacts concerning the number of people reclassified will be the same as under sub-option A3b. Even though sub-option A3c would apply to all digital labour platforms, it may be expected that only those platforms that exercise a certain degree of control *vis-à-vis* the people working through them would offer employment contracts. Given the potentially larger scope of this sub-option, it is likely that more cases will be resolved, with precedents being established through court cases. The courts would have to define the circumstances in which the rebuttable presumption applies. In doing so, they will rely on national law, and will eventually apply a certain standard in terms of control and subordination.

### 5.5.3. Impacts on platforms

#### 5.5.3.1. Sub-option A3a: rebuttable presumption applying to on-location platforms

Generally speaking, the impacts with regard to on-location platforms under the rebuttable presumption would be similar to those experienced by ride-hailing and delivery platforms under Option A2. The magnitude of the effects, however, will differ because the rebuttable presumption would cover a wider range of platforms. We discuss the key costs below, after presenting the characteristics of the platforms affected.

**Number of platforms affected.** Given that the rebuttable presumption would apply to all on-location platforms, details of these are presented in the table below.

**Table 27. Characteristics of platforms affected by sub-option A3a**

<b>Platforms affected</b>	329	
<b>Type</b>	84% on-location 16% provide both online and on-location services	
<b>Services</b>	Contest-based	0.30%
	Delivery	30%
	Domestic work	20%
	Freelance	9%
	Home services	26%
	Microtask	2%
	Professional services	3%
	Taxi	9%
<b>Countries of operation</b>	70% operate in a single EU country only; 30% operate in more than one EU country	
<b>Origin</b>	89% originated in the EU; 11% from outside the EU	
<b>Turnover</b>	If the earnings of people working through platforms are excluded, data are available for 97 platforms. Of these, 89 (92%) had a turnover of less than EUR 50 million.  If the earnings of people working through platforms are included, data are also available for 95 platforms. Of these, 66 (69%) had a turnover of less than EUR 50 million.	

Source: CEPS dataset.

Note: the typology of services and its definitions are outlined in the CEPS study<sup>353</sup>, and do not follow the same definitions presented in Table 1. The true number of platforms affected might be slightly higher.

**Earnings and social security costs.** If low-skill on-location platforms had to employ the people working through them and who are in subordinate relationships with the platforms, on-location platforms would experience **an increase in costs of EUR 2.9 billion**. If platforms chose to employ only those who are in main platform work, the costs would increase by **EUR 1.0 billion**. See Annex 4 for details.

In interviews, some platforms emphasised that in the event of reclassification, **bankruptcies would be inevitable for some platform companies**, especially smaller ones. Others might withdraw from the EU or from less profitable European cities/countries, as was the case with the delivery platform Deliveroo following the introduction of the Riders' law in Spain.<sup>354</sup>

**Non-compliance costs.** The presumption of employment will encourage people working through platforms, as well as other stakeholders (trade unions, labour inspectorates, other authorities), to challenge the legal relationships between platforms and people working through them in the courts. Thus, in the short term, the number of court cases concerning misclassification and bogus self-employment may increase (in comparison to baseline). This would entail costs to the platforms in terms of legal fees as well as fines, as the ones illustrated in Table 18 in the baseline scenario. These costs would be disproportionately detrimental to platforms that are SMEs (see the discussion under OptionA2 regarding impacts on platforms, Section 5.4). Nevertheless, the platforms are likely to adapt either by reclassifying a certain share of people working through them as employees or changing their terms and conditions, as well as their management practices, to ensure that the legal relationship is clearly that of genuine self-employment.

<sup>353</sup> Available [here](#).

<sup>354</sup> Jiménez M. (2021). Deliveroo abandona España antes de la entrada en vigor de la ley de 'riders'. CincoDias. *El País*. Available [here](#).

Therefore, we would assume that after an initial increase, the number of court cases will decline in the medium term, and will probably be lower than in Option A2.

**The cost of adapting to different EU employment rules.** Following the same principles as under Option A2, we estimate that the total one-off cost for all platforms jointly to research different employment rules across the EU may constitute up to **EUR 557,000**.<sup>355</sup> However, this is an overestimate, as it assumes that all on-location platforms would employ workers, when in reality only those whose models cannot be shifted to genuine self-employment would be likely to do so. Then, **recurring legal research costs** would amount to **EUR 712.5 per platform, per expansion to one country**. This figure does not include costs relating to researching different social security systems or other administrative costs, such as updating the Terms & Conditions, finding ways to adapt business models so that they are in line with the obligations of employers, etc., as outlined under Option A2, Section 5.4.

**Reputation.** While platforms' **public image may suffer in the short term** due to an uptick in litigation, the presumption of employment would have a **positive effect on the platforms' reputation in the long run**. This is because the working conditions of people working through platforms would improve, and platforms would not be involved in as many court cases as in the baseline scenario.

**Revenues.** Employing the same assumptions as outlined under Option A2 (see Section 5.4.3), we estimate that the presumption of employment may **reduce the revenues of on-location platforms by less than EUR 6.6 billion**.<sup>356</sup> The EUR 6.6 billion figure is an overestimate, because we assume that the rebuttable presumption would have the same effect on the demand of all on-location platform services as reclassification did on demand for Uber services in Geneva. In reality, many on-location platforms will be able to prove that their workforces are genuinely self-employed, which is why the figure will be lower. Furthermore, as outlined under Option A2, the effect on revenues may differ substantially depending on the platform and the market in which it operates. For example, the Hilfr platform in Denmark experienced an increase in revenues (from EUR 3 million in 2018 to EUR 4 million in 2019) following its collective agreement with trade union 3F (signed in August 2018), following which part of the platform's workforce became employed.

**Indirect costs.** As in A2, it is likely that employed **people working through the platforms would be less productive** if they could not select which tasks to accept, so platforms would experience a drop in efficiency and a rise in costs (of up to 20%, according to one of the food delivery platforms interviewed).

#### 5.5.3.2. Sub-option A3b: Rebuttable presumption applying to all platforms exerting a certain degree of control over the people working through them and over their work

**Number of platforms affected.** It is difficult to estimate how many platforms Option A3b would apply to, because there no comprehensive data source exists that outlines which platforms: effectively determine, or set upper limits for, the level of remuneration; control or restrict the communication between the person performing platform work and the

<sup>355</sup> Hourly wage of a paralegal (EUR 14.25/hr) \* the number of legal research hours required (50 hrs) \* 782, which represents the sum of EU countries in which on-location platforms that rely on a self-employment model operate, minus the countries where they are headquartered.

<sup>356</sup> CEPS estimates revenue for on-location platforms (EUR 7.3 billion) \* a threefold increase to account for the fact that revenue information is missing for 210 out of 288 of platforms, even though the major players are included \* the drop in demand experienced by Uber in Geneva after reclassification (0.3).

customer; require the person performing platform work to respect specific rules with regard to their appearance, conduct towards the customer or performance of the work; or verify the quality of the results of the work. Nevertheless, the CEPS dataset indicates who oversees the client-worker selection process. These include the following options:

1. The platform assigns the client to the worker (and the worker to the client);
2. The client picks the worker;
3. The worker picks the client; or
4. Any combination of the selection methods above.<sup>357</sup>

We argue that platforms which select the clients for workers are more likely to be those that exercise a certain level of control, compared with platforms in which clients themselves select the workers or vice versa. Thus, details about platforms in the former category are presented below. Nevertheless, this is clearly an imperfect operationalisation of those platforms that will be affected by Option A3b, so it should be treated with caution. This is why we avoid relying on these data with regard to the costs of policy Option A3b to platforms, which are presented beneath the table.

**Table 28. Characteristics of platforms that match clients with workers**

<b>Platforms affected</b>	166	
<b>Type</b>	Online	20%
	On-location	77%
	Both	4%
<b>Services</b>	Delivery	51%
	Domestic work	8%
	Freelance	15%
	Home services	2%
	Microtask	10%
	Professional services	1%
	Taxi	13%
<b>Countries of operation</b>	68% operate in a single EU country only; 32% operate in more than one EU country	
<b>Origin</b>	88% originated in the EU; 12% from outside the EU	
<b>Turnover</b>	<p>If the earnings of people working through platforms are excluded, data are available for 52 platforms. Of these, 47 (90%) had a turnover of less than EUR 50 million.</p> <p>If the earnings of people working through platforms are included, data are also available for 51 platforms. Of these, 37 (73%) had a turnover of less than EUR 50 million.</p>	

Source: CEPS dataset.

Note: the typology of services and its definitions are outlined in the CEPS study<sup>358</sup> and do not follow the same definitions presented in Table 1. The true number of platforms affected might be slightly higher. Only those platforms that are solely responsible for the matching process are presented in the table, even though in a number of cases both the platform and the client/worker may be involved. This is because platforms that are solely responsible for matching arguably exercise the greatest level of control.

<sup>357</sup> The classification is based on Eurofound (2018). *Employment and working conditions of selected types of platform work*. Publications Office of the European Union, Luxembourg.

<sup>358</sup> Available [here](#).

**Earnings and social security costs.** If both online and on-location platforms employed those people who are subordinated by them, the costs to these platforms in terms of increased earnings to workers and social security contributions to public budgets would increase by **EUR 1.9 – 4.5 billion**. These are broken down in the table below.

**Table 29. Additional costs that would be experienced by all platforms jointly due to the rebuttable presumption of employment, by platform type**

Type of activity	Lower-bound estimate, EUR	Upper-bound estimate, EUR
On-location	1.1 billion	2.9 billion
Online	0.86 billion	1.6 billion
<b>Total:</b>	<b>1.9 billion</b>	<b>4.5 billion</b>

Source: own estimates based on PPMI 2021 survey. See Annex 4 for details.

**Non-compliance costs.** Given that no legal cases have been concluded against online platforms in the baseline scenario, we do not expect that the rebuttable presumption will lead to a large increase in litigation for these platforms. Nevertheless, **a slight uptick** might be expected in the short term among platforms that determine, or set upper limits for, the level of remuneration; control or restrict the communication between the person performing platform work and the customer; require the person performing platform work to respect specific rules with regard to their appearance and conduct towards the customer or the performance of the work; or verify the quality of the results of the work. In the long run, the platforms most at risk of litigation are likely to adapt their business models, which will reduce the number of cases. Nevertheless, we can expect the level of litigation to be higher than in the baseline scenario.

**The cost of adapting to different EU employment rules.** In terms of legal research to employ people who work through platforms, the costs faced by on-location platforms would be the equivalent to those mentioned under Option A3a (a maximum of EUR 557,000, if we assume that all on-location platforms will have to switch to an employment model, as it is impossible to estimate how many would do so in reality). It is impossible to estimate the cost for online platforms, because only a handful are likely to qualify under the criteria set out in Option A3b (see the previous paragraph), yet it is unclear how many. Still, **each of those platforms would probably face higher costs compared with on-location platforms** because online platforms function in more countries on average than on-location platforms (17.3 vs 3.5 respectively, based on the CEPS dataset). This means that the impact for each online platform would be substantially greater, as it would need to perform legal research on how to employ workers in each EU Member State in which it operates.

Furthermore, as mentioned before, the legal research costs do not capture the true cost of adapting platforms' business models so that they are in line with the national legislation applicable to employers.

**Reputation.** Online platforms would not experience significant effects in terms of their reputation under this policy option, because online platforms are currently not involved in litigation and will largely continue not be if the presumption were to be put in place. Nevertheless, the platforms that satisfy the criteria mentioned in Option A3b might suffer from a negative public image in the short run, if people working through platforms (or other actors) take legal action. However, these effects will be resolved in the longer term once platforms adjust their business models, either by employing the workers or moving to genuine self-employment.

**Revenues.** The effects with regard to the revenues of on-location platforms would be similarly ambiguous to those outlined for sub-option A3a. We cannot estimate the effect with regard to online platforms, because no data are available to estimate the revenues of platforms that satisfy the criteria mentioned under sub-option A3b.

**Indirect costs.** It is reasonable to assume that the drop in efficiency discussed under Option A3 would similarly apply to online platforms whose work with freelancers resembles subordination.

### 5.5.3.3. Sub-option A3c: rebuttable presumption applying to all platforms

**Number of platforms affected.** The number and characteristics of platforms affected by this sub-option match those outlined under Option A1 (i.e. all digital labour platforms operating in the EU), and are repeated below for reference.

**Table 30. Characteristics of the platforms affected by sub-option A3c**

<b>Platforms affected</b>	516	
<b>Type</b>	Online	36%
	On-location	54%
	Both	10%
<b>Services</b>	Contest-based	4.3%
	Delivery	19.2%
	Domestic work	13.0%
	Freelance	27.2%
	Home services	17.5%
	Medical consultation	0.2%
	Microtask	10.7%
	Professional services	2.5%
	Taxi	5.4%
<b>Countries of operation</b>	54% operate in a single EU country only; 46% operate in more than one EU country	
<b>Origin</b>	77% originated in the EU; 23% from outside the EU	
<b>Turnover</b>	<p>If the earnings of people working through platforms are excluded, data are available for 132 platforms. Of these, 122 (92%) had a turnover of less than EUR 50 million.</p> <p>If the earnings of people working through platforms are included, data are available for 123 platforms. Of these, 86 (70%) had a turnover of less than EUR 50 million.</p>	

Source: CEPS dataset.

Note: the typology of services and its definitions are outlined in the CEPS study<sup>359</sup>, and do not follow the same definitions presented in Table 1. The true number of platforms affected may be slightly higher.

**Earnings and social security costs.** Even though this option applies to all platforms, the people reclassified as a result of this option would still be those whose relationship with platforms includes elements of subordination. Hence, the total effect on earnings and non-wage costs would be identical to those for Option A3b, or may be lower, if a

<sup>359</sup> Available [here](#).

number of online platforms cease their operations in the EU due to the administrative costs of proving that their relationship with freelancers is that of genuine self-employment.

**Non-compliance costs.** Given that the rebuttable presumption will make it easier for individuals, trade unions, labour inspectorates and other actors to bring online platforms to court, we can expect an **uptick** in litigation cases compared with the baseline scenario, although most online platforms would be able to successfully prove that freelancers are genuinely self-employed. Nevertheless, the process of going through court proceedings would constitute a **substantial inconvenience for platforms, potentially motivating some of them to quit EU markets**, without a clear benefit in terms of the number of people who would be reclassified.

**The cost of adapting to different EU employment rules.** Given that the number of people reclassified as a result of sub-option A3c would be the same as under sub-option A3b, these costs would also be identical.

**Reputation.** Online platforms would not experience significant effects in terms of their reputation given this policy sub-option, because online platforms are currently not involved in litigation and will largely continue not to be if the presumption were to be put into place. Nevertheless, given the increased risk of litigation, even those online platforms that operate models involving genuine self-employment might suffer from a negative public image if they are sued increasingly.

**Revenues.** The effect for on-location platforms is the same as that outlined under sub-option A3a. The effect on the revenues of online platforms cannot be estimated. Even though some information on the revenues of online platforms is available,<sup>360</sup> it is unclear how much these revenues would fall due to the initiative. As argued under impacts on the number of people affected, demand for services supplied through online platforms could drop by as much as 90% (essentially including all tasks that could be outsourced to non-EU citizens). Nevertheless, only those platforms that do not operate outside the EU would suffer due to a drop in demand. In other words, online platforms would still derive revenue from EU clients, even if the work would be performed by non-EU citizens with whom EU workers could no longer compete on price.

**Indirect costs.** It is reasonable to assume that the drop in efficiency discussed under sub-option A3b would apply similarly to online platforms whose relationship with freelancers resembles subordination.

## 5.5.4. Impacts on the public sector

### 5.5.4.1. Sub-option A3a: rebuttable presumption applying to on-location platforms

**Administrative costs to public authorities.** If a binding instrument such as a Directive, is chosen to introduce policy sub-option A3a, the Member States would need to transpose it in line with national legislative procedures. As of summer 2021, Spain has already introduced a rebuttable presumption for employment in the food delivery

<sup>360</sup> CEPS estimates that the revenues of online platforms in 2020 stood at EUR 371 million with regard to their EU business. This is a serious under-estimate, given that information is available for only one-fifth (35 out of 181) online platforms active in the EU, and the revenues of major online platforms such as 99designs, PeoplePerHour, etc., are not reflected.

sector.<sup>361</sup> As presented in the box below, the process that led to the adoption of the relevant legislative changes was triggered by a court case, and involved a series of negotiations with social partners. The Spanish example also shows that in order to adopt a presumption that is acceptable to most stakeholders, compromises were necessary, which led to the scope of the law being narrowed down to specifically cover the food delivery sector.

In other countries, the process leading to the adoption of a presumption of employment may either be comparable to, or very different from, the process observed in Spain. It will depend on national policy rules, the level of engagement of social partners, and the ability of the political system to reach a decision based on compromise. Given that sub-option A3a specifically concerns on-location platforms, it may be assumed that reaching an agreement might be relatively easier compared with the introduction of such a presumption for all online platforms (Option A3c).

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<sup>361</sup> Spain. Royal Decree Law 9/2021, which amends the recast Spanish Workers' Statute Law, approved by Legislative Royal Decree 2/2015, of 23 October.

**Box 5. Adopting the Rider's Law**

In December 2017, the Spanish labour inspectorate concluded, after a complaint from riders' organisations in Spain, that people working through Deliveroo in Valencia were falsely self-employed, and should be considered employees.<sup>362</sup> Cases concerning misclassification began to reach the courts, although the court decisions (as well as the opinions of judges) were sometimes contradictory.<sup>363</sup> In 2020, Supreme Court issued a ruling (STS 805/2020), which stated that a rider offering his services through a food delivery platform was an employee.<sup>364</sup> The court's decision was based on the presumption of employment that derives from Article 8.1 of the Workers Statute, which states that an employment relationship exists "between anyone rendering a service on behalf of and within the scope of the organisation and management of another, and the person receiving that service in exchange for compensation paid to the former".<sup>365</sup> As a result, Spain's Labour Minister Yolanda Díaz initiated negotiations to ensure that the principles set out in the court's decision were reflected in law.<sup>366</sup>

Negotiations with social partners took more than six months before the Spanish Ministry of Labour and Social Economy, trade unions and employers' organisations reached an agreement on the regulation of the labour relations for delivery workers (the so-called Riders Law).

