

# The EU Agenda

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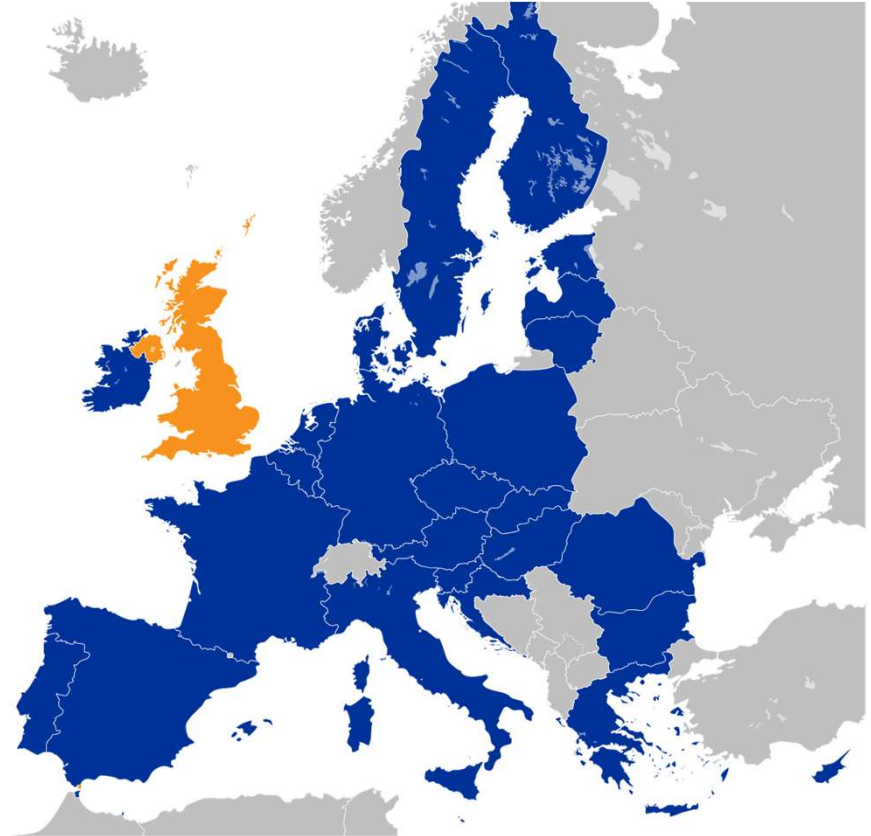


## Top of the Agenda

- The Minimum Wage Directive
- Gender Pay Transparency
- Collective Bargaining for Platform Workers
- EU Parliament Initiative on the Right to Disconnect
- EU Parliament Initiative on a Revision of the EWC Directive
- Global Supply Chain Due Diligence
- GDPR
- Awaiting Action

## A Key Question

- From January 1, 2021, the UK is now completely outside the EU's political, economic and legal structures, even if Brexit happened legally on February 1, 2020, transition arrangements applied through the rest of 2020.
- The UK, since the days of the Thatcher government, was always seen as a “brake” on the development of EU labour and employment law.
- What will the consequences for the labour law legislative process of the departure of the UK?
- A new burst of labour law activism, reminiscent of the Delors era?



# The Minimum Wage Directive

- This Directive seeks to impose an obligation on all Member States to have legislation on a national minimum wage, either through legislation or through collective bargaining.
- The EU member states with minimum wages set by law must at least take the following elements into account when setting a statutory minimum wage under the terms of the directive:
  - The purchasing power of statutory minimum wages, taking into account the cost of living and the contributions of taxes and social benefits;
  - The general level of gross wages and their distribution;
  - The growth rate of gross wages;
  - Labour productivity developments.
- As important, the Directive would place an obligation on all Member States to take measures to facilitate collective bargaining as the primary way of fixing pay and working conditions. But what is collective bargaining? Questions such as:
  - At what level? Sectoral or enterprise?
  - Who decides on the parties?
  - What is the scope?

COLLECTIVE  
BARGAINING





#### **EQUAL PAY**

We all want to be treated fairly.  
The EU has had equal pay law since 1975.

There is a 16% gender pay gap across the EU between men and women's gross hourly pay. Ranging from 27% in Estonia to 8% in Romania, the gender pay gap is only very slowly decreasing across the EU. The overall EU gender earnings gap is a shocking 40%.  
If women were paid the same as men, the poverty rate among working women could be halved and 2.5 million children would come out of poverty.

One very effective thing the EU could do to achieve equal pay would be to create more openness about pay and pay inequalities.

#### **GENDER PAY TRANSPARENCY WORKS**

Pay transparency is a realistic solution to reduce the gender pay gap. Some member states have already taken steps in this direction. Now is the time to introduce an EU pay transparency law.

