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EWCs: Second consultation on “Radtke” in prospect?



Word on the Brussels grapevine suggests that the EU Commission could start the second consultation on the social partners on a possible revision of the EWC Directive before the August shutdown.

It is at this point that the ETUC and BusinessEurope can decide if they want to negotiate an agreement on the issue between themselves. While both sides have indicated that they would be open to such a move, with “Radtke/Parliament” in their back pocket the unions may have little incentive to engage with BusinessEurope, which opposes changes to the law and favours a code of practice instead. Unless that is, the unions think that the Council of Ministers could water “Radtke” down to meaninglessness. That is if the Commission were to propose anything approaching “Radtke” in the first place, which is by no means a given.

In this regard, the result of the July Spanish election could be crucial. The employment minister in the current government, Yolanda Díaz, a member of the Spanish Communist Party and a labour lawyer, is a keen advocate of enhanced workers’ rights. Spain holds the presidency of the EU Council for the second part of 2023, which means Díaz would still set the agenda.

However, were the right of centre Partido Popular, currently ahead in the polls, to lead the next government then that would change the dynamics significantly in the Council of Ministers. The PP is unlikely to want to boost EWCs. But Díaz could be back in office as there is no guarantee that the PP will win the election and form the next government.

President Macron in France will hardly be enthused to give to EWCs the type of powers that successive French governments have rolled back over recent years when it comes to domestic French works councils.

After Germany and France, Ireland is now the third largest jurisdiction when it comes to EWCs, with many US and UK companies moving their EWCs there following Brexit. The Irish government is unlikely to want to see significant changes to the current legislation, especially as it is in discussions with the Commission over the transposition of the 2009 Directive into Irish law when it comes to dispute resolution.

While the German government might be well disposed towards EWC changes, the current administration in Berlin may not want to hand a significant political win to Denis Radtke, a member of the opposition CDU. Radtke is the driving force behind the European Parliament's proposals. But union pressures on the SPD could also come into play. In other words, there may not be a "rush of blood to the head" in the Council of Ministers on an issue which many governments will regard as a very low priority.

The Employment Commissioner, Nicolas Schmit, said earlier this year that if the social partners did not negotiate on the matter, or failed to reach an agreement if they did, he would bring forward legislation before the end of the year. But he could find that there is no great enthusiasm among his fellow commissioners for far-reaching changes in the law which employers claim would damage European competitiveness, especially when faced with the challenges posed by the US's [Inflation Reduction Act](#) and a [slowing eurozone economy](#).

While there is a degree of uncertainty surrounding the EWC revision process, having been launched it is inevitable that there will be changes. The question will be just how extensive will the changes be? Discussions in the Council of Ministers will be crucial. Watch this space.

We will be holding a major "stock take" EWC training event in Sitges, Barcelona, October 11-13. See [draft prospectus](#) for information, or contact tom.hayes@beerg.com

EWCs: Do they still exist in the UK post-Brexit?



David Hopper of Lewis Silkin LLP writes: On Friday 23 June, the Court of Appeal in London heard an appeal by easyJet against decisions of the Central Arbitration Committee and Employment Appeal Tribunal.

Those tribunals decided in 2021 and 2022 that, despite the UK withdrawing itself from the EU's legal framework at the end of 2020, easyJet must continue to operate two European Works Councils despite Brexit: one European Works Council under the laws of a member state of the EU in line with the EWC Directive (i.e., under German law, in easyJet's case) and a second European Works Council under UK law.

In particular, easyJet argued that the Central Arbitration Committee was wrong to decide that it was 'irrelevant' that Parliament had passed a law repealing the requirement for central managements situated in the UK to operate a European Works Council, and that the Employment Appeal Tribunal was wrong to decide that, whilst such legislation wasn't 'irrelevant', it didn't matter that that the wording of that requirement had been repealed as it had never served any purpose. The Court of Appeal's decision is expected over the summer.

MEANWHILE, we understand that one of the appeals against the Irish Workplace Relations Commission (WRC) decisions in the *Verizon* case will be heard by the Labour Court in late August, while an appeal against the collective redundancy decision in *Debenhams* will be heard in September.

Platform Workers: Directive Negotiations to open



On 12 June 2023, after lengthy negotiations, the Council of Employment Ministers agreed on proposals for a Directive that aims to better protect platform workers. This opens the door to negotiations between the Council and the European Parliament on the final text of the Directive. The main point of controversy among the government ministers centred on the criteria that need to be met to determine if platform workers were to be seen as employees or self-employed. Ministers agreed on a “holding position” to allow negotiations with the Parliament and the Commission to get under way, but the issue is far from settled.