The agreement between the Ministry of Labour and Social Economy, workers' organisations CCOO and UGT, and business organisations the CEOE and Cepyme, was reached on 10 February 2021. The law obliges couriers to be classified as employees, and labour unions to be informed of how a platform's algorithms affect couriers' working conditions. It was ratified by Spain's cabinet on 11 May 2021.

The Riders' Law is a compromise between the positions of different stakeholders. The trade unions point out that regulation is limited to the delivery and distribution sector only.<sup>367</sup> Platforms criticise the fact that the law was passed by a royal decree – meaning it was not subject to parliamentary debate – and without sufficiently consulting restaurants, platforms and delivery workers.

In response to the rebuttable presumption, platforms are likely not to employ all the people who currently work through them; it depends on how the presumption of employment is transposed to national law. Nevertheless, it may be assumed that the presumption of employment will make it easier for people working through platforms, as well as other stakeholders (trade unions, labour inspectorates, other authorities), to challenge in the courts the legal relationships between platforms and the people working through them. It may be expected that the number of court cases concerning misclassification and bogus self-employment will increase (in comparison to baseline) during the first 1-3 years after the presumption of employment enters into force. This would entail costs to the public sector. We also assume that due to the signalling effect and on the basis of court precedents, the platforms will adapt either by reclassifying a certain share of people working through them as employees, or by changing their Terms & Conditions, as well as management practices, to ensure that the legal relationship is clearly one that involves genuine self-employment. Therefore, it can be expected that after an initial uptick, the number of court cases will decline in the medium term, and will probably be lower than the tendency shown at baseline.

<sup>362</sup> Gómez, M.V. (2021). La ley de 'riders' obligará a las empresas a informar a los sindicatos sobre los algoritmos que afectan a las condiciones laborales. *El País*. Available [here](#).

<sup>363</sup> Gómez, M.V. (2021). La ley de 'riders' obligará a las empresas a informar a los sindicatos sobre los algoritmos que afectan a las condiciones laborales. *El País*. Available [here](#).

<sup>364</sup> Available [here](#).

<sup>365</sup> Available [here](#).

<sup>366</sup> Catier, L. (2021). Spain approved a law protecting delivery workers. Here's what you need to know. *Político*. Available [here](#).

<sup>367</sup> Ollás, L. (2021). La patronal trata de retrasar la 'Ley Rider' hasta después de Navidad y da espacio a los postula dos de Glovo. *elDiario.es*. Available [here](#).

**Increased tax and social security contributions.** We estimate that in response to the introduction of the rebuttable presumption for on-location platforms, the number of on-location persons reclassified would be between 0.82 million and 2.35 million. Based on these estimates, the additional income to the public budgets from income taxes, employee social security taxes and employer social security taxes could range from EUR 0.93 billion to EUR 2.64 billion per year (for more details, see Annex 4).

Such an estimate is based on a number of assumptions: a) the number of working hours of the reclassified people would not change; b) the gross income of the reclassified people would increase in the case of those currently not earning minimum wage, who will earn at least the minimum wage. In reality, the number of working hours of the reclassified people may increase, which would mean higher revenues for the public budget. As a counter-balance, however, around 1.52 million people working through on-location platforms are likely to become genuinely self-employed, move into another sector, or become unemployed or inactive in the labour market. The last of these directions (unemployed, inactive) would moderate the amount of the increased revenues to public budgets.

**Facilitation for tax authorities and/or labour inspections to detect and pursue cases of false self-employment.** National authorities (including labour inspectorates, social security and tax authorities) would draw on the rebuttable presumption to initiate inspections and bring cases to court. While the rebuttable presumption might facilitate this line of work, extra resources might be needed in order to carry out and conclude the increased number of inspections.

A rebuttable presumption that applied only to on-location platforms would result in online platforms (especially those exercising a high degree of control) remaining in a 'grey area', as public authorities will still need to investigate potential cases of bogus self-employment on these platforms.

#### 5.5.4.2. [Sub-option A3b: rebuttable presumption applying to all platforms exerting a certain degree of control over the people working through them and over their work](#)

**Administrative costs to public authorities.** As with sub-option A3a, the rebuttable presumption would need to be transposed into national law. In line with option A3a, we cannot estimate the workload required to transpose and implement such a presumption at national level, given the vastly different legal frameworks and procedures that would be used by the Member States. Overall, the legislative process will be more complicated, more protracted and costly compared with that for sub-option A3a, due to the larger number of stakeholders affected.

Sub-option A3b would entail some additional workload for the Commission to develop a set of criteria (and possibly to further specify or operationalise them later).

If the rebuttable presumption were introduced, it is likely that some platforms would apply it to a number of people working through these platforms. They are also likely to use a contractor model to cover fluctuations or surges in demand, and to involve both independent sub-contractors as well as other companies (fleets, third-party logistics companies, temporary work agencies). Some contractors will argue that they have been misclassified, and will thus take the platforms to court. Other organisations, such as trade unions, as well as labour inspectorates, social security and tax authorities, might also initiate court cases. We would thus expect that after the introduction of the rebuttable presumption, the number of inspections and court cases would initially increase, above

the trend indicated in the baseline. Nevertheless, we also assume that platforms will adapt by changing their business models to employ workers, introducing dual models or introducing changes to ensure that the people working through these platforms conform to the status of self-employed. Therefore, after an initial surge in inspections and court cases, we would expect the number of such activities to decrease substantially after 2-5 years.

**Increased tax and social security contributions to public budgets.** Using similar reasoning to that applied under sub-option A3a, sub-option A3b would result in an additional **EUR 3.98 billion** to public budgets each year at the higher end, and **EUR 1.70 billion** at the lower end (see Annex 4 for more detailed calculations). Increased income from tax and social security contributions paid by on-location platforms would range from EUR 0.93 billion to EUR 2.64 billion per year, whereas increased income from online platforms would range between EUR 0.74 billion and EUR 1.33 billion per year.

As explained in the assessment of sub-option A3a, this relies on a number of assumptions. On the one hand, given that the working hours of the reclassified persons are likely to increase, annual effects on public budgets are likely to be substantially higher. On the other hand, this effect will be partly counterbalanced by the fact that after reclassification, a certain percentage of persons who are currently working through online platforms will either become inactive or unemployed.

**Facilitation for tax authorities and/ or labour inspections to detect and pursue cases of false self-employment.** National authorities (including labour inspectorates, social security and tax authorities) would draw on the rebuttable presumption to initiate inspections and bring cases to court. While the rebuttable presumption might facilitate this line of work, extra resources might be needed in order to carry out and conclude the increased number of inspections.

#### 5.5.4.3. [Sub-option A3c: rebuttable presumption applying to all platforms](#)

**Administrative costs to public authorities.** This sub-option is likely to be more costly to public authorities in the Member States than either A3a or A3b. If the rebuttable presumption concerning all platforms were adopted at EU level, the national and regional authorities would have to decide on specific criteria defining the platforms to which the rebuttable presumption is applicable, as well the procedure for rebutting the presumption. Given that the field is rapidly changing, complex, with a large number of stakeholders involved, it is likely that transposition will be protracted. Furthermore, given that the number of platforms potentially affected is larger than under sub-options A3a and A3b, the likely number of court-based disputes will also be larger, which will demand greater resources from the public sector.

**Increased tax and social security contributions to public budgets.** While the transposition of a rebuttable presumption applicable to all platforms under sub-option A3c will be more complex than under sub-options A3a or A3b, we assume that the number of people reclassified will eventually be the same as under A3b. Therefore, the effects on public budgets will be the same as under A3b.

**Facilitation for tax authorities and/ or labour inspections to detect and pursue cases of false self-employment.** Similar to sub-option A3b.

## 5.5.5. Impacts on the economy as a whole

### 5.5.5.1. Sub-option A3a: rebuttable presumption applying to on-location platforms

As with Option A2 (see Section 5.4.5), the effect on consumption of sub-option A3a will be **ambiguous**: it might increase due to higher wages being paid to reclassified platform workers; on the other hand, it might decrease due to a drop in demand for platform services. While the former cannot be quantified, we shall attempt to quantify the latter.

According to the CEPS dataset, in 2020 the total revenue from on-location platform work (including only that based on the self-employment model) in the EU-27 stood at EUR 12.2 billion.<sup>368</sup> Nevertheless, this is an underestimate because it relies on information received from only 132 out of 288 on-location platforms identified as being active in the EU-27 in 2020. Furthermore, not all of the on-location platforms active in EU-27 were identified in the study. Hence, revenues from more than half of such platforms in the EU-27 are not reflected in this EUR 12.2 billion figure. Given that the platforms for which information is available include the largest on-location market players such as Uber, Deliveroo, Glovo, Wolt and others, we assume that the actual revenues from on-location platform work might be higher by roughly two-thirds, standing at EUR 20.3 billion. A 30% reduction in these revenues (as per the impacts on consumer behaviour described by Uber in Geneva) would translate into lost revenues of EUR 6.1 billion. In 2020, the GDP of the EU was EUR 13.3 trillion,<sup>369</sup> which means that revenues lost from on-location platform work would account for 0.046% of GDP. If the revenues lost by restaurants (a maximum of EUR 3.8 billion – see Section 5.2.3, b) are added to this figure, the downward effect on GDP would equate to at maximum of 0.074%.

Importantly, this is an overestimate because it assumes that the effects for all on-location platforms will be similar to those experienced by Uber in Geneva. In reality, under sub-option A3a, a large number of platforms would be able to prove that presumption does not apply to them. This is most likely to be the case for high-skill on-location platforms, via which people can set their own rates and schedules, and there is no monitoring, etc. Hence, a lower share of people would be reclassified, resulting in a lesser effect on revenues.

The effects of this sub-option on net exports, business investment and government spending will mimic those outlined under Option A2 (see Section 5.4.5), though they will be greater in magnitude, given that Option A3a affects a greater number of platforms.

### 5.5.5.2. Sub-option A3b: rebuttable presumption applying to all platforms exerting a certain degree of control over the people working through them and over their work

While the effects of sub-option A3b on GDP would be the same regarding on-location platforms as A3a, the same analysis cannot be performed for people working through **online** platforms, because it is impossible to estimate how large the drop in demand for their services would be if people working through such platforms were reclassified. Nevertheless, the drop in demand could be substantial. Following the AB5 law in

<sup>368</sup> The estimate includes platform revenues, earnings of people working through platforms, and fourth-party earnings.

<sup>369</sup> Eurostat table NAMA\_10\_GDP. Available [here](#).

California, businesses based outside California avoid hiring freelancers that are based in the state because AB5 makes it harder to negotiate a contract with an independent contractor without making them an employee.<sup>370</sup> According to the representative of Upwork interviewed, the platform provides assistance for clients to hire a person from California according to these requirements, including a payroll system, tax forms, information about relevant benefits, etc. This is done through a third-party payroll vendor. However, clients now increasingly prefer to hire freelancers from other states or countries. The representative interviewed stressed that clients are less concerned about the increased cost (in terms of benefits or salary), than they are about the inconvenience of dealing with employment contracts. A similar effect can be expected in Europe.

Although this effect is difficult to quantify in terms of its impact on GDP, this would inevitably shrink (albeit slightly) if people working through online platforms were to be reclassified. Rather than disappearing, demand for these services would most likely be outsourced to third countries, except in cases where local knowledge or specific language skills were needed to perform the task. Thus, **net exports would also shrink**.

The effect of this sub-option on government spending is also ambiguous: while the effect will be positive with regard to on-location platforms (as discussed above in relation to sub-option A3a), the effect regarding online platforms is less clear. If many of the tasks performed by people working through online platforms are outsourced, the effect on contributions to public budgets might be negative, limiting government spending.

Lastly, the effect on business investment by online platforms is impossible to quantify without knowing how much these platforms spend on office rentals, software purchases, etc.

#### 5.5.5.3. Sub-option A3c: rebuttable presumption applying to all platforms

Similar effects on GDP can be expected to those anticipated under sub-option A3b, although the negative pressure will likely be stronger under A3c, as more online platforms are likely to cease operations in the EU and more will be outsourced to non-EU freelancers due to lower prices.

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<sup>370</sup> For an example, see [here](#).

## 5.6. Summary: Policy Area A

**Table 31. Summary of impacts: Policy Area A**

Impact	Baseline	A1	A2	A3a	A3b	A3c
<b>Social impacts</b>						
<b>Number of people at risk of misclassification</b>	Estimated total of 5.51 million people (Table 12)	The issue of misclassification is resolved through a) employing the people working through platforms; b) other outcomes (including retaining current status, genuine self-employment, no longer working through platforms, better social security or working conditions in self-employment); c) ensuring that people working through platforms are genuinely self-employed. Under each option, a combination is expected (*Note: more people in the 'Other' category may become genuinely self-employed, in addition to those indicated under (c); however data are insufficient to make a more precise estimate)				
		a) No change from baseline in the short term; above the baseline in the medium to long term c) Up to 2.25 million people*.	a) Between 0.57 and 1.54 million people b) Between 26.74 and 27.71 million people c) Up to 2.25 million people*.	a) Between 0.82 and 2.35 million people b) Between 25.94 and 27.46 million people c) Up to 1.52 million people*.	a) Between 1.72 and 4.1 million people b) Between 24.19 and 26.56 million people c) Up to 3.78 million people.	a) Between 1.72 and 4.1 million people b) Between 24.19 and 26.56 million people c) Up to 3.78 million people.
<b>Income, social security and working time of people working through platforms</b>	The self-employed are not eligible for minimum wage, paid leave; they have to cover the costs of their working tools and protective materials.	Benefits for reclassified workers: lower income unpredictability and variability during periods of low and high demand; paid holidays; some social contributions shifted on to the employer, and fuller social insurance coverage; coverage of expenses for work equipment and protective gear. Costs to reclassified workers: lower flexibility and autonomy, fewer options for multi-homing. Benefits people working through platforms who become genuinely self-employed: less control by platforms, ability to set working time and pay rates. Costs (indirect) to those who do not have an employment contract with the platform company: platforms may prioritise orders to people under the employment contract; platforms may sub-contract work agencies, which may reduce the income of people working through platforms; ability to set rates might lead to a 'race to the bottom'.				
		Limited, but above-zero benefits in the medium to long term.	Increased net wages to workers of between EUR 82 million and EUR 221 million per year (an average annual increase of EUR 144 per reclassified worker, varying from 0 for those workers	Increased net wages to workers of between EUR 83 million and EUR 239 million per year (an average annual increase of EUR 94.5 per reclassified worker, varying from 0 for those workers	Increased net wages to workers of between EUR 203 million and 484 million per year (an average increase per person of EUR 121.07 per year,	Similar to A3b.

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Impact	Baseline	A1	A2	A3a	A3b	A3c
			<p>who already earn minimum wage or more, to a maximum of EUR 880 per year for those who currently earn less than minimum wage and work an average number of hours and weeks).</p> <p>Value of paid leave for those reclassified: between EUR 173 million and EUR 411 million per year.</p> <p>Compensation for the costs of COVID-19 protective materials for reclassified delivery and ride-hailing workers: between EUR 37 million and 104 million per year.</p> <p>Additional one-off benefit for delivery workers in the form of a high-visibility vest and helmet, valued at a total of EUR 73.2 million.</p> <p>For at least 1.5 to 2.47 million people: better working conditions or social security in self-employment.</p>	<p>who already earn minimum wage or more, a maximum of EUR 675 per year for those who currently earn less than minimum wage and work an average number of hours and weeks).</p> <p>Value of paid leave for those reclassified: between EUR 173 million and EUR 411 million per year</p> <p>Compensation for the costs of COVID-19 protective materials for reclassified on-location workers: between EUR 42 million and 121 million per year.</p> <p>Additional one-off benefit for delivery workers in the form of a high-visibility vest and helmet, valued at a total of EUR 73.2 million.</p>	<p>varying from 0 for those workers who already earn minimum wage or more, to a maximum of EUR 1,800 per year for those who currently earn less than minimum wage and work an average number of hours and weeks).</p> <p>Value of paid leave for those reclassified: between EUR 349 and 830 million per year (average annual gain of EUR 178 per person).</p> <p>Compensation for the costs of COVID-19 protective materials for on-location workers: between EUR 42 million and EUR 121 million per year.</p> <p>One-off benefit for delivery workers: high visibility vest and helmet valued at a total of EUR 73.2 million.</p>	

Impact	Baseline	A1	A2	A3a	A3b	A3c
<b>Situation in relation to health and safety, to which the employment status and platform practices contribute</b>	Costs of estimated number of additional road accident fatalities linked to ride-hailing in EU-27: between EUR 478.1 million and EUR 3.7 billion per year. Monetary costs of fatal and non-fatal accidents at work among people working through platforms in the EU-27 could reach EUR 20 billion per year.	Limited, but above-zero benefits in the medium to long term.	Higher benefits compared to A1, due to higher level of reclassification. Mostly in low-skill transport and delivery work.	Higher benefits compared to A2, due to higher level of reclassification. Mostly in low-skill on-location platform work.	Higher benefits compared to A3a, due to higher level of reclassification. Mostly in low-skill on-location platform work.	Similar to A3b.
<b>Possibility of flexible work to earn (additional) income, and to work through several platforms simultaneously</b>	The majority of people working through platforms have another job; also, for the majority, the opportunity to earn extra income without commitment to platforms or clients was moderately to strongly important.	Loss of opportunities for sporadic/ marginal platform work, as platforms reduce the number of people working through them after reclassification, discontinue their operations, or prioritise orders to workers on employment contracts. For reclassified on-location workers there will be a loss of opportunities to work through more than one platform at the same time, although non-simultaneous work through several platforms will remain possible. Due to this, low-skill on-location workers are likely to be more affected than people working through platforms online.				
		No negative change from baseline.	Up to 2.25 million people among those who are potentially misclassified will become genuinely self-employed.	Up to 1.52 million people who are potentially misclassified will become genuinely self-employed.	Up to 3.78 million people who are potentially misclassified will become genuinely self-employed.	Up to 3.78 million people who are potentially misclassified will become genuinely self-employed.
<b>Economic impacts</b>						
<b>Consumers</b>						
<b>Prices</b>	Consumers enjoy competitive prices, which some argue are below the true cost of operation.	Negligible impact on consumers in the short term; higher prices than baseline in the long run if guidelines encourage selected MS to adopt laws similar to Spain's Riders' Law.	Assuming platforms cannot adapt their business models so that they comply with genuine self-employment, prices for ride-hailing and delivery services could increase by up to 40%.	Same as A2 for ride-hailing and delivery platforms. Prices would also increase for other on-location services, e.g. the hourly rates of employed cleaners working through the Hilfr platform were 9.4% higher than those for the equivalent	Same as A3a for on-location platforms. Prices would remain unchanged for tasks that can be performed by freelancers outside the EU (due to downward effect on prices from competition). Prices	Same as A3b.