- In Portugal making employers give employees information on average salaries is believed to be why it has a relatively small gender pay gap.
- In France a law requiring employers and unions to discuss the gender pay gap once a year during pay negotiations resulted in the amount of collective agreements tackling the gender pay gap rising from 3% to 10% in the first 3 years.
- In Denmark the gender pay gap shrunk 7% in the 1000 firms covered by a law which obliged them to report on gender pay statistics.

## **ETUC CALLS**

### **FOR A PAY TRANSPARENCY DIRECTIVE**

The ETUC is calling for a new EU Directive on Gender Pay Transparency that will end pay secrecy by:

- banning pay secrecy clauses in contracts so that workers can discuss pay
- requiring information for job evaluation for the purpose of establishing equal pay for equal work
- making all employers produce pay information (audits) and annual action plans on pay equality
- supporting unions to negotiate with employers to tackle the pay gap
- requiring job advertisements to include the pay range
- preventing employers hiding behind privacy, data protection or administrative burden to avoid pay transparency
- ensuring transparency for the whole pay package including benefits, bonuses, pensions, allowances etc
- imposing sanctions on employers who do not take action

For more information: [www.etuc.org](http://www.etuc.org)  
"ETUC Resolution on Gender Pay Transparency Directive"

# Gender Pay Transparency

- There is a significant pay gap across Europe between men and women, estimated at a gross 16%.
- There are suggestions that part of the reason for that gap is pay secrecy.
- There are persist calls from many quarters for a Directive on Pay Transparency.
- The Commission has said it will bring forward such a Directive but, to date, no text has been tabled.
- Just how transparent should pay be? Are there privacy issues to be resolved?

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## Collective Bargaining for Platform Workers

- Recent years have seen a significant growth in the platform “gig” economy.
- One report suggests that the numbers of people earning more than half their income from gig work ranged from 1.6% of the adult population in the Netherlands (equivalent to an estimated 200,000 people) to 5.1% in Italy (equivalent to 2,190,000 people). In Austria, the estimated number was 130,000 (2.3% of the population); in Germany, 1,450,000 (2.5%); in Sweden 170,000 (2.7%), in the UK 1,330,00 (2.7%) and in Switzerland 210,000 (3.5%)



## Collective Bargaining for Platform Workers

- Platforms (e.g., Uber, Deliveroo, Glovo) see workers as “self-employed” contractors.
- Court judgements in France, Spain, Italy, Belgium and Germany say they are employees.
- Employees can organise and bargain collectively. Not so for the “self-employed” because of competition law.
- The EU Commission will move to make it clear that platform workers have to right to bargain collectively.
- The Transparent and Predictable Working Conditions Directive will also come into play.

# EU Parliament Initiative: Right to Disconnect

- **The Covid19 pandemic has seen a sharp rise in people working remotely (from home, from hubs, from co-work spaces).**
- **The EP is currently considering a report which calls on the Commission to table legislation on a “right to disconnect”.**
- **France and Spain have such legislation. Other countries, such as Ireland, are considering initiatives.**
- **The CJEU ruling in 2019 on the need for legislation to require the strict recording of working time also need to be considered.**

*(Judgement in Case C-55/18 Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank)*

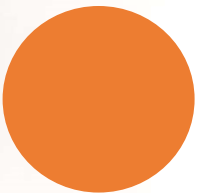


## EU Parliament Initiative: Right to Disconnect

- Research from multiple sources suggest that there may be a tendency for some such workers to “overwork” and to be “always on”.
- However, many remote workers say they like the freedom and flexibility that being able to work at times that suit them and fits in with their personal lifestyle and family role.
- Care needs to be taken that we do not try to force remote working into working time schedules that were originally designed for a “9-to-5” culture.
- If working time needs to be recorded in accordance with the WTD and the CJEU decision then creative thinking will be required.

# EU Parliament Initiative: Revision of EWC Directive

- It is understood that the EP is working on an initiative that will call on the Commission to bring legislation to further revise the EWC Directive.
- It was expected that an initial report would have been produced in late 2020.
- The European trade unions have been loudly demanding a further revision.
- As we understand it, there are no immediate plans on the part of the Commission to move on this.
- As the meaning of the provisions of the 2009 Directive is still being worked out it seems a further revision seems premature.



# Global Supply Chain Due Diligence

- In recent years there have been growing demands for transnational corporations to be made legally responsible for human and labour rights throughout their global supply chains.
- For example, France already has such legislation, though there are extremely limited sanctions available.
- The Commission has committed to bring forward legislation in 2021.
- But any such legislation will raise a host of questions:
  - Define supply chain. How extensive? EU corporation A buys from EU corporation B. Is A now responsible for B?
  - What are the boundaries of supply chains? Internal or external?
  - Who are the legitimate actors in supply chains? Unions, local communities, NGOs, others?

