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EWCs: Irish legislation deficient



We have again written to the Irish Minister for Enterprise, Trade and Employment about the deficiencies in the Irish European Works Council legislation, the *Transnational Information and Consultation of Employees Act, 1996*.

On this occasion we have pointed out that Ireland's ability to negotiate within the Council of Ministers on any proposed revisions to the EWC Directive resulting from the Radtke Report will be hampered if Ireland is regarded by the Commission as being in breach of existing legislation. This could be especially damaging given the number of US multinationals with EWCs based under Irish law. We have offered to facilitate a meeting between the Department and multinationals with EWCs based in Ireland to discuss the matter.

Should any BEERG/HR Policy Global member company wish to receive a copy of the letter, please email: tom.hayes@beerg.com

Ireland: Gender Pay Gap reporting



Our long-time associates in the Dublin law firm, [Matheson](#), has a series of guides to complying with the now-in-force legislation on Gender Pay Gap reporting. The law applies to any company with more than 250 employees. You can access the series [here](#).

At the same time as Irish legislation became active, the European Parliament and the Council of Ministers reached agreement on the text of the proposed Gender Pay Transparency Directive. ([See the supplement to this newsletter](#)). We will publish a full comment on the new Directive before the end of January.

Restructuring: New Ius Laboris guides



As many businesses, facing serious disruption in terms of energy, supplies, inflation, and a downturn in market demand, are having to think about difficult restructurings, some for the first time after years of exponential growth, new guides from Ius Laboris answer some key questions about restructuring in a range of countries.

Click the link [here](#) and scroll down to reports on the costs of collective redundancies and on restructuring.

Future Work: A Round up of some recent developments



A report from the UK Office of Tax Simplification (OTS) on the tax implications of hybrid and distance working saw the independent adviser to the government talk to a wide range of businesses and others to consider the challenges and complexities that have arisen for employers and employees following the changes in working practices in the wake of the pandemic. Among its findings, the OTS report warned that businesses need more clarity and simpler processes

for the taxation of cross-border workers, and people who work from home say their commuting costs should be treated as a tax-deductible expense if employers want them to come into the office. More [here](#)

Employers are finding that staff remain resistant to returning to the office and some are willing to quit rather than go back to the workplace, [according to the BBC](#). Despite nearly two-thirds of workers saying they are more productive in a hybrid or remote work environment, a third of companies in the UK are planning to cut back on flexible working in the coming months, according to a poll by LinkedIn. Chantelle Brown, who works for the UK recruitment company Latte, says companies who expect staff to work five days a week in the office risk losing out on talent. But if, as many predict, the UK enters a protracted recession and competition for talent weakens, companies may find it easier to demand a return to the office.

Jeremy Myerson and Philip Ross, co-authors of [Unworking: The Reinvention of the Modern Office](#), consider how bosses are trying to keep staff of all ages happy as they “wrestle with new ways of hybrid working” post-pandemic, saying that whether you’re in Generation X, Z, a Millennial or a Baby Boomer, “the chances are that your idea of the perfect place to work will differ to that of your older or younger colleagues.” They add that issues do not solely stem from the generational category a worker falls into, saying that while age “has a part to play . . . so does life stage.” They offer the example of the contrasting needs of staff with young children who are based in suburban locations and singletons who expect to be in a city centre. [here](#)

This [article](#) looks at what legislators on both sides of the Atlantic are doing on the issue on Artificial Intelligence governance. One major difference is the emphasis in Europe on the information of employees’ representatives about the use of AI and algorithms in human resource decision making.

Which is why we are running a workshop in Sitges, Barcelona on this issue in mid-February. You can find [more details](#) elsewhere in this newsletter, or email tom.hayes@beerg.com

Unions: ITUC chief steps aside



The International Trade Union Confederation (ITUC) General Council held an extraordinary meeting on 21 December and decided to suspend Luca Visentini (photo) as ITUC General Secretary until it meets on 11 March when it will give further consideration to the matter. A statement from the ITUC said that this “*in no way implies any presumption of guilt.*” The Council will decide early in January on the question of an acting General Secretary in the interim. Until then, Deputy General Secretary Owen Tudor will fulfil the responsibilities of General Secretary.