Impact	Baseline	A1	A2	A3a	A3b	A3c
				self-employed cleaners on the platform.	would increase for tasks that require local language or other expertise.	
<b>Availability of service</b>	Wide coverage, including in small towns, for on-location services. <sup>371</sup> At least 117 online platforms active in all EU-27 countries. <sup>372</sup>	Negligible impact in the short term; in the long run, platforms may consider withdrawing from markets (either individual EU MS or smaller towns) where MS adopt laws similar to the Riders' Law as a result of the guidelines.	Lower availability of ride-hailing and delivery services in less densely populated areas if platforms cannot switch to genuine self-employment. No impact regarding services supplied through other platforms.	Same impacts as ride-hailing and delivery services under A2, but for services supplied through all on-location platforms.	Same impacts as A3a regarding services supplied through on-location platforms. No impact on the availability of online services that can be supplied by freelancers outside the EU. Negligible impact on the availability of online services that require local expertise or language skills – even if targeted online platforms exit the market, traditional businesses could easily supply these services, given their online nature.	Same as A3b.
<b>Quality of service</b>	Ongoing improvements to the quality of services provided through both on-location and online platforms, as a growing number of platforms and people working through them compete for customers.	Negligible impacts in the short run; mixed effects on quality in the long run if guidelines encourage selected MS to adopt laws similar to the Riders' Law (see previous discussion).	Mixed effects on the quality of ride-hailing and delivery services: potentially improved quality due to employee training and the discontinuation of nudging techniques and surge pricing; reduced quality in terms of longer waiting times, lower impact of	Same impacts as A2, but for all on-location platforms.	Same impacts as A2, but for all targeted platforms.	Same impacts as A2, but for all on-location and online platforms.

<sup>371</sup> For example, see the cities in which Uber operates [here](#).

<sup>372</sup> CEPS (2021) dataset.

Impact	Baseline	A1	A2	A3a	A3b	A3c
			negative reviews, and lower levels of competition.			
<b>Traditional businesses</b>						
<b>Effects on businesses that compete with platforms</b>	Traditional businesses such as taxi companies are losing an increasing share of the market, in part due to the higher cost of employing workers.	Slight improvements in terms of fair competition may be expected in the long run, though by then many traditional businesses in direct competition with digital labour platforms may no longer be operating.	Improvements in the taxi and delivery sectors in terms of ensuring fair competition for traditional businesses that employ workers. Possibility of an unfair advantage for traditional businesses (e.g. taxi companies) that promote bogus self-employment, unless these are also regulated).	Same impacts as A2, but the initiative would benefit a greater number of traditional businesses, as it would cover a wider range of on-location services.	Same impacts as A3a, but businesses in direct competition with targeted online digital labour platforms would also benefit.	Same impacts as A3b, given that the remaining online platforms would be likely to prove that their relationship with the people providing services through them is genuine self-employment.
<b>Effects on businesses that rely on platforms</b>	Restaurants increasingly use delivery platforms in their operations, especially in light of the COVID-19 pandemic. Temporary work agencies are used by a few digital labour platforms for staffing decisions.	Negligible effect in the short run; possible negative effect on restaurant revenues in the long run if guidelines encourage selected MS to adopt laws similar to the Riders' Law in Spain.	Less than 1.0% of restaurant revenue, which across the EU-27 translates to EUR 3.8 billion. Increased demand for TWA services for both delivery and ride-hailing services.	Same impacts on restaurants as A2. Increased demand for TWA services with regard to a variety of on-location services.	Same impacts on restaurants as A2. No information exists on whether targeted online platforms may turn to TWAs for their staffing needs.	Same impacts on restaurants as A2. No information exists on whether any online platforms may turn to TWAs for their staffing needs – some said they would leave the EU.
<b>Economy as a whole</b>						
<b>Consumption</b>	Digital labour platforms generate at least EUR 13.7 billion in total revenue. <sup>373</sup>	Negligible impact in the short run; ambiguous impact on consumption in the long run if guidelines encourage selected MS to adopt laws	Ambiguous effect: reclassification will reduce the consumption of ride-hailing and delivery services, yet increase consumption on the part of	Ambiguous effect: reclassification will reduce the consumption of on-location services, yet increase consumption on the part of reclassified	Same effect with regard to on-location platforms as A3a. Impossible to estimate the impact with regard to online platform services, given the	Same as A3b.

<sup>373</sup> CEPS (2021). The figure is an underestimate because it presents information from 200 out of 500 active digital labour platforms only. The estimate includes platform revenues, earnings of people working through platforms, and fourth party earnings.

Impact	Baseline	A1	A2	A3a	A3b	A3c
		similar to the Riders' Law in Spain.	reclassified workers if their incomes increase.	workers if their incomes increase.	lack of historical precedent.	
<b>Net exports</b>	39% of people working through platforms at least once a month engage in tasks for clients outside the EU. <sup>374</sup>	No change from the baseline.	No change from the baseline, given that net exports are less relevant for on-location platforms.	No change from the baseline, given that net exports are less relevant for on-location platforms.	Negative effect on net exports – fewer EU citizens would be able to provide services via targeted online platforms, because they could not compete in terms of price with self-employed non-EU freelancers.	A greater negative impact than A3b, given that some online platforms would be likely to cease operations in the EU rather than taking on the administrative burden of proving that their freelancers are genuinely self-employed.
<b>Investment</b>	Impossible to estimate.	No change from the baseline in the short to medium run; small negative effect in the long run if guidelines encourage selected MS to adopt laws similar to the Riders' Law in Spain.	Potential drop of up to 30% in business investment by digital labour platforms in the long run, though the impact on GDP would be less than 0.07% of GDP, given that investment comprises a smaller share of GDP than consumption.	Potential drop of up to 30% in business investment by digital labour platforms in the long run, though the impact on GDP would be 0.07%-0.074% of GDP, given that investment comprises a smaller share of GDP than consumption.	Same impacts as A3a with regard to the effect with regard to on-location platforms. Not possible to estimate the effect with regard to online platforms.	Same impacts as A3b with regard to on-location platforms. Drop in business investment with regard to online platforms would be greater than A3b, due to more platforms being affected, some of which would be likely to exit the EU.
<b>Government spending</b>	Negligible.	Negligible.	Additional tax contributions (due to the higher rates of employer and employee social security contributions compared with those paid by the self-employed, by an average of 10 percentage points across the EU-27)	Same impacts as A2, but the impact would be greater, given the wider scope of the policy option.	Same impacts as A3a with regard to on-location platforms. Ambiguous effect with regard to online platforms (higher wages for reclassified workers, but a strong possibility that many	Same impacts as A3b, but the effect on online platforms would be of a greater magnitude.

<sup>374</sup> PPMI 2021 survey data.

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Impact	Baseline	A1	A2	A3a	A3b	A3c
			could lead to greater government spending.		jobs would be outsourced).	
<b>Platforms</b>						
<b>Number of platforms affected</b>	N/A	More than 516	More than 127	More than 329	More than 166	More than 516
<b>Annual costs relating to increased earnings of people working through platforms and related social security contributions</b>	EUR 13.3 billion, taking into account all people at risk of misclassification	Social security contributions would increase in the long run if, due to the guideline, a number of MS adopted laws similar to the Riders' Law.	Additional EUR 0.8 to 2.2 billion per year in costs regarding annual gross earnings of people working through platforms, compared to the baseline.	Additional EUR 1.0 – 2.9 billion per year in costs regarding annual gross earnings of people working through platforms, compared with the baseline.	Additional EUR 1.9 – 4.5 billion per year in costs regarding annual gross earnings of people working through platforms, compared with the baseline.	Same as A3b.
<b>Non-compliance costs</b>	Lately, these have increased from tens to hundreds of millions of euros, but only for on-location platforms. No litigation has been seen concerning online platforms.	Decrease below the baseline in the long run.	Decrease below the baseline in the long run, even more so that A1.	Decrease below the baseline in the long run, even more so that A2.	Same impacts as A3a for on-location platforms; slightly higher number than baseline for targeted online platforms, given the lack of fines for online platforms in the baseline scenario.	Same impacts as A3 for on-location platforms; slightly higher number than baseline for all online platforms, given the lack of fines for online platforms in the baseline scenario.
<b>Legal research to adapt to different EU employment rules</b>	At least EUR 712.5 for platforms that employ workers per country of operation.	No change from the baseline in the short term; one-off costs to platforms in the long run in countries that adopt new legislation as a result of the guidelines.	One-off combined cost for all platforms that operate a self-employment model of at least EUR 180,000 for legal research, plus recurring costs of at least EUR 712.5 per expansion to a new country, plus the cost of adapting to the new legal rules; however, this cost cannot be estimated.	One-off combined cost for all platforms that operate a self-employment model of at least EUR 557,000, plus recurring costs of at least EUR 712.5 per expansion to a new country, plus the cost of adapting to the new legal rules; however, this cost cannot be estimated.	Same impacts as A3a for on-location platforms. Impossible to estimate impacts on online platforms, but cost per platform would be higher than for on-location platforms due to the higher average number of countries in	Same as A3b.

Impact	Baseline	A1	A2	A3a	A3b	A3c
			No change from baseline for platforms that employ workers.	No change from baseline for platforms that employ workers.	which online platforms operate (17.3 vs 3.5). No change from baseline for platforms that employ workers.	
<b>Revenue growth</b>	Revenues of on-location platforms are currently displaying a positive growth trend. Impossible to estimate growth for online platforms.	No change from baseline.	Ambiguous effect. In some relevant cases (e.g. Uber in Geneva, following a court decision to reclassify workers), a drop in orders was reported following reclassification. In others, (e.g. Hilfr in Denmark, following the collective agreement with trade union 3F), an increase in revenues was observed.	Same as A2.	Same impacts as A3a for on-location platforms. Impossible to estimate for online platforms, given the lack of information on the revenues of targeted online platforms and lack of similar historical precedents.	Same as A3b.
<b>Impacts on the public sector</b>						
<b>Administrative costs to the public sector</b>		Several FTEs at the EC, to develop the guidelines and to ensure further monitoring and updates.	Trend with regard to court cases will be higher than the baseline in the short to medium term. Costs for Member States to assign which institution is to carry out certification, and to develop the procedure and conduct certification. Establishment of new institutions is not expected.	Costs to the Member States to revise their legal frameworks in order to implement the rebuttable presumption. The number of court cases concerning misclassification will be higher than the baseline in the short to medium term, following which the number will decrease	Costs of adapting the legal framework will be roughly similar to A3a Number of court cases will be higher than under A3a, due to the number of platforms affected being higher	Cost of adapting the legal framework will be higher than under A3a or A3b. Number of court cases will be higher than under A3b, due to the number of platforms affected being higher
<b>Increased tax and social security contributions due to reclassification</b>	Between EUR 1.6 billion and EUR 3.7 billion in tax contributions from people at risk of misclassification (or those in main platform work, in	Limited, but above the baseline trend in the medium to long term.	An additional EUR 0.73 to 1.95 billion compared with the baseline.	An additional EUR 0.93 billion to 2.64 billion compared with the baseline.	An additional EUR 1.67 billion to 3.98 billion compared with the baseline.	Same as A3b.

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Impact	Baseline	A1	A2	A3a	A3b	A3c
	the case of the lower-bound estimate)					
<b>Facilitation for tax authorities and/or labour inspections to detect and pursue cases of false self-employment</b>		Some facilitation, but we would not expect this option to significantly increase the number of cases pursued or significantly reduce the workload.	Some facilitation, but not significant enough to lead to either an increase or decrease in FTEs at these institutions.	Greater clarity to authorities regarding how to oversee platform work. Extra resources might be needed in order to carry out and conclude the increased number of inspections.	Same as A3a.	Same as A3b.
<b>Other impacts</b>						
<b>Sustainability and resilience of social protection systems</b>	Loss of income to social security systems. Social security systems not adapted to new forms of employment.	Limited, but positive impact.	Greater benefits than under A1 due to higher level of reclassification/lower number of people at risk of misclassification.	Greater benefits than under A2 due to higher level of reclassification/lower number of people at risk of misclassification.	Greater benefits than under A3a due to higher level of reclassification/lower number of people at risk of misclassification.	Same as A3b.
<b>Environmental impacts</b>	The labour platform economy is likely to have a net negative impact on the environment, especially in relation to the ride-hailing sector.	Limited, but positive impact.	Limited, but positive impact.	Limited, but positive impact.	Limited, but positive impact.	Same as A3b.
<b>Technological sovereignty</b>	In the absence of regulation regarding multinational digital labour platforms, they do not always comply with European principles of fair competition and the wellbeing of the labour force.	Setting the key policy objectives in this area will define the common principles.	Stronger impacts than under A1, as the principles set out will be more likely to be implemented in practice.	Stronger impacts than under A2, as the option will have more far-reaching consequences on the market.	Stronger impacts than under A3a, as the option will have more far-reaching consequences for all types of labour platforms.	Same as A3b.

## 6. Assessment of the impacts of Policy Area B: algorithmic management

### 6.1. The baseline

Algorithm-driven platform business models and automated decision-making relate to issues in the areas of working conditions and data protection of people working through them. While the estimated share of Europeans (EU-27) who in the period of six months worked through digital platforms more than sporadically was **10.7% of EU-27 daily internet users (or 28.3 million people in EU-27<sup>375</sup>)**, it can be assumed that all of them are exposed to algorithmic processes of work organisation at least to some extent. All platforms apply algorithms for worker-client matching in some way or another, from ranking search results in freelance marketplaces, to estimating the distances to assign a specific person to a specific task in the most efficient way on ride-hailing and delivery platforms. In many cases, the contractual terms and conditions are in practice also algorithmically implemented.

However, the practices of algorithmic management, as discussed in Section 2.1.2 are not limited to platforms. The data of the European enterprise survey on the use of technologies based on artificial intelligence<sup>376</sup> by FRA shows that 42% of EU enterprises use at least one of the AI-based technologies covered in the survey.<sup>377</sup> European companies operating in various industries also increasingly apply a range of algorithmic management practices to organise work. According to the results of 2019 ESENER-3 survey of EU enterprises by EU-OSHA:<sup>378</sup>

- 3.7% of organisations in the EU-27 use robots that interact with workers;
- 11.8% of organisations in the EU-27 use machines that determine the content and pace of work;
- 8.2% of organisations in the EU-27 use machines to monitor workers' performance;
- 4.8% of organisations in the EU-27 use wearable devices, such as smart watches, data glasses or other (embedded) sensors.

The results of the 2021 survey implemented for this impact assessment also provide figures from **people in employment, who do not work through platforms at least occasionally<sup>379</sup>**. Overall, **27.4% (equivalent to 72.76 million)<sup>380</sup>** of daily internet users

<sup>375</sup> 2021 survey, see Table 11.

<sup>376</sup> European Commission (2020). European enterprise survey on the use of technologies based on artificial intelligence. Luxembourg: Publications Office of the European Union. Available [here](#).

<sup>377</sup> These included process or equipment optimisation; anomaly detection; process automation; forecasting, price optimisation and decision making; natural language processing; autonomous machines; computer vision; recommendation/ personalisation engines; creative and experimentation activities; sentiment analysis.

<sup>378</sup> ESENER (2019). The Third European Survey of Enterprises on New and Emerging Risks. Available [here](#).

<sup>379</sup> Based on Q8 of the 2021 survey.

<sup>380</sup> Q42. Larger figures than in the ESENER company survey are logically feasible, as large enterprises (i.e., those employing large numbers of people) are more likely to invest in digitalisation – both to both resources and needs being bigger than in smaller enterprises. This is confirmed in the data from the FRA survey mentioned above (available [here](#)). Furthermore, algorithmic management may not require specific devices, covered in the company survey, as ordinary computers may be sufficient. However, the research team suspects that a considerable share of respondents may have misunderstood the formulation of the question – firstly, because speaking about algorithms to non-specialists is generally

reported that they were employed, and that software or algorithms are used at their workplaces for **at least for one** – and **16.7% (equivalent to 44.19 million)**, for at least three – of the following purposes, which automatically determine aspects of their work:<sup>381</sup>

- 16.2% of respondents – for work schedules, shifts or working hours
- 18.4% – for pay
- 8.6% – for working locations or routes
- 13.4% – for the content of work or tasks
- 9.4% – for the pace of work
- 10.2% – for the assessment of performance
- 10.8% – for specific clients with whom they work
- 10.3% – for the collection of client or customer feedback about their work

Applying these figures to the total share of people working through platforms, we estimate that between **72.48 million and 101.05 million people in EU-27**<sup>382</sup> are exposed to algorithmic processes in their place of work (main or secondary) at least to some extent, in at least one area of work organisation. These may vary from very basic monitoring of work processes to more complex applications of algorithms to assign tasks and determine pay.

