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EU Commission's public consultation on a Directive on Improvement of Working Conditions of Platform Workers on 9 December 2021

Opinion of the German Social Insurance dated 09.02.2022

The German Federal Pension Insurance (DRV Bund), the German Social Accident Insurance (DGUV), the National Association of Statutory Health Insurance Funds (GKV-Spitzenverband) and the national associations for statutory health and long-term care insurance funds at the federal level have joined forces to form the German Social Insurance - Working Group Europe with a view to their common European policy interests.

The association represents the interests of its members vis-à-vis the bodies of the European Union and other European institutions and advises the relevant players in the context of current legislative projects and initiatives.

As part of a statutory insurance system, health and long-term care insurance, pension insurance and accident insurance offer effective protection against the consequences of major life risks.

I. Preliminary remark

The umbrella organisations of the German Social Insurance welcome the European Commission's proposal for a Directive on Improvement of Working Conditions of Platform Workers.

In recent years, platform work, further accelerated by the COVID-19 pandemic, has taken off in more and more sectors of the economy, offering many opportunities for digital labour platforms, for consumers, and for people working in the platform economy.

However, platform work also poses a variety of challenges for social security systems. This applies, in particular, to the determination of the actual employment status. Thus, platform workers who are in a de facto dependent employment relationship but are classified as self-employed face the risk of poor working



conditions and missing or limited access to adequate social protection. This is accompanied by the risks of unfair competition, undeclared work, fragmented and incalculable incomes and working hours, a lack of opportunities for qualification, and a lack of measures for health and safety at work.

The digital transformation has also created new opportunities for algorithmic management. However, these must not be at the expense of the working conditions and health and safety of platform workers. Accordingly, there is an urgent need for regulation here.

Platform work is often a new form of cross-border work that evades national regulations. In order to be able to exploit the potential of platform work, while ensuring the social protection of employees in the platform economy, the umbrella organisations of the German Social Insurance believe that a European regulatory framework is needed while maintaining subsidiarity.

The umbrella organisations of the German Social Insurance therefore support the three objectives laid down in the proposed directive:

- (1) ensure that individuals working through platforms have the applicable employment status and thus, appropriate labour and social security rights;
- (2) ensure fairness, transparency and accountability in algorithmic management;
- (3) improve transparency and traceability of platform work developments and ensure rules applicable to people working through platforms, including across borders.

II. Comments on the individual provisions of the proposal

Chapter I – general provisions and Chapter II – determination of employment status

The umbrella organisations of the German Social Insurance expressly welcome the fact that the scope of application of the proposed directive under Article 1 para. 3 extends to all platform workers performing platform work within the European Union and covers all digital labour platforms regardless of their place of establishment, as long as the work organised via the respective platform is performed in the EU.

Questionable is



- the restriction of the definition of "digital work platforms" in Article 2 para. 2 sentence 2. What is meant by the term "subordinate and purely incidental nature"?

Therefore,

- adding a clear definition of the term "subordinate and purely incidental nature" to Article 2 para. 2 is suggested.

The intention of the proposed Directive on Improvement of Working Conditions of Platform Workers, regardless of their employment status, is expressly welcomed. Furthermore, it is welcomed that, according to Article 3, the procedure for determining employment status is to be based on the actual employment relationship and not on the contractual agreement between platform workers and digital labour platforms.

From the point of view of the umbrella organisations of the German Social Insurance, it should be noted that the submitted directive mainly concerns the respective national labour and procedural law and that the implementation must take into account the applicable national regulations, the relevant national case law and the interests of the social partners.

Chapter III - Algorithmic management

From the perspective of the top organisations of the German Social Insurance, a key goal is the transparent, non-discriminatory, trustworthy and ethically justifiable use of algorithms vis-à-vis all platform employees, regardless of their employment status.

Therefore, the obligation of the digital labour platform to provide information to platform employees, as proposed in Article 6, is supported. This applies, in particular, to the information requirements on automated systems used to monitor work performance and other decisions, as these have a direct impact on working conditions, the emotional and psychological state of platform workers, and occupational safety.

Furthermore, the restrictions on the processing of personal data laid down in Article 6, such as on the emotional and mental state of platform employees, are welcomed.



Article 7 regulates the monitoring of automated systems by humans. It focuses on the assessment of risks and protective measures and calls for the introduction of appropriate prevention and protection measures, which is welcomed. The aim is to minimise risks and prevent occupational accidents from the outset, with the goal of achieving Vision Zero.

A good approach is also the stipulation in Article 8 that platform workers can receive explanations for decisions made with automated systems and demand their review, because the decision-making process should always be under human supervision.

Chapter IV - Transparency in relation to platform work

From the perspective of the umbrella organisations of the German Social Insurance, it is essential that, in line with recital 41, digital labour platforms comply with labour laws and regulations, social security contribution obligations, social security coordination rules and other relevant regulations, and report work performed by platform workers in accordance with the rules and procedures set out in the law of the Member State concerned.

For this reason, the umbrella organisations of the German Social Insurance expressly welcome the fact that, according to Article 11, digital labour platforms that are employers are to be obliged to report the work performed by platform workers and to communicate "relevant data" to the competent labour and social protection authorities of the Member State.

It is further welcomed that EU-wide uniform information to be provided is listed and that in Article 12 the labour and social security authorities are granted the right to request additional clarifications and details on the data provided.

In this context, the commitment proposed in Article 16 of Chapter V is also expressly welcomed. Accordingly, digital labour platforms must disclose all relevant evidence, including confidential information such as relevant data on algorithms for the purpose of determining employment status when ordered to do so.