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Uber: Leaks will impact EU law



It has long been the BEERG newsletter's policy not to comment on individual companies other than where they have been the subject of a significant court judgement relating to labour or employment law issues, or because of an EWC development which would be relevant to our wider membership.

In keeping with this approach, we will not be saying anything about the Uber revelations that have dominated the newspapers in recent days. The one comment we will make is that these revelations are likely to strengthen the hand of those in European Union law-making circles, whether in the Parliament or the Council, who want to see all platform economy workers classified as employees rather than self-employed.

The upcoming debate in the Parliament on the report from Elisabetta Gualmini ([here](#)) is likely to be all the sharper. As we note in the supplement attached to this newsletter, the left-of-centre rapporteur wants the presumption in the legislation to be that all such workers are employees, unless the platform can prove otherwise. Right-of-centre politician had begun to organise to push back against this. The Uber revelations [here](#) are now bound to influence the debate. This [comment](#) from the ETUC on the affair underscores the point we make above.

Spain: Unions with no members can negotiate equality plans



Since 2019, companies with 50 or more employees are obliged to draw up an action plan for gender equality and the prevention of sexual harassment in the workplace. While there was some phasing in for companies with between 50 and 150 employees,

the law is now in full force. The works council, where one exists, has to be involved in the drafting of the plan. The employer must provide the employees' representatives with the necessary information to enable them to engage in a proper manner.

But what happens if there is no works council in the company? With whom is management expected to engage? The 2019 legislation gave the negotiating mandate to the representative trade union for the sector, even if the union had no members in the company. Union officials with no connection with a company would be charged with helping to draft the equality plan.

The Spanish Confederation of Business Organisations (CEOE) objected to this provision in the law, suggesting that an ad-hoc committee of employees' representatives be established instead. The employers' association also argued against the measure on the grounds of data protection, since personnel data for negotiating equal opportunity agreements would have to be given to external trade unions, who could then be in possession of such data for competing companies.

Towards the end of March, the Supreme Court in Madrid ruled against the employers and in favour of the government. The Supreme Court upheld the government's position because an ad hoc committee would have no legal mandate to negotiate a collective bargaining agreement which is what an equality plan is in reality. ***We will come back to this ruling ([See full text here](#)) in a future issue.***

UK: Unfair dismissal over gender critical beliefs



A [woman who said that people cannot change their biological sex](#) was discriminated against by her employers, a UK employment tribunal has ruled. Tax expert Maya Forstater did not have her contract at the Washington, D.C. and London based think tank Centre for Global Development (CGD) renewed after posting a series of tweets about gender and sex.

In 2019, a tribunal judge decided such views were not "worthy of respect in a democratic society." But in a 2021 appeal, another judge ruled "gender-critical" views were protected under the UK's Equality Act 2010. The judge ordered a fresh tribunal, whereupon employment judge Andrew Glennie found the decision not to offer Ms Forstater an employment contract nor renew her unpaid visiting fellowship role at the CGD in March 2019 was direct discrimination related to her "gender-critical" beliefs.

Future Work: Dutch parliament moves to legislate for remote working



The Dutch parliament has [approved legislation](#) to establish remote working as a legal right. The legislation has been approved by the lower house of the bicameral parliament of the Netherlands but still needs the green light from the Dutch senate before final adoption.

The law obliges companies to consider employee requests to work from home as long as their jobs allow it. Employment experts say the legislation could encourage adoption in other European Union countries. Germany is understood to be working on policies that could legally increase flexibility for staff, and employment lawyers say France and Portugal are also looking at laws on télétravail.

[The Wall Street Journal](#) says business, city and community leaders across the US are exasperated with workers' reluctance to go back to the office while life returns to normal at restaurants, airlines, sporting events and other places where people gather. Less than half the number of pre-pandemic office workers are returning to business districts consistently, even after many employers have adopted hybrid schedules.

Nationally, office use hit a pandemic-era high of 44% in early June, but cities like Philadelphia, Chicago, San Francisco, and New York have lagged, according to Kastle Systems, which collects data on how many workers swipe into office buildings. Concerns about crime and safety, including on public overdone transportation, and time spent in transit, are among issues that have contributed to a reluctance to go back to the office.

Organizations are hearing from employees that *"I'm still worried about Covid. Gas prices are \$5 a gallon and it's too expensive to go into work,"* said Brian Kropp, vice president of human resources research at advisory firm Gartner, or *"...why should I go into work when half the people I need are going to be at home on any given day?"*

EWCs: Latest from "EWC Academy"



The latest issue of the union-side consultancy EWC Academy's quarterly newsletter, No. 2/2022, can be found at this link [here](#). Some of you are mentioned in it. As always, a health warning applies. Take it with a grain of salt. In particular, its ramping up of the Radtke report on a proposed revision of the EWC Directive is overdone.

The newsletter gives the impression that radical changes to the Directive are imminent. Nothing could be further from the truth. Even if the Radtke report were to be adopted as written and if the European Commission were to propose legislation, it would be at least five years, if not longer, before such legislation became effective.

