DeutscherAnwaltVerein

Position Paper

of the German Bar Association by the Committee on Labour Law

on the Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work (COM(2021) 762 final)

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1. Summary

The DAV welcomes the European Commission's proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work (in the following abbreviated as 'Proposal'), which was published on 9 December 2021. The Proposal aims to achieve harmonised rules for all workers affected by platform work, especially in cross-border situations, regardless of whether they are self-employed or employed. Platform work often takes place without direct contact between the parties involved, in particular due to algorithms controlling the performance and assigning work. This poses a risk that minimum standards under labour and social security law - which would apply if these forms of work were labelled in a transparent way, - do not apply or are difficult to enforce. Hence, the challenges of platform work require criteria that are as uniform as possible with regards to the distinction between self-employment and employment. This concerns in particular triangular contractual relationships between the platform, the person assigning the work or recipient of the service, and the person performing the platform work.

At the same time, in the context of digitalization in the working world, it is important to create planning reliability for the further development of platform work as an appropriate form of activity. This calls for adjustments of the criteria that the proposal foresees to hold up the legal presumption of an employment relationship. Furthermore, the proposal should avoid overlaps with the Regulation (EU) 2016/679 of the European Parliament and 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 (in the following abbreviated as 'GDPR'), with the Regulation (EU) 2019/1150 of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (in the following abbreviated as 'Regulation

2019/1150'), with the Council Directive 89/391/EC on the introduction of measures to encourage improvements for safety and health of workers (in the following abbreviated as 'Directive 89/391/ECC') as well as with the Directive 2019/1152/EC of 20 June 2019 on transparent and predictable working conditions in the European Union (in the following abbreviated as 'Directive 2019/1152'). A lack thereof would result in leaving the interpretation of overlaps once again to the Member States and their courts. This might ultimately result in preliminary ruling procedures pursuant to Art. 267 TFEU, leading to legal uncertainty.

Finally, additions and adjustments are needed regarding the granting and enforcement of rights and obligations in relationship with representatives of persons performing platform work. On the one hand, restrictions are required regarding the material requirements for action. On the other hand, regulations for the enforcement of these rights and obligations are missing.

2. Personal and territorial scope

Pursuant to Article 1 (2), the Proposal is intended to apply to persons who have an employment contract or are in an employment relationship, as defined by the law, collective agreements or practice in force in the EU Member States. Additionally, the case-law of the Court of Justice has to be taken into consideration. This statement resembles the wording in other directives, for example Directive 2019/1152. Nevertheless, the meaning of 'consideration to the case-law of the Court of Justice' is still disputed. It is not clear whether the reference to the case-law is solely intended to ensure the effectiveness of the Directive or if the reference to the case-law would also include the Union law definition of an employee. This would be particularly crucial for determining the scope of application of the proposed Directive, since the Union law definition of an employee also includes managing directors of German limited liability companies (GmbH) – which would be a deviation from the German view. When Directive 2019/1152 was adopted, Germany had declared that it followed the first (national) view. In order to avoid the possible interpretation difficulties resulting from this view, the meaning of the reference to the case-law of the Court of Justice should be clarified. According to the justification provided in Art. 1, the reference to the case-law of the Court of Justice is intended to cover situations where a platform worker's

employment status is unclear, including cases of false self-employment. However, this justification is not sufficient, since national provisions also intend to define an employment relationship. This is for example covered by Section 611(a) of the German Civil Code (BGB). Furthermore, the protection of people performing platform work is not dependent on defining them as employees and it is not necessary to extend the national definition of an employment relationship with respect to platform work. It would furthermore be possible to extend provisions for employees (e.g. right to a minimum paid leave, application of collective agreements) to self-employed persons. Alternatively, it would be possible to enact rules that exclusively cover self-employed persons (e.g. maternity protection, compulsory pension and health insurances). In parallel, these new provisions for self-employed persons should create obligations for the client.

Notwithstanding the above, it seems right to extend the scope of the Proposal to persons who perform platform work without being characterised as being in an employment relationship (Arts. 1 (2) and 10 of the Proposal). Nevertheless, this extension should not lead to the applicability of labour law provisions in the area of self-employed persons. The Proposal guarantees this insofar as Art. 6 et seq. states that essential parts of the rules on access to information also apply to self-employed activities. However, this requires further clarification, as will be discussed later.

