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## Ireland: New measures on union recognition proposed



This week (Wednesday) saw the publication of the report by the High-Level Group on Collective Bargaining. We will circulate a full note on the report when we have had a chance to read it in detail.

The part of the report that will catch the immediate attention of BEERG/HR Policy Global members is the section on “Good Faith Engagement at Enterprise Level.”

Unions in Ireland have long complained that there was no legal procedure in place to oblige employers to meet with them over issues of concern to their members. The law does not require employers to engage in collective bargaining with unions. Unless unions have sufficient members to give them the economic leverage to force employers to the bargaining table there is little they can do.

The recommendations in the new report do not fundamentally change the situation. Where unions have reached a certain membership level in a particular group or grade, the figure of 10% found in the Employees (Information and Consultation) Act 2006 is referenced but the “trigger” is kicked back to the Labour Court to decide, then an employer will have to meet with the unions and listen to its representations.

The employer will be required to respond to these representations and to deal with them in “good faith.” The report lists set of criteria against which “good faith” can be judged. There is no suggestion in the report that employers must engage in collective bargaining, much less reach an agreement if they do not wish to do so.

The High-Level Group was set up with an eye on the EU Directive on an Adequate Minimum Wage, which contains an obligation for Member States to take measures when collective bargaining coverage falls below 80% of the workforce. The Directive has now been adopted and will come into force in late 2024.

The proposed procedure set out in the report will certainly create new dynamics in the labour relations field but unless employees decide to join unions in significant numbers then not much will change in practice. Not only are employees not joining unions in Ireland or elsewhere in Europe, but union membership as a percentage of the workforce (density) has been falling for years. Unless unions can find a value proposition that appeals to employees then this trend is unlikely to be reversed anytime soon.

The High-Level Group on industrial relations and collective bargaining, working under the auspices of the Labour Employer Economic Forum (LEEF), was established by the Tánaiste (deputy prime minister) last year. It is chaired by Professor Michael Doherty, Maynooth University head of law, and includes senior representatives from the employers' organisation, IBEC, and the Irish Congress of Trade Unions (ICTU), as well as Professor Bill Roche from University College Dublin and representatives from government departments. There were no human resource or company employee relations professionals on the group.

The Group was set up to examine the adequacy of workplace relations in Ireland regarding pay determination and conditions of employment in the context of the legal, economic, and social conditions. Included in this remit was the issue of trade union recognition and any implications it may have for the collective bargaining processes.

Given the number of BEERG/HR Policy member companies with employees in Ireland, we will organise an online event as soon as possible to discuss the matter and give member companies the information they need to feed into the legislative decision-making process.

*Speaking of Ireland, BEERG is pleased to note that our long time Irish colleagues, Matheson, has been voted the best law firm in Ireland [here](#)*

## EU: New laws on AI Liability, and Solo Self-Employed Workers

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Last week, the EU Commission published details of two initiatives that could have significant labour law implications.

First, and probably the more important, the Commission released details of a proposed Directive on [AI Liability](#) which will see those who believed that they have suffered losses as a result of AI-based decisions given the right to claim compensation. The Commission says:

*The purpose of the AI Liability Directive is to lay down uniform rules for access to information and alleviation of the burden of proof in relation to damages caused by AI systems, establishing broader protection for victims (be it individuals or businesses), and fostering the AI sector by increasing guarantees. It will harmonise certain rules for claims outside of the scope of the Product Liability Directive, in cases in which damage is caused due to wrongful behaviour. This covers, for example, breaches of privacy, or damages caused by safety issues. The new rules will, for instance, make it easier to obtain compensation if someone has been discriminated in a recruitment process involving AI technology.*

This Directive will have to be read in conjunction with the proposed [Regulation on AI Governance](#) which sees AI-based human resource as "high risk" and which will impose significant information and consultation obligations on businesses around the use of algorithms. It is likely that works councils will be quick to take advantage of the new rights when enacted.

It will take time to read the proposed Directive in detail and to fully understand its implications. We will come back to this soon.

*We plan to run a workshop in early 2023 on “Data Privacy, AI Governance, and Employee Information and Consultation.” Drop an email to [tom.hayes@beerg.com](mailto:tom.hayes@beerg.com) if you would like further information when available.*

Second, the Commission confirmed that, in future, EU competition law will be interpreted in such a way that will allow solo self-employed workers to organise and bargaining collectively. Until now, questions hung over the right of such workers to do so as they are seen as “undertakings” and EU law prohibits undertakings from getting together to fix market conditions, such as prices. New Guidelines have now been issued to clarify the situation.