The Directive will cover not just workers on platforms such as Uber and Deliveroo, but also workers such as IT contractors hired through digital channels. As agreed by ministers, platform workers will be presumed to be employees if the relationship between the platform (employer) and platform worker meets at least three of the following seven limitative criteria:

- *Platform sets upper limits on the worker's remuneration.*
- *Platform sets requirements for the worker regarding appearance, conduct towards the recipient of the service or performance of the work.*
- *Platform monitors the performance of work, including by electronic means.*
- *Platform effectively limits, including through sanctions, the freedom of the worker to organize his work, regarding the choice of working time.*
- *Platform limits, including through sanctions, the freedom of the worker to organize his work, regarding accepting or refusing jobs.*
- *Platform restricts, including through sanctions, the freedom of the worker to organize his work, regarding the use of subcontractors or substitutes.*
- *Platform restricts the worker's ability to build a client base, or to perform work for third parties.*

Ministers also gives new information and consultation rights to platform workers and their representatives in respect of the use of algorithms. Workers and their representatives will be entitled to understand how jobs are assigned and how the assessment of work is made. How algorithmic decisions affect working conditions or access to the platform will also need to be discussed. These provisions could be strengthened in negotiations with the Parliament.

As noted, there is an uneasy truce between ministers over the “presumption of employment” issue with some governments such as Spain, Belgium, and the Netherlands wanting a harder position in favour of employment status as the default. This is also the position of the Parliament. Expect tough negotiations.

Global Survey: Disengagement costing \$8.8 trillion



[Wenchao Dong](#) of *HR Policy Global* writes: Gallup released its State of the Global Workplace: [2023 Report](#) finding that over half of the global workforce is disengaged at work, costing the global economy \$8.8 trillion, and reinforcing the need for employers to get more in touch with their employees. Over half (51%) of global respondents state they are watching for or actively seeking new employment, and to take a new job, disengaged employees want a 22% pay increase. The report found that disengagement has more of an impact on stress and productivity than work location.

Long road ahead to improve employee engagement. Despite employee engagement reaching a record high of 23%, the majority of the world’s employees are disengaged, or “quiet quitting” (59%). However, not all is lost with disengaged employees, as they are ready to be motivated by work, and employers and managers can take steps to improve their engagement. Improving company culture, increased pay and benefits, and an increased focus on wellbeing were all factors that employees believed would reengage them.

Engagement impacts employee stress more than work location. Gallup found that engagement has 3.8 times as much influence on employee stress as location and that what employees experience in their everyday work — their feelings of involvement and enthusiasm — matter more in reducing stress than where they are sitting.

Managers play a key role in engagement. An employee’s relationship with their direct manager also has more impact on stress than work location. In fact, 79% of team engagement is attributable to the manager. However, many managers are also disengaged, so companies should focus on enabling and empowering their management teams and providing them with the resources and tools to effectively lead.

44% of global workers feel stressed at work. Despite continued recovery from Covid, worker stress levels have been steadily growing over the past two years. Workers in the U.S., Canada, and East Asia are the most stressed with a rate of 52% and Europe is the least stressed region. Interestingly, workers in Europe experience both low stress and low engagement while those in South Asia are the most engaged yet most angry.

Outlook: As organizational leaders navigate economic uncertainty; employee stress is impacting productivity and performance. Gallup advises employers to consider whether poor work performance is a location problem or a management problem and address workplace stressors like low salaries, long hours, and lack of advancement to reengage employees.

Social Dialogue: A role for non-union representatives?



Trade unions appear to be deeply concerned about language in a Recommendation from the Council of Ministers [on strengthening social dialogue](#) that clearly accepts that non-union elected worker representatives have a role to play in social dialogue within companies. The unions believe that this should be their exclusive prerogative. The offending language is to be found in Article 13 of the recommendation which reads:

According to the Workers’ Representatives Convention 135 of the International Labour Organisation, currently ratified by 24 Member States, worker representatives can be persons who are recognised as such under national law or practice, whether they are trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. Where both trade union representatives and elected representatives exist in the same undertaking, such representation should not be used to undermine the positions of the trade unions concerned or of their representatives. Cooperation between the elected representatives and the trade unions concerned or their representatives should be encouraged.

Given that, at best, unions represent about 25% of all workers across the EU, and only around 15% in the private sector, it is not surprising that Ministers see a role for elected representatives. However, the unions see it differently. ETUC Deputy General Secretary Claes-Mikael Ståhl said:

For the ETUC it is crucial that social dialogue and collective bargaining is firmly placed at the centre of a more social Europe. This Council Recommendation must provide a template for achieving this. However, we regret that the social partners were not consulted on the final text before adoption, as proper involvement and consultation of social partners is at the heart of social dialogue. We will now need to have a full assessment of the text adopted by the Council.

