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Note from the Editor: *First post Summer 2022 BEERG newsletter*

Welcome back to the BEERG newsletter as we resume after the summer break.



It is a long time since Europeans returned from the beaches to face into a winter that threatens to be so hard and cruel. We have no idea what the weather will be like over the coming months. It could be a mild and pleasant winter, but we are facing into economic and energy storms like we have rarely seen before. The Russian invasion of Ukraine stands as the cause of many of these storms. Unwise decisions over many years to become reliant on Russian oil and gas are coming home to roost with a vengeance.

Across Europe, inflation is heading for 10%. Goldman Sachs predicts it could hit 20% in the UK. Many European countries have already taken steps to limit energy price hikes. The UK government has been missing in action as the Tory party picked a new leader to replace Boris Johnson. They have decided on Liz Truss, the former foreign secretary. Press reports suggest that she plans "to take an axe" to EU-derived workers' rights, specifically to laws based on the Working Time Directive.

On the positive side, the number of unemployed people in the eurozone fell below 11mn for the first time to an all-time low of 6.6% of the workforce. In the wider EU, the number of unemployed people fell 113,000 in July, taking it below 13mn for the first time and its jobless rate to a new low of 6%.

Workers and their unions are demanding inflation equalling pay increases, which businesses will struggle to offer as they get hit with energy and other costs increases. It seems that many small businesses may simply shut their doors. We plan to track pay and collective bargaining developments as they happen.

The European Union continues to push ahead with a packed labour law agenda. The Directive on Adequate Minimum Wages (and the promotion of collective bargaining) is a done deal and will be officially finalised in the months ahead. As will the Directive on gender balance in board representation. Discussions continue on the Gender Pay Transparency Directive, as well as on the legislation on supply chain due diligence.

Proposed laws on platform economy workers bring into focus issues around AI and the use of algorithms in human resource decision making, likely to be one of the “hot topics” in the years ahead.

The Radtke Report, calling for a further revision of the EWC Directive, will be debated by Parliament and, if adopted, sent to the Commission with a call for it to bring forward legislation. We are not impressed by the report, as we made clear in previous comments.

Across Europe, governments are finally putting through legislation to transpose Directives on fair and transparent working conditions, ([HERE](#)) on whistleblowing, and the work-life balance Directives into national law.

The impact of Covid on work organisation continues to play out, with debate and controversy around the extent of remote work and/or the need for employees to come to the office filling newspaper columns. Some recent comments from us on this can be found [here](#).

As noted above, the UK has a new prime minister. What they will mean for EU/UK relations remains to be seen, but a thaw in the EU/UK “cold war” anytime soon seems unlikely. Businesses already know the pain that new borders and barriers to trade are causing. For many, the biggest concern will be the risk of the EU/UK data adequacy decision being cancelled if the UK pushes ahead with its threat to “burn” all existing EU laws on the UK statute books.

Over the coming months we will track all these issues in this newsletter, as well as at BEERG meetings and in our training programs. We will deep dive into some of them in *BEERG Perspectives* and explore them further with a wide range of experts in *BEERG Bytes*.

CJEU: Pay outside of EU’s legal competence



In a recent ruling, the Court of Justice of the European Union (CJEU) held that a collective bargaining agreement that provided for higher pay for irregular night working as opposed to regular night working did not fall within the scope of the Working Time Directive (WTD).

Why? Because Article 153 of the EU Treaty makes it clear that the EU has no legal competence when it comes to issues of pay and, therefore, differential pay rates are not something that can be regulated by the WTD. For a useful comment on the decision see [here](#).

While the judgement relates to the particular circumstances of the case in question, it may have wider significance in two respects.

First, members of EWCs often attempt to raise questions about pay in their discussions with management. In view of the cost-of-living crisis facing all European countries, such questions are likely to become more persistent in the months ahead. The court ruling makes it clear that anything to do with pay is outside the scope of EU law and so outside the scope of any body, such as an EWC, created by EU law. EWCs have no mandate when it comes to pay. The CJEU decision has now underscored this.

Secondly, the ruling that pay is clearly outside the scope of the EU Treaty will embolden those who consider that the recently agreed Adequate Minimum Wage Directive overstepped the mark and has no proper basis in EU law. The question will be this. If the CJEU has made clear that the EU has no legal authority to legislate on issues of pay, is it legally permissible for the EU to *indirectly* legislate on pay through putting metrics on minimum pay into law, and encouraging collective bargaining as a way of setting pay?

Put it this way. If it is illegal for the EU to influence the end, the rate of pay, is it legal for the EU to legislate on the means to that end?

For now, an open question we think.

UK: P&O case closed



P&O Ferries will not face criminal proceedings over its mass sacking of almost 800 mainly British workers earlier this year after the UK Insolvency Service, which was asked to investigate the matter, said it had determined there was “no realistic prospect of a conviction”.

