

## **A pro-innovation approach to AI Regulation**

### **APSCo UK and OutSource Response: 20<sup>th</sup> June 2023**

#### **About APSCo**

The Association of Professional Staffing Companies (Global) Ltd (APSCo) is an international trade body offering global services with local delivery to the international professional recruitment sector through its offices in Australia, Germany, Southeast Asia and the UK.

APSCo helps differentiate the professional recruitment market by raising standards and delivering expert support and market intelligence to members of APSCo around the world.

APSCo Global comprises APSCo Asia, APSCo Australia, APSCo Deutschland and APSCo United Kingdom as well as APSCo OutSource, the trade body for the RPO and MSP sectors.

APSCo and OutSource members range from SMEs to the largest global, listed recruiters and outsourcers. Members recruit professionals into permanent and contract roles across STEM, accountancy, legal, finance, marketing and media in addition to highly regulated sectors such as qualified social work, teaching and clinical healthcare.

Should you wish to discuss this response in further detail please contact Tania Bowers, APSCo's Global Public Policy Director – [tania.bowers@apsco.org](mailto:tania.bowers@apsco.org)

#### **Overview**

The use of automation in the professional recruitment and outsourcing sectors is growing, but up until quite recently this has largely been through the use of algorithms with consistent human oversight of the process. Using AI in recruitment can help to save time and costs in the hiring process and improve communication with use of tools such as Chatbots. However, the greater benefit is its input into talent acquisition, minimising human subjectivity and bias when pooling candidates online by AI's prioritisation of skills and potential, versus education establishments and previous employers.

The use of technology and increasingly AI remains the essential component of the ongoing growth of our sectors matching candidates and clients quickly and effectively, sourcing rare talent and recognising new demand and skills. This in turn supports macroeconomic targets around growth and levelling up.

However, while the use of AI in recruitment is gaining traction, outside of a few large multi-national members, usage is still fairly poorly understood. There are still limitations to its use such as reliance on accurate data input particularly in sifting and finding suitable candidates for a role.

Our members often report concerns about the limitations of AI, particularly around the potential use of biased data and the issues of privacy when pooling candidates online. AI regulation is therefore needed to ensure that it can be used as a fair, effective, trusted and efficient tool in recruitment for the future.

APSCo are engaging with DCMS as a communication mechanism for DCMS, CEDI and ICO to engage with outsourcing providers and recruiters supporting professional sectors and large-scale engagers of

talent in the UK and internationally. Our global Trusted Partner membership includes technology providers focusing on the responsible, ethical evolution of AI and LLM within recruitment. We are keen to engage on the challenges, regulation and guidance needed to support the very fast paced evolution of Large Language Models/Generative AI, most prominently ChatGPT.

Given the global nature of the professional recruitment sector with a majority of our APSCo UK and OutSource members being international businesses, part of a global group or delivering some recruitment services internationally, our members will benefit from global auditable standards in AI. We continue to be encouraged by ongoing work into standards on the AI principles led by the Alan Turing Institute in partnership with British Standards Institution (BSI) and National Physical Laboratory (NPL).

APSCo are overall generally supportive of the UK's proportionate, pragmatic, sectoral approach to AI regulation which remains key should the UK wish to continue to be a global leader in this area.

### **The revised cross-sectoral AI principles**

#### **1. Do you agree that requiring organisations to make it clear when they are using AI would adequately ensure transparency?**

It would help but would not be sufficient to ensure transparency. Firstly, the definition of AI must be sufficiently clear for a technical provider and organisation to know when it is using AI, as opposed to non-AI algorithms. Secondly, the AI can only be transparent if it is explainable to the user and data subject.

One difficulty arises if a member is asked to explain their automated decision making, they may not have access to the information needed about the nature of the machine learning in their tool to provide a full answer.

The accountability of the technical providers who design the tools is paramount, and the consequences of a breach of regulation should be serious to both the technology business and its directors and officers.

#### **2. What other transparency measures would be appropriate, if any?**

Our members will benefit from global auditable standards in AI, and we are encouraged by the ongoing work into standards on the AI principles led by the Alan Turing Institute in partnership with British Standards Institution (BSI) and National Physical Laboratory (NPL) and supported by the UK Government. Due diligence and good practice recommendations listed in statutory guidance will have limited, practical applicability without the auditable standards. These will also allow technology providers to mitigate risk and unlock and scale the benefits of their products and services.

Our members, the majority of which are SME recruitment businesses without expert inhouse technology support, already use layers of software utilising AI within their "technology stacks". This is not simply a staffing industry issue, as employers, hirers and their providers are also using AI in their processes. Guidance for due diligence, such as that issued by CEDI with the Recruitment and Employment Confederation (REC) or the ICO, is in itself complex and time consuming to adhere to, and relatively unknown to our members. A technical standard is clearly understood by users and is a selling tool for good technology and software providers. An example of complexity is the advice given in the CEDI guidance to address bias during the purchase process:

Seek information from the vendor: vendors will likely have tested tools for bias in their own relevant testing contexts. Use this as a basis for assessing whether you are comfortable with the tool.

Be aware that UK populations may be different, and that UK legal standards may not have been used. In particular, many vendors use the US-relevant “four-fifths” rule (see above) to determine how much adverse impact is permissible. Decide if your team is comfortable with the vendor’s results, keeping in mind that the context may be different.