It seems to us that it will be difficult for the unions to sustain an argument that they should have the exclusive right to represent workers through social dialogue when workers, especially younger workers, are no longer joining. Unions can only be representative if workers join. They cannot be representative simply because of history and institutional inertia. Things change.

AI in Workplace: EU Parl wants greater information and consultation rights

The European Parliament has finally reached an agreed position on the proposed AI Act, which will regulate the use of AI across the European Union. As with other legislation covered in this newsletter (*see item on Platform Workers*) this opens the door to negotiation between the Parliament, the Council of Ministers, and the Commission to see if an agreed, common text can be found.



The proposed amendments to the text proposed by the European Commission include:

- A duty to consult with workers and their unions/representatives before introducing AI to the workplace.
- A duty to carry out an assessment of the impact on fundamental rights of the introduction of AI.
- An opening clause for national legislators to limit the use of AI systems to protect workers' rights.

The AI Act, as amended by Parliament, would continue with a risk-based-on-use, tiered regulatory framework. The highest risk tier is reserved for certain AI uses that are considered to pose an “unacceptable risk” to society, including uses like scraping Internet images from social media and other sites to build facial recognition databases, social credit scoring, real-time facial recognition technology, predictive policing, and emotion recognition in governmental, educational, and employment contexts. These uses are outright banned.

Uses of AI that are considered “high-risk,” such as uses in aviation, vehicles, medical devices, and eight other specifically enumerated categories, including human resource decision making, are permitted, but subject to heavy regulation. Operators will need to register their AI systems in an EU-wide database and will be subject to extensive regulatory requirements around risk management, transparency, human oversight, and cybersecurity, among others.

Uses of AI that are considered “limited risk,” such as systems that interact with humans (like chatbots) and AI systems that could produce “deepfake” content would be subject to a limited set of transparency obligations. Uses of AI that do not fall into any of the prior categories are considered “low or minimal risk” and are not yet subject to any regulation.

If a company fails to comply with these regulations, the draft rules impose significant penalties ranging from 2% to 7% of a company's total worldwide revenue. The unions are still pushing for a stand-alone AI Directive for the workplace. European Trade Union Confederation (ETUC) Deputy General Secretary Isabelle Schömann said:

“Today is a further key step towards ensuring that artificial intelligence is regulated to better protect users in line with European values and which respects human rights. “The Parliament has made important improvements, such moves must be upheld in tripartite negotiations, while the

introduction of 'significant risk' must be deleted. "AI at work must deliver for workers as much as for business: this is the reason why a new dedicated directive is needed to ensure the 'human in control' principle is made practice in European workplaces, in consultation with workers through their trade unions, and to secure workers' rights and protection.'

It is unlikely that such a Directive will be proposed anytime soon, especially with European Parliamentary elections scheduled for 2024, and the new Commission to be appointed later in the year. For now, workplace issues involving AI will be regulated by the AI Act.

This is an [interesting article](#) in the UK newspaper *The Observer* of the impact of AI in the workplace. Some interesting data on AI from the Boston Consulting Group can be found [HERE](#).

Remote Work: A roundup of recent developments



You can find some interesting material on remote working from AGVBANKEN, a German banking association at this [LINK](#).

Meanwhile, the European telecom social partners – the European Telecommunications Network Operators' Association (ETNO) and UNI Europa ICTS – released a [joint statement on remote work](#). The statement is accompanied by a set of [guidelines and recommendations](#) for the implementation of remote working arrangements through social dialogue at the local level, [HERE](#).

Here is an [interesting article](#) from the *New York Times* on where workers who can do their jobs remotely are moving to enhance their quality of life.

Due Diligence: Auto firms in potential supply chain law violation in China



Volkswagen, BMW, and Mercedes-Benz have been accused by the European Center for Constitutional and Human Rights (ECCHR) of not carrying out due diligence to prevent the risk of forced labour being used by their suppliers in Xinjiang, China.

The ECCHR has filed a complaint against the carmakers with Germany's export control office, alleging a potential violation of Germany's new supply chain law. Volkswagen is planning an external audit of its factory in Xinjiang following the complaint. "Our aim is to be as quick as possible, and show that everything is right over there," CEO Oliver Blume said. See this [ver.di and UNI guide](#) to the German due diligence law. Also this [guide for unions](#) from the Friedrich Ebert Stiftung.

It will also be interesting to see if the auto companies also get caught up in the *Uyghur Forced Labor Prevention Act* (UFLPA) law in the U.S. as it relates their U.S. plants and any imports, they may be getting with materials originating from the Xinjiang region.

