

The legally compliant deployment of external digitalisation specialists within agile projects



Background

The digitalisation of work has become a necessity for all businesses and is already a reality for the REWE Group, including developing apps, employing the latest warehouse and delivery systems and designing successful cutting-edge technologies. Being able to flexibly deploy both internal and external digitalisation specialists is mission critical here. However, this type of collaboration is being thwarted by the current legal position.



External digitalisation specialists are incredibly important for our IT departments. Whether self-employed or employed by external service providers, they are highly qualified and bring huge innovative potential to our business. They have a particularly important role to play in our highly complex projects, where the prevailing global trend is for non-hierarchical agile working methods, such as Scrum and Kanban, which do not have fixed roles, but do require significant flexibility.

Here in Germany however, employment and welfare legislation imposes stringent restrictions on the use of external digitalisation experts for project-related collaboration in agile teams, whether they are self-employed or employed by external service providers. This is because auditing authorities essentially assess whether or not these specialists have an employment relationship with the client on the basis of instruction and integration as defining criteria. These, however, cannot be applied to agile working methods, which are instead characterised by close collaboration without the issuing of instructions. If German audit authorities perceive that external experts have been integrated into a business or have been issued with instructions due to the use of agile methods, it could lead to allegations of ‘bogus self-employment’ against external freelancers or ‘covert temporary employment’ against service providers when external service providers are responsible for the staff. This is a legal risk to be avoided at all costs.

This has the effect of impeding and delaying the implementation of digitalisation projects in Germany, as it prevents genuine agile collaboration on the scale required. However, we need to ensure a modern, unambiguous framework for the flexible deployment of external digitalisation experts in agile projects, not least in view of international competition.

The 2021 legislative amendment to the German employment status determination procedure did not provide the necessary clarification. As it only concerns self-employed workers and does not address the problem of using external contractors, this procedure should be further simplified and accelerated. We therefore welcome the German government’s initiative to engage with the self-employed and their associations in order to accelerate and improve the employment status determination procedure in order to bring legal compliance free of bureaucracy to the world of digital and agile work. We would be happy to contribute our experience here but would also like to point out that a modern legal framework is necessary for the deployment of external contractor employees in agile projects.

Our view on the appropriate way forward

- Deploying external digitalisation specialists – both self-employed and employees of service providers – legally and appropriately in agile projects is urgently needed to prevent the further slowdown of digitalisation projects for German business as a whole.
- The German pension insurance scheme's employment status determination procedure will have to be simplified and accelerated, particularly in accepting modern agile working methods. The legislative amendment to the German employment status determination procedure, which comes into force on 1 April 2022, has not provided the necessary clarification.
- Auditing authorities should receive better training on agile working methods. Policies on agile projects could then be drawn up, which would also provide guidance to the companies involved.

Your Public Affairs contact on this topic



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About REWE Group

The cooperatively organized REWE Group is one of the leading trade and tourism groups in Germany and Europe. In 2020, the company generated a total external turnover of around 75 billion euros. Founded in 1927, REWE Group operates with 380,000 employees in 21 European countries.

The sales lines include REWE, REWE CENTER and BILLA as well as BILLA PLUS and ADEG supermarkets and consumer stores, the discounter PENNY, IKI, the drugstores BIPA and the toom Baumarkt DIY stores. The company also operates convenience stores REWE To Go and the e-commerce activities REWE Lieferservice and Zooroyal. The Lekkerland Group comprises the wholesale activities of the business group in the area of on-the-go consumption. Travel and tourism under the umbrella of DER Touristik Group includes the tour operators DERTOUR, Jahn Reisen, ITS, Meiers Weltreisen, Travelix, Kuoni, Helvetic Tours, ITS Coop Travel, Billa Reisen, Koning Aap, Apollo, Exim Tours and Fischer as well as more than 2,300 travel agencies (e.g. DERTOUR, DERPART, Kuoni, Exim, Fischer and cooperation partners), the hotel brands Sentido, Aldiana, Calimera, Cooe, and the online travel portal Prijsvrij Vakanties.