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Labour Relations Regulation: Some impending developments

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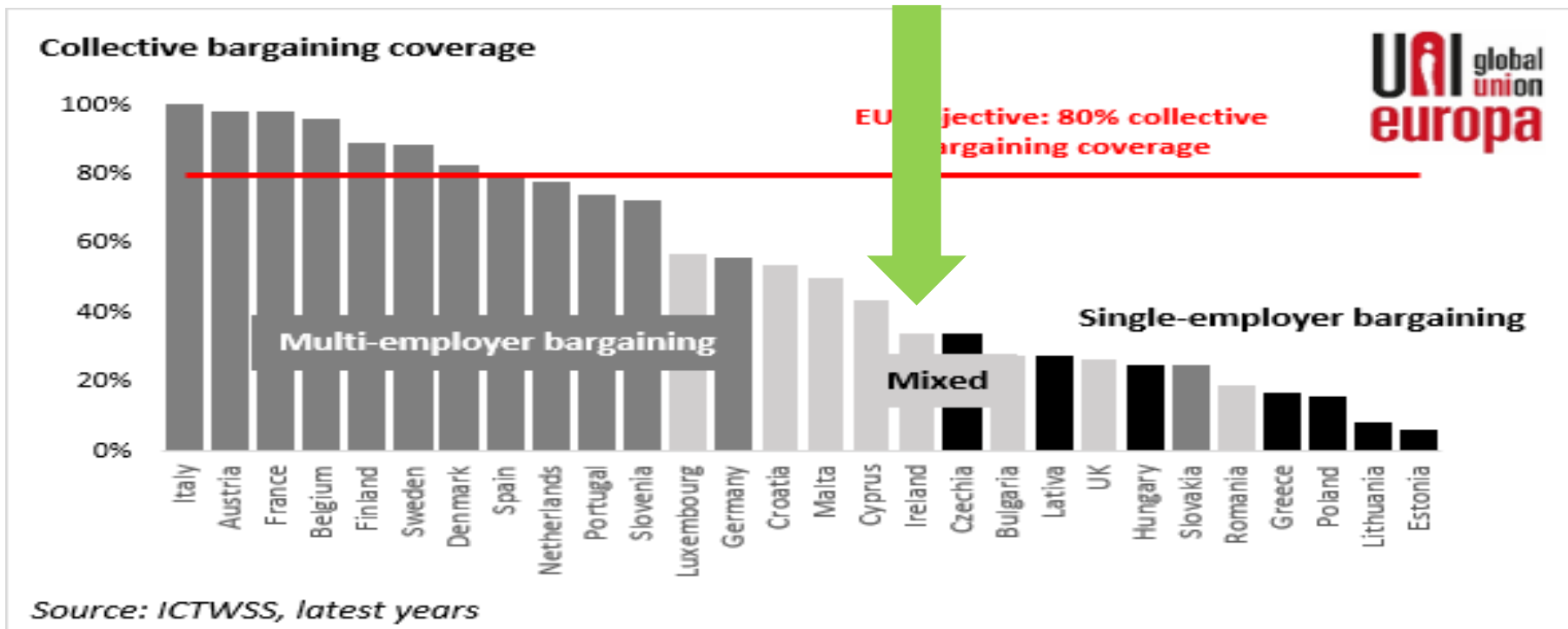
Coming soon

- Adequate Minimum Wage Directive
- Employment Status
- Remote Working



1. Adequate Minimum Wage Directive: The Issue

- Member States with a collective bargaining coverage rate below 80% must adopt 'measures' with a view to enhancing collective bargaining.
- action plans and frameworks to facilitate collective bargaining; subject to ongoing review.



Adequate Minimum Wage Directive: The Issue

- Rec 19: ‘it is essential that the Member States **promote collective bargaining**, facilitate the **exercise of the right of collective bargaining on wage setting** and thereby enhance the wage setting provided by **collective agreements** to improve workers’ minimum wage protection’.
- Rec 18 states that ‘**strong and well-functioning collective bargaining** together with a high coverage of **sectorial or cross-industry collective agreements** strengthen the adequacy and the coverage of **minimum wages**’

Adequate Minimum Wage Directive: What's coming

- Directive must be transposed by Nov 2024
- LEEF High Level Working Group on Collective Bargaining



- Package of recommendations; aim=ensure Ireland is well placed to fulfil upcoming EU law obligations in the context of a genuine tripartite approach
- Improve functioning of Joint Labour Committees
- Proposes a mechanism for Good Faith Engagement at enterprise level (where no collective bargaining takes place)

Adequate Minimum Wage Directive: Some thoughts....

- ‘We’re not in Kansas anymore’ (Danny McCoy, 2023)
-but where are we?
- Recent survey data suggests both a ‘representation gap’and....
- Growing employer interest in ‘non-union bargaining’



Adequate Minimum Wage Directive: Some thoughts....

- Long-term resistance to measures that infringe on employers' right to manage (political; policy; legal)
- International picture post-Covid (e.g ESG)?
- Domestic politics....



