EVERSHEDS SUTHERLAND

Keeping up with EU Directives

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Employers, are you ready for the latest developments?

There is currently a myriad of EU Directives being implemented by EU Member States or progressing through the EU legislative process. All employers operating in the EU are likely to need to make at least some changes to their current arrangements to take account of the requirements of those Directives.

Each Directive is at a different stage of progress. When coupled with the different local speeds of implementation and requirements, keeping on top of the developments and planning for local legislative variations can be a significant challenge for employers.

In this briefing, we summarise some of the salient parts of the Directives that may impact employers operating in the EU and suggest some practical tips for employers wanting to keep ahead of the game. We also highlight the potential impact for employers operating outside the EU, provide a tracker of the current status of the Directives and set out how we can help.

Whistleblowing

The Whistleblowing Directive[1] aims to strengthen whistleblower protections by imposing new duties on employers to introduce effective and secure reporting channels, reinforced by significant legal safeguards for whistleblowers.

The Directive extends whistleblower protection to include a much wider group beyond existing workers, including job applicants, former workers, the self-employed, and those working for third parties.

Employers must operate internal whistleblowing channels meeting minimum criteria on diligent investigation and response. This includes a requirement to acknowledge reports within seven days of receipt and provide feedback within three months of the acknowledgement.

The deadline passed for Member States to transpose the Directive into national law on 17 December 2021 and most have now done so, although many missed that deadline. Some Member States who have transposed the Directive have given employers an initial grace period for establishing internal reporting systems, some of which will shortly be coming to an end.

For further details, see our briefing Local implementation of the EU Whistleblowing Directive: Keeping up with latest position.

Three key practical actions for employers to take now:

1. Revisit whistleblowing policies and procedures. A gap analysis against the minimum requirements of the Whistleblowing Directive will identify any changes which will, at a minimum, need to be made to EU-wide policies and procedures.

2. Monitor local implementation and variations. Alongside differences in the timing of implementation, local differences are being seen in the way the Directive is being implemented and penalties for breach. These differences will need to be considered in any updated policies and procedures.

3. Train your teams. Qualifying whistleblowers have enhanced legal protection. Training should ensure that staff understand the importance of whistleblowing procedures and protections and the potential risks of non-compliance.

See **how we can help** below.

Transparent and Predictable Working Conditions

The Directive on transparent and predictable working conditions[2] provides rights for workers to more foreseeable and secure working terms and arrangements.

The Directive's provisions include a right to receive certain written terms within a week of engagement, a limit on the duration of probationary periods, restrictions on the use of exclusivity clauses, and a right to refuse a work assignment outside previously defined reference hours/days without suffering adverse consequences. Additionally, the Directive will introduce an obligation for employers to provide cost-free mandatory training to workers.

Recognising the numerous ways in which workers are now engaged, the Directive seeks to ensure that all categories of workers, whatever the nature of the arrangement, receive certain key information as to their working conditions in writing at the outset of the arrangement and that there exist effective mechanisms in the event of non-compliance.

Although many jurisdictions missed the deadline, Member States had until 1 August 2022 to implement the EU Directive into domestic law.

For further details, see our briefing EU Directive on transparent and predictable working conditions.

Three key practical actions for employers to take now:

1. Review existing standard terms of employment. An updated and more complete information package applies, with additional information required to be given to workers with variable work schedules. Any probationary periods should generally not exceed six months and the use of exclusivity or incompatibility clauses are generally prohibited.

2. Look at existing processes for contract issue and amendments. Most information must now be provided between the first and seventh calendar day of employment. Any variations must be notified to the worker, at the latest, on the day on which the change takes effect.

3. Consider training provision. Employers must provide workers with training free of charge where such training is required under EU law, national legislation or collective agreements. The training should be performed during working hours and count as working time.

See **how we can help** below.

