

## In this week's issue:

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## EWCs: Commission opens second round consultations on EWC Directive



The European Commission has now begun the second round of consultations with the European Social Partners on a possible revision to the European Works Council Directive. In documents released on Wednesday, July 26, the Commission said that it was looking at changes that could ensure that (*our comment in italics*):

- There are no unjustified differences in workers' information and consultation rights at transnational level. This would mean having one set of rules for all EWCs, to overcome the existing exemptions of certain companies from the common minimum requirements. *An end to Article 13 agreements – thought probably phased out on an agreement-by-agreement basis rather than through some overall diktat. This would give the parties to such agreements the time and space to negotiate arrangements that suited them for the future.*
- The process to set up the European Works Councils becomes more efficient and effective. This would for example further streamline the process following the request by employees to set up a European Works Council, and remove risks of unnecessary delays or of lack of resources for employee representatives. *The timeline for SNBs to be shortened and it made clear that the first meeting must be held within six months of receiving a request.*
- All Councils can rely on an effective process for their information and consultation, as well as appropriate resources, for example by providing more certainty to the concept of transnational matters. *A further attempt will be made to define transnational (suggestions welcome) and how EWCs are financed will be looked at. A budget for EWCs?*
- Member States enforce the Directive more effectively, for instance through effective, dissuasive and proportionate sanctions, as well as access to justice for employee representatives and European Works Councils. *Injunctions are for discussion, but the Commission knows that if they are included in draft legislation they will be killed off in the Council of Ministers. Fines will be increased.*

These comments are made after our first read of the consultation document. We will circulate a fuller comment early next week.

The consultation period closes on October 4 next. During the consultation the European social partners could decide to negotiate an agreement on the issue between themselves and then ask the Commission to make the agreement legally binding by way of a Directive. Otherwise, the Commission could decide to proceed with legislation. It would be a stretch to have legislation ready by the end of the year. Early 2024 seems more likely.

It is important that companies make their views known on this to their various industry and employer associations and to relevant government departments.

The consultation documents can be accessed [here](#).

*We will have a discussion on this at our [Brussels Network Meeting](#) on Wednesday/Thursday Sept 27/28. We will also do an in-depth examination of where we are with EWCs at our [training program](#) in Sitges in October. The Newsletter will return on Sept 14.*

## Ireland: Workplace data guidance issued

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Many of you have substantial operations in Ireland. The Irish Data Protection Commission ("DPC") recently published [guidance](#) for employers (as data controllers) regarding their data processing obligations and duties when processing the personal data of employees, former employees and prospective employees (the "Guidance").

The Guidance considers the legal bases for processing employee data, in particular occupational health data, and employer policies, monitoring employees, and employee rights. It also includes some practical case studies. As our colleagues in Matheson note, the:

*"Guidance is timely given the willingness of data protection authorities to impose fines for the unlawful surveillance of employees and the upward trajectory of fines. The fines show the importance of employers ensuring that they comply with their data protection obligations when processing employee data, and prior to implementing any employee monitoring measures."*

This [article](#) from the Matheson data protection team discusses some of the key highlights of the Guidance, and employers' responsibilities as data controllers in the workplace.

## Spain: Amendment to collective redundancies law

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**[Rubén Agote of Cuatrecasas writes:](#)** The government has amended Royal Decree 1483/2012 of 29 October, which sets out the regulations on collective redundancy procedures, the suspension of contracts and reduction of working hours, to introduce a new Additional Provision 6.

This is a new notification obligation for companies that are going to close one or more work centres, that this closure involves the cessation of their activity (of the work centre, it should be understood) and that the decision affects more than 50 workers.

The new Provision 6 says employers must give at least 6 months' notice (unless there is a justification for not being able to meet this deadline) to: (i) the competent labour authority, through the Directorate-General for Labour; and (ii) the most representative trade union organisations and those representing the

sector to which the company belongs, both at national level and in the autonomous community where the workplace or workplaces to be closed are located. There is no mention of an RLT (works council representing the whole workforce).

The exception reads as follows: *"If it is not possible to comply with this minimum period of notice, the notice must be given as soon as possible, stating the reasons why it was not possible to comply with the period laid down"*.

No consequences are foreseen in the event of non-compliance, and we do not believe that this could affect the nullity of the procedure. However, the labour authorities could see non-compliance as a breach of administrative obligations and impose an appropriate fine. Also, it may have some inconveniences in the preparation process from an operational perspective: workers knowing that the site will close could impede some changes that could have been made in a different scenario.