The Council also decided to establish two processes:

- *An independent external audit of all financial questions concerning the circumstances relating to the allegations and of the ITUC’s financial rules and procedures.*
- *The establishment of a special Commission to investigate the circumstances surrounding the allegations against Luca Visentini, including the results of the external audit, and possibly other matters.*

Visentini, only recently elected general secretary of the ITUC after years at the ETUC, was forced to step aside as he admitted taking thousands of euros in cash from a former MEP at the centre of a corruption scandal in the European Parliament, Pier Antonio Panzeri. Panzeri is at the heart of an international investigation into allegations that Qatar and Morocco sought to influence EU lawmakers through bribes. He has been charged with corruption and being part of a criminal organisation. Visentini, who was released after 48 hours in police custody in Belgium, rejects any allegation of wrongdoing, saying:

“I have accepted a donation from Fight Impunity [Panzeri’s NGO] for a sum lower than €50,000, which was aimed at reimbursing some of the costs incurred to finance my campaign for the ITUC congress and I have transferred the sum to the ITUC solidarity fund in order to pay for the union’s travel costs [to Melbourne].

“I accepted the donation in cash [because of Panzeri’s good reputation] and its no-profit nature... it was in no way connected to a corruption attempt or aimed at influencing my position on Qatar,” he added.

In the wake of the scandal, the European Trade Union Confederation (ETUC) says it “has appointed an independent company with specialist expertise in anti-corruption practices in response to allegations of corruption involving public figures in and around the European Parliament, which resulted in the questioning and release under conditions of the former General Secretary of the ETUC.”

General Secretary, Esther Lynch said that while the ETUC is not under investigation the independent analysis is an important step to reinforce the Confederation’s commitment to trade union values of openness, transparency, and ethical standards.

Comment: Proposed EU Due Diligence Directive must be looked at again



Axel Voss is a senior and highly respected German Christian Democrat Member of the European Parliament and a member of the European Peoples Party. In this opinion piece for BEERG, he writes of his concern about the overreach of the proposed Due Diligence Directive: The European Commission has presented a proposal for a European Due Diligence Directive, which is currently negotiated in the European Parliament. One thing is clear: the standards for the protection of human rights and the environment in our supply

chains must be harmonised at European level. At the same time, we need a Directive that is practicable for companies and creates legal clarity.

In our increasingly globalised world, corporate action is more closely linked to responsibility than ever before. Products consumed by European citizens are still too often accompanied by violations of human rights or environmental standards in the supply chain. So far, non-binding mechanisms have been relied on as far as possible, but they have proven to be insufficient.

Supply chain laws, or rather due diligence laws, therefore encourage companies to take more responsibility for the protection of human rights and the environment by addressing weaknesses in their supply chains. In France and Germany, national supply chain legislation has been passed in recent years.

However, in order to promote competitiveness in the EU, there is a need to introduce a uniform directive that applies to companies in all member states, precisely because supply chains are internationally ramified and uniform rules prevent unnecessary bureaucracy. That is why the European Commission proposed a uniform Directive at the beginning of the year.

Due diligence obligations are obligations to make an effort, not an obligation to solve every problem

The European Commission's proposal stipulates that all companies with 500 or more employees, as well as companies in particularly high-risk sectors such as textiles with 250 or more employees, must review their entire value chain. This approach rightly raises a lot of criticism. It in fact demands that every direct supplier needs to be checked and that it is ensured by means of contractual clauses that there are no risks.

This leads to a lot of bureaucracy without fulfilling the purpose of the law. Large companies in particular often have more than 10.000 suppliers in the first part of the chain (Tier 1) alone. It is simply impossible to check these and, if in doubt, to go beyond them, and risks are often not present there. Moreover, contractual cascading would mean that virtually all companies, regardless of size, would be affected by the law, but without support.

Due diligence in the supply chain should also not mean that one has to solve every identifiable problem oneself, unless it is directly responsible for it. Rather, due diligence is about a duty of effort. Every company should do its best to be aware of its supply chain and any risks and mitigate known risks to the extent possible. It should also not be about the complete value chain, but about the product-based supply chain, which also takes into account aspects of the value chain that are particularly relevant for environmental standards, such as disposal. However, the Commission's proposal does not meet this requirement for due diligence either.

Only the risk-based approach is purposeful

Because of these difficulties, we in the European Parliament are clearly in favour of a risk-based approach. Instead of checking every single supplier, checks should only have to be carried out where risks can actually occur. Within the EU, for example, Member States are already responsible for enforcing human rights and environmental standards. Thus, one should focus on certain risk-based sectors outside the EU.



Moreover, companies should be required to take actions to mitigate the risk if it was directly responsible. If there is knowledge of risks beyond direct responsibility, the company should use its leverage and do its best to mitigate those. However, it is oftentimes impossible to get the data on such cases.

Civil liability can thus only be considered if damage has already occurred in the supply chain and the company is directly responsible for it. This risk-based approach thus reflects the long-standing international standards on due diligence of the OECD and the UNGPs and leads to actual results rather than pure bureaucracy.