A spokesperson said: “After a full and robust criminal investigation into the circumstances surrounding the employees who were made redundant by P&O Ferries, we have concluded that we will not commence criminal proceedings.

Nautilus International, a union which represents ships’ officers, said the Insolvency Service’s decision would be a blow to the “discarded” workers.

General secretary, Mark Dickinson, said:

“This is a deeply disappointing decision and will be met with frustration and anger by the 786 seafarers and their families who were so cruelly discarded by P&O Ferries. Only one day after P&O Ferries parent company announced record profits, making the company’s claims on operational sustainability questionable, we are further let down by a system that fails to punish apparent criminal corporatism. The message is clear, P&O Ferries must be held properly accountable for their disgraceful actions and we will continue the campaign to ensure that the CEO and his fellow directors are held to account and to make certain this can never happen again.”

During hearings in parliament, the business admitted it had broken the law that would have forced it to give notice of the firings. This was because no unions would have accepted its new proposals, managers said. They added that consultation would have been a waste of time.

Meanwhile, a coalition of trade unions has launched a legal challenge against the UK government over claims its new law, which allows companies to bring in agency workers as strike breakers, breaches the European Convention of Human Rights (ECHR) and violates the UK's Brexit trade deal.

Acting on behalf of twelve trade unions – including Unite, RMT, and GMB – Thompsons Solicitors wrote to the then Business Secretary, Kwasi Kwarteng MP, claiming the new law violates Article 11 of the ECHR, which protects the right to form trade unions in enshrining the freedom of assembly and association into law. The UK's Brexit agreement further entrenched Britain's commitment to ECHR into law.

According to the *Guardian* [The TUC has lodged a complaint with the ILO](#) over proposals to curb the right to strike.

Gig Economy: Lewis Silkin survey

According to [Colin Leckey](#) and his colleagues at Lewis Silkin

“... The dramatic expansion of the gig economy, turbo-charged during the pandemic, continues across the world. However, there is still no global consensus on the status of digital platform workers and how they should be treated.”



Read their survey on what is happening [HERE](#).

ILO: Collective bargaining is the answer



“Collective bargaining can advance equality and foster inclusion”, says a new ILO report, the first in a new series of reports on social dialogue. The higher the coverage of employees by collective agreements, the lower the wage differences are, says the report entitled [Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery](#), which is based on a review of collective agreements and practices in 80

countries at different levels of economic development and the legal and regulatory frameworks in 125 countries.

According to the report, over one third of employees (35%) in 98 countries have their wages, working time and other conditions of work set by autonomous collective negotiations between a trade union and an employer or employers’ organization. But there is a considerable variation across countries, ranging from over 75% in many European countries and Uruguay to below 25% in around half of the countries for which data are available.

Future Work: A Roundup of Recent Developments

In the US, Gallup recently released a return to office [survey](#) which makes for interesting reading.

- *Approximately 56% of full-time employees in the U.S. -- more than 70 million workers -- say their job can be done working remotely from home.*
- *5 in 10 are working hybrid (part of their week at home and part on-site)*
- *3 in 10 are exclusively working remotely*
- *2 in 10 are entirely on-site*



In the UK *Times*, the respected commentator, David Aaronovitch [writes](#) about the “war” between (some) employers who want to keep remote workers under constant surveillance, and employees who push back against it. Tech companies on both sides of the divide are creating software to deepen surveillance on the one hand, and to feign presence on the other. Aaronovitch wryly observes:

News from the working-from-home battlefield: the Undetectable Mouse Jiggler can be yours within 24 hours for just £14.99. And a very handy bit of kit it is too. What it does is make your computer look as though it is being used by you, even when you've nipped down to the shops or are watching golf on the TV. "Just plug it into your computer and press the button," the manufacturers advise, and "the cursor will start to move automatically".

The Wee Shoogle goes one better. "It's important to learn all the tricks and tips in order to maintain a pristine image in the office," say its makers. So if you're in one of those interminable Microsoft Teams meetings and want to slip out without your screen "going yellow" (the virtual equivalent of taking your jacket off the back of the chair) it keeps nudging your mouse to stop your screensaver appearing. And it is undetectable by your employer's IT department.

Meanwhile, Rolf Schmucker a social scientist and head of the DGB Good Work Index institute in Berlin, [writing](#) about the "blurring of boundaries" concludes:

The early and comprehensive participation of the workforce and workplace representatives is a prerequisite for overcoming the invisibility of work in the domestic context. Working in the 'new normal' is not a programme per se to humanise it. Only by strengthening the rights of employees and concrete design with the participation of those affected can it actually be used to enhance self-determination.

A recent [article](#) in the HBR says that while remote work has become commonplace since the beginning of the Covid-19 pandemic, the focus on daily remote work arrangements may miss a larger opportunity that the pandemic has unearthed: the possibility of a substantially increased labour pool for digital economy work. The article explores the idea that "distributed" work will allow companies to recruit across the US without workers having to move from their hometowns.