Launching the *Guidelines*, the Commissioner for Competition, Margrethe Vestager, said:

*“Solo self-employed people in the digital economy and beyond may not be able to individually negotiate good working terms and therefore may face difficult working conditions. Getting together to collectively negotiate can be a powerful tool to improve such conditions. The new Guidelines aim to provide legal certainty to the solo self-employed people by clarifying when competition law does not stand in the way of their efforts to negotiate collectively for a better deal.”*

## Platform Economy: Glovo hit with massive Spanish fine

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SPAIN'S largest food delivery platform has been hit with the biggest ever fine in the country for ‘false self-employment,’ in a move by the Labour Inspectorate which significantly raises the stakes in the battle over the ‘Rider’s Law.’

The €79 million fine to Glovo, which was founded in Barcelona but is now owned by German multi-national Delivery Hero, is about four times larger than any fine the Labour Inspectorate has previously dished out for similar breaches. It relates to 10,614 food delivery couriers (‘riders’) in Barcelona and Valencia, who have all been considered to have an employment relationship with the company and therefore should have been on the payroll, rather than hired on a self-employed basis, and have now had their situation regularised.

The record-breaking fine breaks down as follows: in Barcelona, €39 million for false self-employment and a further €24 million for unpaid social security contributions. In Valencia, €10.7 million for false self-employment and €5.5 million in outstanding social security payments.

Spain's Minister of Labour, Yolanda Díaz, said after the decision was announced:

*“We are facing a genuine act of false self-employment and the weight of the law is going to fall on this company, as it has already fallen with the Inspection. This company is obstructing the work of the Labour inspection. It is very serious in a social and democratic state of law, in which companies also have to comply with the law”.*

For a fuller account from a union-side perspective see [here](#)

## Future Work: A roundup of developments

A major new [report](#) from **Microsoft** shows that managers and workers fundamentally disagree about productivity when working from home.

The results of the survey show that while 87% of workers felt they worked as, or more efficiently, from home, 80% of managers disagreed. The survey questioned more than 20,000 staff across 11 countries. Microsoft CEO Satya Nadella commented that this tension needed to be resolved as workplaces were unlikely to ever return to pre-pandemic work habits.

"We have to get past what we describe as 'productivity paranoia,' because all of the data we have shows that 80% plus of the individual people feel they're very productive - except their management thinks that they're not productive. That means there is a real disconnect in terms of the expectations and what they feel."

He added that employers are having to work harder to recruit, enthuse and retain staff. That even includes Microsoft itself. "We had 70,000 people who joined Microsoft during the pandemic, they sort of saw Microsoft through the lens of the pandemic. And now when we think about the next phase, you need to re-energize them, re-recruit them, help them form social connections," Mr Nadella said. Microsoft employees can work from home up to 50% of the time as standard.

Some interesting statistics from the third edition of **McKinsey's American Opportunity Survey** on how flexible work fits into the lives of a representative cross section of workers in the United States. McKinsey worked with the market-research firm Ipsos to query 25,000 Americans in spring 2022. See [here](#) for the full report.

Some interesting guidance from the **Danish Social Appeals Board** on what can and cannot be regarded as workplace accidents when employees work from home.

In the first case, an employee sustained an injury after falling down during a walk while working at home. In the second case, an employee had gone out into their garden after a virtual meeting to "think". When going back inside to call a colleague, the employee fell and sustained an injury. In both cases, the Social Appeals Board ruled that the injured parties were not covered by the Workers' Compensation Act, as the activity in question did not have a necessary or natural connection to the work.

The third case concerned an employee working from home who fell up two steps and sustained an injury on the way to the toilet. The Social Appeals Board found that the employee's activities were connected to their work, as no personal circumstances had been described in the case to justify the toilet visit. As a result, it was an occupational injury covered by the Workers' Compensation Act.

Similarly, in the fourth case, an employee had set up a home office in their basement while their toilet and kitchen facilities were on the ground floor. The employee suffered an injury by falling on their way upstairs, which was also considered an occupational injury. ([See here](#))

The French language Belgium newspaper, **Le Soir**, looks at who should pay for [home heating](#) for employees who work from home, the employer or the employees themselves.



## Spain: Set to issue “digital nomad” visas

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Spain plans to issue “digital nomad” visas giving non-EU citizens the chance to work in the country. The visas will be offered to people who work remotely for enterprises outside Spain and who derive a maximum of 20% of their income from Spanish firms.

