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EU: Triologue talks on Platform Workers directive begin



Inter-institutional negotiations between the EU Commission, the Council of Ministers, and the European Parliament, known as a triologue, have opened on the Platform Workers Directive. At the heart of the negotiations will be the question of how the employment status of gig economy workers is to be determined. The Commission estimates that around 25 million people find work through gig platforms, and this could rise to 40 million over the coming years.

In its original proposals for a Directive, the Commission said that gig economy workers should be presumed to be employees if they met two criteria out of five. However, the Parliament would like to scrap this altogether and is pushing for a law that would see all gig workers regarded as employees, unless the platform they work for can prove decisively otherwise.

Meanwhile, the Council of Ministers leans in the other direction and wants gig workers to be seen as employees only if they meet three criteria out of seven. Ministers see platforms as an important source of work opportunities, especially for people from marginalised communities who otherwise find access to work difficult. The Council would also like to see “carve outs” which would allow platform workers to be seen as self-employed if they meet certain nationally defined criteria.

There appears to be consensus between the three parties on measures to ensure that platform workers’ understanding of how algorithms impact their day-to-day work and enshrine transparency measures in the use and application of algorithms. The wording will also ensure that any ‘significant’ decision taken due to algorithmic calculations – such as dismissal or remuneration – has a human as the final decision maker.

The Council would like to limit information and consultation obligations to the representatives of employed gig workers, but the Commission and the Parliament want to obligation to apply to all the representatives of all gig workers, including the self-employed.

The Spanish government has been among those pushing hard in the Council of Ministers for a presumption of employment. Next Sunday, the Spanish go to the polls, with the possibility of a switch from a centre-left to a centre-right government on the cards. Would such a switch in Spain change the dynamics in the negotiations?

What will also be of importance is how platform workers are defined. While obviously the Directive will apply to those working for well-known platforms such as Uber, Deliveroo, and Glovo, it may also apply to all those hired through digital channels, such as Amazon's Mechanical Turk. Depending on the final working in the Directive, it could also apply to IT contract workers engaged by non-platform companies.

It is also worth keeping in mind that even if platform engaged workers are deemed to be self-employed, the European Commission has already said that EU competition laws will not prevent such workers organising and bargaining collectively, though, to date, there is little sign of this happening.

Russia: Too late for businesses to leave?



Western businesses that have not yet exited Russia may have left it too late, with President Putin recently signing orders to seize the assets of Carlsberg and Danone's Russian beer and yoghurt-making subsidiaries. [According to the Financial Times](#) he has handed control of these assets to business associates.

The U.S. Yale School of Management has been tracking foreign [investors in Russia](#) since Putin invaded Ukraine last February. According to its senior professor, Jeff Sonnenfeld: *"They really should have seen it coming, they were naïve"* adding: *"I wouldn't be surprised if Unilever or high-profile consumer brands, such as Benetton or PepsiCo, are next in line"*.

Some 1,050 firms left Russia immediately, but about 600 are still there, even if some of them, including Danone and Carlsberg, had belatedly started the process of selling up. *"That's the punishment for vacillating,"* Sonnenfeld told journalists, *"This [Putin's corporate raid] should cause a stampede to the exit — it's ridiculously risky and foolish for them to stay there ... if any EU company thinks Putin will abide by the verdict of an arbitration tribunal or any other court, that's also naïve ... They have zero chance of getting their money back via legal means — it would be Quixotic and a waste of time,"* he said.

Every company still in Russia should simply write off their assets and move on, he added, citing Exxon and BP, who did so within days of Putin's invasion, as models. Companies fighting to keep their Russian business suffer *"humiliation, reputational risks, operational risks ... it's not in the interests of the shareholders, they're better off with expropriation,"* Sonnenfeld said.

UK: Strike laws ruled illegal



Attempts by the UK government to let agency staff fill in for striking workers have been quashed by the high court, with ministers' approach to the policy being labelled "irrational". A number of unions, including Aslef, the RMT and Unite, joined in legal challenge to "strike-breaking" regulations announced last summer by the government as it faced widespread industrial action across rail and other sectors.

In a [verdict delivered last week](#) after a hearing in May, Mr Justice Linden ruled that the approach taken by ministers was "so unfair as to be unlawful and, indeed, irrational".

Unions argued that the changes to regulations announced by the then business secretary, Kwasi Kwarteng, undermined the right to strike. In June 2022, Kwarteng said he was “repealing these 1970s-era restrictions” to give “businesses freedom to access fully skilled staff at speed”.

However, the high court judgment said that Kwarteng showed little interest in evidence or consultation and “his approach was ... so unfair as to be unlawful and, indeed, irrational”. It also said that Kwarteng committed to changing regulations when “the advice to him was that it would be of negligible short-term benefit and probably be counterproductive”.

The change was one of a number that the government proposed to minimise the effectiveness of strikes, including ensuring unions and workers were legally bound to provide some services during planned industrial action. The strikes (minimum service levels) bill is still going through parliament.