Axel Voss MEdP website and contacts: <https://www.axel-voss-europa.de/>

France: Pension reform battle about to kick-off



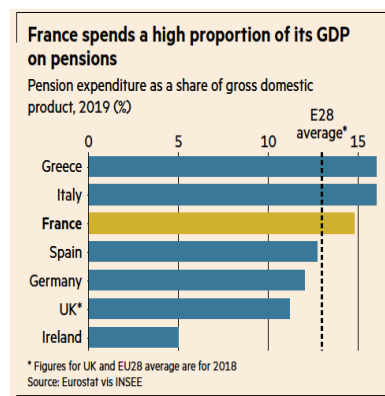
This week will see the French government push ahead with plans to overhaul the costly pensions system by raising the retirement age, risking renewed street protests after unions announced their total opposition. The far left and the far right are also politically opposed. The government wants to bump up the retirement age from 62 to 64 or 65.

President Macron's centrist alliance now holds 251 seats in the national assembly — short of the threshold of 289 needed to pass laws — so passing legislation has become harder. Polls show about 70% of people oppose raising the retirement age.

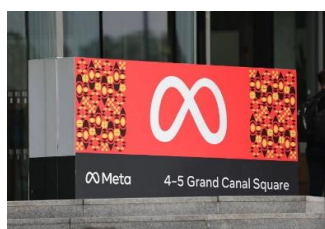
Revamping the pension regime was a key plank of Macron's re-election campaign and comes after he tried a different version of the reform in 2019 that was abandoned during the pandemic. The president says raising the retirement age is the only way to preserve the system as the ratio of workers to retirees falls in the coming decades. He has ruled out other approaches, such as raising taxes, lowering pensions, or adding to the public debt.

The government also argues that raising the retirement age is needed to improve France's relatively poor record on keeping older people in the workforce. Its employment rate for those aged 55-64 is 56%, compared with a 59% average in EU countries and 61% across the OECD group of advanced economies. Only about half of the French are still working when they reach 62.

The state pension system, which relies on workers funding retiree benefits, will have a slight budget surplus this year, according to a recent report from a governmental pension advisory panel. But deficits are forecast in the coming decade and beyond as the number of workers per retiree falls from 2.1 in 2000 to 1.7 in 2020 and 1.2 by 2070.



GDPR: Meta's Irish fines top €1.3bn as DPC detects EDPB over-reach?



Derek Mooney writes: On January 4th the Irish Data Protection Commission [announced](#) that it was fining Meta Ireland €210 million (for breaches of the GDPR relating to its Facebook service), and €180 million (for breaches in relation to its Instagram service). It also gave Meta Ireland 3 months to bring its data processing operations into compliance.

These latest twin fines bring Meta's total regulatory bill to over €1.3bn in Ireland over the last 16 months. A not insignificant amount, even to the Tech giant, but, in a move that could have even greater consequences for data privacy across the EU, the final paragraph of [DPC statement](#) announcing the fine also fired a major warning shot across the bow of the European Data Protection Board(EDPB), saying:

"The EDPB does not have a general supervision role akin to national courts in respect of national independent authorities and it is not open to the EDPB to instruct and direct an authority to engage in open-ended and speculative investigation..."

...the DPC considers it appropriate that it would bring an action for annulment before the Court of Justice of the EU in order to seek the setting aside of the EDPB's directions."

This is the DPC stating that it will take the EDPB to the ECJ/CJEU.

The latest investigations in Meta were the subject of months of wrangling between the DPC and the EDPB, with the EDPB briefing that the DPC was too lenient in its past dealings with tech companies headquartered in Ireland. For a background to this situation see this [detailed article](#) from Sept 2022 by Robert Bateman. The EDPB has stated that it wishes to see new investigations conducted by the DPC spanning all of Facebook and Instagram's processing operations. The DPC views this move as the EDPB purporting to instruct or to direct it to act – a clear attempt by the EPDB to exceed its authority.

Another phrase that it could use to describe this situation is: **overreach** — it's the phrase used by a former European Court of Justice Advocate General Michal Bobek, as we set out in over [2022 BEERG preview](#), and several other articles. BEERG has long argued that several data watchdogs were seeking to overreach their powers, it is fascinating to see that it is a member state watchdog which has decided to push back.

UK: Government considering new anti-strike laws



As the UK continues to be hit by a wave of public sector strikes protesting below inflation pay offers, the government has announced plans for new anti-strike legislation to enforce “minimum service levels” in key public sectors including the NHS and schools.

The law, which the government plans to introduce in the coming weeks, will allow managers in health, education, fire, ambulance, rail, and nuclear commissioning to sue unions and sack employees if minimum levels are not met.