Due diligence expert, Auret van Heerden, who spoke at our recent BEERG Meeting in Sitges, told us:

I suspect that the auto companies are vulnerable on the chip front due to the significant poly silicon production in Xinjiang. The chips may be produced elsewhere but companies will have to be able to show that the poly silicon did not originate in Xinjiang, and that any Chinese chips do not contain labour originating in Xinjiang. Ironically the unions may not want to open that particular pandoras

box because of the supply chain disruption it would provoke, possibly costing them hours, wages and even jobs. That said, I think the unions will try to use the information, consultation, and disclosure obligations in the DD laws to good effect. Shareholder activists may try to do the same if they pass the “affected stakeholders” test.

The complaint against the German auto companies is a foretaste of what can be expected when the EU’s Due Diligence Directive is finalised and comes into force in several years’ time, again with strong union/employees’ representatives’ information and consultation obligations. It is also worth noting the increasing use the US government is making of the [labour procedures in the US/Mexico/Canada Trade Agreement. As Wenchao Dong of HR Policy Global notes:

In one month, the United States asked Mexico to review possible labor violations in four different Mexican facilities under the Rapid Response Labor Mechanism (RRM) within the USMCA. Put into perspective, the RRM was implemented in July 2021 and since then, only seven complaints were submitted to Mexico by the U.S. before May 2023.

HR Policy Global will host a [webinar on September 21st](#) to discuss US/Mexico developments.

Brexit: Japanese companies and the UK

Last week was the seventh anniversary of the UK voting to leave the EU. It was marked by various reports from thinktanks, nearly all of which noted that Brexit has failed to deliver the benefits promised by those who pushed for it. Polls consistently show that a majority in the UK would now vote to rejoin the EU but in our view such a development is highly unlikely. The best that can be hoped for is better relations between the UK and the EU under a future Labour government.

One report that we particular noted was from Pernille Rudlin (pic) [on Japanese companies and the UK since Brexit](#). The report finds:



In the seven years since the Brexit referendum, the benefits of Japanese long-term planning for resilience have become clear. Although employment by Japanese companies in the UK has fallen since 2018/19, this is largely in the automotive sector, triggered by the closure of the Honda Swindon plant. Non-automotive manufacturing employment and investment have stayed steady, but there have been no new manufacturing companies coming to the UK.

Employment in the wholesale sector has also fallen, as Japanese companies move their European logistics, warehousing and coordination functions to the EU. There has been significant disinvestment from the UK financial sector, but again employment seems to have held steady.

Germany has almost caught up with the UK as the largest host of Japanese companies in the EU and has overtaken the UK as the largest host of Japanese corporate expatriates.

Now the smoke and fog of Britain’s departure from the EU, and the pandemic have cleared, a new third phase of Japanese investment is taking shape. It is more focused on geopolitical concerns around climate change, energy, defence and security. The UK is seen as an important partner in this but needs to ensure that it strengthens its long-term policy commitments to these sectors, which require large investments and the support of host communities, as well as collaboration and synchronization with the EU, Africa and the Middle East.

London Lunchtime Network Event

Sept 21, at Oracle offices, London, U.K.

HR Policy Global is pleased to announce a Greater-London Area Networking and Lunch event on September 21, 2023. The event runs from 12PM to 3PM, to include a light lunch and presentations on UK HR and Labour Law updates. This event is generously hosted by Oracle Corporation, at their 1, South Place, London HQ,

[London Network Event](#)

Places at the events will be limited to 30 people - so sign up soon!

BEERG Members' Network Meeting

Pullman Hotel, Gare du Midi Brussels Sept 27/28

Attendance at the September HR Policy Global/ BEERG Network Meeting in Brussels is open to all members. Click link on right to book your place at the meeting. Guest speakers at the September meeting will include:

- *Stefaan De Rynck, former EU Brexit Negotiator*
- *Delphine Rudelli, Director General of CEEMET*
- *Tristan d'Avezac, future of work and non-standard forms of work, expert*

[Book Sept Meeting](#)

Dinner guest speaker to be announced soon. Draft meeting agenda and hotel accommodation booking form will be available next week.

BEERG Training: European Works Councils - All Change

Hotel Estela, Barcelona, Oct 11-13

To make sure you are best prepared for the coming changes we have created a new EWC-focused program that presents a comprehensive stock taker of where we are now and how EWC management is set to develop. To get your EWC management team ahead of the curve check out our [Draft Prospectus](#) and/or email tom.hayes@beerg.com

**Booking link will be available from July

*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
Sept 21st	London Networking Event - Lunch + Roundtable Discussion at Oracle London Office	Book London Network Event	Oracle, The Helicon 1 South Place, London EC2M 2RB, GB
Sept 27 & 28	BEERG Members Meeting We will soon circulate a draft agenda for this meeting	Book Sept Meeting	Brussels, Belgium
Oct 11 - 13	BEERG Training: "European Works Councils - All Change" **Booking link will be available from July		Hotel Estela, Sitges, Barcelona, Spain