Seek information on the diversity of the vendor’s engineering and product development team including the composition of their team. Check if the team has been trained on unconscious bias.

Ask for copies of auditing documentation and check how often audits take place, in order to understand whether the outcomes produced by the tool (for example, who is recommended for recruitment) have been evaluated in order to make sure that those outcomes are non-discriminatory.

For an additional level of assurance, you may wish to commission independent evaluation of the tool.

In reality, most businesses and certainly SMEs won’t have the expertise to determine if a vendor’s bias testing is sufficient or the diversity of a vendor’s coding team has affected the coding. Once in receipt of auditing information they may struggle to understand it without external advice or the independent evaluation. These are increasingly “off the shelf” software products, which plug into existing technologies, so there needs to be a trusted, independent standard to measure them by.

It should be recognised that there are different types of “AI life cycle actors” all with different levels of expertise. A requirement to undertake regular impact assessments throughout an AI supply chain should help to highlight evolving risks and unexpected outcomes at an early enough stage to rectify issues minimising detriment to life cycle actors/data subjects. This must be supported by audit to be effective.

The onus should be on the technology providers and AI developers to explain use of AI and to address risks within the context of use by a purchaser and user of the AI technology. SME businesses do not have the bandwidth or expertise to complete effective audits and impact assessments without the help of third parties. We recognise that this must be achieved through the existing legal frameworks including UK GDPR and DPA 2018 and that recruiter organisations and their directors and officers ultimately carry responsibility for use of AI tools within their systems.

### **3. Do you agree that current routes to contestability or redress for AI-related harms are adequate?**

Within the recruitment sector, the most probable AI related harms relate to the processing of personal data throughout the recruitment process from candidate search, uploading, contact,

selection to permanent appointment or contract engagement and processing and retention of data thereafter.

One example provided to us by members is in respect of minimising bias in candidate selection – is it the data used to train the machine to process data that should be tested for bias, the data held on the user's database that is relevant, or in some cases will they be one and the same as the machine will use all of the data it processes across multiple client systems to continually learn. Redress is available via the ICO or by enforcing existing legal rights e.g., through enforcement of the Equality Act 2010 or employment agency and business regulation. However, these routes will need to be updated and subject to continual review to meet the challenges of AI usage.

#### **4. How could routes to contestability or redress for AI-related harms be improved, if at all?**

Through transparency and explainability of AI usage in supply chains, including international auditable standards, to mitigate the risks of harm. Then through specific and easy to apply guidance on principles and sectoral usages, supported by regulation if needed.

#### **5. Do you agree that, when implemented effectively, the revised cross-sectoral principles will cover the risks posed by AI technologies?**

This is a difficult question to answer as it depends on the changing nature of the risks posed by AI technologies in the recruitment and outsourcing sectors.

Our members are very clear that the AI technology developers must share in the responsibility for usage of their technologies and held accountable with clear routes of redress, including accountability of directors and officers.

#### **6. What, if anything, is missing from the revised principles?**

The principles are wide ranging, but their effectiveness will be determined by the underlying regulatory framework.

EASI can and should work with ICO and EHRC to produce guidance, but it is critical to consider that much modern hiring is outside of the scope of EAS regulation – whether undertaken directly by end hirers, by unregulated platforms or activities that form part of the hiring process that are not within scope of the current regulations.

#### **A statutory duty to regard**

#### **7. Do you agree that introducing a statutory duty on regulators to have due regard to the principles would clarify and strengthen regulators' mandates to implement our principles, while retaining a flexible approach to implementation?**

In the context of the recruitment sector, AI regulation seems beyond the scope of the current EAS regulations.

#### **8. Is there an alternative statutory intervention that would be more effective?**

Targeting the adherence to the principles by regulation targeted at the technology developers.

## **New central functions to support the framework**

### **9. Do you agree that the functions outlined in [section 3.3.1](#) would benefit our AI regulation framework if delivered centrally?**

Our members are particularly interested in approach to interoperability with international regulatory frameworks, in particular the EU and US approaches. A majority of our APSCo UK and OutSource members have international businesses, are part of a global group or deliver some recruitment services internationally. It is a feature of the industry that businesses generally use the same technologies and systems throughout their global delivery.

Therefore, it is important that not only do they comply with UK regulation, but they are also able to comply with the regulations in the jurisdictions in which they deliver services, in particular EU derived legislation and regulation, the federal and state-based regulation of the USA and the regulation of other global business centres such as Singapore. For this reason, our members are supportive of the UK's approach as it is sufficiently flexible and pragmatic to both respond to evolving technologies and to dovetail with other regulatory regimes.

**10-21** No further comment.

## **Final thoughts**

### **22. Do you have any other thoughts on our overall approach? Please include any missed opportunities, flaws, and gaps in our framework.**

Large language models/generative AI, most prominently ChatGPT, has had an immediate impact on our recruitment members, and in particular their employees' use of the tool given the ease and unregulated nature of access. It can very easily produce realistic, accurate job descriptions, and recruitment tools such as chatbot job interview simulations. There is also the ability to review the contents of job applications against descriptions within the tool. This type of activity of course creates risks including data privacy, confidential information dissemination, and misinformation.

The UK's AI framework needs to be able to respond swiftly and with expertise to these ongoing challenges.

Should you want to discuss any issues raised in this response with us or our members please contact [tania.bowers@apsco.org](mailto:tania.bowers@apsco.org).