BEERG HRPA HR POLICY ASSOCIATION HR POLICY GLOBAL

Newsletter

Issue #29 – Sept 22, 2022

In this week's issue:

- **Collective Bargaining:** Indexation on the way back?
- **EU:** Ban of forced labour products
- **UK:** Gig economy worker issue goes to Supreme Court
- **Future Work:** *'Cuando calienta el sol aquí en la playa'*
- **Germany:** Working time must be recorded
- **Global:** Towards an international labour court?
- **Jones Day Webinar:** Pay Equity and Whistleblower Protections

Collective Bargaining: Indexation on the way back?

European policymakers and central bankers charged with keeping inflation under control are concerned that "wage indexation" may be about to make a comeback.

Longstanding readers of this newsletter will remember that back in the 1970s wages in many EU countries were indexed automatically to rises in the cost of living. If the consumer price index went up, say, 8%, wages automatically went up 8%, before any negotiations on sharing productivity gains even began. Policymakers came to see indexation as "locking in" inflation expectations, and gradually the systems were largely dismantled. But they never went away completely.

In Spain, where annual inflation in August was 10.5% unions are succeeding in building indexation into more and more contracts. Such contracts cover almost a third of Spanish collective wage agreements, from less than a fifth at the end of 2021, and are expected to reach half next year, according to the Bank of Spain. While the Bank fears a "wage-price feedback loop," the UGT, with 960,000 members one of Spain's biggest unions, said workers should not be "once again the ones to pay the cost of a crisis".

Spanish wages are rising well below inflation, like those of most workers in Europe. CaixaBank has built a wage tracker based on customers' payslips that showed they rose 2.5% in the year to June from 2.4% in May.

Figures published last week by Eurostat, the European Commission's statistics bureau, showed hourly pay rose 4.1% in the eurozone in the second quarter of 2022 against the same quarter the previous year, the strongest rise for at least a decade.

In countries including Belgium, Cyprus, Luxembourg and Malta, indexation was never entirely done away with. Luxembourg this year suspended pay rises due under its indexation rule and gave workers tax credits instead.

In Belgium, there is concern over a trigger that adjusts the pay of most public and private sector workers in line with a “health index” of inflation that excludes fuel, alcohol and tobacco prices. Under the trigger, hourly wage costs are set to rise 12% in total over the next two years, the National Bank of Belgium has forecast, 4.8 percentage points more than in France, Germany, and the Netherlands.

Belgium’s Unizo employers’ association said wage growth at that level would be “devastating for our economy and employment” and called for an “index skip” by the government to lower expected wage rises this year. In response, Lars Vande Keybus, adviser at ABVV, Belgium’s largest union with 1.5mn members said: “Purchasing power is extremely important if we do not want to fall into a deeper recession next year”.

EU: Ban of forced labour products

Following the publication earlier this year of the proposed Corporate Due Diligence Directive, the European Commissioned has now brought forward draft rules which would prohibit the placement of products made with forced labour on the European market.

The new rules:

- *Outlaw products made with forced labour from being placed on the EU market or exported, no matter whether they were made within the EU or elsewhere*
- *Use the ILO’s definition of forced labour:* “All work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily”
- *Be enforced by member-state customs authorities, who will carry out investigations based on information collated by the EU and external submissions from civil society organisations.*
- *Where forced labour is uncovered, require customs authorities to intervene to and withdraw products from free circulation within the EU and prevent export. Businesses would then be required to dispose of the products.*
- *Empower member-states to penalise non-compliant companies.*
- *Require member-states to recognise each other’s decisions.*
- *Include a non-cooperation clause, allowing authorities to take decisions based on best available evidence, in the event companies and non-EU countries refuse to cooperate.*
- *Unlike the corporate sustainability and supply chain due diligence proposal, which applies solely to larger companies, cover SMEs.*
- *Come into effect 24 months after the rules are placed on the statute books, meaning it would apply from 2025 at the earliest.*

UK: Gig economy worker issue goes to Supreme Court

In the final stage of a case that started in 2016, the Independent Workers' Union of Great Britain (IWGB) was given permission to challenge Deliveroo in the Supreme Court over collective bargaining rights. The case concerns whether the fact that Deliveroo riders may and do use substitutes to make deliveries on their behalf means that they do not have "worker" status.

That is important because, without it, the Central Arbitration Committee could not consider the IWGB's application against Deliveroo for trade union recognition.

This appeal will play out against a different context from the earlier appeals in the case as, in May, Deliveroo signed a partnership agreement with the GMB union, based on its riders being self-employed instead of "workers." The IWGB has heavily criticised that deal for neither addressing many issues that it has with the tech firm's practices nor reflecting riders' choice of trade union.