We agree that the Proposal should apply when the platform work is organised through a digital labour platform in the Union. This definition of the territorial scope includes clients and workers, even if they are established outside the Union but provide their activity through the platform within the Union. As platform work is organized via the internet, this is a necessary step to achieve the goal of the Proposal – the protection of workers within the Union.

3. Definitions

The definition of ‘platform work’ (Art. 2 (1)(2) of the Proposal) should be reviewed and potentially amended. Currently, platform work means ‘any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual,

irrespective of whether a contractual relationship exists between the individual and the recipient of the service'. This puts the focus on the contractual relationship between the digital labour platform and the person performing platform work, as is also demonstrated by Art. 4 (1) of the Proposal.

However, this definition does not sufficiently take into account situations in which the platform is provided by a third party, either on behalf of the service provider or on behalf of the recipient of the service. Here the provided service is based on a contractual relationship established between the service provider and the person performing the platform work. In such constellations, the platform only provides the digital medium (intermediary) that brings together the service provider and the person performing platform work. Hence, the contractual relationship between the service provider or recipient of the service and the persons performing the platform work is decisive when determining whether the person performing platform work is to be categorized as employed or self-employed. Besides the definition of this contractual relationship, its actual implementation must necessarily equally be considered.

4. Determination of the employment status

a) Establishing the relevant criteria

According to Art. 3 (1) of the Proposal, EU Member States shall have appropriate procedures in place to verify and ensure the correct determination of the employment status of persons performing platform work. We support this provision, since this is in the best interest of all parties involved.

This provision is in line with the case-law of the CJEU, holding that the determination of the existence of an employment relationship shall be guided 'primarily' by the facts relating to the actual performance of work (see CJEU, Judgment of 22 April 2020, C-692/19). At the same time, the peculiarities of organizing platform work by way of algorithms need to be taken into account. It is correct to give priority to these facts when the relationship is classified differently than any contractual arrangement that may have been agreed between the parties involved. This is also consistent with the case law developed on Section 611 and Section 611 (a) BGB. This case law avoids that arbitrary

classification governs the legal character of a contractual relationship, even though it might be implemented differently.

b) Introducing a legal presumption

In general, we also welcome the idea of a rebuttable legal presumption to determine the employment relationship. However, the Proposal should already provide clarity in the first step, i.e. when defining the criteria whether a digital labour platform is 'controlling the performance of work'. It is not sufficient that this presumption is rebuttable pursuant to Art. 5 of the Proposal.

Based on this, the criteria that can justify the legal presumption of the existence of an employment relationship must be reviewed and adjusted. In particular, the criteria must be adjusted with regards to the 'controlling the performance of work'. The Proposal does not fulfil its purpose in this respect. Adjusting the criteria is also necessary regarding the legal consequences and the legal relationships for which the legal presumption of the existence of an employment relationship shall apply. The wording in Art. 4 (1) of the Proposal in the second paragraph suggests that the legal presumption shall apply in all relevant administrative and legal proceedings. However, this provision is not clear, since it does not specify which legal consequences and legal relationships are exactly covered. When one accepts that the control of the performance of work is to be decisive for determining the employment relationship, we further consider the criteria mentioned in Art. 4 (2) of the Proposal as problematic.

Additionally, it remains unclear whether the Proposal is intended to apply to social security law in addition to labour law. Looking at the wording of the Proposal, we surmise that both areas of law are supposed to be covered. However, social security law has a different purpose than labour law. This means that the criteria for determining an employment relationship under labour law are different from the criteria that apply to dependent employment under social security law. In other words, not everyone who is deemed "employed" under social security law is categorized as an employee under labour law.

Furthermore, Art. 4 (2) of the Proposal also provides for criteria that are not related to the controlling of the performance. Thus, these criteria are not suitable for establishing

the presumption of an employment relationship, at least when considering it from the perspective of labour law. In particular:

a) Effectively determining, or setting upper limits for the level of remuneration: The mechanisms of supply and demand allow provisions for upper and lower limits of price-setting in cases of self-employment. These prices can be set by self-employed individuals, clients or recipients of the service. In other words: Flat rates and upper price limits can also exist in connection with self-employed activities. The criterion ‘level of remuneration’ alone is ambivalent and in this general wording irrelevant for determining the employment status.

b) Requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work: This criterion is to be divided into two separate points. Requiring a person to wear certain clothes can also exist in connection with self-employed activities. Since this criterion is ambivalent, it is irrelevant in order to determine the employment status. Conversely, however, the requirement to respect specific binding rules with regard to the conduct towards the recipient of the service can indeed constitute a certain degree of control on the individual’s behaviour. Therefore, this criterion should be enumerated separately.

c) Supervising the performance of work or verifying the quality of the work results, including through electronic means: The mere supervision of work performance in the sense of assessing the quality of results – by whatever means – is not an indication of an employment relationship. This supervision can also take place in connection with self-employed activities. When the performance of a service (service contract) or the success of the completed work (contract for work) is supervised in connection with self-employed activities, this supervision can be assessed and might even be accepted to determine the remuneration. Hence, this criterion is ambivalent and irrelevant when determining the employment status.

d) Effectively restricting the freedom, including by means of sanctions, to organize one’s work, in particular the discretion to choose one’s working hours or

periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes: This criterion is relevant, but should be broken down into several individual points.

e) Effectively restricting the possibility to build a client base or to perform work for any third party: This criterion is again not relevant as far as it is not caused by the restrictions of freedom mentioned above under d). Self-employed individuals that (permanently) work for one single client exist. Due to the thereof resulting need of protection, German law requires a mandatory pension scheme albeit no workers subject to the legal obligation of social security may be employed (see Section 2 No 9 of the Social Security Code Book VI). In this respect, we refer to our comments above on the necessary differentiation between labour and social security law. We reiterate that the legal consequences need to be clarified.

Under the realm of labour law, it should be clarified that the Proposal does not erroneously cover truly self-employed persons. To ensure this, several adjustments of the above-mentioned criteria are urgently needed. In addition to the specific comments on each criterion above, the criteria should concretise the specific elements related to work performance and taxation.

This includes especially specifications that control the performance of work with regards to the timing or sequencing of certain steps. In other words, any material control of the performance of platform work. This should also include criteria that describe the integration of the platform work into the overall organization of the work. This criterion should describe all the ways in which the platform workers' work is linked to the work of other workers - possibly including platform workers - in such a way that indirect influence is exerted on the time of completion, the sequencing of work steps or the intensity of the work. This would be an element of integration into an organization determined by the client. Hence, this would be a typical criterion for the existence of an employment relationship, regardless of whether workers are performing their duties while being classified as platform workers or in more traditional forms of employment.

The Proposal could furthermore include criteria that point towards situations where the platform workers' freedom to refuse tasks is restricted; or vice versa situations where

platform workers' are pressured to accept more and more tasks. The latter might be obtained by granting a higher remuneration proportional to the increase of tasks. At the same time, it could also be achieved by scaling effects, where it is possible to plan or divide the work more effectively due to a higher amount of tasks. This in turn would lead to increased effectiveness, less time spent and/or higher income for the platform worker (see Judgment of the German Federal Labour Court of 01 December 2020 - 9 AZR 102/20 - Plattform Roamer). Likewise, the control of work performance can be achieved through 'gamification' of the electronic tools. Gamification means that the inclusion of game-like elements (e.g. experience points, high scores, progress bars, virtual goods and awards, levels, bonus and malus points) establishes a dependency of the platform workers. These would also be criteria pointing towards the existence of an employment relationship that are not yet taken into account in the Proposal.

To achieve the purpose of the Proposal – which is to properly take the peculiarities of platform work into account – it must not make a difference between whether the control of the performance of work is defined by contractual agreements or by the algorithm that interacts with the platform worker, in the form of accepting or refusing tasks/single work steps and the way of working on them. The Proposal should treat an algorithm that exerts controlling influence on the performance of work and/or the acceptance of tasks as if it was the person that assigns the work itself. The influence of the algorithm is therefore attributed to the contracting party in whose interest it takes place. This applies irrespective of whether the platform is operated by the user itself or by a third party. This should also be clarified in the Proposal.