Work-life Balance

Member States had until 2 August 2022 to transpose the provisions of the EU Work-life Balance Directive[3] into national law, although not all Member States met this implementation deadline. The Directive aims to increase the participation of women in the labour market, increase the take-up of family-related leave and flexible working arrangements by men and provide opportunities for workers to be granted leave to care for relatives who need support due to serious medical reasons.

Across the EU, there are a raft of different rights to family-related leave and flexible working. The Directive seeks to provide some consistency in this respect, including by providing for minimum individual rights related to paternity leave, parental leave, carers' leave, and flexible working arrangements for workers who are parents, or carers. It also gives additional legal protection for those applying for or making use of family-related leave and flexible working arrangements.

In their drive for social progress and improved working conditions, many Member States have been enhancing family-related leave for many years. However, further enhancements are still likely to be required in some Member States to ensure that the minimum standards required by the Directive are met. In particular:

- **Paternity leave:** From the first day of employment, fathers or equivalent second parents will have the right to take paternity leave of 10 working days on the birth of a child. Generally, the right is to paid leave (at the national sick pay level), although Member States have the option to make the right to a payment or an allowance subject to periods of previous employment, which must not exceed 6 months immediately prior to the expected date of the child's birth.

- **Parental leave:** Each worker will have an individual right to 4 months paid parental leave, 2 months of which are non-transferable between the parents. At least 2 months of parental leave per parent must be paid "at an adequate level". Again, Member States have the option to make the right to a payment or an allowance subject to periods of previous employment, however for parental leave this can be up to 1 year. Member States must ensure that workers have the right to request that they take parental leave in a flexible way, such as on a part-time basis or in alternating periods of leave separated by periods of work.

- **Carers' leave:** Carers are defined as workers caring for relatives requiring support due to serious medical reasons. Each carer will be entitled to take 5 working days per year.

- **Flexible working arrangements:** Workers with children up to a specified age, but at least 8 years old, and carers have the right to request flexible working arrangements for caring purposes. These arrangements include the use of remote working arrangements, flexible working schedules, or a reduction in working hours. Member States may make the right to request flexible working arrangements subject to a period of work or length of service qualification, which must not exceed 6 months.

Three key practical actions for employers to take now:

1. Revisit family leave, carers leave and flexible working request policies. A gap analysis against the minimum requirements of the Directive will identify any changes which will, at a minimum, need to be made to EU-wide policies and procedures.

2. Review flexible work request processes. Employers must deal with requests within a reasonable period and provide reasons for refusing or postponing such arrangements.

3. Monitor local implementation and variations. The Directive allows flexibility for Member States to decide how to implement the Directive in several respects. As such, variations between Member States are likely.

See **how we can help** below.

Pay transparency

The EU Directive[4] to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms entered into force on 6 June 2023.

Member States have three years to transpose the requirements of the EU Directive into local law, by 7 June 2026.

The Directive lays down several minimum requirements, including a right to certain information on pay at the job application stage and during employment, transparency over the criteria used to determine pay levels and career progression and pay reporting requirements for employers with 100 or more workers. In some circumstances, there will be an obligation to carry out a joint pay assessment with the workers' representatives and develop an action plan. The deadline to comply with the pay reporting requirements and the required frequency of reporting will depend on the number of workers.

Given the scope and content of the matters covered by the EU Directive, it is likely that, even where Member States have existing equal pay and pay gap reporting legislation, national laws will still need changing to reflect the additional or different requirements set by the EU Directive.

For further details, see our Pay Transparency briefing.

Three key practical actions for employers to take now:

1. Develop a strategy to understand current pay practices and identify any pay differentials. Consider what information is already available and the scope of any audit to gain additional information. If an audit is undertaken, consider whether it should be completed subject to legal professional privilege.

2. Start to identify where changes to current policies and processes may need to be made. For example, changes may need to be made to recruitment practices to comply with the pay information requirements at the job application stage, transparency may need to be built into pay and career progression structures and changes may need to be made to any existing pay reporting.