Future Work: *"Cuando calienta el sol aquí en la playa"*

It looks like the sun will be shining on the beach for a bunch of Citigroup bankers after an announcement that the investment bank intends to open a new hub in the Spanish resort of Málaga.

The bank has selected twenty-seven analysts from more than 3,000 applicants for the two-year programme. Promising eight-hour days and work-free weekends, it aims to distinguish itself from the seven-day working weeks common for young staff in London and New York.

By locating it in Málaga Citi is seeking to offer a more alluring lifestyle and a different path into banking for those less keen to return to a city-centre office in Canary Wharf or Manhattan after the pandemic.

Some 86% of companies taking part in a trial of a four-day working week have said they are likely to extend the policy beyond the six-month test period here . More than 70 organisations, from small independent stores to larger companies covering a variety of sectors, signed up for the trial, which began in June, with more than 3,300 workers taking part.

It is being run by the non-profit 4 Day Week Global in partnership with think tank Autonomy, researchers at Boston College and the universities of Oxford and Cambridge, as well as the 4 Day Week Campaign. Joe O'Connor, chief executive of 4 Day Week Global, said: "We are learning that for many it is a fairly smooth transition and for some there are some understandable hurdles, especially among those that have comparatively fixed or inflexible practices, systems or cultures dating back well into the last century."

Writing for the *Wall Street Journal*, Callum Borchers reports on how some companies are erecting new partitions to give employees some separation from one another in a bid to lure back workers who dislike 'open' offices and the 'hot' desk system that businesses adopted for hybrid staff to drop into reopened office buildings. Kristi Buchler, principal at Interior Architects, which helps companies plan workspaces, says "seated privacy" is the latest buzzword in office design.

Many new cubicles in formerly open setups feature low walls topped with glass, which offer workers a sense of solitude when sitting - "But I can still pop my head up and easily go, 'Oh, my colleague just got here. Great! I had a question for them,'" she says. But this doesn't mean companies are reverting to a '90s-era cubicle culture, Borchers notes.

Germany: Working time must be recorded

Dr Gerlind Wisskirchen, a partner with CMS Hasche Sigle writes: In a recent landmark decision (1 ABR 22/21), the German Federal Labor Court (BAG) ruled that all employers were under an obligation to record their employees' working hours.

What are the effects of this ruling in favour of electronic time recording on labour law and working time models?

The decision referred to the German Federal Labor Court (BAG) by the Higher Labor Court of Hamm was actually about whether works councils have a right of initiative and can require the introduction of electronic working time recording. Whereas the Higher Labor Court had affirmed such a right of initiative of the works council, the German Federal Labor Court (BAG)rejected this.

So far, so good, you might think from an employer's perspective. However, the court's rationale means that all employers, i.e., even those companies without a works council, must now decide how to deal with the issue of recording working time. This is because the German Federal Labor Court (BAG) dismissed the works council's right of codetermination and initiative on the grounds that a statutory regulation exists in this respect which "blocks" any such right.

In the court's view, this statutory provision follows from the interpretation of section 3 (2) no. 1 German Occupational Health and Safety Act (ArbSchG) in conformity with EU law, thus leaving no room for a right of initiative of the works council.

Obligation to record working hours has significant practical implications

On the one hand, the decision affects works councils' codetermination rights. But it also makes it difficult for trust-based working time models to survive. Previously, only overtime and Sunday work had to be documented; according to this ruling, all working hours must be recorded.

Even if trust-based working time models have worked well for employers to date and therefore there is neither a need nor any interest in recording specific working hours, employers are now required to "monitor" their employees in the context of recording working times.

This consequence is unlikely to be in the interests of employees, employers or works councils.

Not least because the latter are restricted in their powers to protect employees from employer surveillance, among other things. However, the German Federal Labor Court (BAG) appears to take the view that such monitoring by the employer is mandatory.

Amendments to the German Working Hours Act (ArbZG) now obsolete?

Ever since the CJEU's so-called time clock decision, companies and lawyers have anticipated that the German government would adapt the German Working Hours Act (ArbZG) to meet the requirements of that ruling on the recording of working time – in fact, however, nothing has happened here in the past three years.

With its decision, the German Federal Labor Court (BAG) has pre-empted the German legislator, which will clearly have massive repercussions on any amendment to the German Working Hours Act (ArbZG).

Grounds for the BAG ruling on the recording of working hours yet to be published

Only time will tell how exactly this ruling will impact on the German government's legislative amendments. So far, only a press release is available, which does not allow any specific inferences.

What is certain, however, is that a sea change is already underway as a result of this sensational decision: the clear tendency is to move away from trust-based working hours and toward stricter monitoring of employees.

