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Data Protection: The cost of an EU/UK data border

According to a new [report](#) from the New Economics Foundation and University College London's European Institute of the UK's international data flows:

...75% are with the EU. Much UK economic activity is dependent on these flows. This is especially true for the services sector, which comprises 79% of the UK economy. To illustrate the potential importance of EU-UK data flows, 46% of UK exports are to the EU, of which services account for 40%.



For data to flow freely from the EU to the UK after economic Brexit on December 31 next, it will require a “data adequacy” decision from the EU which certifies that UK laws are sufficiently robust that it is safe location to which personal data can be safely transferred from the EU. Despite the fact that the UK has incorporated the GDPR into its domestic legislation, such a decision is no means assured, particularly as the prime minister, Boris Johnson, has said that one of the benefits of Brexit is that it will allow the UK to deviate from EU data law.

The new report estimates that the aggregate cost to UK firms of no adequacy decision would likely be between £1 billion and £1.6 billion, though it does say that this estimate errs on the side of caution and that the real cost could be very much greater.

This extra cost stems from the additional compliance obligations – such as setting up standard contractual clauses (SCCs) – on companies that want to continue transferring data from the EU to the UK. The authors of the report estimate that the costs would be:

- £3,000 for a micro business
- £10,000 for a small business
- £19,555 for a medium business
- £162,790 for a large business

This overall figure of between £1 billion and £1.6 billion, the report says, “represents money that companies would have been free to spend to meet the requirements of the business by, for instance, investing in new equipment, staff, or processes, but are now required to channel into compliance activities or additional costs for goods and services, due to EU-UK data flows disruption.”

No adequacy decision would also have a range of other economic implications, including:

- *Increased risk of GDPR fines, due to the new compliance requirements*
- *Reduction in EU-UK trade, especially digital trade*
- *Reduced investment (both domestic and international)*
- *Relocation of business functions, infrastructure, and personnel outside the UK*

January 1 next will see the creation of a “data border” between the UK and the EU. How easy it will be to transfer data across that border is still to be decided.

EU: Scandinavian unions object to minimum wage legislation



In a hard-hitting [article](#) in the *EU Observer*, the leaders of the Scandinavian trade unions have set out clearly their objections to the proposed EU Directive on Minimum Wages.

The unions leaders say that while they share the view that “wages are too low in many parts of Europe” they believe that “EU legislation on pay would not only be in breach of the treaty, but would also interfere with well-functioning labour market models.” They say, bluntly, that “it is our firm position that the EU lacks competence to legislate on issues regarding pay.

Pay is - just like the right of association, the right to strike or the right to impose lockouts - explicitly exempted from EU legislation, according to [Article 153\(5\) in the treaty](#) and related ECJ rulings.

If the Scandinavian trade unions are opposed to the proposed legislation then so also, in all likelihood, will the Scandinavian governments oppose the measure. This could mean that the Commission will struggle to get the legislation through the Council of Ministers.

Germany: Mandatory quota for women on corporate boards



According to press reports, the parties in the German coalition government have agreed to introduce a mandatory quota for women in the senior management of listed German companies. Franziska Giffey, minister for families and women, called the deal a historic breakthrough. “We are putting an end to women-free C-suites in big companies,” she said, adding that moves to encourage businesses to hire more female executives on a voluntary basis had failed. Under a deal

agreed by the Christian Democrats and the Social Democrats, management boards with more than three members must in future include at least one woman.

The *Financial Times* suggests that Germany's "business groups will be dismayed at the deal. They had argued that a quota represented unwarranted interference in the internal affairs of companies, and that there was a dearth of suitable female candidates for senior management roles."

Women make up only 12.8 per cent of management boards of German companies listed on the blue-chip Dax index, a recent survey by the Swedish-German AllBright Foundation found. The proportion of women in leadership roles is 28.6 per cent in the US, 24.9 per cent in Sweden and 24.5 per cent in the UK. Yet the survey found German C-suites had become more male-dominated recently with the number of women in senior executive posts falling to 23 at the start of September, from 29 a year before.