3. Monitor the progress of the local implementation of the Directive. Given the scope for local enhancements to the requirements, national adjustments are possible.

See **how we can help** below.

Platform workers

Digital labour platforms (often referred to as the 'gig' or 'platform' economy) have become an increasingly prominent feature of the newly emerging social and economic landscape, with the number and size of labour platforms constantly growing. Estimates of revenues in the digital labour platform economy in the EU vary, but some put this at over 500% growth in the last five years, with around 30 million people working through such platforms.

Digital labour platforms often classify people working through them as self-employed. Although some digital platforms are starting to put in place certain benefits packages for self-employed platform workers, it is often the case that self-employed status results in workers being denied such benefits and key statutory rights. This means that such workers do not receive the minimum wage, collective bargaining rights, working time and health and safety protection, the right to paid leave or access to protection against work accidents, unemployment and sickness benefits, as well as pension rights.

In December 2021, the European Commission proposed a set of measures to improve the working conditions of platform workers and to support the sustainable growth of digital labour platforms in the EU. The proposed Directive has now been adopted by the European Parliament and will come into force shortly. Once in force, Member States will have two years to transpose it into national laws. The Directive[5] regulates the rights of individuals working via digital labour platforms (DLPs) for the first time, including a rebuttable presumption of employment status in certain circumstances. The Directive also seeks to strengthen controls and transparency over the algorithmic management (i.e., automated systems that support or replace managerial functions at work) that is often intrinsic to the organisation of work via DLPs. In addition, the EU Directive includes measures to encourage social dialogue and transparency around the introduction and use of automated monitoring or decision-making systems, as well as introducing new reporting obligations to authorities for DLPs.

In relation to status, Member States will be under an obligation to have *"appropriate and effective procedures in place to verify and ensure the correct determination of the employment status of persons performing platform work"*, including the creation of a rebuttable legal presumption of the existence of an employment relationship where facts indicate *"control and direction, according to national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice"*. DLPs can contest that presumed status but would then have the burden of demonstrating that the presumed status is incorrect

Three key practical actions for platform business employers to take now:

1. Assess the Directive for impact on current business models. Some companies may have to reclassify the status of some of their workers, with a consequent impact on their people models and strategies.

2. Review current automated decision-making processes. Considerations should include the current level of transparency around the use of algorithms and whether workers have the right to contest automated decisions.

3. Monitor the transposition of the Directive into national laws. Once the Directive is in force, Member States will have two years to transpose it into local laws. It is likely that new local guidance will also be issued.

For further details, see our briefing Significant EU development on platform workers.

Gender balance on company boards

Progress on gender diversity on company boards has been slow across the EU, with many Member States still having less than 25% of women represented on the boards of many of the largest listed companies.

The EU has now agreed a new Directive[6], which must be implemented by Member States by 28 December 2024. With effect from 30 June 2026, listed companies should aim to have at least 40% of their non-executive director positions held by members of the "under-represented sex" (usually women). If it is decided to apply the new rules to both executive and non-executive directors (it should be noted that this is a decision for Member States, not employers), the target is 33% of all director positions.

If companies cannot reach the targets, they must put in place transparent procedures for the selection and appointment of board members designed to rectify the situation – such as a comparative assessment of the different candidates based on clear and neutrally formulated criteria.

Member States will also have to ensure that companies give priority to candidates of the under-represented sex when choosing between candidates who are equally qualified in terms of suitability, competence and professional performance.

The EU will not set out sanctions, leaving it to the Member States to ensure "effective, proportionate and dissuasive" remedies in the event of non-compliance.

For further details, see our briefing Gender balance in the boardroom: New EU law approved.

Three key practical actions for employers to take now:

1. Plan ahead to drive forward a cultural shift. In light of the track record of slow progress to date, it is likely that a cultural shift will be needed in many Member States and organizations to ensure a smooth transition to the new requirements.

2. Think about recruitment. Companies should have in place transparent and fair senior recruitment processes.Such processes may need to include giving priority to candidates of an under-represented sex when choosing between equally qualified candidates.