As the law has yet to be passed there are still some details to be hammered out, but it is expected that the visa – essentially a residency permit – will be initially valid for one year, renewable for up to five years depending on the applicant’s circumstances. Close relatives, such as a spouse or children, will be eligible to join the applicant.

Applicants must be from outside the European Economic Area and be able to demonstrate that they have been working remotely for at least a year. They must have a contract of employment or, if freelance, show that they have been regularly employed by a company outside Spain.

They must also demonstrate that they will earn enough to be self-sufficient and that they have an address in Spain. It is not clear yet whether they will have to undergo a criminal record check.

For the first four years they will be taxed at 15%, rather than the standard 25% base rate.

*See a full report in the Guardian [here](#)*

## Collective Bargaining: Some interesting developments

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TSB, the UK unit of Spanish bank Sabadell, is to pay around 4,000 staff a one-time £1,000 (\$1,135) bonus to help them cope with rising inflation. Around three-quarters of the lender's UK employees will receive £500 in October and another £500 in April, a bank spokesperson said, confirming a report in the Spanish newspaper *Cinco Días*.

Senior executives and management will not get the bonus. *Reuters* notes that HSBC, Barclays, Lloyds, NatWest, and the UK business of Santander are among British lenders who have similarly given thousands of their staff a one-off sum or a pay rise to help them cope with the spiralling cost of living.

Meanwhile, the Financial Conduct Authority (FCA) told employees on Wednesday that those earning under £60,000 will receive a one-off payment of £1,000 next month to help them weather the cost-of-living crisis. Those earning between £60,000 and £60,500 will also receive an extra £500. The move comes after pay reforms led to strikes at the Regulator earlier this year. Elsewhere, Marks & Spencer has announced a pay rise for more than 40,000 of its staff - the retailer's second salary increase this year - as it responds to cost-of-living concerns.

**Belgium workers** hit the streets two weeks ago on September 20 to protest the rising cost of living and soaring energy bills. Read why from the general secretary of one the country's major unions [here](#).

Stellantis, the French auto company, is offering its French workers a bonus payment for help with inflation and is to discuss one for workers in Italy. As part of the Franco-Italian auto maker's initiative, Stellantis will also bring forward salary negotiations in France, initially scheduled for the start of next year, to December.

Help for workers in France will include a one-off bonus payment and the possibility to convert three days off to compensate for overtime into cash. The top-earning 20% of workers will not receive anything.

"The proposals made by the management and shared with the social partners make it possible to increase the purchasing power of our employees above the level of inflation," said Bruno Bertin, director of human resources at Stellantis.

A spokesperson said the group was approaching the inflation issue country by country and would start talks in Italy soon. "We are working on a co-construction mode with our union partners, respecting local regulations, constraint and timing, in order to make the best proposals to protect both the company and the employees' interests," the spokesperson said, also leaving the door open to similar moves in other areas.

## UK: Hard to keep up

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It is hard to keep up with developments in the UK. No sooner have you written a sentence than it is redundant as some new announcement hits your screen. From the point of view of the business community, the worst of all is the uncertainty, the lack of any clear roadmap that the Truss government can deliver on.

It has been in office for less than a month and already doubts are being cast on its ability to survive. And that is from its own backbench MPs! Rarely has any politician seen a bridge and decided to burn it before they even crossed it.

For now, press reports suggest that the government is moving towards scrapping the Working Time Regulations, based on the EU's Working Time Directive. The Regulations provide for a 48-hour working week but allow individual employees to opt out of that limit if they so choose.

The government may move to do away with the 48-hour reference completely and leave it to be decided between employers and individual employees. Whether the government will also end the legal holiday entitlements remains to be seen. Confusion about what to do seems to be the order of the day [here](#)

**Meanwhile**, eleven trade unions, including RMT, Unite and GMB, are challenging the UK government's "strikebreaking" law, which lets firms bring in temporary staff to replace striking workers. The trade unions are seeking permission for a judicial review arguing the law breaches Article 11 of the European Convention of Human Rights (ECHR) and that unions were not consulted by former business secretary Kwasi Kwarteng during the drafting process.

They are claiming the new laws violate Article 11 of the ECHR – which guarantees freedom of assembly and association – in undermining the right to strike. The challenge comes after the UK government in July brought the law into force with a view to mitigating "the disproportionate impact strike action can have both on the UK economy and society." Major recruitment agencies are unhappy with the new law, claiming the changes risk damaging the reputation of the temporary staffing sector.