Ireland: Special *Irish Times* report on US companies



For those of you with operations in Ireland, the *Irish Times* has published a special report which looks at how US multinationals continue to expand in the country despite global challenges.

The influx of American companies continues as Ireland is seen a country that delivers. The report also looks at the factors that could threaten this situation and why the current housing crisis needs to be tackled with a sense of urgency. It also explores the workplace trends that have been spearheaded by American companies. *See here:* [irishtimes.com](https://www.irishtimes.com).

Brexit: Banks to close UK-based accounts



[Thousands of British citizens living in the EU](#) could have their UK bank account closed by the end of the year unless banks set up separate entities in each jurisdiction. High street banks, including Barclays, have written to British customers who live abroad informing them that because "passporting" rules have ended their accounts will be automatically wound down.

Barclays confirmed customers with mortgages and other loans were not affected. A spokesman said: "We will no longer be offering services to personal current account or savings customers (excluding Isas) within the European Economic Area. We are contacting impacted customers to give them advance notice of this decision and outline the next steps they need to take."

Data Transfers: Ban on EU-US data transfers by Meta by September?



Derek Mooney writes: [Last week](#) the Irish Data Protection Commission notified its EU national data protection authority counterparts on the European Data Protection Board (EDPB) that it had made a draft decision to halt Facebook's parent company Meta from transferring personal data from the EU to the U.S

This is the gradual culmination of a long running investigation by the DPC that has wound its way through the Irish and European courts over the past number of years and has been frequently reported upon here.

Article 60 of the EU General Data Protection Regulation gives EDPB members across the EU four weeks to comment, or express "relevant or reasoned objection," on the DPC's draft decision, though moving from a draft to a final decision could take much longer as two-thirds of EDPB members must approve the decision. If two-thirds do not agree, another two weeks are allotted for a simple majority vote.

The Irish DPC move had been anticipated for some months. Speaking [with Reuters](#) back in February, Helen Dixon of the Irish DPC said that she was expected to share a draft decision with fellow EU regulators in April and if none of them lodge an objection that "*the earliest time we could have a final decision could be the end of May.*" Given the delay from April to July to share this draft decision, this would point to a late August timeline for a full EDPB decision.

Last February, Dixon specifically ruled out the possibility that the move against Meta would immediately hit other big tech companies saying:

"The decision that the DPC will ultimately make in relation to Facebook will be specific to Facebook and addressed only to Facebook... The consequence of the CJEU (Court of Justice of the European Union) decision is that we can't make a broader and more sweeping finding. We have to go company by company by company."

She added that were "*hundreds of thousands of entities*" that would potentially have to be looked at, starting with other large internet platforms.

Meta has repeatedly warned a data transfer ban will likely leave it unable to offer significant services such as Facebook and Instagram in Europe without a new transatlantic data transfer framework. The decision does not affect Whatsapp. In a disclosure to US authorities it said:

"If we are unable to transfer data between and among countries and regions in which we operate, or if we are restricted from sharing data among our products and services, it could affect our ability to provide our services, the manner in which we provide our services or our ability to target ads..."

"...In the event of no political or judicial breakthrough on the matter, we will likely be unable to offer a number of our most significant products and services, including Facebook and Instagram, in Europe."

THE BEERG AGENDA:

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

HRP India: Changing Scenario in Global Workforce Deployment Webinar July 20, 9 - 10am EST

HR Policy in India is organizing a panel discussion on 'Changing Scenario in Global Work Force Deployment' on 20th July 2022, at 6.30 PM India time for 60 minutes. We plan to have some CHROs of member companies on the panel, give valuable insights into what changes are likely to happen in the future of work from a work force deployment point of view.

[Book July Webinar](#)

Impact of Inflation & Uncertainty on Annual Incentive Design Webinar July 26, 12 noon EST

This HR Policy webinar will dive into the challenges employers faced evaluating performance for 2022 and focus on potential strategies employers may want to consider related to the performance metrics and targets of their 2023 incentive plan design in light of continued inflationary periods and sustained economic uncertainty.

[Book July Webinar](#)

BEERG Members' Network Meeting Pullman Hotel, Gare du Midi Brussels Sept 28/29

Attendance at the September BEERG Network Meeting in Brussels is open to BEERG members, HR Policy Global members. Click link on right to book a place at the meeting.

You can find draft agenda outline and accommodation booking form via this [BROCHURE](#).

[Book Sept Meeting](#)

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 component offering participants a tailored choice of modules.

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

[Book Oct Training](#)

*BEERG/HR Policy Global Members can self-register online for these events via the links supplied. Members who get the "No Tickets Available for Purchase" message online should contact [Derek](#).

BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
July 20	HR Policy in India: The Changing Scenario in Global Workforce Deployment	Book July Webinar	Webinar on Zoom
July 26	HR Policy Webinar: Impact of Inflation & Uncertainty on Annual Incentive Design	Book July Webinar	Webinar on Zoom
Sept 28/29	BEERG Members' Network Meeting	Book Sept Meeting	Hotel Pullman, Gare du Midi, Place Victor Horta 1, 1060 Brussels
Oct 18 - 21	BEERG Training: "Managing European Employee Relations"	Book Oct Training	Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain