

## **APSCo positioning paper on the EU Directive of the European Parliament and of the Council on improving working conditions in platform work.**

January 2024

Digitalisation is changing the world of work, improving productivity and enhancing flexibility in the staffing sector and the wider economy.

In today's unpredictable job market, attracting and placing top talent has become much harder for staffing companies. Recruiters are battling pressure to be quick and efficient at moving candidates through hiring processes before losing them to other staffing companies. Clients urge recruiters to match the perfect candidate for a job in seconds, often in resource short roles, and candidates desire to experience quick and simple onboarding processes.

This is why a lot of recruitment companies have integrated automated business software to offer clients and candidates a better recruiting experience. In addition, staffing companies often act as a managed service provider (MSP) to offer contingent labour services to clients, being responsible for the entire process of sourcing, onboarding, managing, and off-boarding of either leased workers or self-employed contractors. They will typically provide or partner with a technology system (VMS) to manage this process from requisition to payment of the supply chain and/or workers.

APSCo Deutschland is dedicated to these recruitment companies that contribute significantly to the success of the labour market. APSCo Deutschland was founded in 2015 as part of a global association that has represented the interests of the recruiting industry worldwide since 1999.

APSCo Deutschland represents the German recruiting industry with more than 100 German member companies. APSCo membership is a seal of quality for clients and candidates alike, as APSCo only accepts reference-checked companies that follow a strict code of conduct. Like no other association, APSCo Germany knows the needs and challenges of companies that place experts, specialists and executives in permanent positions and in freelance projects.

The new regulation on platform work, which has been under discussion in Brussels since December 2021, is causing great concern among staffing executives. The "EU platform workers directive" sees the introduction of a legal presumption of employment for "bogus" self-employed platform workers, including in cross-border situations. Its intention is to standardise across the EU the laws on platform work, the so called "gig economy".

It is broadly drafted and contractors of "digital labour platforms", including independent contractors are to be classified as employees, if certain criteria are met. This endangers the existence of countless previously undoubtedly self-employed persons. Sufficient for the classification as employee is that three of seven criteria set by the European Parliament are met, regardless of whether the contractors are self-employed developers or management consultants. The criteria focus on setting upper pay rates, supervision and restrictions on freedoms to refuse tasks, choose working hours, work with multiple clients and supply substitutes; all highly complex legal areas with national laws already in place.

Central to the impact of the Directive is the definition of a "digital labour platform". If the directive enters into force as currently proposed, many companies will in future be considered "digital workplaces" as there is no clear definition of which companies will be classified as platforms in the future. Potentially any company will be considered a digital work platform as soon as it organizes and mediates work orders for an individual digitally, for example via a website or app.

The Council added in June 2023 that the platform should involve use of automated monitoring or decision making, but again this is an uncertain legal area. So if our industry does not want to go back to the fax, this will have serious consequences for contractors and companies.

The legal hurdles seem to be worse for our German members or Global members operating in Germany. Even now, the simple status determination procedure of the German pension insurance takes an average of just under three months.

If courts have to decide, it will potentially take years. Whether all self-employed people will be able to hold out economically until a rebuttal - let alone initiate legal proceedings at all will be questionable. In Germany alone, there are over 3.5 million self-employed workers who could be affected by the EU directive and 28 million in the EU. Many will then have to give up self-employment.

This cannot be in the interest of our industry sector as the self-employed are a central pillar of our economy and pivotal for digitalization. Without self-employed, there is no industry 4.0. Germany urgently needs the value added and the associated innovations by self-employed EU-contractors.

The financial losses as well as the administrative and legal consequences for the German state, German clients and the self-employed would be immense. Our industry sector plays a key role in obtaining the value added and the associated innovations by self-employed EU-contractors.

APSCo Deutschland and APSCo Global advocate more legal certainty for the self-employed in the EU and insists on fair competitive conditions. If the plans of the European Parliament are implemented, a large part of today's 28 million self-employed sole traders in Europe will automatically and wrongly be classified as employees.

### **Our proposals and demands are therefore:**

- A clear definition of a digital labour platform that is consistent with the term used in politics and in public, to facilitate platform work and does not encompass every system used to coordinate the flexible workforce, including leased workers and self-employed persons.
- Exclude intermediaries and digital technology management systems that only offer administrative supply chain services via digital technology solutions from the directive's scope.
- Exclude the highly paid and expert self-employed from the directive by setting a maximum rate of pay, beyond which the directive does not apply, as the worker does not require protection.
- Automatic classification as an employee should only apply if the majority of the criteria are met (e.g. 4 out of 7 criteria).
- The objection and complaint procedure must have a suspensive effect in order not to classify too many self-employed persons too quickly as employees.