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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on improving working conditions in platform work
- *Evaluation of the impact assessment*

In accordance with the guidance on Impact Assessment (doc. 6270/18), delegations will find attached the draft summary of the replies to the Impact Assessment questionnaire on the abovementioned proposal.

This draft is currently based solely on the answers delegations have sent in response to the Impact Assessment questionnaire. It will be adapted in view of the discussion of the Impact Assessment, which will take place in the informal videoconference of the Social Questions Working Party on 8 February 2022.

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**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on improving working conditions in platform work**

Draft summary of the evaluation of the Impact Assessment

*- to be reviewed in light of the discussion in the informal videoconference of the Social
Questions Working Party on 8 February 2022 -*

All the delegations considered **the policy context** to be clearly explained in the IA.

The **Union's competence and the legal basis** were considered by most delegations to be at least partly clearly established although a limited number of delegations raised the question as to whether the legal basis of the initiative enables the establishment of a presumption of employment. Furthermore, many delegations asked for more information on the selection of the criteria underpinning the legal presumption of employment.

Delegations were satisfied with the IA analysis on **compliance with the principle of subsidiarity and proportionality**. Regarding the principle of proportionality, one delegation questioned whether the imposition onto the affairs of self-employed was proportionate.

Delegations generally were of the opinion that the **problem definition** was clearly shown. However, while recognising the challenges related to platform work, some delegations asked why platform workers needed particular legislation when the same challenges were found in other areas. Some regretted that there was no integrated gender equality perspective.

A large majority of delegations found that the **analysis of the problem was supported by evidence**. Yet, one delegation meant that views of different categories of stakeholders were not sufficiently reflected in the impact assessment.

As regards the **acknowledgment of possible gaps in evidence**, delegations were divided. Some thought that due to the difficulty in accessing and collecting data it was difficult to make an estimation of who will be affected by the initiative and to what extent.

A broad majority of delegations recognised that the **methodology, the limitations and uncertainties** were made clear, but regretted that the analysis was based on estimates.

All Member State considered that the **policy objectives, including general aims and more specific/operational objectives**, were clearly set out. The policy objectives were also largely thought to correspond to the identified problem. All delegations agreed that **the policy objectives** were **consistent with the broad EU policy strategies and the Strategic Agenda**. Delegations generally considered that the **impact assessment took into account action already taken or planned at EU or MS level**. Delegations broadly agreed that the IA has identified many easible **policy options** and most affected **stakeholders**. The delegations were fully or partly satisfied with information regarding how stakeholders' inputs fed into the policy options.

A broad majority of Member States found that the **criteria used to determine the impact of the different policy options** were **transparent** and that the impact of the different choices were set out in a way making it easy to compare them.

Most delegations found that **both the short and long-term costs and benefits of the different policy options had been taken into consideration**. Yet, some of the delegations would have liked to see information about the impact on consumers; how the increased income from tax and social security contributions had been calculated; consequences on social security expenses for the Member States if a number of platform workers are reclassified as employees; impact of the rebuttable presumption.

A majority of delegations found that the **impacts on affected public and stakeholders were clearly analysed, for each policy option**. However, some delegations noted that the administrative costs for the Member States in the case of a rebuttal of the presumption and the impact on the business environment, in particular the information obligation on employers in Article 11 were not sufficiently addressed. Some delegations enquired how case law and administrative law would be affected when people performing platform work as independent workers would be classified as employees and in the case of a rebuttal of this legal presumption. Another request concerned the need for a more exhaustive evaluation of the impact of the legal presumption in the Member States where such presumption had been introduced in the field of platform work. A few delegations meant that possible impacts on the autonomy of the social partners and for different national labour market models needed to be further addressed.

All delegations appreciated that the **impact had been sufficiently assessed, both in qualitative and quantified terms and** most of them considered **that the data and evidence used were appropriate**.

A large majority of delegations found that most of the **economic aspects of the proposal** had been fully assessed and were based on evidence. Some delegations would however have welcomed information on the impacts on consumers following a possible increase of the prices of platform work services. For some delegations, a detailed description of what impact the implementation of the Directive would have on SMEs was missing. As for **futureproofing** of the proposal, a few delegations would have welcomed more information on algorithmic management practices, the relationship between this proposal, the GDPR and the AI Act as well as the impact on innovation.

Regarding the social aspects, most delegations found that they had been assessed. Nevertheless, some delegations would have welcomed a gender dimension of the expected effects of the platform work Directive. Most delegations also found that environmental aspects and territorial impacts were sufficiently assessed.

All Member States considered that the IA set out, at least partially, the **responsible for monitoring (and compliance)**.

As for the **monitoring**, most delegations thought that the indicators were only partly able to measure the intended effects. Some delegations pointed out that some indicators were based on data that were very complex, which made it hard to estimate the impact. Another perceived problem was the lack of baseline data and the difficulty to implement indicators as well as the difficulty to detect indicators. Many delegations were sceptical as to whether the indicators would make it possible to measure the intended effects. Furthermore, delegations suggested other indicators that could be used, such as indicators assessing the number of people losing the opportunity to platform work, change in number of platform workers, percentage of platform workers satisfied with their working status, percentage of platform workers satisfied with information on algorithmic management.

The **comments and recommendations of the Regulatory Scrutiny Board (RSB)** were thought to have been considered.

Some delegations indicated that their position was only preliminary.