3. Prepare for disclosure, including annual reporting. For some companies, responding to candidates' requests for appointment process information, as well as annual reporting on progress and measures taken, will require planning and attention. Given the recent focus given to diversity data as part of ESG reporting, we expect annual progress against gender boardroom targets to become a key ESG reporting measure.

4. Monitor the implementation progress of the Directive. Given the scope for local tailoring, national adjustments are possible. For example, which target is chosen (the 40% for non-executives or 33% for all directors) and whether a MS has, before the entry into force of the Directive, either achieved progress coming close to the targets or put in place equally effective legislation, allowing it to suspend parts of the Directive.

See **how we can help** below.

Minimum wage

Failure to pay the appropriate minimum wage rate, whatever the reason, can lead to public embarrassment, time and expense in responding to enforcement action, and penalties. With the growing focus on ESG factors, minimum wage breaches can have repercussions amongst investors and other stakeholders.

A new Directive[7] on minimum wages aims to create a framework to improve the adequacy of minimum wages and increase the access of workers to minimum wage protection in the EU. It seeks to do this in three ways: through improved adequacy of statutory minimum wages (where they exist); the promotion of collective bargaining in all Member States; and through better enforcement and monitoring.

The Directive does not seek to harmonise the level of minimum wages across the EU, nor to establish a uniform mechanism for setting minimum wages. Instead, Member States with statutory minimum wages will be required to put in place certain controls for adequate statutory minimum wages, including setting clear and stable criteria, providing for regular and timely updates, and effective involvement of social partners. The Directive also aims to improve adequacy by limiting the use of variations to statutory minimum wages for specific groups and deductions from remuneration.

Recognising that compliance and effective enforcement are essential for workers to benefit from access to minimum wage protection, the Directive provides for improved enforcement and monitoring in all Member States. Member States will need to report their national minimum wage protection data each year.

Three key practical actions for employers to take now:

1. Audit pay arrangements to check for minimum wage compliance. Identify when and how to apply the minimum wage requirements in the operating locations and the minimum wage responsibilities.

2. Risk-proof processes. Understand how to protect against errors and to address allegations of underpayment.Once the Directive is implemented, employers should anticipate greater scrutiny of arrangements to check for compliance and heightened enforcement activity.

3. Monitor the progress of local implementation of the Directive. The requirements may shift as it is implemented locally.

See **how we can help** below.

Corporate sustainability due diligence and reporting

Recognising that identifying adverse human rights and environmental impacts in operations and supply chains is key to fostering sustainable and responsible corporate behaviour, a new corporate sustainability due diligence Directive[8] is now in force.

Hailing it as a landmark text with the EU doing their bit to *"ensure no products on the market come at the cost of human lives and environmental destruction"*, companies that meet certain thresholds must conduct due diligence to identify, prevent, and mitigate adverse human rights and environmental impacts across their operations and chain of activities (upstream and downstream) using a risk based approach. This includes using their influence to promote environmental sustainability, improve standards of living and support their SME partners; integrating due diligence into company policy; implementing risk

management systems; producing climate transition plans; being responsible for harms caused and remediating them; engaging with their stakeholders and affected communities; implementing grievance mechanisms; and ensuring the effectiveness of such measures through monitoring and reporting.

The CSDDD's scope targets EU companies with over 1000 employees and an annual net turnover exceeding €450 million and non-EU companies with a net turnover of more than €450 million in the EU. The conditions must occur in two consecutive financial years.

The transposition periods following the CSDDD coming into force are staggered depending on whether the company is an EU company or a non-EU company (including ultimate parent companies of a group) and the size of the company in terms of employee numbers and net Union turnover.

