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## EWCs: Another demand for another revision



It is like hearing the first cuckoo of spring. If it is September, then we are bound to hear the first call of the season for yet another revision of the European Works Council Directive. Like the sound of the cuckoo, the call for an EWC revision sounds all too familiar. EWCs should be able to go to court and seek injunctions where they believe that management has failed to observe information and consultation obligations. Management decisions should be put on hold until the

EWC is satisfied. But how do you ever satisfy an EWC if difficult decisions are under consideration?

The latest September call came from Isabelle Schömann, ETUC Confederal Secretary, at the annual ETUC/ETUI EWC conference. Speaking on the Radtke report, which is currently being considered by the European Parliament, Schömann said:

*“The first decision to take for MEPs is to strengthen the EWC in their daily work and to make their rights effective: information and consultation of EWC are key democratic features in the European Union and should be the conditions for any multinational business to operate in Europe and to do business in Europe. for the moment it doesn't. The EP report to be voted by the end of this year has to deliver more and better rights for EWCs; it has to guarantee proper enforcement and deterrent sanctions for any violation of a the right of information and consultation.”*

The Radtke report is an “own initiative” report by a German MEP, Denis Radtke. If adopted by the Parliament, it will be sent to the Commission with a request that the Commission bring forward legislation to completely overhaul the Directive. Radtke's proposals include:

- *Recital 16 to become an integral part of the text of the Directive as a new Article 7a. This would mean that issues affecting only one country could be considered transnational.*

- *In case of disagreement as to whether the EWC should be involved or not, central management would have to justify precisely why EWC information and consultation is not necessary. (Justify to whom?)*
- *EWC consultation must be concluded before national consultations can be concluded. This would give EWCs unlimited blocking and delaying powers.*
- *All EU countries would have to create administrative and judicial procedures so that EWCs are able to enforce their rights in a timely and effective manner. This includes the right to go to court and ask for injunctions.*
- *Court fees, legal fees and travel expenses for at least one EWC representative to attend a court hearing must be covered by central management.*
- *There should be penalties of up to €10 million or 2% of total annual worldwide turnover where information and consultation rights are infringed, and double that in the case of intentional infringements. (How is the decision that the right to offer nothing more than an “opinion” has been infringed to be determined?)*
- *Companies should only classify documents vis-à-vis the EWC as confidential if this is authorised by defined regulations of the country in which the EWC is based.*
- *Article 13 agreement to be scrapped unless they meet the requirements of the Directive. (Goodbye Article 13 agreements)*
- *EWCs to meet with management twice a year.*
- *The timeline for SNBs to be reduced from three years to one. (Given that it takes about six months to put an SNB together this would leave just six months for negotiations).*

The Directive does not give the EWC the right of co-decision. Nor does it require consultation with a view to reaching an agreement. All it requires is that the EWC can offer an opinion on proposed management decisions. What is being proposed by Radtke is completely out of proportion when all an EWC can do is to offer an opinion. What is really in play here is an attempt to turn conflicts of interest into conflicts of rights. Workers and their representatives will always object to management decisions to cut jobs or close facilities. This is a clash of interests, a clash between what management believes to be right and what workers and their unions believe. These are conflicts that cannot be resolved by judges.

All the law can do is to establish a procedure that must be followed. It cannot mandate an outcome to that procedure. Which is really what Radtke wants. That courts can strike down management decisions, that judges can second-guess management as to what is best for the business.

Read the above proposals carefully. In the first place, EWCs are to be the judges that management has not properly followed information and consultation procedures to their satisfaction. Then they go to court and ask that their interpretation be endorsed. They want the judge to rule that management must make them happy.

That is an impossible ask.



*The seriousness of what is in play here should not be underestimated. Were the main Radtke proposals to make their way into law, then the ability of management to make necessary organisational changes would be severely curtailed and held hostage by the activists who dominate EWCs. Companies need to talk to their national and industrial employers' associations about this issue and brief their local MEPs about their concerns.*

*Our upcoming Sitges Training Program on European employee relations will deep dive into the law and practice of EWCs. Potential EU legal developments will also be on the agenda for our Brussels meeting later this month.*

## Brexit: Watch your laptop

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A group of Welsh cyclists planning to do a 600-mile charity ride in Spain unexpectedly got hit with a £7,330 tariff by Spanish customs because the necessary paperwork to bring the bikes into Spain had not been completed. When the UK was a member of the EU there would have been no such problem. But as a “third country” anyone bringing goods into the EU must comply with its customs regulations. There are no exceptions for ex-members.