Given the increasing prevalence of platform work and rates of digitalisation in workplaces<sup>383</sup> – especially post-COVID 19 – **it can be expected that the application of algorithmic management will become increasingly prevalent**. At the same time, with the evolution of technological applications at work, algorithmic management practices are likely to become increasing intrusive and will involve less human oversight, not only on platforms, but in traditional businesses as well. This will continue to increase the negative consequences on workers and people working through platforms (see Section 2.3.1.7), leading to greater levels of stress, poor work-life balance and income instability.

In the absence of public sector interventions, these issues are likely to continue – due also to the lack of incentives for platforms and businesses to deprioritise efficiency in return for increased social benefits. The recent proposal for the AI Act, if adopted, should improve the situation in relation to bias and discrimination, as well as increasing transparency on the part of companies that use AI systems (e.g. platforms). However, the direct impacts of the AI Act on workers and people working through platforms are likely to be fairly limited. Meanwhile, the Member States are likely to continue introducing different instruments slowly and at a varied pace, as discussed in Section 2.2.4.2.

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complicated due to the technical nature of the term; and secondly, because workers' knowledge about how their work is affected by algorithms is limited by the very problem that the initiative aims to address: the algorithms used at work can be so opaque that workers do not know or even think about them, and therefore cannot report this information accurately in a survey.

<sup>381</sup> Q42 of the 2021 survey.

<sup>382</sup> Estimated on the basis of the 2021 survey data: share of people working through platforms more than sporadically plus the share of people in employment who reported at least one type of algorithmic management, multiplied by the number of daily internet users in Europe (28.3 million plus 44.19 million = 72.48 million).

<sup>383</sup> Moore, P.V. (2019). OSH and the future of work: benefits and risks of artificial intelligence tools in workplaces. In: International Conference on Human-Computer Interaction. Available [here](#).

## 6.2. General impacts of Policy Area B

The measures proposed under Policy Area B to tackle the challenges posed by algorithmic management are expected to make platform work environment more transparent, and to empower workers to defend their rights.

As an indirect effect of these developments, improvements can be expected in the working conditions of people working through platforms. This will come as a result of platforms opening their algorithms up to external scrutiny, as well as their enhanced responsibilities with respect to the people who work through them. The benefits of these measures include the following:

- Better access to information on the algorithms used for work organisation will allow stakeholders to examine the extent to which these constitute a relationship of subordination. This, in turn, will be important in tackling the misclassification of the employment status of people working through platforms.
- Understanding the algorithmic practices used to modify the behaviours of people working through platforms (e.g. behavioural nudges such as bonuses for faster food delivery during periods of peak demand) would enable the prevention of health and safety risks, including stress and psychosocial consequences.
- Better access to information regarding platform practices is likely to improve social dialogue. For example, many claims concerning platform practices currently rely on fragmented information, which prevents the people working through them from formulating clear demands and outlining positions.

The positive spillover effects would, in the longer term, affect earnings, as increased transparency regarding pay, performance evaluation and client ratings would grant workers firmer control over their own work schedule and organisation.

The general impacts of Policy Area B on platforms and public administrations relate to administrative costs resulting from the adoption and implementation of the pertinent measures, and benefits in terms facilitating the work of the public policy institutions in charge of overseeing algorithmic management.

## 6.3. Option B1: guidance

Policy Option B1 would consist of non-binding guidelines, addressed to Member States and/or digital labour platforms. The guidelines are likely to provide clarifications regarding the existing rights of platform workers in relation to algorithmic management, which stem from the EU's *acquis* (especially the GDPR), and provide recommendations on how these rights could be implemented.

### 6.3.1. Impacts on people working through platforms

As a result of this initiative, several Member States are likely to use the guidance to introduce specific rights regarding algorithmic management, aimed at employed platform workers. The new rights are likely to be limited in scope, e.g. introducing the right for information to be provided to works councils on the parameters, rules and instructions on which algorithms or artificial intelligence systems are based, provided that these affect

decision making, working conditions and access to employment and its maintenance, including profiling.<sup>384</sup>

The countries that are more likely to introduce specific rights are those ones that are currently more advanced in the area of platform work regulation, such as Italy, France, Austria, Germany, the Netherlands, Spain and other Cluster 1 and Cluster 4 countries (see Section 2.2.4 **Error! Reference source not found.**). Other countries may endorse the clarifications on GDPR and consider the rights provided by the Regulation to be sufficient. In such cases, the outcome may be limited to improved awareness and the application of existing GDPR rights. Overall, however, the new rights provided to people working through platforms will not be very far-reaching.

### 6.3.2. Impacts on platforms

The **costs to platforms** of adapting to different algorithmic management regulations across the EU will be slightly – though not substantially – higher than at baseline, because those countries that are most likely to pass laws regulating algorithmic management in response to the guideline are the same ones that are currently taking such actions in the baseline scenario. For similar reasons, impacts on consumers, traditional businesses and the economy at large are considered negligible. All platforms will be affected by the guidance. Details about the platforms affected are presented below.

**Table 32. Characteristics of the platforms affected by Option B1**

<b>Platforms affected</b>	516	
<b>Type</b>	Online	36%
	On-location	54%
	Both	10%
<b>Services</b>	Contest-based	4.3%
	Delivery	19.2%
	Domestic work	13.0%
	Freelance	27.2%
	Home services	17.5%
	Medical consultation	0.2%
	Microtask	10.7%
	Professional services	2.5%
	Taxi	5.4%
<b>Countries of operation</b>	54% operate in a single EU country only; 46% in more than one EU country.	
<b>Origin</b>	77% originated in the EU; 23% from outside the EU.	
<b>Turnover</b>	<p>If the earnings of people working through platforms are excluded, data are available for 132 platforms. Of these, 122 (92%) had a turnover of less than EUR 50 million.</p> <p>If the earnings of people working through platforms are included, data are available for 123 platforms. Of these, 86 (70%) had a turnover of less than EUR 50 million.</p>	

<sup>384</sup> This is an example taken from the Spain's Rider Law. It is important to note, however, that it introduces not only the right to information, but also to consultation. In this initiative, this right is considered under Option B2.

Source: CEPS dataset.

Note: the typology of services and its definitions are outlined in the CEPS study<sup>385</sup>, and do not follow the same definitions presented in Table 1. The true number of platforms affected may be slightly higher.

### 6.3.3. Impacts on the public sector

**Costs to public authorities.** Option B1 consists of the development of the non-binding guidelines regarding possible actions by Member States or digital labour platforms to strengthen platform workers' rights with regard to algorithmic management, without prejudice to the role of the European Data Protection Board over issues falling within the scope of GDPR.

We assume that the guidelines will be developed by the Commission and will be then offered to public institutions and other stakeholders in the Member States to use. The Commission would monitor the use of the guidelines, and might initiate a peer learning exercise. It would update the guidelines on the regular basis. Uptake of the guidelines by Member States would differ. We expect some of them to introduce specific rights concerning algorithmic management, drawing on the guidelines as one of the possible sources.

**Facilitation of the work of public authorities.** It can be assumed that the guidelines would be used by public authorities (for example, labour authorities) and other stakeholders to assess whether platform companies and other companies engaged in algorithmic management comply with the GDPR, AIA (once it is adopted) and other pertinent initiatives. This would facilitate their work and may help to detect cases of misclassification with regard to employment status. It is not feasible to estimate the possible number or share of people who may potentially be reclassified, given the relatively long chain of causation (from guidelines being adopted by the EU to inspections and/or court cases determining employment status in specific cases), as well as a number of intervening factors.

## 6.4. Option B2: transparency, consultation, human oversight and redress

Option B2 would introduce a stronger measure compared to B1, building on existing data protection and other legislation. It would clarify the application of relevant GDPR rules in the context of platform work, and would create new labour rights and obligations for digital labour platforms (and through one of its sub-options, for employers). These are considerably stronger than those envisaged under Option B1, and cover:

- **Transparency regarding automated monitoring and decision-making systems** (including how platforms or employers allocate tasks and assess performance), to make them more intelligible to the people affected, their representatives and labour inspectorates.
- **Consultation** with workers' representatives on substantial changes in work organisation or contractual relationships linked to algorithmic management.
- **Human oversight/review of significant decisions** taken by algorithms in individual cases (e.g. the termination or suspension of accounts, or decisions with similar effects) and protection against undue repercussions for human supervisors.

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<sup>385</sup> Available [here](#).

- The right of workers to request that the platform/employer provide **written explanations** for, and/or to **reconsider**, decisions regarding the termination or suspension of user accounts, or decisions with similar effects, within a reasonable time period (e.g. one week).
- Obligation on platforms/employers to introduce internal **complaint-handling procedures** to address user/worker complaints and settle disputes.
- Obligation on platforms/employers to conduct **risk assessments** regarding the impacts of algorithmic management on the safety and health of workers.

The new labour rights and obligations concerning transparency, consultation, human oversight, complaint-handling mechanisms and others under Option B2 vary in their personal scope:

- Sub-option B2a covers employed platform workers only;
- Sub-option B2b includes all persons working through platforms; while
- Sub-option B2c considers all employed workers who are subject to algorithmic management.

#### 6.4.1. Impacts on people working through platforms

It is expected that the impacts on people covered by this Policy Option will cover the following aspects:

- Greater awareness, both of data rights and of how algorithms determine platform work.
- More consultation and social dialogue about algorithmic management and data rights.
- Fewer unexplained/arbitrary decisions by platforms, due to higher accountability of platforms.
- Less uncertainty regarding the risk of termination or suspension of accounts (or other measures with similar outcomes for workers).

This, in turn, should translate into the higher quality of jobs and higher job satisfaction, as well as less stress and fewer of the health and safety risks that are created by the opaque platform practices described in the previous chapters. The number of people whose algorithmic rights will be enhanced will depend on the personal scope of Option B2:

- **Sub-option B2a:** employed platform workers. As in the case of option B1, the reach (in terms of the number of people affected) of this sub-option will depend on the option selected under Policy Area A (i.e. how many people will be reclassified and employed). Under sub-option A3c, the number of people affected would range **between 1.72 and 4.1 million**.
- **Sub-option B2b:** the maximum number of people affected would be all those working through platforms more than sporadically – **28.3 million people in the EU-27** (see Table 11). This sub-option may also have a positive effect on misclassification, as platforms would a) lose the incentive to misclassify workers as self-employed in order to avoid these obligations (compared with Option B2a); and b) be required to reveal information about self-employed workers that indicates relationships of subordination (this may either make reclassification easier; or may incentivise platforms to ensure genuine self-employment).

- **Sub-option B2c:** all employed workers subject to algorithmic management. The maximum number of people affected by this sub-option would consist of all employed platform workers. This would depend on the policy option selected under Policy Area A (**between 1.72 and 4.1 million**, see Table 31) and the total number of employees subject to algorithmic management in their workplaces (an estimated figure of between 44.19 million and 72.76 million, as explained in the baseline). The resulting figure could be **between 45.91 million and 76.85 million people in the EU-27**.

## 6.4.2. Impacts on platforms

Option B2 would entail **additional costs to platforms** and other employers responsible for implementing these provisions. We detail the costs and considerations with regard to each provision below. It is important to stress that the information requirements may **have stronger effects on SMEs**: most large platforms already provide at least some information on how their algorithms are formulated, and have internal dispute resolution systems for the people who work through platforms. Large businesses are also better equipped than SMEs to deal with the additional administrative burden.

**Costs to platforms that result from transparency requirements regarding automated monitoring and decision-making systems** are difficult to quantify without additional information on what information platforms would be required to disclose. Many platform representatives argued that they already disclose information regarding the criteria that are used to formulate ratings, search results, etc. Freelancer.com, for example, lists the four criteria<sup>386</sup> used to rank freelancers, including reviews and feedback, the use of milestone payments, responsiveness, and the quality of their profile. Each criterion is further broken down to provide more detail (e.g. the reviews and feedback criterion considers how recent the employer feedback is, how many reviews the freelancer has, the size of past projects, and the quality of the reviewer). Representatives interviewed from one online platform argued that it would not be possible to provide additional information regarding how rankings are formulated – for example, the **weight of each criterion** when formulating the ranking – because such weights are **dynamic**: machine learning algorithms recalculate them constantly. Nevertheless, interviewees argued that the first step would be to provide a **legal definition of what algorithmic management is**. Standards in terms of transparency should also be unified for all platforms.

**The cost of consulting worker representatives** could also vary, depending on the extent, type and frequency of such consultations. Nevertheless, assuming that each consultation would take the form of a two-hour meeting between one platform manager and workers' representatives (i.e. work councils, associations of freelancers, trade unions, etc.), to discuss key changes in the way algorithms are formulated, we can roughly estimate the cost to platforms per consultation. According to the Structure of Earnings survey, the hourly rate of a manager in the ICT sector is EUR 33.68/hr,<sup>387</sup> so the cost per consultation would be EUR 67.36 (the cost could be respectively higher if more than one manager is involved). The number of companies affected, and hence the total cost for the whole sector, will vary depending on the personal scope of the initiative, as explained below.

<sup>386</sup> Smith, A. (2020). How to write a winning bid. Freelancer.com. Available [here](#).

<sup>387</sup> Available [here](#).

- **Sub-option B2a:** according to CEPS, there are currently 43 platforms in the EU that conclude work agreements with their workers. Hence, the average cost for all of them combined would amount to **EUR 2,896**<sup>388</sup>. This cost could, of course, increase substantially if a number of additional platforms employ workers as a result of options in Policy Area A. Details of the platforms that currently employ workers are presented in the table below.

Table 33. Characteristics of the platforms affected by sub-option B2a

<b>Platforms affected</b>	43	
<b>Type</b>	Online	5%
	On-location	93%
	Both	2%
<b>Services</b>	Delivery	14%
	Domestic work	42%
	Home services	28%
	Professional services	16%
<b>Countries of operation</b>	79% operate in a single EU country only; 21% in more than one EU country.	
<b>Origin</b>	93% originated in the EU; 7% from outside the EU.	
<b>Turnover</b>	If the earnings of people working through platforms are excluded, data are available for 19 platforms. Of these, 17 (89%) had a turnover of less than EUR 50 million.  If the earnings of people working through platforms are included, data are also available for 18 platforms. Of these, 13 (72%) had a turnover of less than EUR 50 million.	

Source: CEPS dataset.

Note: the typology of services and its definitions are outlined in the CEPS study<sup>389</sup>, and do not follow the same definitions presented in Table 1. The true number of platforms affected may be slightly higher.

- **Sub-option B2b:** there are at least 516 active platforms in the EU according to CEPS that would fall under the scope of this option. Hence the total cost would stand at **EUR 34,758**<sup>390</sup>. Details of the affected platforms match those presented in Table 32, under Option B1.
- **Sub-option B2c:** to estimate the number of businesses affected by this sub-option, we rely on the estimate from the ESENER survey that 11.8% of all organisations use machines to determine the content or pace of work, as a proxy for the share of businesses that engage in algorithmic management.<sup>391</sup> Given that there are 25.3 million businesses in Europe,<sup>392</sup> the number of businesses that can be presumed to include elements of algorithmic management is 2.99 million. Hence, the cost of consultations would be **EUR 201 million**<sup>393</sup>. Nevertheless, this is likely to be an **overestimate**, since 'machines' covers a much wider scope than algorithms. Details of the particular businesses affected are not available.

<sup>388</sup> That is, EUR 67.36 per consultation x 43 platforms.

<sup>389</sup> Available [here](#).

<sup>390</sup> That is, EUR 67.36 per consultation x 516 platforms.

<sup>391</sup> Available [here](#).

<sup>392</sup> Available [here](#).

<sup>393</sup> That is, EUR 67.36 per consultation x 2.99 million businesses.

We consider together the cost of ensuring **human oversight/review of significant decisions** taken by algorithms, of providing **written explanations** of these decisions, and of internal **complaint-handling procedures**, as these options are closely related. To implement these initiatives, platforms and other businesses would face the **one-off cost of creating an online interface** for complaints to be submitted. As an example, Uber's interface for handling complaints related to account deactivation is shown in the figure below.

**Figure 23. Uber's mechanism for handling complaints- relating to account deactivation**

My account is deactivated

Your account can be deactivated from the Uber network for various reasons. These decisions are always taken after a careful consideration of all information available to us and taking into account the conditions outlined in the Service Agreement with Uber B.V. and if relevant any local Community Guidelines.

If however you do not agree with this decision, you can provide further information below and we will review this and get back to you.

Email (Required)

Information (Required)

Your contact details (Required)

Email

Email address where our support team can contact you

name@example.com

An automated message will be sent here to confirm this is really you. Please open it and choose "Confirm email address" to be connected with a member of our team.

Writing in from Lithuania

I'm not a robot

reCAPTCHA  
Privacy - Terms

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We assume that it would take 8 hours of a front-end developer's time to develop such an interface, including the design, backend system, etc. The average hourly rate of a professional working in the ICT sector in the EU-27 is EUR 23.07.<sup>394</sup> Hence, **the cost of creating the interface would be EUR 184.56** per platform or business. As mentioned previously, the total cost for the entire sector would depend on the personal scope of each sub-option, and would amount to:

- **Sub-option B2a:** EUR 7,936<sup>395</sup>.
- **Sub-option B2b:** EUR 95,233<sup>396</sup>.
- **Sub-option B2c:** EUR 552 million<sup>397</sup>.