The CDU/CSU and SPD agreement also dictates that 30 per cent of the seats on the supervisory boards of companies in which the government holds a majority stake must be set aside for women.

UK: High Court rules *workers* be protected from health & safety detriment



[Shalina Crossley](#) from [Lewis Silkin LLP](#) writes: The UK has failed to properly implement EU health and safety law by restricting protection from detriment on health and safety grounds to "employees", the High Court has ruled in a recent case. The extension of such protection to the broader category of "workers" potentially increases employers' exposure to Covid-related health and safety claims.

How did this case arise?

The Independent Workers' Union of Great Britain (IWGB) has around 5,000 members who are mainly lower-paid workers, including many working in the "gig economy". Between March and May 2020, the union's legal department received a large number of queries regarding Covid-19 issues, such as a lack of Personal Protective Equipment (PPE) and failure to implement social distancing, which indicated that members were scared by having to work without the health and safety protection they considered they needed.

The IWGB brought an application for judicial review in the High Court (HC), seeking a declaration that the UK had failed properly to implement into national law two EU Directives dating back to 1989.

Read the full [article](#) here.

Brexit: Growing the UK customs sector – in Romania



According to [Bloomberg, UK](#) companies are creating jobs in countries including Romania and India as they turn to cheaper overseas labour to complete their post-Brexit customs paperwork.

The Bloomberg report quotes Dave Gladen, group marketing manager at Xpediator, a company which handles freight flows for international firms, as saying that Romania has broad expertise in EU customs rules because the country only joined the bloc in 2007.

“It’s allowed us to get some great expertise, and obviously there’s a lower cost,” he said, adding “Salaries for customs clearance representatives in the UK have just escalated crazily.” Grant Liddell, business development director at Metro, which moves goods for UK retailers and automotive companies, observed a shortage of trained staff in Britain. “There’s nowhere near enough skill-set here to cover it,” he said.

Meanwhile, last Tuesday saw thousands of lorries backed-up on the M20, the UK motorway that leads to Dover port and the Eurotunnel, as French authorities tested Channel Tunnel border controls they say will be in place after January 1 next. New border controls will come into force whether or not there is a deal between the UK and the EU.



As we write this newsletter Brexit talks between the UK and the EU continue. As always, the main roadblocks to a deal are fishing rights for EU boats in UK waters after January 1 and the reluctance of the UK to commit to a “level playing field” with the EU on social, labour and environmental standards.

As noted in our piece on the new UCL report on data, UK prime minister, Boris Johnson, sees Brexit as an opportunity for the UK to depart from EU regulations across a range of policy areas.

France: Court blocks takeover over lack of worker information and consultation



Last week, November 19, the Paris Court of Appeal confirmed that the proposed takeover by Veolia of Suez remained blocked because Veolia had not given sufficient information to Suez to allow it to inform and consult its works councils, as required by French law.

Suez management, which is opposed to the hostile takeover, said that the effects of Veolia's purchase of a 29.9% stake in Suez's share capital remained suspended pending the completion of an employee consultation, which can run up to four months. Veolia has acquired its stake in Suez from the energy company Engie SA.

Since no consultation had been carried out before the deal was finalized on Oct. 5, the effects of the sale remain suspended until the consultation had been completed, according to the ruling, Suez said.

"At this stage, Suez management still has not received from either Engie or Veolia all the necessary elements to respond precisely to employees' legitimate concerns regarding their future," the company said.

For its part, Veolia said in a statement that it would recover all rights in Suez resulting from the purchase by February 5 at the latest, three months after a date when, according to Veolia, Suez announced the beginning of the consultation. Suez contests that Veolia will recover its rights on that date and argues that the starting date for the consultation hasn't been fixed.

Marie-Noel Lopez of [Planet Labor](#) notes the consequences of the Paris court’s decision:

The decision asserts that the employer responsibility for informing and consulting employee representatives remains, even in cases where a decision involves third-party companies. Third party companies are therefore also accountable for complying with this requirement, by having to provide the necessary information.

As such, these third-party companies may suffer consequences in so far as a judge can order a suspension of a corporate operation until such time that the information and consultation procedures have been completed.