While it is unlikely that any BEERG members from the UK will be taking bikes with them to cycle to business meetings in the EU, they will certainly be bringing their laptop and phone, and maybe more than one of each. Depending on the value of the laptop, customs formalities may be required. As [reported](#) by the Manufacturing Technologies Association, UK Revenue and Customs has advised:

- Where individuals are travelling between the UK and EU with a laptop with a value of £1500 or less, a declaration can be made orally or by conduct. That is to say, by speaking to a Customs officer or walking or driving through the ‘green channel’ at the port or airport.
- Where the value exceeds £1500, and the items being taken out of Great Britain are for permanent business use, for example to sell, or for own business use, a customs declaration must be made. If the items are carried in a traveller’s accompanied baggage then a Merchandise in Baggage (MiB) declaration can be made. Information about MiB export declarations can be found at [LINK](#). The items will need to be declared to customs on their return to the UK. Information on how to do this for items carried in a traveller’s accompanied baggage can be found at [LINK](#).

For now, we are not sure how these rules apply to EU citizens travelling to the UK, but we will follow up on it. One more example of the “Brexit of small things” that just make life more difficult than it used to be.

Be warned. An undeclared expensive Apple or HP could have the customs take it away.

Also, the EU ban on phone roaming charges no longer applies to UK operators. There are reports appearing in the UK press of holiday makers coming home to bills of up to hundreds of pounds for the use of their phones while in France or Spain or other EU countries. If you are in the EU on business, connect to the internet as soon as you can.

## Future Work: Our weekly roundup of recent developments

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According to a new [policy paper from the thinktank Bruegel](#), COVID-19 has accelerated the shift to remote work. Enabling knowledge workers to do their jobs from home or elsewhere brings benefits by increasing labour participation, avoiding unproductive commuting time (thus reducing the carbon footprint), and reducing the gender gap by enabling single parents or partners with domestic-care responsibilities to work.

The paper says that the post-pandemic new normal is sure to differ both from the pre-pandemic normal and from current arrangements. Hybrid arrangements in which part of the week is spent at the office, and part at home, are likely to become the norm. It argues:

*Employers, workers, educators, trade unions and governments will need to adapt to the new normal. For employers and managers, the change emphasises the need to manage based on results rather than hours worked, and likely implies many changes in how they manage their employees.*

*Workers will need to be flexible in order to capitalise on the new opportunities in the evolving world of work, and to ensure they have suitable skills for remote work. Educators will need to further emphasise digital skills, and to accelerate the shift from traditional education to lifelong learning. Trade unions will need to re-think how they recruit workers who do not see each other every day, and how they can respond to evolving social protection needs.*

*Policymakers will need to deal with distributional effects driven by the shift to remote work, to protect the work-life balance that remote work potentially erodes, and to seek to ensure that the shift to remote work does not erode social protection.*

Research by our member company, **Manpower**, suggests workers in the UK are resisting pressures from their employers to return to the office. While bosses are hoping to see a return to more traditional working patterns after the pandemic, Manpower says firms are engaged in a “balancing act of keeping their existing employees happy while phasing out remote work for new candidates.” Chris Gray, a director at Manpower, said: “Employers are keen to get people back into the office. However, employees still have a lot of bargaining power.”

He notes that employers have offered “unprecedented” benefits in the last 12 months, “from hefty signing bonuses to fully remote working” in order to attract skilled candidates. “But as demand for new workers cools, candidates are less able to secure these benefits - though many existing employees don’t want to give them up,” he added. Mr Gray said there has been a “shift from candidates holding all the cards to employers now having the leverage to ask candidates to come into the office - at least some of the time.”

**Meanwhile**, Amazon CEO Andy Jassy told a conference in Los Angeles on Wednesday that the company had no plans to order its employees to come back into the office as it continues to embrace remote working. He did acknowledge that bonding as a team was more difficult on video calls but said that most departments were continuing to work hybrid or remotely. “At the end of the day, we have to deliver the right results for customers, and people understand whether they work remotely or in an office that that has to be the No.1 priority. And so we’re trying lots of experiments, and we’ll see over the next year.”

In an insightful comment in the [Financial Times](#) Sarah O’Connor gives short shrift to the notion of “quite quitting”. “Employers don’t need to cater to employees’ every psychological need, and employees don’t need to be passionate about their employers”, she writes.