<sup>394</sup> Available [here](#).

<sup>395</sup> That is, 43 platforms \* EUR 184.56 per interface.

<sup>396</sup> That is, 516 platforms \* EUR 184.56 per interface.

<sup>397</sup> That is, 2.99 million businesses \* EUR 184.56 per interface.

Importantly, **the true costs could vary considerably**. They could be smaller, because some platforms have already created such interfaces or other complaint-handing mechanisms. Based on the PPMI 2021 survey, out of those people who had faced negative consequences for refusing tasks or clients, 74% said that they appealed the decision. If 74% of people working through platforms can already challenge negative decisions taken by algorithms, the costs indicated above could shrink considerably. Furthermore, a number of platforms (or businesses) which have a lower number of people working through them (or employees) might opt the cheaper option of simply providing an email address for customer support, the cost of which we consider to be negligible. On the other hand, the estimates above assume that platforms already have internal processes and customer service systems set up, which might not be the case for many SME platforms and businesses. Creating such systems and online interfaces could require substantially more time and resources.

Following the one-off costs of creating an interface, platforms and businesses would face **recurring costs** whenever people submitted complaints. We assume that it would take a customer support worker 0.5 hours to handle each complaint, including providing a written response. The average gross hourly salary of a clerical support worker in the ICT sector is EUR 14.78,<sup>398</sup> so the cost per complaint would be **EUR 7.39**.

With regard to the obligation on platforms to conduct **risk assessments** regarding the impact of algorithmic management on the safety and health of workers, the cost for these could vary considerably depending on the personal scope of the option chosen. For Sub-options **B2a** and **B2c**, the additional cost on employers would probably be limited, as businesses already have to conduct health and safety risk assessments.<sup>399</sup> The risks concerning algorithmic management could therefore be integrated into the more general OSH risk assessment. On the other hand, the costs for Sub-option **B2b** could be substantially higher, as platforms do not currently conduct OSH risk assessment for self-employed people who work through platforms. It is difficult to estimate these costs with any precision, given the lack of clarity as to such an assessment might consist of. A tool such as the Online interactive Risk Assessment (**OIRA**),<sup>400</sup> coordinated by the European Agency for Safety and Health at Work, could bring clarity to businesses as to how to evaluate such risks, and could considerably reduce the costs of these assessments, including for SMEs.

Lastly, with regard to the requirement to establish a **communication channel** for people working through platforms, the costs would again vary depending on the type of channel chosen. Nevertheless, we can use the cost of developing an application such as Slack or WhatsApp as a proxy. Various sources<sup>401</sup> estimate this cost to be between USD 10,000 and USD 60,000 if the application is developed in the United States, including the following breakdown of working hours:

- Planning and market research: around 50+ hours;
- Designing the app: around 150+ hours;
- Developing the app, including back end and front end: 250+ hours;
- App testing: 70+ hours.<sup>402</sup>

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<sup>398</sup> Available [here](#).

<sup>399</sup> See more [here](#).

<sup>400</sup> Available [here](#).

<sup>401</sup> For example, please see Martin, S. (n.d.). How Much Does It Cost To Create An App Like Slack? JavaScript. Available [here](#); Konstant Infosolutions (2017). How Much Does It Cost to Build an App like WhatsApp? Business of Apps. Available [here](#); Martin, S. (2020). Cost To Create A Chat App Like WhatsApp or Telegram in 2021 (Cost, Business Model, Features, etc.). Medium.com. Available [here](#).

<sup>402</sup> Martin, S. (n.d.).

After adjusting for differences in purchasing power<sup>403</sup> and conversion to euros<sup>404</sup>, the **one-off cost** of developing a communication channel could range **between EUR 6,000 and 35,700 per platform**. An additional 25% of the total project cost would probably be needed for app maintenance and support,<sup>405</sup> resulting in **recurring costs** of approximately **EUR 1,500-8,925 per platform, per year**. Below, we summarise the costs for all the platforms/businesses affected under each sub-option:

- **Sub-option B2a:**
  - Between EUR 258,000 and 1.5 million in one-off costs;<sup>406</sup>
  - Between EUR 64,500 and 382,775 per year in recurring costs<sup>407</sup>.
- **Sub-option B2b:**
  - Between EUR 3.1 million and 18.4 million in one-off costs;<sup>408</sup>
  - Between EUR 774,000 and 4.6 million in recurring costs.<sup>409</sup>
- **Sub-option B2c:**
  - Between EUR 17.9 billion and 106.7 billion in one-off costs;<sup>410</sup>
  - Between EUR 435 million and 26.7 billion<sup>411</sup>.

The costs required to develop communication channels would increase the administrative burden on platforms. It is therefore important to consider whether people working through platforms would actively use such a new feature, especially in the light of numerous Facebook and Reddit groups that already connect people working through specific platforms.<sup>412</sup>

### 6.4.3. Impacts on the public sector

**Administrative costs to public authorities.** The adoption at EU level of Option B2 according to any of the personal scopes discussed would necessitate actions concerning advice to/consultation with Member States, the monitoring of implementation, provisions for further updates. The Member States would need to apply this instrument in line with their national instruments and drawing on their national legal frameworks. It is not expected that new institutions would be created to implement or monitor the new rights, but certain laws or implementation procedures might be amended. The legislative and non-legislative processes presented in the baseline scenario are likely to accelerate in the direction suggested by the EU instrument. The new rights are also likely to foster

<sup>403</sup> According to [the World Bank](#), GDP per capita PPP (constant 2017 international \$) is 1.45 times greater in the US than in the EU. We use this as a rough proxy to estimate how much lower the development costs would be in the EU (USD 10,000-60,000/1.45 = USD 6,900-41,400), prior to converting to euros.

<sup>404</sup> 1 USD = 0.863260 EUR, as of 18 October 2021. Conversion rates available [here](#).

<sup>405</sup> Martin, S. (n.d.).

<sup>406</sup> That is, 43 platforms x EUR 6,000-35,700 per communication channel.

<sup>407</sup> 43 platforms x EUR 1,500-8,925 per year for app maintenance.

<sup>408</sup> That is, 516 platforms x EUR 6,000-35,700 per communication channel.

<sup>409</sup> 516 platforms x EUR 1,500-8,925 per year for app maintenance.

<sup>410</sup> That is, 2.99 million businesses x EUR 6,000-35,700 per communication channel.

<sup>411</sup> 2.99 million businesses x EUR 1,500-8,925 per year for app maintenance.

<sup>412</sup> For example, please see [here](#) for the r/deliveroos group on Reddit and [here](#) for a private Facebook group dedicated to Bolt drivers in Lithuania.

policy discussion and follow-up measures in countries (presented in the baseline) where policy discussion on algorithmic management has so far been limited, and few policy steps (if any) have been adopted.

**The work of public authorities.** Once the instrument introducing new labour rights and obligations is adopted at EU level, the competent national and regional authorities will have to ensure that it is applied properly by platform companies and other companies. On the one hand, this new instrument may be considered a facilitation, because it will introduce clear and specific rights in an area that has been evolving quickly, and which has been approached differently by different countries and institutions. This means that the competent institutions in the Member States will be in a position to follow an EU initiative instead of developing their own initiatives. On the other hand, as demonstrated by the examples of the benchmark initiatives, the new EU initiative is likely to increase the number and/or scope of tasks that the competent national institutions are mandated to undertake, which will lead to an increased workload.

## 6.5. Option B3: addition of the portability of reputational data to Option B2

Option B3 is identical to the Option B2, with one key addition: Option B3 will also include a right to the portability of reputational data (i.e. ratings by platforms and clients) across platforms. This right would extend the existing right to data portability under the GDPR, to ensure better professional mobility across the platform economy.

This new right could be introduced either to employed platform workers only (**Sub-option B3a**) or to people working through platforms either as employees or as self-employed (**Sub-option B3b**). The different personal scopes offered by these sub-options would affect different numbers of people working through platforms. While Option B3a would cover **between 1.72 and 4.1 million** people (i.e. employed platform workers; see Section 6.4.1), Option B3b would reach **up to 28.3 million people** (i.e. all of those working through platforms more than sporadically).

However, it is very likely that these figures could be substantially reduced in reality, due to a number of factors.

To begin with, the role and importance of reputational data, as well as its portability, differs according to the types of labour platforms and platform work concerned.

**Portability of reputational data** is especially important for people working through **online labour marketplaces**. In online marketplaces, worker ratings and reviews are not only used in algorithmic rankings, but are also client-faced and used by clients to make individual decisions whether or not to hire a specific person. Because ratings and reviews serve as a tool to establish trust between strangers, whether or not a worker has some kind of track record on a platform can significantly determine their success in securing assignments. Having a longer track record of ratings and reviews that is not easily portable can create the effect of 'locking in' that person to a single platform. Therefore, although people working through online platforms are in theory free to work for multiple platforms at once, in practice they are discouraged from doing so. A recent study by CEDEFOP revealed that the majority of people working through online platforms do not feel they can switch platforms without affecting their income,<sup>413</sup> due to the

<sup>413</sup> CEDEFOP (2020). Developing and matching skills in the online platform economy – Findings on new forms of digital work and learning from Cedefop's CrowdLearn study. Luxembourg. Available [here](#).

necessity to build up their track record from scratch on a new platform. Therefore, a right to reputational data portability, if implemented, is likely to provide greater opportunities for work mobility and career development for people working through online platforms. As it becomes easier to move between platforms and 'multi-home' productively, competition for workers between platforms will strengthen, leading to improving working conditions or pay.

However, the ways in which workers are affected by client ratings and reviews differ between online and on-location platforms. For people working through **on-location platforms**, their ratings are most often platform-facing, and used by the platform's algorithms to allocate work assignments. For these workers, such ratings therefore serve as tools for surveillance, control and subordination, rather than signalling reliability and quality of work. Furthermore, as has been established in the courts over recent years, the way in which platforms formulate and use these ratings is not always fair from the worker from a legal perspective. For example, Uber drivers may be 'deactivated' if their ratings drop too low, while Deliveroo riders may receive fewer work assignments if their ratings drop due to such reasons as sickness.<sup>414</sup> Portability of ratings alone will therefore not be sufficient to empower workers, if they are not composed and used fairly by platforms.

Furthermore, in response to recent policy developments in some Member States and internationally, on-location platforms have considered giving up, or have already given up, their worker rating systems. This is likely to accelerate in response to Policy Area A. For example, as illustrated by platform strategies in response to Spain's Rider Law, some platforms chose this path to ensure genuine self-employment for at least a share of the people working through them.<sup>415</sup>

As a result, therefore, it can be expected that the new right to personal data portability will be mostly relevant (in terms of improving platform work conditions) and effective for people working through **online platforms (low- and high-skill) and high-skill on-location platforms**. This may reduce the number of people positively affected to **between 0.96 and 2.09 million**<sup>416</sup> under sub-option B3a; or up to **24.12 million**<sup>417</sup> under sub-option B3b.

In addition to this, the need for the portability of reputational data stems from the desire or need of people working through platforms to '**multi-home**'; that is, to provide the same or similar services using multiple apps or platforms interchangeably. Meanwhile, employed platform workers are likely to have fewer opportunities and/or incentives for multi-homing. To such workers, the portability of reputational data would only be relevant if they decide to change jobs or get an additional job, and their future employer is another platform that uses a client-sourced reputational system. Therefore, the introduction of the functional right of data portability would mostly be relevant for people who work through platforms as **independent contractors**. To estimate the numbers of people for whom this functionality could improve the chances of succeeding in the labour platform economy, we would need to subtract a major share of the numbers of employed platform workers (which would depend on the option selected under Policy Area A).

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<sup>414</sup> IOE (2021). Italy: Bologna Labour Court held a previously used algorithm of a platform company as discriminatory. Available [here](#).

<sup>415</sup> Jiménez, M. (2021). Glovo contratará 2.000 repartidores para cumplir la ley de 'riders'. Cincodías. El País. Available [here](#).

<sup>416</sup> The estimate of between 0.96 and 2.09 million was derived by taking the total number of employed platform workers under the preferred option (1.72 to 4.1 million) and subtracting those in low-skilled on-location work (between 0.76 and 2.01 million).

<sup>417</sup> **Error! Reference source not found.** The number was derived by subtracting the number of people who work in low-skill on-location platform work (4.18 million) from the total number of people who work through platforms more than sporadically (28.3 million).

A third factor that is likely to influence the scope of the positive effects on workers concerns the **feasibility of implementing platform interoperability solutions**. Introducing such a right would effectively mean that digital labour platforms must make their reputational systems compatible and interoperable, to ensure that such an extended right to data portability could be exercised in an efficient manner. The feasibility of such a scenario was strongly contested by the platforms interviewed.

To begin with, implementing interoperability would require cooperation between competing platforms to develop a standardised design for ratings systems, as well as for exchanging data, in order to operate such systems across platforms. However, a number of obstacles to this exist:

- Over 500 digital labour platforms<sup>418</sup> operate within the EU, making close cooperation between such a large number of players hardly feasible. Even in the best-case scenario, it would be extremely costly. Due to this, only a small number of dominant platforms are likely to engage in the development of the common standard.
- If the data portability standards are set by a small number of dominant players, smaller platforms will be forced to follow these standards, carrying technical implementation costs that may be especially heavy for them (for example, smaller platforms may be forced to collect data to feed into these systems that they would not otherwise collect).
- Generally, platforms are disincentivised to share data and design structures that might threaten the platforms' proprietary advantages. Ratings and review systems are considered, at least by some platforms, to be part of their competitive advantage, and rely on proprietary algorithms. Forcing platforms to reveal this information to competitors might have negative effects on innovation.
- The sharing of reputational data between platforms might compromise the right to privacy of the clients who create the reviews or ratings, as they will not know what the new data controller will do with their data after it is transferred.
- Platforms may not ensure that the ratings imported from other platforms follow the same criteria and quality standards as data generated on that specific platform.
- This Policy Option would entail the transfer of ratings from other platforms without access to the transactional history of freelancers (in the case of online platforms). This would increase the risk of fraud.

Related to these factors, Article 20 of the GDPR, which mandates personal data portability is considered by some to be formal rather than actionable.<sup>419</sup> Attempts to develop interoperability solutions, meanwhile, have proved to require significant additional time and resources to show any results. For example, the Data Transfer Project<sup>420</sup> kicked off in 2018 in response to the GDPR. The number of contributors grew from the initial four to six (all of them largest global internet companies) by mid-2021, but by that stage the overall project was still very much in development.

Hence, **the cost of portability is deemed to be so high as to be prohibitive, given that the associated costs will clearly outweigh the benefits**. It is likely that the addition of reputational data portability to Policy Option B3 would face similar challenges to those outlined above. In this (pessimistic) scenario, at least in the short to medium term, the impacts of Option B3 on people working through platforms, as well as on platforms, will **not differ from those of Option B2**.

<sup>418</sup> CEPS (2021). Digital Labour Platforms in the EU: Mapping and business models. Luxembourg: Publications Office of the European Union.

<sup>419</sup> Peramaud, C. (2019). GDPR after more than one year – How to make it happen? Available [here](#).

<sup>420</sup> See more [here](#).

## 6.6. Summary: Policy Area B

**Table 34. Summary of impacts: Policy Area B**

Impact	Baseline	B1	B2a	B2b	B2c	B3a (portability element only)	B3b (portability element only)
<b>Social impacts</b>							
<b>People exposed to algorithmic management</b>	A total of between 72.48 million and 101.05 million people are exposed to algorithmic management processes at their place of work (main or secondary), at least to some extent. Up to 28.3 million of them are people working through platforms. There is currently a lack of clarity, transparency and platform accountability with regard to such working conditions.	People gaining new rights with respect to the practices of algorithmic management in their work.					
		Impossible to estimate	Between 1.72 and 4.1 million people	Up to 28.3 million people	Between 45.91 and 76.85 million people	Between 0.96 and 2.09 million people	Up to 24.12 million people
<b>Economic impacts</b>							
<b>Costs to platforms</b>	Platforms benefit, since algorithms allow them to efficiently manage large workforces, although the different requirements regarding algorithmic	Administrative costs to adapt to different EU regulations would be slightly higher	Impossible to estimate the cost of providing greater transparency without precise information regarding what information platforms would be required to disclose.	Same as B2a with regard to transparency requirements. Cost per consultation with workers' representatives: same	Same as B2a with regard to transparency requirements. Cost per consultation with workers'	Impossible to estimate the costs, but they would be substantial,	Overall cost would be much greater than B3a, given that a much larger

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Impact	Baseline	B1	B2a	B2b	B2c	B3a (portability element only)	B3b (portability element only)
	transparency across various EU MS entail costs.	than in the baseline.	<p>Cost per consultation with workers' representatives estimated at EUR 67.36 for each platform (assuming one manager attends the consultation), or EUR 2,896 combined for all platforms that currently employ workers. The cost of ensuring human oversight/review of significant decisions taken by algorithms, providing written explanations of these decisions, and internal complaint-handling procedures, could vary substantially between platforms, depending on whether they already have complaint-handling procedures, and how many people work through each platform. Impossible to estimate the precise cost of conducting a risk assessment, but the cost would be fairly small for platforms that employ workers, assuming that the assessment regarding risks from algorithmic management could be integrated into the overall OSH assessment. One-off cost to develop a communication channel: between EUR 6,000 and EUR 35,700 per platform; a total of between EUR 258,000 and</p>	<p>as B2a, but the combined cost for all affected platforms would be EUR 34,758. The cost of ensuring human oversight/review of significant decisions taken by algorithms, providing written explanations of these decisions, and internal complaint-handling procedures, would vary in a similar way to that under B2a, but the cost across platforms would be higher than in B2a due to more platforms being affected. The cost of risk assessment could be substantially higher than in B2a, given that platforms currently do not perform OSH risk assessments for the self-employed. One-off cost to develop a communication channel: between EUR 3.1 million and 18.4 million for all platforms combined; Recurring cost to maintain the communication channel between EUR 774,000</p>	<p>representatives: same as B2a, but the combined cost for all affected businesses would be a maximum of EUR 201 million. The cost of ensuring human oversight/review of significant decisions taken by algorithms, providing written explanations of these decisions, and internal complaint-handling procedures, would vary in a similar way to that in B2a, but the cost across businesses would be higher than in B2a due to more businesses being affected. The cost of a risk assessment for each business would be comparable to B2a (and smaller than B2b). One-off cost to develop a communication channel: between EUR 17.9 million and 106.7 billion for all businesses combined.</p>	<p>given that it took three years to get six platforms to contribute to the Data Transfer Project.</p>	<p>number of platforms would have to become interoperable.</p>

Impact	Baseline	B1	B2a	B2b	B2c	B3a (portability element only)	B3b (portability element only)
			EUR 1.5 million for all platforms combined. Recurring cost to maintain the communication channel: between EUR 1,500 and 8,925 per platform, per year, or between EUR 64,500 and EUR 382,775 per year in maintenance costs for all platforms combined.	and 4.6 million per year for all platforms combined.	Recurring cost to maintain the communication channel: between EUR 435 million and 26.7 billion per year for all businesses combined.		
<b>Impacts on the public sector</b>							
<b>Costs/ benefits to public authorities</b>		Costs/ benefits impossible to estimate, due to the non-binding nature of the instrument and long chain of causation	Limited costs to public authorities. No new institutions envisaged.	Limited costs to public authorities. No new institutions envisaged.	Limited costs to public authorities. No new institutions envisaged.	Limited costs to public authorities. No new institutions envisaged.	Limited costs to public authorities. No new institutions envisaged.