The court also ruled that the Suez representative bodies should have been involved from the moment the shares were sold, given that public statements from Veolia clearly intimated that this 29.9% acquisition was just a first step towards a full takeover bid that would in turn lead to a major industrial operation.

The full corporate project thus appeared to be effectively and sufficiently complete for it to be submitted to the relevant employee bodies for their opinion.

Remote Working: Google staff are 'more productive working from home'



Ruth Porat, Google's chief financial officer, has said there had been a 'productivity lift' since the company started sending workers home. She said Google was in no rush to open offices again because "working from home is working" and "there is a productivity lift from not needing to come into the office."

She further observed at the *New York Times DealBook* conference: "There is a range of what people are hoping for in this new normal and our expectation on returning to the office - which is frankly substantially more complicated than everyone home - is that we will end up in a hybrid environment with some in the office and some at home."

Social media: Where have all the "pop-up" protests gone?

Over the past couple of years you could barely open a newspaper or click on a news website without reading about an employee driven "pop-up" protest, organised through social media, and protesting the company's human resource or labour policy, its political affiliations, or whom it was selling to and doing business with.



Have these protests had any lasting impact?

- *Maybe at the margins, but they did not move the dial on the really big-ticket items.*

Have any of the companies that were protested changed in any significant way?

- *Well, the answer is "no".*

This is the key takeaway from this [article](#) *What's next for the tech workers movement?* Why, because, as the article describes it, pop-up protests lack staying power, lack organisation. They provide an emotionally satisfying moment for those involved, the camaraderie of the crowd, but the protest ends when the crowd dissolves, lingering on only in social media exchanges, the converted talking to the converted.

The authors hope that the "tech workers movement" can move on, get a structure in place, build an organising infrastructure. In truth, there is little evidence that this will happen anytime soon.

BEERG Bytes: Like a BEERG meeting... but online and byte-sized



Our BEERG Byte #17 discussion on Brexit with Baroness Margaret Ritchie an independent member of the House of Lords and a former Northern Ireland MP and NI Executive Minister was uploaded to the website last week

Margaret has been involved in securing several amendments to the UK's Internal Market Bill during its passage through the House of Lords. Margaret will talk about Brexit and how she sees events panning out over the coming weeks. late last week.

It brings to 17 the number of BEERG Bytes episodes online*. You can access these as video or audio only files on the website. Go to www.beerg.com/beergbytes to view episodes. We also have selected episodes available as Podcasts to download from [Spotify](#), Google Podcasts etc (Search for *BEERG Bytes*).

* You need a password to view *BEERG member only* broadcasts, this is available from [Tom Hayes](#).

THE BEERG AGENDA:

BEERG Online Training 2020: Introduction to EWCs – Oct/Nov on www.beerg.com

You can still view our 2020 online training programme: **An Introduction to European Works Councils** on the BEERG website. It is available on request to BEERG members (via password), but it will be offline from December 2nd 2020. Course attendees can access the 5 videocasts, 5 sets of slides (pdf) and 5 audiocasts. The five modules are:

PP1 EWCs and the Special Negotiating Process

PP2 The Subsidiary Requirements

PP3 Information and Consultation in detail

PP4 The rest – training, confidentiality, etc.

PP5 And finally, Brexit and EWCs.



The five videocasts are password protected and only available to BEERG member companies via a non-indexed page on BEERG's website.

There is a BEERG webcast on EWC issues on Tuesday December 1st at 1700H CET (Paris time).

To register for the December 1st webcast and/or submit questions, email: tom.hayes@beerg.com
A Zoom link for the call, with instructions, will be sent to registered attendees tomorrow (Friday Nov 27th). Register ASAP to book your place on the call.

Registered attendees of the EWC programme are invited to participate fully in the call. You can submit questions/issues for the Q+A session in advance by emailing Tom.

All BEERG 2020 physical meetings are cancelled:

TBC BEERG 2021 Dates for your Diary:
Events are subject to confirmation

Date	Event	Venue
TBA	BEERG Members' Network Meeting	TBC
TBA	BEERG Training Programme	TBC