In addition, a corporate sustainability reporting Directive[9]starts to apply from 2024 with a phased implementation. It aims to make EU companies more accountable by requiring a greater number of them to disclose mandatory information on environmental, social affairs and governance (ESG) matters. It amends the EU Non-Financial Reporting Directive (NFRD) and will bring a much greater number of EU companies in scope to report in their management reports both information regarding the environmental impact of significant aspects of the business and social measures, including detailed reporting requirements on workforce matters and on human rights in the value chain. The rules will start to apply between 2024 and 2028. EU Sustainability Reporting Standards, which specify the sustainability information that should be disclosed in accordance with the Directive, have been developed and will be in force after a short consultation.

For further details, see our briefings: EU Corporate Sustainability Due Diligence law would apply to non-EU companies; EU Parliament adopts new sustainability reporting rules; Significant changes in companies' workforce and human rights reporting: new EU legislation; EU Corporate Sustainability Reporting Directive, EU: Update on Corporate Sustainability and EU: A harmonised approach to corporate sustainability

Three key practical actions for employers to take now:

1. Monitor the progress of the Directives and Standards. Additional guidance will be issued to assist companies with their obligations. For example, the EU Commission is expected to publish standards (which the European Financial Reporting Advisory Group is responsible for developing) to assist firms with their sustainability reporting, which will include further detail on content, a format for reporting to ensure consistency of approach, and sector specific requirements.

2. Start to identify where changes to current processes and documents may need to be made. Understanding current practices will be key. Reviews should include considering existing policies, procurement and operational procedures, contract terms, codes of conduct, due diligence processes, staff training, ethics programmes, and reporting.

3. Consider additional training and resourcing. Once the Directives are in force and local implementing legislation starts to be seen, additional training is likely to be required to ensure that staff are aware of and can effectively implement the new requirements.

See **how we can help** below.

AI Act and EU AI Liability Directive

The AI Act, which will start applying on 2 August 2026, with some exceptions, adopts a risk-based approach to the use of Artificial Intelligence (AI). AI in the employment context is deemed high risk if it is used in the following cases:

- recruitment or selection of candidates
- evaluating candidates
- hiring, promotion and termination decisions
- task allocation based on individual behaviour, or personal traits or characteristics
- performance management

In such cases, increased governance is applied, meaning that those within the scope of the Act (which includes a wide scope of providers and deployers/users and will, in some cases, include those based outside the EU) who are using AI for such activities must comply with a higher set of requirements. This includes robust principles around data governance, technical documentation and record-keeping, transparency and human oversight. Sanctions for non-compliance will be substantial, with fines of up to 7% of the global annual turnover for violations of banned AI applications, up to 3% for violations of other obligations and up to 1.5% for supplying incorrect information.

For further information in relation to AI in employment, see our AI at work briefing and our Global AI at work - Regulating responsible AI use briefing.

European Works Councils Directive

In January 2024, the EU Commission proposed a revision of the existing European Works Councils Directive.

European Works Councils (EWCs) are social dialogue bodies which provide a framework for employees to be informed and consulted on transnational issues. They concern companies with at least 1,000 employees within the EU or European Economic Area and at least 150 employees in each of at least two Member States.

The current Works Councils Directive outlines the processes for creating EWCs and for informing and consulting them on transnational matters. The proposed revisions aim to improve the effectiveness of the Directive, including a focus on how non-compliance is enforced in Member States. They also aim to strengthen the gender balance of EWCs by requiring that whenever an EWC agreement is negotiated or renegotiated, provisions are put in place for attaining, as far as possible, a gender-balanced composition.

For further details, see our briefing EU acts to strengthen European Works Councils Directive.

Impact outside the EU

Countries outside the EU will not be required to implement the EU Directives. Except for some corporate sustainability due diligence and reporting requirements, non-EU companies are therefore unlikely to be directly impacted by the Directives.

However, the implementation of the Directives across the EU, will result in the position of other countries being out of kilter with the EU Member States. Businesses with European operations looking for

consistency of approach to arrangements with workers may therefore seek to “level-up” obligations across all operations, resulting in changes to non-EU practices.