## OECD Outlook: Pay and Collective Bargaining

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### COLLECTIVE BARGAINING



Russia’s war of aggression against Ukraine has caused lower global growth and higher inflation, with negative impacts on business investment and private consumption, says the [OECD Employment Outlook 2022](#)

Tight labour market conditions mean that companies across the OECD are confronted with unprecedented labour shortages. In the European Union, almost three in ten manufacturing and service firms reported production constraints in the second quarter of 2022 due to a lack of labour.

It recommends raising minimum wages and urged a revival of support for collective bargaining to help counter wage erosion amid the current inflationary spiral. *"Protecting living standards... requires rebalancing bargaining power between employers and workers, so that workers can effectively bargain for their wage on a level playing field,"* adding that meant giving "a new impetus" to collective bargaining and encouraging unions and employer organisations to boost membership so more workers would be covered by collective agreements.

The 38-member country policy forum observed that recent collective agreements for workers at online platform-based companies in Denmark, Germany, Italy, Spain and Sweden were "interesting" and could be the model for deals in other countries.

The *Outlook* says that nominal wages are not keeping pace with the rapid rise in inflation. The real value of wages is expected to decline over the course of 2022, as inflation is projected to remain high and generally well above the level expected at the time of relevant collective agreements for 2022. The cost-of-living crisis is affecting lower-income households disproportionately. They have to devote a significantly larger share of their incomes on energy and food than other groups and were also the population segment falling behind in the jobs recovery from the COVID-19 pandemic.

In these circumstances, supporting real wages for low-paid workers is essential, according to the report. Governments should consider ways to adjust statutory minimum wages to maintain effective purchasing power for low paid workers. Targeted, means-tested, and temporary social transfers to people most affected by energy and food price hikes would also help support the living standards of the most vulnerable.

For a fuller summary see: [HERE](#).

**MEANWHILE**, the latest [European Collective Bargaining Report](#) from the Institute of Economic and Social Research (WSI) of the trade union affiliated Hans Böckler Foundation says that slackening growth, an upsurge in inflation, and the unpredictable course and consequences of the war in Ukraine have combined to create an uncertain and challenging outlook for collective bargaining in Europe. For employees, the subdued pace of pay growth in all European Union Member States has now culminated in falls in real wages, in some cases on a substantial scale, putting pressure on trade unions to offset these through higher pay settlements.

**Hans Böckler  
Stiftung** 

At the same time, employers have warned against substantial pay rises, pointing to the risks of a wage-price spiral - despite the fact that, as yet, there is no evidence that pay has been a factor in current inflationary pressures. Achieving a compromise between these divergent standpoints is also made more difficult by the fact that the institutions of collective bargaining now have only limited scope in many countries. At the same time, the outcomes of collective bargaining can have far-reaching distributional effects.

**In the US**, around a quarter of employers in the [National Salary Budget Survey](#) from employee-compensation platform Salary.com are planning raises between 5% and 7% for next year. The survey, which collected information from more than 1,000 employers across 20 industries, also found that companies are planning for a [median pay bump of 4%](#) for 2023, in line with increases for 2022 and up from 3% the two years prior.

A separate May [survey](#) of 337 companies from compensation consulting firm Pearl Meyer found that the most common reason cited for higher salary increases this year was retention, followed by inflation and cost of living.

Workers' offer expectations have also increased: In a July [survey](#) from the Federal Reserve Bank of New York, respondents said they would need [an average salary of \\$72,873](#) to take a new job, up from \$68,964 a year prior.

**In France**, the CGT at [TotalEnergies](#) has called a three-day strike in late September in support of a demand for a 10% pay increase.

## Modern Slavery: A growing challenge says ILO report

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A new ILO report says modern slavery is a growing challenge due to a combination of armed conflict, climate change and the global pandemic. The International Labour Organisation (ILO) estimates suggest that 50 million people are trapped in forced labour or forced marriages - up nearly 10 million from only five years ago. ILO director general, Guy Ryder said:

*"Nothing can justify the persistence of this fundamental abuse of human rights... We know what needs to be done... an all-hands-on-deck approach is needed. Trade unions, employers' organisations, civil society and ordinary people all have critical roles to play."*

The UN's labour organisation says slavery is not confined to poorer countries outside the West. More than half of all forced labour happens in wealthier countries in the upper-middle or high-income bracket. The ILO counts both forced labour and forced marriage as modern enslavement - both situations where the person cannot leave "because of threats, violence, deception, abuse of power or other forms of coercion."