A Department for Business and Trade spokesperson said: “We are disappointed with the high court’s decision as we believed the decision to repeal the ban on agency workers covering strikes complied with our legal obligations. The ability to strike is important, but we maintain there needs to be a reasonable balance between this and the rights of businesses and the public. We will consider the judgment and next steps carefully.”

Unions: Bring back sectoral bargaining

COLLECTIVE BARGAINING



No surprise. Uni Europa would like to bring back sectoral collective bargaining because of a “strong recognition of the potential benefits of this approach” among the trade unionists UNI surveyed, which include “higher wages and improved worker conditions”. You can read the UNI reports which argues for this [here](#). But it would appear, calls for a return to sectoral bargaining are getting little traction across the European Union, though the government in Australia recently legislated for such bargaining in certain circumstances.

So, what’s the problem? It would appear that, despite the obvious benefits of sectoral bargaining for the unions, employers do not see it that way and do not want to play ball. Employers prefer collective bargaining at the level of the individual enterprise, or on a plant-by-plant basis, as that way deals can be tailored to the specific circumstances of each enterprise or plant. Further, why should employers agree to structures that hand bargaining leverage to the unions? Not only do employers not want to set up new sectoral bargaining structures, but where such structures do exist, they are being “hollowed out”. As the report notes:

One of the primary challenges stems from the increasing difficulty of reaching agreements, particularly as these agreements tend to be more framework-oriented rather than comprehensive. Additionally, some actors within the industry are beginning to question the necessity of multi-employer agreements all together.

Still, the report takes comfort from the Adequate Minimum Wage Directive which obliges governments to put in place action plans when collective bargaining coverage falls below 80% of the workforce. It says that the only way that governments can do this is by legislating for sectoral bargaining. While governments might legislate to facilitate such bargaining, no government can make parties bargain with one another if they do not want to, much less oblige them to reach agreements. While the law can oblige workers to join unions, as it did in the past with closed shops and union shops, governments today are unlikely to want to go down that road.

There is no legal magic wand that will restore union fortunes. If unions want to rebuild their declining memberships, then they need to come up with offerings that appeal to today’s workers and also find value

propositions that would incentivise employers to want to sit down and talk to them. The law is not going to do the job for them.

Read the full UNI report [here](#).

Transatlantic Data Transfers: U.S. + EU signal resolve to make DPF work



[Derek Mooney](#) writes: Last week the EU Commission announced that it had adopted its much-awaited adequacy decision on the EU-U.S. Data Privacy Framework (DPF) – thus giving a lawful basis for trans-Atlantic data transfers certifying compliance with DPF principles.

This week, in a clear signal that both EU and US authorities are determined to make this new data transfer framework work for the long-term, the U.S. Departments of Justice and Commerce and the European Commission issued a [joint statement](#) confirming a: “...joint commitment to promoting economic opportunity while protecting individual privacy rights”. Speaking in Washington, the EU’s Justice Commissioner, Didier Reynders said.

“The EU-U.S. Data Privacy Framework represents a significant achievement for safe and trusted transatlantic data flows... The new framework guarantees the fundamental right of Europeans for the protection of their personal data and brings legal certainty for companies on both sides of the Atlantic. Today’s meeting ...shows the EU and the U.S. are like-minded partners that can work together to find solid solutions to complex issues.”

While the U.S. Secretary of Commerce Gina Raimondo said:

“Now, businesses – large and small – will be able to access a streamlined and affordable mechanism to transfer data between our jurisdictions. To meet the needs of businesses, the Commerce Department launched the [DPF program website](#) today, giving companies a one-stop-shop where they can sign up for the DPF program and get important information about its benefits.”

US Commerce Dept DPF website: <https://www.dataprivacyframework.gov/s/>

EU Commission DPF Q&A: https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_3752

Working Time: New report from IndustriAll



This new [report](#) from IndustriAll looks at the state of working time arrangements across Europe. It finds that there is still an east–west divide, with considerably longer weekly working hours in central and eastern European countries than in western European countries.

The report argues that collective bargaining delivers shorter weekly and annual working hours. A comparison of statutory maximum working hours and collectively agreed working hours illustrates that collective agreements lead to considerably fewer weekly working hours. Moreover, because they ensure additional vacation days on top of the holidays provided for by legislation, collective agreements also help to ensure shorter annual working time.

Weekly and annual working time are longer in CEE countries because legislation rather than collective agreements remains the dominant way of regulating working time there. From a sectoral perspective, the analysis illustrates that the collectively agreed working time in the metal and chemical industries tends to be shorter than in the rest of the economy. But the analysis also showed that normal actual weekly working time in the metal and chemical industries were on average more than 2.5 hours longer than collectively agreed working hours.

London Lunchtime Network Event

Sept 21, at Oracle HQ, 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 HQ at 1, South Place, London EC2M 2RB.

[London Network Event](#)

Places at the event 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*

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

[Book Sept Meeting](#)

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 avail end of 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, please 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 circulate the full agenda for this meeting very soon	Book Sept Meeting	Brussels, Belgium
Oct 11 - 13	BEERG Training: "European Works Councils - All Change" *Booking link available from end of July		Hotel Estela, Sitges, Barcelona, Spain