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## Gig Economy: UK Supreme Court rules Uber drivers are “workers”



Friday, February 19, the UK Supreme Court ruled that Uber drivers were “workers”, a classification between “employees” and “self-employed”, unique to the UK. It entitles the “workers” concerned to the national minimum wage, holiday pay and some other rights that fall short of the full basket of entitlements that comes with employee status. (See [here](#) from the New York Times).

In a key passage in the [judgment](#), Lord George Leggatt said:

*“Drivers are in a position of subordination and dependency in relation to Uber such that they have little or no ability to improve their economic position through professional or entrepreneurial skill ... In practice, the only way in which they can increase their earnings is by working longer hours while constantly meeting Uber’s measures of performance.”*

The Court held the drivers are “working” from the moment they logon to the Uber App, and not just when they are actually driving a fare. In other words, waiting time on the App is to be considered as working time.

Uber said the decision does not automatically reclassify all its UK drivers as “workers” and noted that since the case was filed it has added driver benefits such as insurance for sickness and injury. “We are committed to doing more and will now consult with every active driver across the UK to understand the changes they want to see,” said Jamie Heywood, Uber’s regional chief for Northern and Eastern Europe.

The SC also held that it is the duty of courts to look beyond contracts of employment to the reality of the relationship to ensure that the intention of the legislators to protect employees was not circumvented by

contracts imposed on employees by employers because of an imbalance in bargaining power. In the UK this means that the ruling could potentially have consequences beyond the platform economy and impact businesses which make use of significant numbers of contractor associates.

- *For a comprehensive overview of the judgement see this paper from David Hopper of Lewis Silkin.* <https://www.lewissilkin.com/en/insights/supreme-court-confirms-that-uber-drivers-are-workers>
- *See also this from the House of Commons Library:* <https://commonslibrary.parliament.uk/uber-at-the-supreme-court-who-is-a-worker/>

## EU: Commission consults social partners on platform workers

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The European Commission has kick-started the [first-phase consultation of social partners](#) on how to improve the working conditions for people working through digital labour platforms. The Commission says it has identified the following areas in which measures to tackle the challenges posed by platform work could be envisaged:



- *employment status;*
- *working conditions;*
- *access to social protection;*
- *access to collective representation and bargaining;*
- *cross-border dimension of platform work (including social security contributions and tax collection);*
- *algorithmic management;*
- *training and professional opportunities for people working through platforms.*

In a section that will catch the attention of most BEERG/HR Policy members, the Commission says that these:

*... challenges are not necessarily specific to platform work. The question of correct employment status classification, access to collective bargaining or access to social protection is relevant also to some self-employed and other types of non-standard forms of employment in the 'traditional' economy.*

As was already made clear in a note earlier this year on collective bargaining rights for platform workers, the Commission thinks that legislation on the working conditions and collective bargaining rights of “solo self-employed” workers, such as IT contract workers, also needs attention.

The Commission notes that the upside of platform work which “is developing rapidly in the EU across a growing number of business sectors”, is that it can “offer increased flexibility, job opportunities and additional revenue, including for people who might find it more difficult to enter the traditional labour market.”

Set against that, it says that “certain types of platform work” are also associated with “precarious working conditions, reflected in the lack of transparency and predictability of contractual arrangements, health and safety challenges, and insufficient access to social protection.”

Additional challenges related to platform work include its cross-border dimension and the issue of algorithmic management are also highlighted.

The purpose of this first-stage consultation of social partners is to invite the views of European social partners on the need and direction of possible EU action to improve the working conditions in platform work. The consultation will be open for at least six weeks.

*We will be looking at this issue in more detail over the coming weeks.*

## Gig Economy: New Dutch ruling - and Spain to legislate

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On Wednesday of last week, a court in the Netherlands ruled against Deliveroo and held that its couriers are employees. In a case brought by the FNV union confederation, Amsterdam's Court of Appeals [ruled](#) that Deliveroo's food delivery riders are employees and must be treated as such.

That was the third major court defeat suffered by Deliveroo in the past two months. In [Spain](#), Deliveroo is to pay 1.3 million euros in social contributions following a Barcelona Court ruling establishing that 748 Deliveroo's riders were falsely self-employed. In [Italy](#), the Court of Bologna ruled in favour of a complaint about the fact that Deliveroo's algorithm, Frank, discriminated against workers' and restricted their access to working slots following absences for strike, or for health or care reasons.