## 7. Assessment of the impacts of Policy Area C: enforcement, transparency and traceability, including in cross-border situations

### 7.1. The baseline

Platform work in cross-border settings – i.e. where the platform or client is based in a different country from the person providing a service – brings additional challenges not only for people working through platforms, but also for national agencies and authorities.<sup>421</sup> In many cases, these challenges stem from the fact that national authorities (in particular, those responsible for labour inspection, social security and taxation) lack sufficient information to verify and enforce the compliance of platforms with existing laws, as well as to inform policy making in the area. For example, as of the time of writing, no completely robust EU-level data exists to estimate the exact numbers of people working through platforms, or the numbers of platform FTEs. Platform-mediated transactions are also often invisible to national tax authorities. The reluctance of platforms to share this data is one of the main factors contributing to this situation. Many platforms consider information on, for example, the numbers of people working through them, to be a commercial secret (which is also related to the treatment of people working through them as clients of an information society service, rather than as workers). The fact that the platforms, the people working through them and the clients may all be located in different countries, only adds to this complexity.

Many platforms, while operating in multiple Member States, are based in only one of them or in a third country. Estimates based on the data collected by CEPS<sup>422</sup> show that 22% of platforms operating in the EU originate from third countries, and 19% do not have an EU headquarters. Meanwhile, 41% of platforms based in one of the Member States operate in more than one EU country. According to the 2021 survey data, 59% of people working through platforms at least once a month engage with clients from outside their country of origin.<sup>423</sup> These figures illustrate that cross-border situations are very prevalent in platform work in Europe.

In addition to this, even in local situations, a lack of transparency on the part of platforms can be problematic where it concerns the earnings, working conditions and collective action of people working through them. For example, a lack of information regarding the number of people working through platforms seems especially relevant for people in ride-

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<sup>421</sup> e.g. claiming rights in courts is more complicated for people engaging in cross-border platform work, due both to a lack of awareness of their rights, and because platforms may require claims to be brought in a particular jurisdiction. When people working through platforms are employees, EU legislation is clear about the applicable law being that of the place where the 'employee habitually carries out his work in performance of the contract'. However, for people working through platforms who are classified as self-employed, in a cross-border working situation, questions may arise as to the applicable law governing the working arrangement, and platforms' terms of service may deter people from having recourse to their local system of justice. This is particularly problematic, as courts are usually the main avenue through which people working through platforms can challenge their classification.

<sup>422</sup> PPMI estimate, based on the dataset compiled by CEPS (2021). Digital Labour Platforms in the EU: Mapping and business models. Luxembourg: Publications Office of the European Union.

<sup>423</sup> This figure refers to those working more often than sporadically. It is based on Q19: When working via online platforms, how often have you worked for clients based in countries other than [country where the respondent is based]? For the full questionnaire, please see Annex 4F.

hailing and delivery work who suspect that platforms unilaterally reduce their pay rates when the numbers of people offering their services through these platforms increase, but who do not have sufficient evidence to protest such platform policies.<sup>424</sup> Currently, most platforms do not publish information regarding the actual number of people working through their platforms, or what their employment status is, despite the fact that platforms do collect this data for internal purposes.

Given the projected growth of the platform economy in terms of both the numbers of platforms and of workers (see Section 5.1.2), as well as the increasing popularity of remote working (accelerated in particular by the COVID-19 pandemic), it is likely that the figures for people working through platforms cross-border will also increase. Meanwhile, without regulatory intervention, the issues faced by these workers as are unlikely to lessen, especially given the prevailing lack of information about platform work.

## 7.2. Assumptions for Policy Area C

The options for Policy Area C concern the supervision of platforms and requirements for them to provide more information to public authorities and other stakeholders with regard to their platform operations.

The first option in Policy Area C (C1) concerns **non-binding guidelines** regarding possible Member State actions to introduce **information requirements or registers of platforms**, as well as providing interpretation and guidance for platforms and workers with regard to existing EU legislation (labour law, social security coordination, rules regarding jurisdiction and applicable law) and its implications for cross-border platform work.

The guidelines will concern possible Member State actions to introduce information requirements or registers of platforms, and to provide interpretation and guidance for platforms and people working through platforms. The Commission will be tasked with developing such guidelines, and will ensure their continuous monitoring and updating. A variety of actions by Member States are possible in response to these guidelines. For example, it is possible that some Member States will ask platforms to systematically report the number of people that working through them. Other Member States may proceed to create a register of platforms.

Option C2 would require platforms to **publish** on their websites – for each Member State in which they are active – information regarding the **active Terms and Conditions** that apply to people working through them, the **number of people working** through them, and under what employment status. Such information would need to be updated on a regular basis (e.g. twice per year) or provided to the relevant authorities upon request. Such obligations could be more stringent for platforms over a certain size.

Option C3 would involve a **central public register**, including all digital labour platforms that are active in the respective Member State. Similar to Option C2, this register could also include the platforms' active Terms and Conditions of and the number of people working through them and under which status, thereby bringing greater transparency and easier access to information for regulators, enforcement authorities, platform workers and other relevant stakeholders.

The effects of the option selected under Policy Area C will be closely linked to which option is selected under Policy Area A, and its impacts (especially with regard to the

<sup>424</sup> Insight from posts from a Facebook group for delivery riders.

numbers of platforms that will change their business models and become employers). Once the platforms become the employers of the people working through them, they would become subject to a number of reporting requirements as regards national tax, social security and labour authorities. Additional provision of the same data will increase the administrative burden on platforms. However, here we will assess the impacts of each policy option in Area C separately from those of Policy Area A, to better understand what implications these policy options might have on their own.

### 7.3. Social impacts of Policy Area C

All of the options under Policy Area C concern requirements for platforms to provide information to public authorities. While the people working through platforms may not feel the direct effects of such an intervention immediately, additional information regarding digital labour platforms and the people working through them will strengthen the role of labour inspectorates and other public authorities and allow better public policymaking.

This, in turn, is likely to have several indirect positive effects on people working through platforms. These include:

- Improved working conditions due to enhanced oversight of platform work. This will be relevant to all people working through platforms, not only for those in cross-border platform situations.
- Greater transparency with regard to the people working through platforms and their working conditions.

These impacts have been described in greater detail in the previous sections on the impacts of Policy Areas A and B.

### 7.4. Economic impacts of Policy Area C

Policy Area C is likely to have a negligible effect on consumers, traditional businesses and the economy as a whole. However, platforms will be directly affected because they will have to implement new reporting requirements. Below, we detail the costs to platforms that will result from each policy option. Despite these costs, increased transparency fosters trust in platforms as responsible and reliable actors in the market. As such, platforms may benefit from increased trust on the part of public authorities, people working through platforms, and clients.

All platforms would be affected by each of the options considered under Policy Area C. Details of these are presented below.

Table 35. Characteristics of the platforms affected by Policy Area C

<b>Platforms affected</b>	516	
<b>Type</b>	Online	36%
	On-location	54%
	Both	10%
<b>Services</b>	Contest-based	4.3%
	Delivery	19.2%
	Domestic work	13.0%
	Freelance	27.2%
	Home services	17.5%
	Medical consultation	0.2%
	Microtask	10.7%
	Professional services	2.5%
	Taxi	5.4%
<b>Countries of operation</b>	54% operate in a single EU country only; 46% operate in more than one EU country.	
<b>Origin</b>	77% originated in the EU; 23% from outside the EU.	
<b>Turnover</b>	<p>If the earnings of people working through platforms are excluded, data are available for 132 platforms. Of these, 122 (92%) had a turnover of less than EUR 50 million.</p> <p>If the earnings of people working through platforms are included, data are available for 123 platforms. Of these, 86 (70%) had a turnover of less than EUR 50 million.</p>	

Source: CEPS dataset.

Note: the typology of services and its definitions are outlined in the CEPS study<sup>425</sup>, and do not follow the same definitions presented in Table 1. The true number of platforms affected may be slightly higher.

### 7.4.1. Option C1: guidance

The **cost** of implementing information requirements or registers of platforms could range from significant to low, depending on how Member States adopt the guidance. Given that non-binding guidelines will leave room for Member States to decide on the specifics of policies to increase cross-border transparency, it is possible different requirements would be set across the EU. As a result, a large financial burden might be placed on platforms operating in more than one country. Platforms would be obliged to **respond to various different national requirements**, which would mean setting up different systems of reporting for each Member State in which they operate. Nevertheless, if Member States opt for a uniform approach – for example, by following the model already implemented in other countries such as Spain, the costs could be substantially lower. The costs would also depend to a large extent on how strict the reporting requirements are. Still, Option C1 creates greater **uncertainty** for platforms with regard to potential costs compared with the other options below.

<sup>425</sup> Available [here](#).

## 7.4.2. Option C2: publication requirement for platforms

The costs of introducing reporting requirements for platforms were estimated by multiplying several variables: 1) an initial one-off cost for a developer to design and develop a new feature for the platform's website, which would correspond with the reporting requirements for platforms; 2) the average hourly rate of that developer; and 3) the number of platforms in the EU-27. The available data on these elements reveals the following figures:

- The assumed number of hours for a developer to design and develop the necessary feature for the platform's website: 4 hours.<sup>426</sup>
- Average hourly rate of a professional working in the ICT sector in the EU-27 is EUR 23.07.<sup>427</sup>
- Number of active on-location platforms: 329.<sup>428</sup>
- Number of active online platforms: 187.

Based on the figures above:

- The estimated total one-off cost per platform is EUR 92.28<sup>429</sup>
- The estimated combined cost for all on-location platforms is EUR 30,360<sup>430</sup>
- The estimated total one-off cost for all online platforms is EUR 17,256<sup>431</sup>

Note that these figures are underestimates because the CEPS dataset (from which the numbers of active platforms are taken) somewhat underestimates the true number of platforms in the EU. This is because additional platforms were identified during the course of the study.

Following the establishment of this feature, twice-yearly updates could involve **recurring costs**. Platforms would be most likely to install automatic updates, linking directly with data from their other systems in order to avoid the need for manual updates.<sup>432</sup> However, if these data are not linked automatically, the annual cost of updates can be assumed to be double:

- Estimated combined annual recurring cost for all on-location platforms, if manual updates are required: EUR 60,720.
- Estimated combined annual recurring cost for all online platforms, if manual updates are required: EUR 34,513.

During the interview programme, platforms were concerned that the information provided might **not be accurate**, since people often sign up to platforms but do not conduct any work, which might lead to inaccurate assumptions being made about the size of the

<sup>426</sup> Given that the information on the number of people working through platforms is collected already, we only include the number of hours required to publish this information.

<sup>427</sup> Available [here](#).

<sup>428</sup> Estimates of active digital labour platforms were taken from the CEPS (2021) dataset: CEPS (2021). Digital Labour Platforms in the EU: Mapping and business models. Luxembourg: Publications Office of the European Union.

<sup>429</sup> 4 hours \* EUR 23.07.

<sup>430</sup> EUR 92.28 \* 329 platforms.

<sup>431</sup> EUR 92.28 \* 187 platforms.

<sup>432</sup> Estimated total one-off cost per platform is between EUR 0 (if data are automatically linked to the tool) and EUR 185 (if manual updates are required).

platform's workforce. Thus, requiring platforms to break down the total number of people by their degree of activity would make sense and would not pose a significant additional burden on the platform, given that this information is already collected. One of the delivery platforms interviewed, for example, was able to provide the research team with a breakdown of the average number of hours worked by couriers in each country in which the platform operates (see the table below).

**Table 36. Average weekly hours worked by couriers on the delivery platforms interviewed, by country of operation**

Country	Average weekly hours per courier
Cyprus	50.25
Czechia	25.12
Germany	18.70
Denmark	15.78
Estonia	25.56
Finland	31.60
Greece	24.33
Croatia	22.53
Hungary	17.34
Lithuania	18.38
Latvia	21.10
Malta	32.85
Norway	17.88
Poland	17.24
Slovakia	23.32
Slovenia	18.79
Sweden	24.42

Source: one of the food delivery platforms interviewed.

Furthermore, online platforms expressed concern that they would become **less competitive** due to the extra costs of the new reporting requirements, compared with non-EU platforms, which would not be affected by the requirements.

### 7.4.3. Option C3: register of platforms

A similar logic to that used for Option C2 was used to calculate the costs to platforms of Policy Option C3. When calculating the costs of C2, we estimated the one-off costs involved in platforms complying with the reporting requirements. For C3, we multiplied the same variables by the sum of countries in which the platforms operate in (1,145 for on-location platforms and 3,244 for online), taking into account that the registers would be created at a national level and might come in different data formats.

- Estimated one-off cost for all on-location platforms: EUR 105,660<sup>433</sup>.
- Estimated one-off cost for all online platforms: EUR 299,356<sup>434</sup>.

In addition to this one-off cost, twice-yearly updates could involve recurring costs. The annual cost is assumed to be double if manual updates are required:

- Estimated annual recurring cost for all on-location platforms, if manual updates are required: EUR 211,320.
- Estimated annual recurring cost for all online platforms, if manual updates are required: EUR 598,713.

According to the interviews with platforms and employers' organisations, adding new reporting requirements on top of the existing regulations for platforms would mean increased **barriers to market entry**. Hence, they could disproportionately affect SMEs.

## 7.5. Public sector impacts of Policy Area C

### 7.5.1. Option C1: guidance

It is impossible to estimate the extent of the impacts of Option C1, for several reasons:

- The non-binding nature of the instrument means that different Member States and stakeholders will use it differently, as explained in Section 7.2.
- There is a long chain of causation from the adoption of non-binding guidelines at EU level to Member States requesting information from platforms, and eventually to Member States using this information received from platforms. A variety of intervening factors make it difficult to attribute causality – for example, what information a specific Member State already collects from companies; how this information is stored and processed; how important this evidence is to public sector decision making.

### 7.5.2. Option C2: publication requirement for platforms

The publication requirement for platforms may cause certain costs to public authorities for monitoring whether platforms publish the information requested, and enforcing the publication requirement in situation where the platforms do not comply. Further costs will be incurred if the authorities decide to collect and systematise this information for the purposes of policy making and implementation.

As mentioned previously, the 2021 CEPS study identified 516 active digital labour platforms operating in the EU (among them 278 platforms providing location-based services).<sup>435</sup> Most on-location digital labour platforms are active in a single EU country (195 out of 278), and many other on-location DLPs are active in between two and five

<sup>433</sup> 23.07 eur/hr \* 4hrs \* 1145 countries.

<sup>434</sup> 23.07 eur/hr \* 4 hrs \* 3244 countries.

<sup>435</sup> CEPS (2021). Digital Labour Platforms in the EU: Mapping and business models. Luxembourg: Publications Office of the European Union.

countries.<sup>436</sup> The number of on-location DLPs that are most likely to use the publication procedure in a given Member State ranges from 14 in Bulgaria and Malta to 97 in France. Given that the number of platforms operating in Member States is small, we do not expect the publication requirement to incur significant costs to the public sector.<sup>437</sup>

### 7.5.3. Option C3: register of platforms

Several registers of platforms already exist that can help us to understand the costs to the public sector of implementing Option C3.

In Belgium, 93 platform businesses are licensed by the Federal Services of Finance under the regulated collaborative economy.<sup>438</sup> These platforms, listed on the government's website, fall under a specific sector of the regulated platform economy, and a specific tax regime applies to them. The national authorities in Belgium thereby gain access to information on the total numbers of people earning through these platforms under this beneficial tax regime, as well as the size of these earnings. Some major platforms operating in Belgium remain outside this 'regulated platform economy', including Uber and Upwork. The country's labour inspectorates do not have specific competencies with regard to platform work, as the employment status of platform workers remains ambiguous.

