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Public consultation by the European Commission on its draft notice of guidelines on the application of EU competition law to collective agreements on working conditions for solo self-employed people of 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 as well as the Social Insurance for Agriculture, Forestry and Horticulture have all joined forces to form the "German Social Insurance - Working Group Europe" in view of 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

Solo self-employed people often find themselves in a weak negotiating position with their clients. The draft guidelines presented by the European Commission on 9 December 2021 (COM(2021) 8838 final) aim to establish legal certainty and ensure that EU competition law does not preclude collective agreements by solo self-employed People (i.e. self-employed people excluding employees) on their working conditions and remuneration.

Consumers and the economy should also continue to benefit from competitive prices and innovative business models. The draft guidelines explicitly include solo self-employed people on digital labour platforms.



The guidelines are binding on the European Commission regarding its subsequent interpretation and enforcement of the EU competition rules.

II. Comments

German Social Insurance welcomes the European Commission's draft guidelines on the application of EU competition law to collective agreements on working conditions for solo self-employed people. It shares the European Commission's assessment that collective bargaining can be an important instrument for improving the working conditions - especially with regard to health and safety at work - of solo self-employed people and supports the proposed prioritisation in the application of EU competition law.

The digital transformation is especially giving rise to new forms of employment that create more flexible working models. These can be advantageous for both parties to the contract. However, some also pose occupational health and safety risks. This includes the employment relationships of solo self-employed people when their clients have a much stronger negotiating position. Collective bargaining is one way to counteract this and to better protect the working conditions of solo self-employed people and ensure minimum occupational health and safety standards.

German Social Insurance welcomes the priority regulation proposed by the European Commission in this regard, which aims to address the asymmetric bargaining power of solo self-employed people and their clients. According to this, the European Commission will not assume a violation of EU competition law in collective bargaining by solo self-employed people in a weak negotiating position. According to the draft, this is the case if the solo self-employed has to negotiate with a client who represents the entire sector or industry and who either employs at least ten employees or whose annual turnover exceeds EUR 2 million.