The report says: *"Entrapment in forced labour can last years, while in most cases forced marriage is a life sentence."* About 27.6 million people are in forced labour, including 3.3 million children. Of those children, more than half are in commercial sexual exploitation. Another 22 million people are in forced marriages - more than two-thirds of them women - and many victims are under 15 when the marriage takes place.

**ILO press release and report available:** [HERE](#)

## GDPR: Application overreach becoming mission creep?

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**[Derek Mooney](#) writes:** This week Andrea Jelinek, Chair of the European Data Protection Board (EDPB), and Wojciech Wiewiórowski, European Data Protection Supervisor (EDPS), wrote an [Open Letter](#) to the European Parliament and the European Council, calling on the EU Commission to increase its funding, saying:

*"We are deeply concerned that the 2023 budget, if not substantially increased, will be significantly too small to allow the EDPB and the EDPS to fulfil their tasks appropriately."*

The EDPB's Andrea Jelinek added:

*"The EDPB plays an essential role in the implementation of the General Data Protection Regulation (GDPR). There are high expectations regarding the GDPR's success in reining in data protection abuses, especially by large tech companies. However, the EDPB Secretariat is currently understaffed and at risk of no longer being able to fulfil its legal duties at the service of the EDPB and of the GDPR. Should this happen, the enforcement of individuals' data protection rights would be weakened and the credibility of the GDPR undermined."*

Their call for extra funding does beg the question: what tasks do they fulfil? It is a question with which BEERG has long wrestled. It was one of the 8 key issues to watch in our [2022 Preview](#). In that preview we highlighted the growing concerns about the "application overreach" of GDPR, particularly via activist data privacy watchdogs.

It was also a point made by the European Court of Justice Advocate General Michal Bobek in the course of [an opinion](#), when he warned:

*I suspect that either the Court, or for that matter the EU legislature, might be obliged to revisit the scope of the GDPR one day. The current approach is gradually transforming the GDPR into one of the most de facto disregarded legislative frameworks under EU law. That state of affairs is not necessarily intentional. **It is rather the natural by-product of the GDPR's application overreach**, which in turn leads to a number of individuals being simply in blissful ignorance of the fact that their activities are also subject to the GDPR.*

BEERG has long made the case that not every GDPR breach should constitute an offence... shouldn't the authorities be required to show that the breach resulted from deliberate misconduct before fines are imposed?

Yet it seems that the EDPB, in addition to complaining about its 2023 budget, is also preparing proposals it intends to present to the EU Commission later in the year suggesting further changes to the procedural aspects of GDPR enforcement. The EDPB recently held discussions with several high-profile privacy activist groups, including noyb, Access Now and Panoptikon. In April the EDPB adopted a new statement on enforcement cooperation: [HERE](#). In that statement it undertook to

*“...identify a list of procedural aspects that could be further harmonised in EU law to maximise the positive impact of GDPR cooperation. Harmonised horizontal provisions in administrative procedural law could bridge differences in the DPAs' conduct of (cross-border) proceedings to increase efficiency. The EDPB will also collect best practices as regards the interpretation of national procedural law in a way that ensures a more effective application of the GDPR.”*

For far too many people “a more effective application of the GDPR” has been confused for “bigger fines for business” however, in the real world, the world of complex rules and increased cyber-attacks and cyber criminality, *bigger fines* do not equate to *better enforcement*... quite the opposite.



# THE BEERG AGENDA:

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

HRPA: *Deskless Workers: Why They Leave & How to Retain Them* Webinar Sept 15<sup>th</sup> 1:00 pm EST/1900H 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 20<sup>th</sup> 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 20<sup>th</sup> 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	<b>HRPA Webinar: Deskless Workers: Why They Leave and How to Retain Them</b>	<a href="#">Booking Page</a>	Webinar on Zoom
Sept 20	<b>Lewis Silkin/BEERG Webinar: Important UK decisions and developments</b>	<a href="#">Lewis Silkin Booking link</a>	Webinar on Zoom
Sept 28/29	<b>BEERG Members' Network Meeting</b>	<a href="#">Book Sept Meeting</a>	Hotel Pullman, Gare du Midi, Place Victor Horta 1, 1060 Brussels
Oct 18 - 21	<b>BEERG Training: "Managing European Employee Relations"</b>	<a href="#">Book Oct Training</a>	Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain

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