Reports from Spain suggest that the government is preparing labour law changes that could mean food delivery apps such as Uber Eats and Deliveroo must formally employ the couriers they rely on. The rules would mean the offer of wages, social security and unemployment benefits to 30,000 platform couriers working in Spain, a labour ministry spokesperson said. [Bloomberg](#)

## Spain: Obligation to discuss equality plans with external unions is challenged

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Last January, new Spanish legislation requiring companies to negotiate plans to ensure greater equality between men and women came into force. The legislation envisages a two-stage process. First, a diagnosis of the actual, comparative situation of men and women in the company. Second, the development of a plan to eliminate differences.

The legislation envisages that the two-stage process is completed through discussions between management and employees' representatives, with both sides being assisted by experts, if appropriate. If there are no internal employees' representatives then management is obliged to contact the most representative external union for their business sector and invite the union to send officials to engage with management on the equality plan.

As discussed during the recent BEERG web meeting ([link](#)) on the issue, this requirement to contact external unions with no members in the company raises a number of questions. For example, what business sector is the company considered to be part of and which is the most representative union? What happens if there is no recognised sector? Further, how can external union representatives with no knowledge of the company properly engage?

Now, according to the Spanish financial newspaper, *Expansion*, CEOE, the main Spanish employers' association, has initiated legal action to protest what it sees as the "imposition" of the CC.OO and UGT, the

two most representative union federations, on companies whose employees are not members of these union. However, this action does not “freeze” the obligation on companies to develop equality plans and companies still need to work to the timetable set out in the legislation.

## Remote working: ...meets the gig economy

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It was inevitable that the move to Working from Home/Remote Work (WFH/RW) necessitated by Covid19 but now increasingly seen as part of the future employment model would lead businesses to question from where such remote work could be done, who should do it, and whether those doing it needed to be employees.

Now, a new [report](#) from PwC – “*Productivity 2021 and beyond: Upskilling the workforce of the future to create a competitive advantage in financial services*” confirms what many suspected and others feared, that WFH/RM will result in a significant switch from permanent employment to contract and gig-based work over the next three to five years.

PwC’s research on productivity, which surveyed over 500 financial services businesses globally, and received over 60% of responses from C-suite leaders, looked at some key work streams implemented by financial services businesses and “evaluated its impact on productivity”.

The report states that upskilling of the workforce is a “key element” to improving productivity within financial services. This includes better understanding of the workforce, embracing the platform economy and gig workers, and making sure employees are equipped with the right digital tools, specialist knowledge and soft skills to navigate in the new normal of the business world.

It found that despite increasingly available on-demand talent, most institutions still rely primarily on full-time and part-time employees. Among respondents, contractors comprise just 9% of the workforce, and gig-economy talent makes up just 5%. PwC believes that gig economy employees will likely perform 15% to 20% of the work of a typical institution within five years, driven by continuous cost pressure and the need to access digitally skilled talent.

Beyond the gig-economy, crowd-sourcing solutions were also highlighted as a key contributor to improve productivity. Crowd-sourcing has more than doubled since 2018, cited by 50% of the survey’s participants, from 21% in the first survey, of which 80% of respondents who leveraged crowd-sourcing believed it added ‘high value’ to their organisations. This is a significant increase from just 39% who felt it would add value in 2018.

John Garvey, PwC’s Global Financial Services Leader, PwC US, said: “Leaders in the industry are looking seriously at their workforces to evaluate which roles need to be performed by permanent employees and which can be performed by gig-economy workers, contractors or even crowd-sourced on a case-by-case basis.

“Covid19 and remote working have opened the door to accessing talent outside of a firm’s physical location, including outside of the country. What we are seeing now is a talent marketplace for gig workers in financial services, competing to take advantage of their specialist skill set and boost productivity within their businesses.”

Meanwhile, [Research](#) from Ricoh Europe found that a third (31%) of European office workers struggled to feel motivated and engaged due to communication and tech problems during the pandemic, while two-thirds (65%) say they miss working with colleagues face-to-face.

The French newspaper [Le Figaro reports](#) on a hearing in the French Senate where fears were expressed that a switch to WFH/RM could disadvantage older-workers because they “struggle” with technology. I’m not sure this is true. I’ve recently mastered using the fax. Unfortunately, no one else seems to have such an advanced machine so I can’t send any faxes. Ah well, the trials of being a trend-setter. TH



- *Here’s a [piece](#) on what the future holds for big, downtown office buildings and why converting them to apartments is not as easy as people think.*
- *But this from [Wired](#) says “Big Tech” will not be letting go of their trademark buildings anytime soon.*

## Brexit: UK data adequacy decision published

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As presaged in last week’s newsletter, the EU Commission has now published two draft adequacy decisions for transfers of personal data to the UK, one under the GDPR and the other for the Law Enforcement Directive. The proposed decision will be welcomed by businesses which would have been badly hit by the imposition of a “data border” between the EU and the UK. [here](#)

*"The UK has left the EU, but not the European privacy family. At the same time, we should ensure that our decision will stand the test of time," said Věra Jourová, Vice-President for Values and Transparency*

However, it needs to be kept in mind that the European Court of Justice decided in Schrems I and Schrems II that national security laws in the United States are in violation of European privacy standards and struck down “Safe Harbour” and “Privacy Shield”.