For now, we do not think this change will make any major difference to redundancy procedures. I am more than happy to answer any questions on this. [ruben.agote@cuatrecasas.com](mailto:ruben.agote@cuatrecasas.com)

## Future Work: Some recent developments

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*The Future of Remote Work* is a volume of essays, from various contributors, which looks at the shift to remote work from a trade union perspective. It says:

*"Debates on the future of work have taken a more fundamental turn in the wake of the Covid-19 pandemic. Early in 2020, when large sections of the workforce were prevented from coming to their usual places of work, remote work became the only way for many to continue to perform their professions. What had been a piecemeal, at times truly sluggish, evolution towards a multilocation approach to work suddenly turned into an abrupt, radical and universal shift. It quickly became clear that the consequences of this shift were far more significant and far-reaching than simply changing the workplace's address. They involved a series of rapid, blockbuster transformations that were going to outlast the 'mandatory lockdown' phase of the pandemic."* **You can download the book [HERE](#).**



**A poll of 42,400 full-time employees** in 34 countries shows that British workers spend an average of 1.5 days a week working remotely, compared with an international average of 0.9. This means Brits work more hours from home than almost every other nationality, with only Canadian workers spending less time in the office. Employees in France work just 0.6 days a week at home, while in Italy it is 0.7 days and in Spain the average is 0.9 days of remote work. In America, workers spend 1.4 days a week at home, while in Australia the number is 1.3. In Canada, office staff spend 1.7 days a week working remotely.

Asked how often they would like to work outside of the office, UK-based workers said they would like to work an average of 2.3 days a week from home. Mathias Dolls, of the IFO Centre for Macroeconomics and Surveys, said: "What we're seeing is that employees really value the option to work from home. However, there's a gap between the number of days that employees would like to work from home and the number that their employers are planning for them." More details [here](#).

**The biggest holdouts** on the five-day office week are top-tier executives, according to research from McKinsey which shows that senior employees strongly prefer the option of working from home at least part of the time. These executives, who may be small in number, says McKinsey, nevertheless can have outsize stature inside organisations: they are top performers and competitors will poach them with the promise of remote work.

"It's a group of talent that has a lot of sway," around company culture and what attendance looks like, observes Brian Vickery, a partner at McKinsey. In its survey of 13,000 office workers in six countries,

McKinsey found the largest share of employees who strongly prefer to work from home were those who earn more than \$150,000. That group said they were likely to quit their jobs if called back to the office every day and were prepared to trade more than a fifth of their compensation to work their preferred number of days at home.

## Bits and Pieces: A roundup of other HR news

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Some weeks ago, we commented on how women, over the past few years, had taken the leadership of major unions in many Western countries. Now, [Christiane Benner](#), who has been nominated by the IG Metall executive board to be the next president of the union, has written an [article](#) for *Social Europe* on the same theme. Well worth a read.

[EurActiv reports](#) that DG Employment in the European Commission has retained consultants to do a report on the impact of AI in the workplace. This is seen as a possible prelude to a bespoke Directive regulating the impact of AI on employment relations and human resource practices. However, there are no immediate plans for such a Directive. It will be up to the next Commission, to be appointed in late 2024, to decide on the matter. The political complexion of the new Commission, and of the incoming European Parliament, will determine whether such a law is needed or whether the AI Act, now under consideration, will suffice. The European Trade Union Confederation (ETUC) is pushing for a stand-alone workplace Directive.

The price of package holidays, [according to the ETUC](#), at home or abroad has increased by 12.4% across the EU between January and May and that follows an 11.5% increase last year. That is the highest increase in the cost of package holidays since records began in 1996 – before last year, the previous highest annual rise was 7.2% in 2015.

[The UK TUC has said](#) that it will fight a new “anti-strike bill tooth and nail” as the legislation passed its final parliamentary stage. The union body said the Conservatives were threatening to “take a wrecking ball” to the fundamental right to strike – adding that “unions won’t rest” until the legislation is repealed.

The *Strikes (Minimum Service Levels) Bill* will soon receive Royal Assent and make its way onto the statute book as the legislation passed in the House of Lords. The Bill will mean that when workers vote to strike in health, education, fire, transport, border security and nuclear decommissioning, they could be obliged to attend work – and dismissed if they don’t comply.

**Electronics Watch** is a union-supported advocacy group based in the Netherlands which monitors employment and working conditions in the global supply chains of major electronics companies, such as IBM, Apple, and HP. It has a full-time staff of over 20. It has just published [Principles of Worker-Driven Remedy](#) “as a guiding framework for public buyers and other stakeholders to address harm to workers in supply chains. Developed in consultation with trade unions, labour rights organisations, and public buyers, the Principles put affected workers at the heart of the remediation process” [here](#).

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*This is the last BEERG/HR Policy Global (Europe) newsletter before the Summer break. The next issue (#28) will reach your inbox on Thursday, September 14<sup>th</sup>*

## 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](mailto:tom.hayes@beerg.com)

\*\*Booking link available 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	<b>London Networking Event - Lunch + Roundtable Discussion at Oracle London Office</b>	<a href="#">Book London Network Event</a>	Oracle, The Helicon 1 South Place, London EC2M 2RB, GB
Sept 27 & 28	<b>BEERG Members Meeting</b> We will circulate the full agenda for this meeting very soon	<a href="#">Book Sept Meeting</a>	Brussels, Belgium
Oct 11 - 13	<b>BEERG Training: "European Works Councils - All Change"</b> *Booking link available from end of July		Hotel Estela, Sitges, Barcelona, Spain