Kwarteng, now Chancellor in the Truss government, announced during his recent "mini-budget" that unions would be forced to put pay offers to members during negotiations. "We will legislate to require unions to put pay offers to a member vote to ensure strikes can only be called once negotiations have genuinely broken down." He also reaffirmed plans to force transport companies to maintain a minimum level of service during industrial action — a pledge made in the Conservatives' 2019 election manifesto.

Derek Mooney adds: ...speaking of political and policy turmoil in the UK, the UK's newest Secretary of State for Digital infrastructure and media Michelle Donelan MP (*Photo below*) told the Conservative party's annual conference that she would be "...replacing GDPR with our own business and consumer-friendly, British data protection system", adding that this new system of data protection would be co-designed by government with business.

Given the uncertainty over the UK's attitude to GDPR since Brexit, this latest announcement of plans for a yet to be designed or defined British alternative to the GDPR only serves to raise more questions about the UK's capacity to continue to enjoy a *data adequacy* status from the EU. Members of the Labour party opposition described the move as "madness," with Chris Bryant MP saying that:



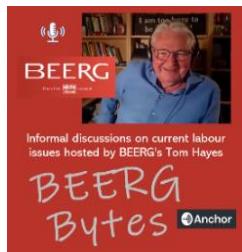
"UK companies will still have to abide by GDPR if they want any online business in the European Union (as other non-EU companies already do). So, UK divergence will simply mean UK double costs."

There was stern criticism too from the government side with a current Peer, and former Conservative Party MP and MEP, Lord Kirkhope of Harrogate slamming Donelan's announcement reminding the minister that "*the so-called "EU GDPR" was actually partly written by me and other UK MEPs and is understood and accepted Internationally. Its "proportionality" provisions were my idea. Leave it alone!*"

As Tom observed earlier... it is tough trying to keep up with developments in the U.K. Declared UK government policy it fast becoming like the weather here in Ireland... *if you don't like it now... just wait 15 minutes, it's bound to change.*

## BEERG Bytes: New Podcast Stream - *Knowing Me Knowing EU*

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We have just released the first in a new monthly podcast stream entitled: [Knowing Me Knowing EU](#) these will look at developments in the European Union of particular interest to HR professionals.

In this first episode Tom looks at several important EU legislative initiatives that are in the pipeline and have particular relevance for people in labour relations. This Podcast is based on Tom's most recent [BEERG Perspective paper](#).

It is available as a Podcast via your favourite [Podcast](#) search engine – search for "BEERG Bytes". See: [Spotify](#) / [Google Podcasts](#) / [Apple Podcasts](#) / [Anchor RSS](#)

## Flichy Grangé Webinar: Formes atypiques de travail et/ou nouvelles d'activité

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Our good friends in Flichy Grangé are hosting a Webinar/In-person breakfast event at their offices at 66 avenue d'Iéna, 75016 Paris on **Thursday October 13<sup>th</sup> from 8h30 à 9h30**. The meeting will be in French and is entitled: *Formes atypiques de travail et/ou nouvelles d'activité*

*You can register online for the Webinaire [HERE](#)*

# THE BEERG AGENDA:

Note that BEERG events are now 'in person' unless listed as a webinar

## BEERG Training: Managing European Employee Relations

Hotel Estela Sitges: Oct 18-21

Over the past fifteen years, hundreds of executives have participated in our twice yearly BEERG training programs. We have radically restructured our program to include a twin track element offering participants a tailored choice of modules.

[Book Oct Training](#)

Download the training brochure and draft course schedule [ONLINE HERE](#)

## Webinar Training for Global Leaders: Fundamentals of Global Labour Relations

Dec 6 - 8

A unique offering from HR Policy Global and BEERG designed for CHROs and senior executives who need to understand the basics of strategic global labor and workforce relations management. As HR professionals evolve to support a diverse global workforce through various challenges, learning to purposefully manage and lead successful labor and employee relations around the world is crucial.

[BOOK Dec Training](#)

The course will take place on December 6-8 with three or four sessions each day. Details of Agenda [HERE](#)

\*BEERG/HR Policy Global Members can self-register for these events via the links above. If you get a "No Tickets Available for Purchase" message check that you are logged in online – if the issue persists contact [Derek](#).

## BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
Oct 18 - 21	<b>BEERG Training: "Managing European Employee Relations"</b>	<a href="#">Book Oct Training</a>	Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain
Dec 6 - 8	<b>Training Program for Global Leaders: Fundamentals of Global Labour Relations</b>	<a href="#">BOOK Dec Training</a>	Online

Part of the



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