But why stop at the US borders? Does not remote/distributed work open up the possibility of a digitally connected global workforce which avoids all the problems normally associated with immigration? We are certain that we are going to hear a lot more about "remote meaning remote" as discussions about the future organisation of digital work continue.

BNP, the French bank, or at least one manager in the bank, has emailed his team encouraging them to spend more time in the office: see [HERE](#)

UK: Remote office employees' tax affairs to be reviewed



It was only a matter of time before it happened. The UK's Office of Tax Simplification, an independent adviser to the government, is to examine issues involving the taxation of employees working remotely from other countries.

The number of employees looking to extend holidays or spend time working in another increased following the switch to remote during Covid has jumped significantly, raising tax and social security issues, such as whether these employees become liable for such payments in the country from which they are working.

If "digital nomad" employees were judged to be liable to income tax and social security contributions in the country from which they were working, it could also raise questions about whether the company now had an "establishment" there, possibly leaving itself open to corporate taxation and other legal obligations.

"Very few jurisdictions are aggressively policing this at the moment but, as hybrid working becomes the norm, a crackdown will come over the next few years as these workers will be seen as a lucrative additional

source of tax revenue,” Tim Stovold, head of tax at accounting firm Moore Kingston Smith told the *Financial Times*.

The OTS review, to be published next spring, will examine the tax and social security implications for companies and employees of working across borders, as well as homeworking in the UK. It will also assess the role of “digital nomad” visas offered to attract mobile workers in more than 40 jurisdictions. It would seem that the focus on the enquiry will be more on British workers heading abroad and less on the few workers from elsewhere who seem to want to work remotely from the UK.

Data Privacy: Some useful documents



[Derek Mooney](#) writes: You may be interested in two documents pertaining to GDPR and transatlantic data transfers which have been published over the past few weeks.

The **first** is this [detailed report](#) from Dr [Halafom Abraha](#) of Oxford University. Entitled: ‘A Pragmatic Compromise? The role of Article 88 GDPR in upholding privacy in the workplace’, it is a most significant paper that specifically examines the processing of employee data under Article 88 of GDPR. It is a very useful resource as it contains a wealth of material on individual countries.

The **second** is this [handy comparison](#) between the EU/US Privacy Shield and the draft American Data Privacy and Protection Act (ADPPA). It is written by Shanzay Pervaiz, a senior researcher with the [Privacy Across Borders](#) project, bringing U.S. and European experts and practitioners together to develop practical recommendations for ensuring “the viability of transatlantic data flows in light of the Schrems II decision.”

Ireland: Matheson Webinar on Gender pay Gap Reporting



For those of you with operations in Ireland, our colleagues in Matheson, Dublin, are running a webinar, “**Gender Pay Gap Reporting: Practical Tips and Guidance**”, on Wednesday, 14 September 2022 at 11:00 am Dublin/London time (GMT +1). With December’s reporting deadline fast approaching, the webinar will offer guidance on how employers can best prepare and comply with their reporting obligations, including:

- *taking you through the core legal requirements of who is in scope, what data needs to be reported, which pay elements are captured for calculation, how and when the data must be published and possible penalties for non-compliance;*
- *highlighting key differences between the Irish and UK GPG reporting regimes;*
- *discussing common queries and pitfalls arising in practice and difficulties employers are encountering in preparing the data;*
- *analysing the latest guidance on some of the trickiest areas such as handling bonus and commission payments, employees on various types of paid and unpaid leave, and reporting requirements for group companies; and*
- *sharing top tips on developing an internal and external communications plan*

You can register for the [Webinar Here](#)

THE BEERG AGENDA:

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

HRPA: Deskless Workers: Why They Leave and How to Retain Them Webinar Sept 15 1:00 pm EST/1900 H CET

Employers are at risk of losing 37% of their deskless workers in the next six months, according to a BCG survey of 7,000 deskless workers across seven countries. Join HRP for a discussion of the main factors that drive the decision for deskless workers to leave their jobs and several steps employers can take to avoid losing these critical employees.

[Booking Page](#)

Lewis Silkin/BEERG on UK LR developments

Webinar Sept 20th 1700H CET/ 11am EST

As our latest BEERG Byte shows there is a lot happening in the UK when it comes to labour relations, so we will be hosting an open format BEERG/HR Policy Global members' webinar to explore these issues and answer your questions. Sept 20th at 4pm (London/Dublin time).

[Lewis Silkin Booking link](#)

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 element 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
Sept 15	HRPA Webinar: Deskless Workers: Why They Leave and How to Retain Them	Booking Page	Webinar on Zoom
Sept 20	Lewis Silkin/BEERG Webinar: Important UK decisions and developments	Lewis Silkin Booking link	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

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