2. Employment Status: The Issue

- Employees (subordinated labour)
- Self-employed (autonomous)
- NB access to statutory rights; collective bargaining; tax and social welfare



Non-standard employment relations

- For example....A **platform worker** is a person selected online from a pool of workers through the intermediation of a platform to perform personally on-demand tasks (platform work) for different individuals or companies in exchange for remuneration

upwork™



- but what about.....



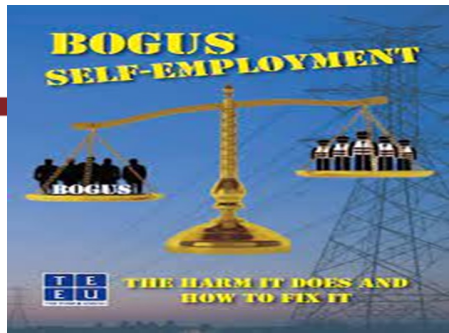
- ... or even....



- <https://evoke.ie/2023/08/18/entertainment/rte-talent-to-face-cuts>

2. Employment Status: What's Coming

- Issue of bogus self-employment is not going away
- A reduction in the differential between **PRSI contributions for employees and the self-employed** has been proposed to ‘reduce the **financial incentive to employers and employees to use self-employment arrangements and intermediary-type structures for the purposes of disguising employment**’ (Department of Finance, 2018)
- **2019: Employment Status Investigation Unit** established by the Department of Employment Affairs and Social Protection



2. Employment Status: What's coming

- **The Domino's case** (*Karshan (Midlands) Ltd, t/a Domino's Pizza v Revenue Commissioners* [2022] IECA 124; [2019] IEHC 894)
- Domino's delivery drivers- employees (for tax assessment purposes) or self-employed?
- Drivers notified Domino's of availability for a given week and managers drew up a roster
- Contracts, however, stated that the company would not guarantee it would use the contractor's (driver's) services at all



2. Employment Status: What's coming

- Tax Appeals Commissioner and High Court both found that the drivers were employees
- Influenced by recent approach of the UK courts/ tribunals: “necessity to adapt to modern means of engaging workers”
- Court of Appeal (2-1) found that they were self-employed
- Focused heavily on the *absence of mutuality of obligation* (there must be an obligation to provide work on one party, and an obligation to perform the work on another party)
- We await the Supreme Court.....



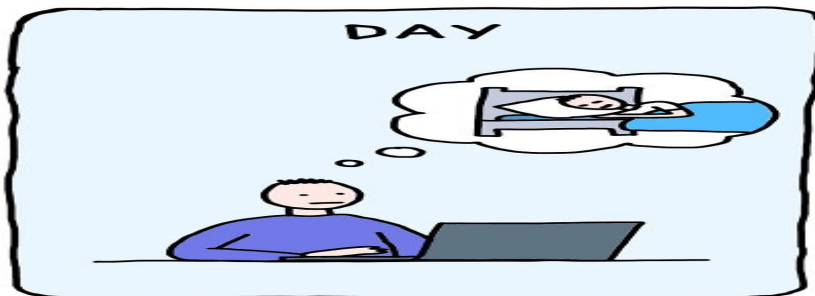
2. Employment Status: What's Coming- Extra toppings

- ...but may not completely resolve tensions...
- Intersection of tax - social welfare - employment rights....different agencies with different perspectives making different decisions
- EU momentum:
 - towards 'presumption of employee status' (at least in employment rights)
 - extending collective bargaining rights for 'economically dependent' workers
- An intermediate category?
- Fundamental reform in tax/ social welfare?



3. Remote Working: The Issue

- It's here to stay...
 - IE experienced a greater increase in remote working during Covid than almost all other EU Member States
 - Benefits to employees (WLB/ housing/ commuting, etc)
 - Benefits to employers (recruitment and retention/ office-space/
- ...isn't it?
 - Employees: Blurring of work-life boundaries / isolation
 - Employers: Concern about oversight/ work culture



3. Remote Working: What's Coming

- *Work Life Balance and Miscellaneous Provisions Act 2023, Part 3-* right to request remote working arrangements
- Employees with at least **six months continuous service** with the employer can make a written request for a remote work arrangement
- Must specify **details** of the proposed arrangement (commencement and, if applicable, expiration dates), the **reasons for the request**, and the proposed **location** of remote work (s.20).



3. Remote Working: What's Coming

- Employers must **consider requests** for remote working arrangements and render a final **written decision** on requests **with reasons** based upon the needs of both parties, no later than four weeks after receipt of requests (s.21).
- Employers must have regard to the **WRC's Code of Practice** as a part of this consideration.



3. Remote Working: Some thoughts

- Already controversial (originally a stand-alone Act; limited right of appeal for employees on procedural grounds only)
- WRC Code of Practice will do much of the heavy lifting on detail (BUT not legally binding)
- Remote work is framed as an **employee benefit** to be granted at employer's discretion; (Mangan and Geary)
 - One-sided dialogue (not consultation)
 - Does not mandate employer policy on the issue

Conclusion

- What links these three things is the digitalisation of work....
-and the need for workers and employers to negotiate change





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Thanks for your attention!

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