Under the plans, minimum service levels will be set for fire, ambulance, and rail services, with the government consulting on the adequate level of coverage for these sectors, to address concerns that disruption to such services puts lives at risk.

However, it will also reserve the power to impose minimum service levels in the other three public services – health, education, nuclear – although ministers expect to reach voluntary agreements in these areas and say they would only impose the anti-strike law if this were not possible.

Government sources confirmed that union members who were told by their employers to work under the minimum service requirement but refused to do so could lose their jobs. The new law will also back employers bringing an injunction to prevent strikes or seeking damages afterwards if they go ahead.

The Business Secretary, Grant Shapps, said: “As well as protecting the freedom to strike, the government must also protect life and livelihoods. While we hope that voluntary agreements can continue to be made in most cases, introducing minimum safety levels – the minimum levels of service we expect to be provided – will restore the balance between those seeking to strike and protecting the public from disproportionate disruption.”

Unions have said they will challenge the new laws in court as being incompatible with the UK's obligations under the European Convention on Human Rights. The Labour Party said it would repeal any such laws if and when it comes to power.

Meanwhile, the government is now holding talks with public sector unions to see if a way forward can be found and the strike wave brought to an end. One option on the table is a proposal to backdate the coming year's pay rise to this month (January) and for a lump-sum payment to staff to compensate for 2023. Commenting on the current industrial relations situation in the UK, Sarah O'Connor in the *Financial Times* says:

Rather than refuse to negotiate over this year's pay, the government could look to the private sector for examples of how to be more flexible. One popular strategy in corporate Britain has been to make one-off payments to staff on top of, or subsequent to, a consolidated pay rise. According to Incomes Data Research, roughly one in five UK employers did this in 2022. Rolls-Royce, for example, gave a £2,000 cash lump sum to 11,000 shop-floor workers and 3,000 junior managers last summer. While unions don't in principle tend to like lump sums over consolidated pay rises, they have shown "a willingness to think creatively about what members need to help with cost of living now", says Kate Bell, assistant general secretary of the Trades Union Congress.

One-off lump sums could also help to ease the government's fears about fuelling higher inflation (though I think the risk is remote given public sector wage growth lags so far behind the private sector). In Germany, the government has tried to gently co-ordinate with employers and unions to avert the risk of a wage-price spiral. As part of this effort, it has given employers the option to pay a one-off bonus of up to €3,000 which would be exempt from income tax and social contributions.

BEERG Members Meeting

Feb 1 & 2 - Pullman Hotel, Brussels

The next BEERG/HR Policy Global, Network Meeting is on Wednesday afternoon/Thursday morning, February 1 and 2. At the Pullman Hotel, Gare Midi. Members may self-register via the link on the right. The cut-off date for booking a room at the BEERG rate is Jan16 – there is a hotel booking form on the Registration page. Non-members should [Email HERE](#) for registration details. **Feb 2023 draft meeting program: [HERE](#)**

[Book Feb meeting](#)

Training: AI in HR management processes

Feb 14 – 16, Hotel Estela, Sitges, Barcelona

BEERG/HR Policy Global has created a new program *Artificial Intelligence, Human Resource Management and Employee Information and Consultation*. The program will deep dive into three key pieces of EU legislation:

(i) the AI Act, (ii) the AI Liability Directive, and (iii) GDPR

Together these three initiatives create complex new challenges for employee relations and human resource executives. [Brochure including draft agenda](#)

[BOOK AI Training](#)

*BEERG/HR Policy Global Members can self-register for these events via the links above. If you get a “No Tickets Available for Purchase” message make sure you are logged in – if the issue persists contact [Derek](#).

Upcoming BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
Jan 17	BEERG/CMS Labor Relations Workshop	Email to Register	Hilton Frankfurt Airport, The Squire, Am Flughafen, 60549
Feb 1 & 2	BEERG Members Meeting	Book Feb meeting	Pullman Midi Hotel, Brussels, Belgium
Feb 14 - 16	BEERG Training: AI in European HR processes	Book Ai Training	Hotel Estela, Sitges, Barcelona, Spain
April 18 - 21	BEERG Training: “Managing ER in Europe” Download brochure	Book April Training	Hotel Estela, Sitges, Barcelona, Spain
June 14 - 16	BEERG Members Annual Summit		Hotel Estela, Sitges, Barcelona, Spain
Sept 27 & 28	BEERG Members Meeting		Brussels, Belgium
Oct 10 - 13	BEERG Training: “Managing ER in Europe”		Hotel Estela, Sitges, Barcelona, Spain