In Estonia, amendments to the Estonian Taxation Act in 2014 authorised the creation of a national register of employees and their employment information. This was part of an e-residency initiative launched in 2014, which helped to digitise documents relating to establishing and managing a business. According to the Estonian Ministry of Economy and Communications, the costs of this initiative for the first 18 months amounted to approximately EUR 1.2 million<sup>439</sup>, and reached EUR 7.4 million by the end of 2018.<sup>440</sup>

Furthermore, one interviewed platform operating in France estimated that the cost of a separate national registry might run to EUR 10,000 per platform.<sup>441</sup>

Therefore, the cost of a separate national registry could run to thousands or even millions of EUR. At the same time, it would apply to a very small number of subjects, as the number of platforms in each Member State ranges from a few to around 100.

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<sup>436</sup> CEPS (2021). Digital Labour Platforms in the EU: Mapping and business models. Luxembourg: Publications Office of the European Union.

<sup>437</sup> As an example, some countries already have a pertinent requirement: as of 2020, ride-hailing platforms in Lithuania are required to report to the State Tax Inspectorate the number of people providing services via their platforms, including their individual earnings.

<sup>438</sup> Available [here](#).

<sup>439</sup> Ministry of Foreign Affairs in Estonia (2014). Estonia's e-residency program to cost 1.2 million euros in 18 months. Available [here](#).

<sup>440</sup> Tamkivi, E.S. (2020). e-Residency: the success story of building a digital nation. Invest in Estonia. Available [here](#).

<sup>441</sup> Interview with a digital labour platform, 10 June 2021.

## 7.6. Summary: Policy Area C

**Table 37. Summary of impacts: Policy Area C**

Impact	Baseline	C1	C2	C3
<b>Social impacts</b>				
<b>Information on platform work</b>	Given that most platforms do not share data on the numbers of people working through them, no good data exist on this for policy making and implementation.	Additional information on digital labour platforms and people working through them will strengthen the role of labour inspectorates and other public authorities and allow better policy making and implementation. This, in turn, is likely to have several indirect positive effects on people working through platforms, including improved working conditions due to enhanced oversight of platform work, and greater transparency regarding the numbers of people working through platforms and their working conditions.		
<b>Economic impacts</b>				
<b>Administrative costs to platforms</b>	No administrative costs.	Costs could be substantial if different EU Member States adopt different requirements; or low if they follow the same approach. Uncertainty for platforms is high.	Estimated total one-off cost per platform: EUR 92,28 Combined cost for all on-location platforms: EUR 30,360 Estimated total one-off cost for online platforms: EUR 17,256 Cost of updates could be EUR 0 if data is automatically linked with this feature (likely scenario) or EUR 185 (if manual updates are required). Costs described above for one year would double if manual updates are required.	Estimated one-off cost for on-location platforms: EUR 105,660 Estimated one-off cost for online platforms: EUR 299,356 Cost of updates could be 0 if data is automatically linked with the feature (likely scenario). Costs described above for one year would double if manual updates are required.
<b>Other economic impacts</b>	Negligible	Negligible	Negligible	Negligible
<b>Impacts on the public sector</b>				
<b>Costs/benefits to the public sector</b>	N/A	Costs/benefits are impossible to estimate due to the non-binding nature of the instrument and the long chain of causation	Minimal costs to public authorities: public authorities would monitor whether platforms publish the information requested, and enforce the publication requirement if platforms do not comply	Thousands or millions of EUR per national register, which would collect information on up to 100 platforms in each country

## 8. Comparison of the impacts of different policy options against the baseline scenario

In this section, we summarise the analyses presented in Chapters 5-7 to compare the policy options in each area against the core criteria of effectiveness, efficiency and coherence.

### 8.1. Effectiveness

Effectiveness refers to the extent to which the policy options help to achieve the social objectives of this initiative: ensuring that people working through platforms have decent working conditions and social rights. At the same time, it should ensure conditions for the *sustainable* growth of digital labour platforms in the EU.

**Table 38. Comparison of the effectiveness of different policy options**

	Option	Rating (---, --, -, 0, +, ++, +++)	Criteria for comparing options
A - Policy options addressing employment status	Baseline	0	<ul style="list-style-type: none"> <li>- Number of people at risk of misclassification who are reclassified as employees (with accompanying benefits)</li> <li>- Number of people at risk of misclassification who end up in genuine self-employment</li> <li>- Number of people in better working conditions in self-employment</li> <li>- Easier access to/process of litigation relating to employment status</li> </ul>
	A1: Interpretation and guidance	+	
	A2: Shift of burden of proof and measures to improve legal certainty	++	
	A3a: Rebuttable presumption applied to on-location platforms	++	
	A3b: Rebuttable presumption applied to platforms that exercise a certain degree of control	+++	
	A3c: Rebuttable presumption applied to all platforms	++	
B - Policy options addressing algorithmic management	Baseline	0	<ul style="list-style-type: none"> <li>- Number of people who obtain new rights regarding transparency, consultation, human oversight and redress</li> <li>- Number of people who can improve their working conditions in platform work through data portability</li> </ul>
	B1: Guidance	+	
	B2a: Transparency, consultation, human oversight and redress for employed platform workers	+	

	Option	Rating (---, --, -, 0, +, ++, +++)	Criteria for comparing options
	B2b: Transparency, consultation, human oversight and redress for employed platform workers and people working through platforms as self-employed	++	
	B2c: Transparency, consultation, human oversight and redress for all employed workers subject to algorithmic management	++	
	B3a: B2 + portability of reputational data of employed platform workers	++	
	B3b: B2 + portability of reputational data of employed and self-employed people working through platforms	+++	
C - Policy options on cross-border transparency	Baseline	0	<ul style="list-style-type: none"> <li>- Better knowledge concerning developments in platform work</li> <li>- Accessibility of information</li> <li>- Clarity on the rules applicable to people working through platforms across borders</li> <li>- Consistency between Member States</li> <li>- Feasibility of implementation</li> </ul>
	C1: Guidance	+++	
	C2: Publication requirement for platforms	++	
	C3: Register of platforms	+++	

### 8.1.1. Policy options addressing employment status (Policy Area A)

We estimate that the effectiveness of the **Policy Option A1** is likely to be limited, although higher than zero in the medium to long term. We assume that some Member States might use the guidelines as one of the possible sources for initiating or supporting policy change. Nevertheless, evidence from other EU instruments that draw on ‘soft law’ approaches shows that change, if any, after such an instrument is adopted, tends to be uneven across the Member States and difficult to attribute to this specific instrument, due to the long chain of causation and many intervening factors.

**Policy Option A2** will be more effective in relative terms than Policy Option 1, because it entails several complementary policy instruments. It is likely to initiate several mechanisms for change, including easier access to court procedures for people working through platforms,

the possibility for platforms to adjust and certify their business models, and the opportunity for platforms to offer better conditions to people working through platforms. We assume that these mechanisms will lead to a decrease in misclassification and improve the working conditions and social protection of people working through platforms. First, a certain number of people who are currently at risk of being misclassified are likely to gain the status of an employee. We estimate that this is most likely to affect people in the ride-hailing and delivery activities (between 0.57 and 1.54 million people), particularly those for whom platform work is their main work activity. Second, we estimate that platforms will revise their T&Cs and work procedures to ensure that people working through them comply with the criteria for self-employment. This is likely to affect up to 2.25 million people who are currently undertaking high-skilled on-location or online work and are at risk of being misclassified due to the control that platforms exercise over them. Lastly, we also assume that a number of people are likely to gain access to platform-funded benefits. This impact will, first and foremost, be pertinent to people in low-skill on-location jobs, for whom platforms work is their main or secondary activity (between 1.5 and 2.47 million people).

Under **Policy Option A3**, even more people are likely to be reclassified than under Policy Option 2. The potential level of reclassification will be somewhat lower under **sub-option A3a**, because it concerns only on-location platforms (between 0.82 and 2.35 million people). Applying the rebuttable presumption to digital labour platforms as well might bring the potential level of reclassification to between 1.72 and 4.1 million under the **sub-options A3b and A3c**. We also assume that platforms will respond to the rebuttable presumption by changing their T&Cs and decreasing the level of control they exert over people working through platforms. The number of people who are currently at risk of being misclassified but who are most likely to become genuinely self-employed includes, as a minimum, high-skill on-location and online workers, and is substantially higher under sub-options A3b and A3c. Under sub-option A3c, different Member States may set slightly different criteria concerning the application of the rebuttable presumption, which would reduce the effectiveness of this sub-option.

The policy options under consideration will have beneficial effects on the **working conditions and social security** of people who are currently at risk of being misclassified, both those who will become employees as well as those who will become genuinely self-employed. Sub-options A3b and A3c will address the issue of misclassification to the greatest extent. In this respect, they are more effective than the other sub-options. For those who will become employees, the key benefits include guaranteed minimum wage; paid leave; COVID-19 protection equipment for on-location workers being provided by the platform; protective helmets and vests for on-location delivery workers, and other benefits.

As a side-effect, in cases where platforms begin to use sub-contracted work agencies that employ the platform workers, the income of people working through platforms tends to decrease, whereas the extent of misclassification and the determination of employment will remain subject to legal disputes.

For persons who are currently at risk of being misclassified and who will become genuinely self-employed, the benefits include less control from platforms and greater flexibility to set their own working hours and pay rates. Nevertheless, as a negative side-effect, some evidence shows that platform companies adjust their algorithms to direct orders towards people working under employment contracts, which reduces the income of those who remain self-employed. Flexibility to set pay rates may result in a 'race to the bottom' in order to win orders. Those negative side-effects should be taken into consideration in the final Policy Area.

### 8.1.2. Policy options addressing algorithmic management (Policy Area B)

The effectiveness of **Policy Option B1** will be limited, due to the non-obligatory nature of the guidelines. It is likely to be higher than zero, because some Member States may use the guidelines, alongside other sources, to develop their own policies with regard to algorithmic management. **Policy Option B2** will be more effective overall than Policy Option B1 because it will grant a package of rights with regard to transparency, consultation, human oversight and redress. **Sub-option B2b** will be more effective than **sub-option B2a**. The potential reach of sub-option B2a, which includes only employed platform workers, is much more limited than sub-option B2b, which targets all people working through platforms. As presented in the analysis of policy options regarding employment status, the number of people who are at risk of being misclassified and who could be employed by platforms may be up to 4.1 million people (under sub-options A3b and A3c), whereas the total number of those employed and self-employed is up to 28.3 million. **Sub-option B2c** could reach even a larger number of people (and thus be more effective) because it targets all employed workers who are subject to algorithmic management. Nevertheless, sub-option B2b also targets *self-employed platform workers*, thus creating a level playing field and avoiding unnecessary differentiation between employees and the self-employed. Whereas the potential target group of sub-option B2c is larger, it excludes self-employed people working through platforms, and may create a disincentive for platforms to offer the status of employee.

Finally, the portability of reputational data in **sub-option B3a** and **sub-option B3b** could potentially contribute to improving the fairness and transparency of algorithmic management. We consider sub-option B3b to be more effective than sub-option B3a, because it offers data portability to both employed and self-employed platform workers. **Sub-option B3b** is also potentially more effective than any of the sub-options within Policy Option B2, because it would facilitate technical and legal solutions for reputational data portability (however, this also entails high cost, as indicated in Section 8.2.2 on efficiency).

### 8.1.3. Policy options on enforcement, traceability and transparency, including in cross-border situations (Policy Area C)

We consider that **Policy Option C1** is likely to be effective, in that clarification and guidance are key when it comes to ensuring cross-border transparency. **Policy Option C2** would be fairly effective, as it would ensure that all platforms publish on their websites information that the authorities currently lack. Such effectiveness is, however, potentially reduced due to the fact that platforms might use different definitions and standards, and authorities would need undertake further effort to ensure that the information published by platforms is useful and comparable. **Policy Option C3** could potentially be more effective than Policy Option C2, as it would guarantee that all information is received regularly by the authorities, in a centralised way and based on the same format.

## 8.2. Efficiency

Efficiency refers to the ratio of the benefits above to the associated costs of each option. The key costs under all policy areas are largely economic costs to platforms and consumers. They are followed by possible costs to the people working through platforms in terms of a decrease in opportunities for platform work, earnings and flexibility.

**Table 39. Comparison of the efficiency of different policy options**

	Option	Rating (---, --, -, 0, +, ++, +++)	Criteria for comparing options
A - Policy options addressing employment status	Baseline	0	Fulfilment of objectives in light of the following costs: <ul style="list-style-type: none"> <li>- Number of people working through platforms with increased working hours</li> <li>- Number of people losing the opportunity of platform work</li> <li>- Adjustment, administrative and compliance costs to platforms</li> <li>- Forgone platform revenue</li> <li>- Forgone revenue for businesses that rely on platforms</li> <li>- Availability, cost and quality of service to consumers</li> <li>- Administrative cost to the public sector</li> <li>- Revenue to the public sector</li> <li>- Public sector administrative and enforcement costs</li> <li>- Impact on GDP</li> </ul>
	A1: Interpretation and guidance	++	
	A2: Shift in the burden of proof and measures to improve legal certainty	+++	
	A3a: Rebuttable presumption applied to on-location platforms	++	
	A3b: Rebuttable presumption applied to platforms that exercise a certain degree of control	+++	
	A3c: Rebuttable presumption applied to all platforms	+	
B - Policy options addressing algorithmic management	Baseline	0	Fulfilment of objectives in light of the following costs: <ul style="list-style-type: none"> <li>- Adjustment, compliance and administrative costs to platforms</li> <li>- Public sector administrative and enforcement costs</li> <li>- Feasibility of implementation</li> </ul>
	B1: Guidance	+	
	B2a: Transparency, consultation, human oversight and redress for employed platform workers	+	
	B2b: Transparency, consultation, human oversight and redress for employed platform workers and people working through platforms as self-employed	++	
	B2c: Transparency, consultation, human oversight and redress for all employed workers	+	
	B3a: B2 + portability of reputational data of employed platform workers	-	
	B3b: B2 + portability of reputational data of employed and self-employed people working through platforms	-	

	Option	Rating (—, —, —, 0, +, ++, +++)	Criteria for comparing options
C - Policy options on cross-border transparency	Baseline	0	Fulfilment of objectives in light of the following costs: <ul style="list-style-type: none"> <li>- Fragmentation across Member States</li> <li>- One-off and recurring costs for platforms</li> <li>- Public sector administrative and enforcement costs</li> </ul>
	C1: Guidance	+++	
	C2: Publication requirement for platforms	++	
	C3: Register of platforms	0	

### 8.2.1. Policy options addressing employment status (Policy Area A)

We estimate that efficiency of **Policy Option A1** is fairly high, given its relatively low cost. Greater clarity concerning the status of people working through platforms will be useful for Member States, platforms and people working through platforms.

**Policy Option A2** would contribute to resolving the issue of misclassification more substantially than Policy Option 1. While the overall number of people working through platforms may decrease as a result of reclassification, we expect that the people affected will mainly be those for whom platform work is a marginal or sporadic source of income. In the meantime, the number of working hours of reclassified workers is likely to increase.

Under all policy options, the platforms will face the cost of litigation, which is likely to increase in the short to medium term, but will then become lower after all the relevant parties adapt to the changed circumstances. The potential cost of litigation is highest for **sub-option A3c**, which encompasses the most platforms. However, we do not expect the number of people reclassified to be higher under **sub-option A3c** than under A3b; therefore, the efficiency of A3c is lower. Furthermore, to the extent that reclassification will necessitate changes in their business models, the platforms will face the cost of legal research, and will have to revisit their internal work procedures and develop their applications or software. These costs will be higher for Policy Option A3, which is likely to affect more platforms, than under Policy Option A2.

The potential annual increase in wage and non-wage costs to the platforms due to reclassification is, depending on the number of people reclassified, between EUR 0.81 billion and 2.2 billion for Policy Option A2; between EUR 1.0 billion and 2.88 billion for sub-option A3a; and between EUR 1.87 billion and 4.46 billion for sub-options A3b and A3c. The increased costs may negatively affect access to the services provided by on-location platforms in less densely populated areas. The effects on service quality will be mixed: on the one hand, waiting times may increase; however, the services will be delivered by people who are better-trained and less stressed. Traditional businesses, particularly the taxi industry, will benefit from a level playing field. However, we envisage some – albeit not very significant – loss of revenue for some traditional businesses (restaurants) that depend on platforms. Costs to the public sector of Policy Options A2 and A3 are likely to be mitigated by increase tax revenues.

Overall **sub-option A3b** is considered most efficient: although its costs are fairly substantial, it would benefit most people who are currently at risk of being misclassified.

## 8.2.2. Policy options addressing algorithmic management (Policy Area B)

We consider the efficiency of **Policy Option B1** to be limited, but somewhat higher than zero. Greater clarity concerning the status of people working through platforms will be useful to Member States, platforms and people working through platforms, while the cost of this policy option remains low. The efficiency of **sub-option B2a** is equivalent to that of B1, given that it entails costs to platforms; however, it resolves the issue of transparency only partly; it does not target people who work through platforms as self-employed. We consider the efficiency of **sub-option B2b** to be relatively high: it entails consultation and adjustment costs to platforms, but these costs are not excessive in view of the objectives that the policy area is likely to achieve. Furthermore, we consider the efficiency of **sub-option B2c** to be lower in relative terms, given that it will entail costs to a larger number of companies, but only those using employment contracts. In effect, despite a larger aggregate cost it will only partly contribute to resolving the problem, because many people working through platforms are genuinely self-employed. Similarly, the portability of reputational data under **sub-option B3a** and **sub-option B3b** will be very costly for platforms to implement, but concerns only one aspect (and a relatively limited one) of the much broader issues of transparency and the power of platforms over their users.

