



**The Draft Directive
of the European Parliament
on improving working
conditions in platform work:**

An APSCo Global positioning paper



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. MSPs are responsible for the entire process of sourcing, onboarding, managing, and off-boarding of either temporary 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 Global and its entities APSCo UK, OutSource UK, OutSource Europe and APSCo Deutschland are dedicated to these recruitment companies that contribute significantly to the success of the labour market. APSCo was founded in 1999 in the UK and APSCo Deutschland was founded

in 2015 as part of this global association representing the interests of the recruiting industry worldwide. APSCo Global group has approximately 1,400 corporate members ranging from micro businesses to outsourcing members managing tens of thousands of workers. 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 Global 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 a proportion of 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 organises and mediates work orders for an individual digitally, for example via a website or mobile application.

As an example, the legal hurdles seem to be worse for our German members or Global members operating in Germany. Even now, the simple employment status determination procedure of the German pension insurance takes an average of just under three months. If courts have to decide a decision under platform worker law, it will potentially take

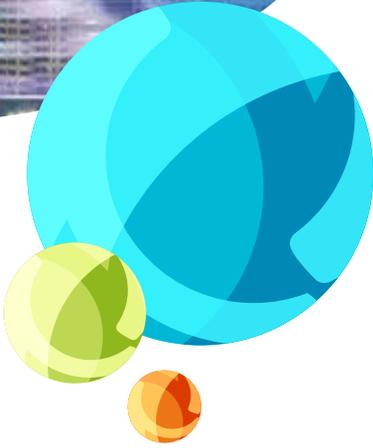
years. Whether all self-employed people will be able to hold out economically until a rebuttal - let alone initiate legal proceedings at all will be questionable. In Germany alone, there are over 3.5 million self-employed workers who could be affected by the EU directive and 28 million in the EU. Many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

This cannot be in the interest of Europe as the self-employed are a central pillar of Europe’s advanced economies, pivotal for digitalisation and drive productivity gain and associated innovations. It is imperative that the genuine self-employed are not an unintended casualty of this platform worker directive, with its legitimate intention to protect workers with less power and control in the gig economy.

APSCo Global advocates 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 may automatically and wrongly be classified as employees.

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Our proposals are therefore:

- Consider if a Directive is necessary, given complex legal areas with national laws already in place.
- Introduce a clear definition of a digital labour platform that is consistent with the term used in politics and in public, to facilitate gig platform work, that does not encompass every system used to coordinate the flexible workforce, including temporary 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 they do not require protection.
- Automatic classification as an employee, if introduced, should only apply if a majority of 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.

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