The ruling comes as employers are having to think about how working time can be managed as an increasing number of employees move to remote and hybrid system of working. It will also serve as a reminder to employers in other EU countries that the 2019 ruling of the CJEU cannot be ignored. Until now, the ruling has largely been disregarded because of the Covid upheaval, but as we move back to normality its implications will have to be taken on board.

As the judgement of the CJEU was handed down in 2019 it will impact the UK because Brexit had not yet come into force. However, press reports suggest that the new Truss government is planning to tear up the Working Time Regulations, based on the Working Time Directive, as a "Brexit bonus". Such a move could put the EU/UK Trade and Cooperation Agreement (TCA), which regulates post-Brexit trade arrangements, at risk as it would be seen by the EU as undermining by the "level playing field" provisions of the agreement.

Global: Towards an international labour court?

In the West, however you want to define it, we live in market economies where the majority of economic transactions are conducted between private actors. The involvement of the state in the market varies from country to country, from the social market economies of Northern Europe to the more laissez-faire economies of elsewhere in Europe and the US.

Historically, trade unions have played an important role in the market economy, organising workers into collectives to strengthen bargaining power with their employers. Such collectivism delivered substantial gains over the years.

For the most part, unions were historically based in what can best be described as "mass male industries", mines, transport, docks, manufacturing. Such industries were contained within national borders, giving unions significant economic leverage. Outcomes were decided by the balance of forces. The strength and determination of the parties to see things through to the end is what counted.

Nowadays union strength in primarily to be found in the public sector and in some countries the number of women in membership is greater than that of men. Further, the creation of the European single market, and globalisation more generally, has undercut union bargaining power through the gradual decline of the "mass male industries" as jobs were moved to more cost-effective locations. Technology has further contributed as ever more sophisticated systems replace human labour.

All of which is a long introduction to a recent piece by Walton Pantland, (*photo*) an official with Industrial Global, in which he argues for the establishment of an international labour court. Pantland wants to see the creation of such a court so that unions can "hold multinationals to account."

Such calls are an indication of union weakness rather than union strength. When unions had economic leverage, they could hold employers "to account" on the picket line. Now that that strength has faded, they need to find new sources of leverage and courts seem the new institutions of choice. We see it in calls for courts to be given the power to issues injunctions to block management decisions where EWCs feel they have not been "properly" informed and consulted.

Courts, of course, adjudicate commercial decisions every day of the week. But their decisions are based on findings of breaches of contract, that one side or the other has failed to do what it committed to do. The problem for the unions, and for EWCs, is that substantive contracts between unions and employers at either European or global level that can be enforced through the courts simply do not exist.

At the global level there are few hundred International Framework Agreements that even Pantland admits cannot be enforced. EWC agreement are little more than procedural agreement in which the parties agree to follow certain steps but there are no binding outcomes or "deliverables" to which they are committed. Which is the unions' real source of frustration with EWCs that the EWCs "opinion" is not binding on management in any real sense.

Pantland's article is well worth reading as it clearly maps out the unions' desired direction of travel. It is likely to be a very long journey with the wished for destination never reached.

Jones Day Webinar: Pay Equity and Whistleblower Protections

Members may be interested in a Jones Day webinar on Wednesday, October 5th (5.00pm – 6.00pm CEST) that will examine recent European developments in pay equity and whistleblower protections – topics of relevance to all global businesses.

Recent European directives and proposals in these areas will drive changes in law and practice in countries across the EU. In this webinar, lawyers from Jones Day's Labor & Employment Practices across the EU and UK will discuss the potential impact of these directives in light of existing local laws and global trends.

Registration link: HERE ***For more information*** *Email*

Please note there will be no BEERG Newsletter next week, due to the members' meeting in Brussels

Issue #30 will arrive in your inbox on Thursday, October 6th

THE BEERG AGENDA:

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

HRPA: *Impact of Inflation on Employee Expectations and Voice*	Webinar Sept 28 Noon EST/1800H CET
Join HRPA for a webinar discussion featuring member company representatives, issue area experts and HR Policy staff as we explore the significant implications of employee voice in the context of high inflation and low unemployment.	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 for these events via the links above. If you get a "No Tickets Available for Purchase" message check that you are logged in online – if the issue persists contact Derek.*

BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
Sept 28	***HRPA Webinar:*** *Impact of Inflation on Employee Expectations and Voice*	*Booking Page*	*Webinar on Zoom*
Sept 28/29	***BEERG Members' Network Meeting***	*Book Sept Meeting*	*Hotel Pullman, Gare du Midi, Place Victor Horta 1, 1060 Brussels*
Oct 18 - 21	***BEERG Training:*** *"Managing European Employee Relations"*	*Book Oct Training*	*Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain*

Phone: + 33 684752 122 I email: tom.hayes@beerg.com I website: www.beerg.com