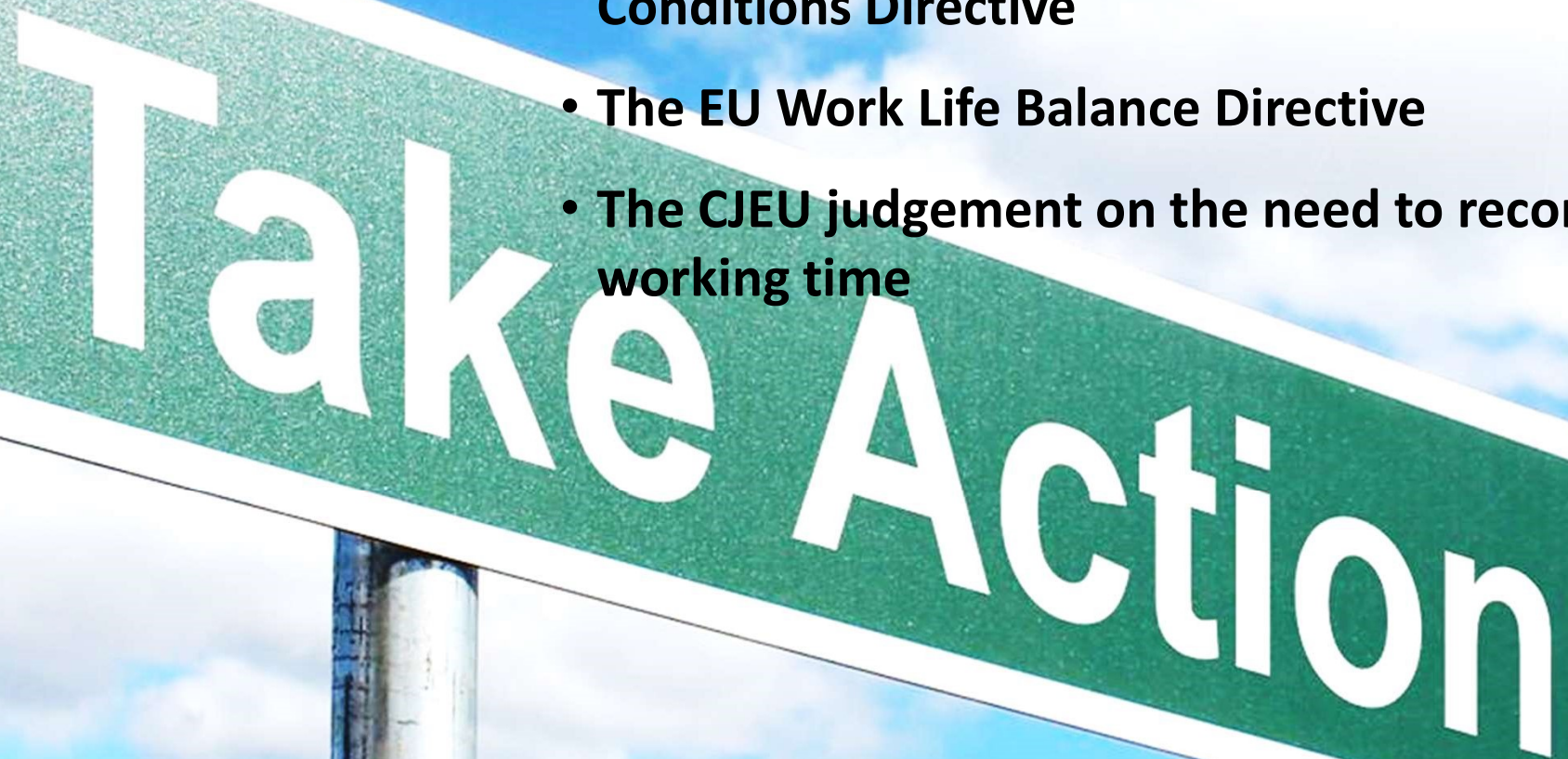
# GDPR



- The full impact of the GDPR is still making itself felt. Hardly a week goes by with a fine being levied in one EU country or another.
- The GDPR is also being used by privacy activists, often animated by an anti-corporate bias, as a battering ram.
- Schrems II blocks EU/US transfers. Suggestions that SCCs get around it seem problematic.
- This is a major political question that need to be resolved between the EU and the US. The Biden Presidency may be helpful.
- And it impacts Brexit Britain as well.

Awaiting Action

- **The Transparent and Predictable Working Conditions Directive**
- **The EU Work Life Balance Directive**
- **The CJEU judgement on the need to record working time**

A green road sign with white text that reads "Take Action". The sign is tilted upwards and is set against a background of a blue sky with white clouds. The sign is mounted on a metal pole.

**Take Action**