## 8.2.3. Policy options on enforcement, traceability and transparency, including in cross-border situations (C)

We consider the efficiency of **Policy Option C1** to be relatively high, due to its low cost. Greater clarity concerning the status of people working through platforms will be useful to Member States, platforms and people working through platforms. The efficiency of **Policy Option C2** is high, as it helps to achieve the objective while incurring very limited cost to the platforms (which will be required to publish on their websites information that they already possess). This option may entail a cost to the public sector to ensure that the format and definitions used by the platforms are sufficiently unified for the information on their websites to be useful and comparable. Lastly, the efficiency of **Policy Option 3** is low, given that the cost to the public sector to set up a register may very high, whereas the number of platforms that might be included in such register ranges from just a few in some Member States to around 100 in others.

## 8.3. Coherence

The table below shows the extent to which Policy Areas A, B and C are coherent with EU values, aims and objectives.

**Table 40. Comparison of the coherence of different policy options**

	Option	Rating (---, --, -, 0, +, ++, +++)	Criteria for comparing options
A - Policy options addressing	Baseline	0	

	Option	Rating (---, --, -, 0, +, ++, +++)	Criteria for comparing options
employment status	A1: Interpretation and guidance	+	<ul style="list-style-type: none"> <li>- EU aims and objectives: the EU's internal market acquis and the principle of the effectiveness of EU law.</li> <li>- Fundamental Rights of the European Union (Charter).</li> <li>- Principles of the European Pillar of Social Rights.</li> <li>- EU labour law acquis</li> </ul>
	A2: Shift in the burden of proof and measures to improve legal certainty	++	
	A3a: Rebuttable presumption applied to on-location platforms	++	
	A3b: Rebuttable presumption applied to platforms that exercise a certain degree of control	+++	
	A3c: Rebuttable presumption applied to all platforms	++	
B - Policy options addressing algorithmic management	Baseline	0	
	B1: Guidance	+	<ul style="list-style-type: none"> <li>- EU aims and objectives: the EU's internal market acquis &amp; principle of effectiveness of EU law.</li> <li>- Fundamental Rights of the European Union (Charter).</li> <li>- Principles of the European Pillar of Social Rights.</li> <li>- EU labour law acquis</li> </ul>
	B2a: Transparency, consultation, human oversight and redress for <u>employed</u> platform workers	++	<ul style="list-style-type: none"> <li>- EU aims and objectives: the EU's internal market acquis and the principle of the effectiveness of EU law.</li> <li>- Fundamental Rights of the European Union (Charter).</li> <li>- Principles of the European Pillar of Social Rights.</li> <li>- EU labour law acquis</li> <li>- Proposed AI Act and the objectives of the General Data Protection Regulation (GDPR).</li> </ul>
	B2b: Transparency, consultation, human oversight	++	Same as B2a, but B2b is more coherent than B2a with the aim of Article 16 of the TFEU and with the European Pillar of Social Rights (in particular principles 5

	Option	Rating (---, --, -, 0, +, ++, +++)	Criteria for comparing options
	and redress for <u>employed and self-employed</u> platform workers		on secure and adaptable employment, 7 on information about employment conditions, and 10 on healthy, safe and well-adapted work environment and data protection), because it foresees a broader personal scope. B2b is also more coherent than B2a with the <i>P2B Regulation</i> (providing for the avoidance of duplication or incompatibility with provisions in the internal market acquis), as well as with the Charter of Fundamental Rights (in particular, Article 8 on the protection of personal data), and with the right to data portability under the GDPR.
	B3a: same as B2 + portability of reputational data for <u>employed</u> platform workers	+	<ul style="list-style-type: none"> <li>- EU aims and objectives: the EU's internal market acquis and the principle of the effectiveness of EU law.</li> <li>- Fundamental Rights of the European Union (Charter).</li> <li>- Principles of the European Pillar of Social Rights.</li> <li>- EU labour law acquis</li> <li>- Proposed AI Act and the objectives of the General Data Protection Regulation (GDPR).</li> </ul>
	B3b: same as B2 + portability of reputational data for <u>employed and self-employed</u> platform workers	+	Same as B3a, but B3b is more coherent than B3a with the aim of Article 16 of the TFEU and the European Pillar of Social Rights (in particular, principles 5 on secure and adaptable employment, 7 on information about employment conditions, and 10 on a healthy, safe and well-adapted work environment and data protection), because it foresees a broader personal scope. B3b is also more coherent with the <i>P2B Regulation</i> (providing for the avoidance of duplication or incompatibility with provisions in the internal market acquis), as well as the Charter of Fundamental Rights (in particular, Article 8 on the protection of personal data), and with the right to data portability under the GDPR.
C - Policy options on cross-border transparency	Baseline	0	
	C1: Guidance	+++	- EU aims and objectives: the EU's internal market acquis and the principle of the effectiveness of EU law.
	C2: Publication requirement for platforms	++	

	Option	Rating (---, --, -, 0, +, ++, +++)	Criteria for comparing options
	C3: Register of platforms	+	<ul style="list-style-type: none"> <li>- Fundamental Rights of the European Union (Charter).</li> <li>- Principles of the European Pillar of Social Rights.</li> <li>- EU labour law acquis</li> <li>- 'Platform-to-Business' or 'P2B' regulation.</li> <li>- Amended Directive on Administrative Cooperation (DAC7)</li> </ul>

### 8.3.1. Policy options addressing employment status (Policy Area A)

Each policy option under Area A was assessed with regard to the extent to which it is coherent with the objective of ensuring the correct functioning of the EU's internal market. All of these measures are coherent with the aims of the EU set out in Article 3.3 of the TFEU, which states that the Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress and that it shall combat social exclusion and discrimination, and shall promote social justice and protection. We consider all of the policy options (A1 to A3) to be compatible with these main objectives of the EU.

Furthermore, we considered whether each option is in line with the aim of Article 31 of the Charter of Fundamental Rights of the European Union, which provides that every worker has the right to working conditions that respect his or her health, safety and dignity, to a limitation on the maximum working hours, to daily and weekly rest periods, and to an annual period of paid leave. All policy options in Area A are coherent with these fundamental rights.

Coherence with the principles of the European Pillar of Social Rights (in particular, principles 5, 7, 10 and 12) in the areas of fair working conditions, as well as social protection and inclusion were also taken into consideration, given that the policy options aim to improve the working conditions of people who work through platforms. All policy options in Policy Area A are in line with the principles set out in the EU Pillar of Social Rights and with the existing EU labour law acquis.

In particular, **Policy Option A3** is highly compatible with Article 151 of the TFEU, which states that the Union and the Member States "(...) shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion". We consider Policy Option A3 to be suitable, due to its stronger character and far-reaching potential effects. Finally, **Policy Option A2**, due to its character of facilitating proof of employment status within clarification procedures, is clearly coherent with the EU law principle of effectiveness, as established by the case law of the CJEU.

We consider that **sub-option A3b** to be the most coherent with the social objectives of the initiative due to its broader scope, as it covers both on-location and online platforms that exercise a certain degree of control, and thus targets all people working through platforms who are potentially misclassified. The coherence of sub-option A3b is greater than that of A3c because the latter is less well targeted and could potentially create an additional administrative burden for platform companies (especially SMEs) without providing any additional effectiveness gains compared with A3b. A3b is therefore more favourable to the sustainable growth of platforms in the EU and the objectives of the EU's internal market *acquis*.

### 8.3.2. Policy options addressing algorithmic management (B)

Each policy option was assessed with regard to the extent to which it is coherent with the objective of ensuring the correct functioning of the EU's internal market. **Policy Options B1 to B3** are coherent with existing internal market legislation, as well as with the legal measures in preparation within the so-called Digital Services Act package. **Policy Option B1** is coherent with the provisions of the Regulation on promoting fairness and transparency for business users of online intermediation services (the so-called 'Platform-to-Business' or 'P2B' regulation). **Policy Options B2 and B3** are more coherent than Policy Option B1 with the aim of Article 16 of the TFEU, which establishes that everyone has the right to the protection of personal data concerning them, as B1 does not establish legal obligations but rather provides guidance only (a 'soft law' measure). **Sub-options B2b and B3b** are more coherent with the aim of Article 16 of the TFEU in comparison to sub-options B2a and B3a, because the former foresee a broader personal scope (both employed and self-employed platform workers). **Sub-options B2b and B3b** are also more coherent with the Platform-to-Business (P2B) Regulation than are B2a and B3a (by providing for the avoidance of duplication or incompatibility with provisions in the internal market *acquis*).

All policy options are also coherent with the objectives of the General Data Protection Regulation (GDPR). The proposed measures foreseen in Policy Options B2 and B3 are coherent with the algorithmic management rules in the proposed AI Act (i.e. specific requirements on documentation, logging, transparency and the possibility of human oversight, as well as information rights). Establishing internal procedures to ensure that information on algorithmic management is shared with people working through platforms or with their representatives is also in line with the algorithmic management rules in the proposed AI Act. **In comparison with B2a and B3a, sub-options B2b and B3b** are more coherent with the Charter of Fundamental Rights of the European Union (in particular, Article 8 on the protection of personal data) and with the right to data portability under the GDPR. In addition, due to their broader scope, **sub-options B2b and B3b** are more coherent than **B2a and B3a** with the principles of the European Pillar of Social Rights (in particular, principles 5 on secure and adaptable employment, 7 on information about employment conditions, and 10 on healthy, safe and well-adapted work environment and data protection). However, the coherence of **sub-options B3a and B3b** is limited, due to their wide and cross-cutting scope, as data portability is being addressed through other policy instruments such as the European Strategy for Data.

### 8.3.3. Policy options on enforcement, traceability and transparency, including in cross-border situations (C)

All of the policy options are coherent with the EU's internal market *acquis* and with the EU labour law *acquis*. They are most compatible with the principle of the effective

applicability of EU law. **Policy Options C1 to C3** are also coherent with the Regulation on promoting fairness and transparency for business users of online intermediation services (the so-called ‘Platform-to-Business’ or ‘P2B’ regulation), and with the amended Directive on Administrative Cooperation (DAC7). The coherence of C2 is somewhat lower due to its costs to platforms, whereas the coherence of C3 is the lowest of all, due both to its financial cost and its duplication with existing registries, which must be taken into consideration given the EU’s aims to avoid any duplication of effort and to limit administrative burden.

## 9. Impact of the preferred policy package

### 9.1. Policy Area A: policy options addressing the employment status of people working through platforms

The preferred policy package consists of:

- Certification procedure and clarification of factors that should not be considered as indicating the existence of an employment relationship; shift in the burden of proof (Option A2).
- Rebuttable presumption applied to platforms that exercise a certain degree of control (Option A3b).

This combination is fully coherent with the EU’s values, aims and objectives, ensures the best cost-benefit mix, and provides the best balance in terms of minimising the extent of misclassification as well as taking into account the need to support the sustainable growth of digital labour platforms in the EU.

This combination is likely to lead to the reclassification of a relatively high share of people working through platforms who are at risk of being misclassified, while providing certainty for platforms and people working through them regarding the criteria for genuine self-employment. This combination of policy options is likely to affect certain types of platforms more than others:

- Low-skill on-location services, such as ride-hailing and delivery, will be affected the most, as they tend to exercise the highest levels of control over their workers.
- Genuine freelance labour marketplaces, mostly for high-skill online and on-location services, will be outside the scope of these measures.
- Other platforms for various types of platform work that deviate from a marketplace model and which exert notable levels of control over workers or operate similarly to TWAs, will also be affected.

We expect that this combination of policy measures would lead to employment contracts for between roughly 1.72 and 4.1 million people who are currently at risk of being misclassified. Up to 3.78 million persons who are currently working on-location or online may become genuinely self-employed. Furthermore, between 1.5 million and 2.47 million

people who currently work in low-skill on-location jobs as their main or secondary activity, could see their working conditions and social security improve as a result of benefits being provided by platforms, as the risk that such benefits will be considered evidence of an employment relationship will be lower.

The benefits for people given an employment contract will include more stable earnings, paid leave, better social insurance coverage, and better health and safety conditions at work (for example, company-provided safety gear for on-location delivery workers). The number of hours worked by these people is likely to increase: first, they will be compensated for time spent on standby (e.g. waiting for orders); second, the platforms are likely to change their work procedures so that their employed workers work more hours. Nevertheless, on the cost side, people on employment contracts will lose some flexibility and will have to follow shifts agreed with the platform company. The benefits to people working through platforms who become genuinely self-employed include a lower level of control exercised over them by the platforms, as these people will be in a position to set their own working hours and pay rates.

Importantly, the combination of the two policy options above is necessary to address the potential negative side-effects of the presumption of employment. Firstly, in situations where platforms begin sub-contracting TWAs that employ platform workers, the income of people working through platforms tends to decrease, while the extent of misclassification and the determination of employer will remain subject to legal disputes. Secondly, the availability of work to self-employed persons may decrease, as platforms are likely to prioritise workers on employment contracts. The ability to set their own pay rates (one of the criteria for genuine self-employment) may lead to a 'race to the bottom' and to a decrease in the income of self-employed people working through platforms. Policy Option A2 could potentially counter-balance these negative side-effects, as it provides for a certification procedure, which would institutionalise a process through which all stakeholders may obtain clarity concerning the business practices used by platforms.

Digital labour platforms will bear most of the costs of these measures. They will face increased wage and non-wage costs, proportional to the number of people to be reclassified. The revenues of such platforms may decline somewhat, due to higher prices and a more level playing field with traditional businesses. Legal and non-compliance costs are likely to increase in the short to medium term, as both policy options would make it easier and less costly for people working through platforms to challenge their legal status. However, we also consider that such costs will probably decline in the medium to long term, due to greater clarity concerning the distinction between employee and genuinely self-employed and the steps that platforms are likely to take to clarify their business models and certify them in the light of this distinction.

With regard to the broader implications for the markets, the proposed policy measures will help to ensure a level playing field for 'traditional' businesses (e.g. taxi companies, cleaning firms, etc.) that employ their workers and compete with digital labour platforms which currently benefit from misclassification. However, there may be a slight decline in revenues for those businesses that use platform services, due to price increases (e.g. based on the case of Spain, we estimate a loss of less than 1.0% in restaurant revenue). The effects on consumers are likely to be mixed as, at least in the short term, the accessibility of certain platform services might decrease in smaller towns, and waiting times might increase. Quality of service is expected to improve, however, as those who are employed by platforms will be more socially secure and better trained, while the platforms will bear responsibility for the services provided.

The public sector will incur costs relating to the development and implementation of the certification procedure, and as a result of an increase in the number of court cases in the

short to medium term. In terms of benefits, the two options in combination will facilitate the work of those authorities in charge of addressing the issue of misclassification. The likely additional income into public budgets, related to increased tax and social security contributions due to reclassification, ranges from EUR 1.67 billion to 3.98 billion per year.

## 9.2. Policy Area B: algorithmic management

The analysis of the costs and benefits of each policy option under Policy Area B showed that the most beneficial option would be sub-option B2b: transparency, consultation, human oversight and redress rights for both employed platform workers and people working through platforms as self-employed. While all of the policy options are coherent with the EU's values, aims, and objectives, sub-option B2b is the most beneficial in relation to the objectives of the planned initiative.

In terms of scope, this policy option will affect all people working through platforms (up to 28.3 million in the EU-27). Formulating specific rights at EU level will be more effective than a 'soft law' approach such as guidelines (B1), due to the fact that mandatory rights are more likely to be taken up and implemented by the Member States. Sub-option B2b targets both those with the status of employee as well as people who work through platforms as self-employed. Its reach is therefore larger than that of sub-option B2a, which targets only platform employees. Sub-option B2b is also more focused than sub-option B2c, which targets platform employees as well as people in employment more generally who are subject to algorithmic management, but leaves aside the self-employed, who account for a majority of people working through platforms. The preferred sub-option B2b is therefore more likely to create a level playing field in platform work and avoid creating a disincentive for platforms to offer the status of an employee.

Platform companies will bear most of the costs of the policy options. These costs include the technical and procedural changes that platform companies would need to implement in order to ensure human oversight of the significant decisions taken by algorithms, as well as to provide written explanations, set up written complaint-handling procedures and consult workers, among other obligations. Nevertheless, these costs are unlikely to be significantly enough to strongly affect platforms' businesses. Based on the interviews, the key concern among platforms is that they may be required to disclose what they consider to be business secrets. Based on evidence from other comparable initiatives, we consider that the EU initiative can be designed in such a way as to satisfy the need for greater fairness and transparency without revealing sensitive information about platform companies.

In view of this, sub-option B2b is more efficient than other policy options. Whereas the cost of implementing the necessary changes under sub-options B2a and B2b is essentially the same, the target group under B2b is much larger. The aggregate cost of B2c is much greater than that of B2b, because it would affect a much bigger group of companies. B2b is more efficient because it is better focused, whereas B2c leaves aside the largest group of people who working through platforms – the self-employed.

The issue of data portability covered by sub-options B3a and B3b is potentially an important aspect of fairness, transparency and worker power *vis-à-vis* the platforms. B3b is more effective than B3a, because it offers data portability for both employed and self-employed platform workers, to whom the functionality is especially relevant. Nevertheless, both policy options would be very difficult to implement in practice (e.g. they would require unprecedented collaboration between a large number of competing platforms to agree common standards for ratings and feedback, and to reengineer the

back-end and front-end of their applications in compliance with these standards). We therefore consider that the costs of B3a and B3b would be excessive.

### 9.3. Policy Area C: enforcement, traceability and transparency, including in cross-border situations

While all policy options under Policy Area C are coherent with the EU's values, aims and objectives, the analysis showed that a combination of Policy Option 1: guidance and Policy Option C2: publication requirement for platforms is the most effective and efficient. Policy Option C1 would provide more clarity to the platforms about their existing obligations. Meanwhile, Policy Option C2 would result in both one-off and recurrent costs for the platforms – although they would not be substantial. Policy Option C3: register of platforms can also be effective, however it is the least efficient due to the potentially very large cost to the public sector of establishing and operating such national registers.

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