The adjustment of the criteria is necessary even if it does not only refer to the employment relationship itself, but also to cases of non-self-employed work in terms of social security law. Even for the purposes of social security law, it does not seem necessary to abandon the general (civil law) criteria to establish the existence of an employment relationship for the sole purpose of also protecting self-employed platform workers. In particular cases, however, it can be necessary to protect self-employed platform workers, for example when platform work is carried out for only one client, if no further client base exists and no self-standing business organization with their own employees is established. In these cases there is only an economic, but not a personal dependency. This dependency could be taken into account through the introduction of

separate provisions to protect platform workers (e.g. minimum remuneration, minimum notice periods) or through special rules under social security law (e.g. compulsory health insurance and pension scheme). It is however not necessary to include these – still self-employed- platform workers into labour law. The classification on quasi-employees in Germany as well as the German Home Work Act (*Heimarbeitsgesetz*) could be considered as a blueprint for this solution, since the criteria that establish the special protection needs of quasi-employees may also be applicable to platform workers.

5. Transparency of the algorithm

The provisions on transparency and the use of automated monitoring and decision-making systems (Arts. 6 et seq. of the Proposal) are generally welcome. However, it is necessary to clarify the overlaps with the existing provisions of Directive 2019/1152/EU. In particular, the overlaps with the GDPR must be clarified and eliminated. This holds particularly true, since under the hierarchy of EU legal acts, the requirements of the GDPR cannot be amended, tightened or softened by the Proposal on platform work. Art. 88 GDPR solely allows Member States to provide more specific rules that are either established by law or by collective agreements, to ensure the protection of rights and freedoms in respect of the processing of employees' personal data in the employment context. Art. 88 of the GDPR does not provide for the possibility of prescribing new rules in a Directive, which would unduly restrict the competence of the Member States.

This danger of an overlap with existing provisions is currently only addressed in Art. 10 (2) of the Proposal, which concerns overlaps with Regulation (EU) 2019/115 that concern persons performing platform work who do not have an employment relationship. According to this provision, in the event of a 'conflict' between the provisions of the Proposal and Regulation (EU) 2019/1150, the Regulation shall prevail when platform workers are equally covered by the Proposal and the Regulation. This provision, however, appears to be insufficient for legal practitioners. The Proposal should resolve this foreseen conflict by not attempting to regulate any details that stand in conflict with Regulation (EU) 2019/1150. This holds particularly true for any conflicts between the Proposal and Regulation (EU) 2019/1150, which do not result from the wording of the provisions themselves, but from the linkages between single provisions

and their interpretation by the CJEU. This situation results in legal uncertainty, which must be eliminated by the legislator before the Proposal enters into force.

There is a considerable overlap between the information obligations of Arts. 6 and 7 of the Proposal and Arts. 12 et seq. GDPR. This concerns not only the content of information obligations, but also the form and timing of the required information. For platform workers, the information obligations would not only be determined by the Proposal, but also by the GDPR and the Directive 2019/1152/EC. This problem equally exists with regard to persons performing platform work who do not have an employment relationship, to whom essential parts of the information obligations would apply. In particular, this concerns the essential parts of the information obligations under Arts. 7 et seq. of the Proposal would apply (Art. 10 (1) of the Proposal), although Arts. 12 et seq. and Ar. 22 of the GDPR already contains legally binding rules. Similar overlaps also exist between Art. 8 of the Proposal and Art. 22 (3) GDPR.

Art. 12 (2) lit. f) GDPR already provides that the controller must inform the data subject about the existence of automated decision-making, including profiling (Art. 22 (1) and (4) GDPR)at least in those cases, that the controller must inform the data subject in a meaningful way about the inherent reasoning of such processing for the data subject, as well as the significance and the envisaged consequence. In addition, Art. 22 GDPR provides that the data subject has the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her. On an exceptional basis, decisions can be taken on the basis of automated processing –which may be relevant for platform workers – when the decision:

- is necessary for entering into, or performance of, a contract between the data subject and a data controller,
- is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject’s right and freedoms and legitimate interests; or
- is based on the data subject’s explicit consent.

In these instances, the data controller shall implement further suitable measures to protect the data subject. This includes the right to obtain the intervention of a person on the part of the controller, to express his or her point of view and to challenge the decision. Furthermore, such decisions may not be based on special categories of personal data referred to in Art. 9 (1) GDPR, unless Art. 9 (2) lit. (a) or (g) GDPR applies; and only when appropriate measures have been taken to protect the rights and freedoms and legitimate interests of the data subject. These provisions may be relevant for platform workers when the awarding of contracts by type and number takes into account whether and how the platform worker communicates his or her political or ideological views or discloses personal characteristics (example: sexual identity), either within or outside of the scope of the platform work.

In the future legislative process, particular attention should therefore be paid to Art. 6 (5) of the Proposal which is already covered by Arts. 6 (1) and 9 (2) GDPR (cf. Art. 6 (5) lit. b) and c) of the Proposal). They are redundant. At the same time, the Proposal unduly restricts the provisions of the GDPR when it *per se* prohibits the processing of personal data on the emotional and psychological state of the platform worker (Art. 6 (5) lit. a) of the Proposal). Processing of this particular type of personal data may, however, be necessary in the context of employment relationships in order to carry out risk assessments pursuant to Art. 6 (3) and (9) of Directive 89/391/EEC. These risk assessments must not only assess physical stress, but also mental stress of employees, in order to take protective measures based on the risk assessment. If the platform worker is working within the framework of an employment relationship, this assessment must also concern him or her and is part of the processing of special personal data permitted under Art. 9 (2) GDPR. The strict prohibition contained in Art. 6 (5) lit. a) of the Proposal ignores this fact, even though Art. 7 (2) of the Proposal explicitly mentions the obligations of labour law in the context of the health and safety of platform workers.

6. Consultation of platform workers‘ representatives

We generally welcome the information and consultation rights of platform workers’ representatives contained in Art. 9 of the Proposal, to ensure an adequate representation of interests. By definition (Art. 2 (1) lit. 4 of the Proposal), these rights

are to be used within the framework of the existence of an employment relationship. Correspondingly, Art.15 of the Proposal ensures the provision of communication channels for persons performing platform work and representatives of persons performing platform.

With regard to the scope, it is advisable to follow Directive 2002/14/EC establishing a general framework for informing and consulting employees (in the following 'Directive 2002/14/EC'). Art. 3 (1) Directive 2002/14/EC contains thresholds in relation to the sizes of undertakings or establishments within a Member State, which need to be honoured, even in the case of platform workers. Both platform workers and 'normal' employees must be taken into account when calculating these thresholds, or else there would be an unequal treatment of platform workers and 'normal' employees, which would not be justifiable, especially in the case of simultaneous employment in the same company.

We are concerned about the potential information and consultation rights of the platform workers themselves (Art. 9 of the Proposal). It should be clarified whether – as the wording suggests – the mere absence of platform workers' representatives is sufficient to make individual information and consultation rights of the platform workers necessary. Another potential interpretation could be that the absence of platform workers' representatives would only lead to a direct information and consultation rights of the platform worker when representatives do not exist 'regardless of the will of the platform worker'. The latter interpretation, which would introduce a limitation, would correspond to Art. 7 (6) of the Directive 2001/23/EC on approximation of the laws of the Member States relating to safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. Furthermore, any direct or individual information and consultation rights of the platform workers should be limited to a duty of notification. A consultation, as laid down in Art. 9 (2) of the Proposal read together with Art. 4 (2) and (4) Directive 2002/14/EC, is only possible with representatives of platform workers, but not with individual platform workers in different Member States. Any consultation should therefore be limited to dealing only with the representatives of platform workers. For platform workers, if further participation is deemed necessary, consultation rights could be replaced with a right to feedback.

In terms of content, the question arises as to whether information rights should only begin when automated monitoring and decision-making systems are introduced or when substantial changes are made. Such a wording would not provide for information or any other form of participation when relevant systems are already in place at the time of recruitment of a platform worker or when representation is subsequently formed.

We deem the possibility useful to call in experts as an accompanying measure. This would apply to representatives of platform workers to provide support, including any obligation to bear costs by the digital labour platform, when there are more than 500 platform workers in a Member State. Similar rules exist in Germany for the introduction and application of Artificial Intelligence systems in Section 80 (3) Works Constitutions Act (*Betriebsverfassungsgesetz* – BetrVG). We assume that existing regulations at national level that allow experts outside this threshold remain unaffected by the Proposal, since this would constitute a more favourable rule.

In order to enforce the mutual rights and obligations regarding information and consultation in accordance with Art. 8 of Directive 2002/14/EC, supplementary rules are necessary. The rules contained in in Arts. 13 et seq. of the Proposal are not sufficient (see comments there).

7. Inclusion of persons performing platform work who do not have an employment relationship

Art. 10 of the Proposal extends the information and consultation rules contained in Arts. 6 et seq. of the Proposal to persons performing platform work who do not have an employment relationship. In principle, this is understandable. However, the overlaps with the GDPR and Regulation (EU) 2019/1150 should already be resolved in the Proposal, which also requires corrections in Arts. 6 et seq. of the Proposal.

8. Further obligations to declare platform work towards labour and social protection authorities

We refrain from providing detailed comments on the content of Arts. 11 and 12 of the Proposal which establishes obligations to declare platform work to reporting to the competent authorities of the Member States. According to Art. 12 (3) of the Proposal, labour, social protection and other relevant authorities and representatives of persons performing platform work shall have the right to ask digital labour platforms for additional clarifications and details regarding any of the data provided. We hold that in view of the general requirements of the GDPR, in particular the principle of proportionality and data minimisation, this right must be concretised and therefore limited. In any event, the Proposal should specify that the right to ask for information extends only to information which the authorities or representatives of platform workers need in order to carry out their tasks arising from the Proposal.

Art. 12 (3) of the Proposal foresees an additional right for labour, social protection and other relevant authorities and representatives of persons performing platform work to ask for additional clarifications and details regarding any of the data provided. This additional right seems to be fulfilling its purpose, albeit it is formulated unclearly. The Proposal should specify that the right to information extends to all information which the authority or representatives of platform workers might need to carry out their tasks arising from the Proposal.

9. Legal remedies and law enforcement

Arts. 13 and 14 of the Proposal foresee an obligation of the Member State to provide effective and impartial dispute resolutions for persons performing platform work, including those whose employment or other contractual relationship has ended. We welcome these provisions to ensure the enforceability of this Proposal. The same applies to the special rules on access to evidence (Art. 16 of the Proposal).

Art. 14 (1) of the Proposal provides that representatives of platform workers or other legal entities which have, in accordance with the criteria laid down by national law or practice, a legitimate interest in defending the rights of persons performing platform work, may engage in any judicial or administrative procedure to enforce any of the rights or obligations arising from this Directive. It is unclear whether this provision is intended to create a right for associations to bring collective action. If this is the political intention – possibly because of the special protection needs of persons performing platform work – this provision would have to be worded more clearly and would have to be extended accordingly. It would have to be justified why this type of litigation is necessary for persons performing platform work in comparison to other activities within the framework of service contracts, work or employment contracts. It further needs to be clarified, that the provision is not intended to limit the enforcement of rights of representatives of platform workers, as provided for in Art. 9 of the Proposal. While the second sentence of Art. 14 (1) and Art. 14 (2) of the Proposal provides that which representatives of persons performing platform work may act on behalf or in support of a person performing platform work, this does not ensure that the provision is not intended to limit the enforcement of rights of representatives of platform workers. It only ensures the possibility of representing platform workers in their individual legal disputes in administrative and judicial proceedings and does not include the enforcement of the representatives' own collective rights on their behalf. Nevertheless, Art. 9 of the Proposal establishes such own collective rights of representatives. The enforcement of these own collective rights must be ensured notwithstanding Arts. 13 et seq. of the Proposal. In accordance with Art. 8 of the Directive 2002/14/EC, Art. 14 of the Proposal should provide for an additional obligation of the Member States to take appropriate measures in the case of infringements of Art. 9 of the Proposal in connection with Arts. 4, 6, 7 of the Directive 2002/14/EC by representatives of platform workers or persons assigning the platform work. This applies in particular to administrative and judicial

procedures, which should ensure appropriate enforcement arising from this Proposal. Besides the representatives of the platform workers, persons assigning the platform work must be able to enforce the confidentiality of information (Art. 9 (2) of the Proposal in connection with Art. 6 of the Directive 2002/14/EC).

10. Prohibition of discrimination and protection against dismissal

Arts. 17 et seq. of the Proposal aim to ensure effective protection against adverse treatment and dismissal resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive. These provisions are purposeful and necessary. The proposed rules - including the simplification of the burden of proof – transfer principles of protection against discrimination. As such, they appear practice-oriented and are not to be objected. This takes into account that the control of the performance of platform work such as the deactivation of the account or the termination of cooperation is usually carried out digitally. Due to this digital nature, its algorithms and premises are usually hidden for persons performing platform work.