Directive status tracker

As the EU continues to promote social progress, seeks to improve living and working conditions and strives to meet the ambitious targets set out in the European Pillar of Social Rights action plan, several EU Directives continue to progress to support those broad aims.

Our tracker below sets out the current status of the various employment-related Directives.

Directive	Current status
Whistleblowing Directive	In force. Local implementation deadline: 17 December 2021. Laws to implement locally have now been adopted in all 27 EU Member states
Directive on transparent and predictable working conditions	In force. Local implementation deadline: 1 August 2022.
Work-life Balance Directive	In force. Local implementation deadline: 2 August 2022.
Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms	In force. The Directive entered into force on 6 June 2023. Member States have three years to transpose its provisions into national law, by 7 June 2026.
Directive to improve the working conditions of platform workers and to support the sustainable growth of digital labour platforms	Pending. The proposed Directive is currently going through the EU’s ordinary legislative procedure and was formally adopted by the EU Parliament on 24 April 2024. The text of the Directive will next undergo lawyer-linguist revision before the final text is formally adopted by the Council. Once it is published in the Official Journal of the European Union, it will enter into force 20 days later.
Gender balance on company boards Directive	In force. Local implementation deadline: 28 December 2024.
Directive on adequate minimum wages	In force. Local implementation deadline: 15 November 2024. EU countries in which the minimum wage is protected exclusively via collective bargaining agreements (Austria, Cyprus, Denmark, Finland, Italy and Sweden) will not be obliged to introduce the changes.
Directive on Corporate Sustainability Due Diligence	In force. Member States must transpose the Directive into national law by 26 July 2026. One year later, the rules will start to apply to the first group of companies, following a staggered approach (with full application on 26 July

	2029). A set of guidelines to be issued by the Commission will help companies to conduct due diligence.
Corporate Sustainability Reporting Directive	In force. Member States must transpose the Directive into local law by 6 July 2024. The reporting requirements will be phased in, applying to financial years from 1 January 2024 onwards.
AI Act	In force. The Act entered into force on 1 August 2024. The majority of the Act will start applying on 2 August 2026, with some exceptions for specific provisions (prohibitions of AI systems deemed to present an unacceptable risk will already apply after six months, while the rules for so-called General-Purpose AI models will apply after 12 months). Member States have until 2 August 2025 to designate national competent authorities, who will oversee the application of the rules for AI systems and carry out market surveillance activities.
AI Liability Directive	Pending. The Commission public feedback period closed on 28 November 2022. The proposed Directive is currently going through the EU's ordinary legislative procedure. Currently no deadline for local implementation.
Works Council Directive (possible revision)	Pending. An EU Parliament resolution on 2 February 2023 supported a full revision of the existing Works Council Directive. On 24 January 2024 the Commission adopted the legislative proposal and a feedback period closed on 27 March 2024. The European Parliament Employment and Social Affairs Committee adopted a Report on the proposal on 3 April 2024. On 20 June 2024 the Council agreed on a general approach (negotiating position) on the proposal. Once in force, Member States will have one year to incorporate the Directive into national law. The new rules will then start to apply two years later. During the two-year period, parties can adapt their EWC agreements to the revised requirements.

How we can help

Our extensive global footprint means that we are well placed to support global employers in their current and future HR plans, wherever they have a presence. Our lawyers are not only experts in the complexities of different laws, but also in the management of projects spanning jurisdictions and driving those projects to maximize the strategic aims and benefits.

The advice and practical support of our specialist teams can help with reviews of existing contractual documents and arrangements, gap analysis against the latest and proposed EU Directives and local implementation requirements and practical action plans.

Please contact any of our global team should you require advice or assistance.

[1] (EU) 2019/1937

[2] (EU) 2019/1152

[3] (EU) 2019/1158

[4] (EU) 2023/970

[5] COM/2021/762

[6] (EU) 2022/2381

[7] (EU) 2022/2041

[8] COM/2022/71

[9] (EU) 2022/2464