For the UK, the Commission assessed that country's [Investigatory Powers Act](#) which contains extensive powers including the ability to carry out bulk data surveillance and concluded that these powers were satisfactorily controlled by UK law and Britain's adherence to the European Convention of Human Rights.

[Max Schrems](#), an Austrian lawyer and activist who led the fight against the EU's data arrangements with the US, tweeted that there were issues with the UK proposal on security that will require "deep analysis". Many data privacy activists consider that the UK’s security laws are more pervasive and intrusive than those of the US. An early legal challenge to a UK data adequacy decision cannot be ruled out. **Watch this space.**

## Announcement: Oneida merges with Oasys

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Our good friend, Philippe Grabli of Oneida Associates tells us that Oneida has joined forces with Oasys Consultants to create OASYS & Cie, a consulting group which will facilitate high, social stake, transformation projects.

The merger brings together Oasys Consultants, a multidisciplinary consulting firm specializing in supporting managerial and professional transitions, and Oneida Associés, a consulting firm focused on the implementation of socially sensitive transformation plans, to create a leading consultancy company in its field. The group brings together more than 150 consultants in addition to a network of partners in France and abroad, with a combined turnover of €40million in 2020.

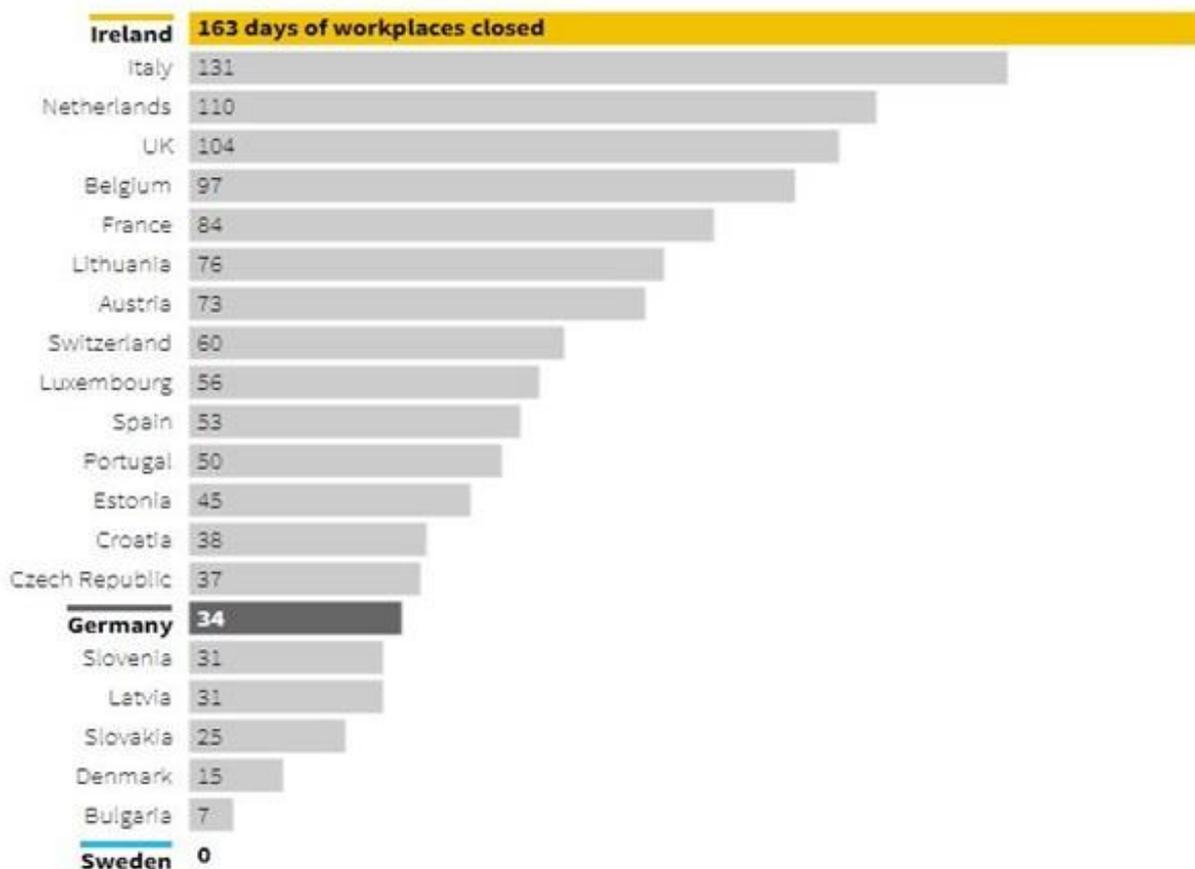
For more information, see [www.oasys-et-compagnie.com](http://www.oasys-et-compagnie.com) or email Philippe ([pgrabli@oneida-associes.com](mailto:pgrabli@oneida-associes.com)) and he will send you on more details. We have worked with Phillipe extensively over the years and he has been a regular at BEERG meetings and training events. We wish Philippe and his colleagues every success as they expand what was already a most impressive offering.

## Covid-19: European surveys show increasing pessimism about the future

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 **REUTERS GRAPHICS** [Reuters Graphics](#) has produced a fascinating [online analysis](#) of data gathered from recent European household surveys. These surveys measured expectations for the economy and for household finances in the coming year. The analysis shows that Europeans are saving more and growing increasingly pessimistic about the future, especially in countries hardest-hit by Covid-19 such as Spain and Italy. Only one country bucks the trend: Sweden. It appears to have escaped the wave of pessimism.

Reuters analysis paper features a number of useful charts, including this one which shows the number of calendar days of workplace closures due to strict Covid-19 lockdowns with Ireland topping the table. Countries such as Romania, Poland, Norway, Malta, Iceland, Hungary, Greece and Finland never closed workplaces. [Source: Oxford Coronavirus Government Response Tracker]



MEANWHILE the European Foundation for Working and Living (Eurofound) is conducting its [latest survey](#) charting how the economic and social impact of pandemic is affecting people. To capture new developments, the latest round of the Eurofound's regular survey includes questions on what people think about the vaccination programmes and the quality and use of public services in pandemic times. The survey is due to conclude in March.

## BEERG Bytes: BEERG Bytes on Podcast and meeting now online

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You will be able to access the video from the latest BEERG “After Uber” – *Where Now for Platform and Contract Workers* online meeting at [www.beerg.com/call-notes](http://www.beerg.com/call-notes) from midday on Friday. The video will be password protected. You can request a password by emailing: [dmooney@beerg.com](mailto:dmooney@beerg.com)

The most recent BEERG Byte (#19) along with several other BEERG Bytes from 2020 are available online at [www.beerg.com/beergbytes](http://www.beerg.com/beergbytes) and also as Podcasts – search for “BEERG Bytes” via your favourite Podcast platform.

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## **BEERG Events in 2021:**

*BEERG meetings and events will be online only up to the start of September 2021. We will revisit this position after June 2021 in the light of the vaccination programme roll-out across Europe and the US and official travel advice.*



### **BEERG Meeting: “After Uber” – Where Now for Platform and Contract Workers?**

*Thur, Feb 25th 17:30h (CET)*

BEERG, along with HR Policy and Lewis Silkin LLP is hosting an online meeting to explore and discuss some current developments.

- *UK Supreme Court rules that Uber drivers were “workers”, entitling the “workers” concerned to the national minimum wage, holiday pay and some other rights that fall short of employee status.*
- *EU Commission has initiated a first-round consultation on improving the working conditions of platform workers.*

The rights of platform economy workers is also a hot topic in the US, with the Biden administration committed to action on the matter and the platform companies suggesting that the way forward should be modelled on the Proposition 22 referendum decision in California.

The meeting will be interactive with all participants having the opportunities to comment and/or ask questions. It will be hosted and moderated by BEERG’s Executive Director Tom Hayes. *Joining Tom will be:*

- *David Hopper from Lewis Silkin LLP*
- *Henry Eickelberg and Greg Hoff from HR Policy Assoc*

**To register for this online meeting e-mail: [dmooney@beerg.com](mailto:dmooney@beerg.com)**

### **TBC BEERG 2021 Dates for your Diary:**

<b>Date</b>	<b>Event</b>	<b>Venue</b>
TBA	BEERG Members’ Network Meeting [Oct]	TBC
TBA	BEERG Training Programme [Oct]	TBC