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EWCs: UK's EAT decision means uncertainty continues



The UK Employment Appeals Tribunal (EAT) has [ruled](#) that the UK Central Arbitration Committee (CAC) did not err in law when it said it had jurisdiction to hear a complaint made by the easyJet European Works Council (EWC), about planned organisational changes during 2020, including possible job cuts.

At that time, the UK was still covered by European Union laws as the UK and the EU negotiated a future trade and cooperation agreement. The UK finally left the EU at midnight on December 31, 2020. Arguments about the role of EU law in the UK continue [here](#). Like the rest of the airline and travel industry, easyJet suffered a dramatic downturn in business in 2020 because of Covid.

The *Transnational Information and Consultation of Employees Regulations* (as amended in 2019, to take account of the UK's exit from the EU) make it clear that after the UK's exit from the EU no new EWCs could be set up in the UK. But it appears to say that EWCs in existence on the date of the UK's exit could continue to operate, even though the EU Commission in a [note](#) of April 2020 made it clear that EWCs could not be based in a non-EU/EEA country.

The EU's [note](#) means that a company that comes within the scope of the EWC Directive cannot have an EWC based in the UK and must appoint a representative agent in an EU Member State and move its EWC to that Member State. UK trade unions, and union-side EWC experts, are arguing that UK law, as written, means that certain companies, particularly those headquartered in the UK, could be obliged to run two EWCs, one based in the EU, the other in the UK. How an “EWC” based in the UK, a “third country” and no longer an EU member, could have any sort of legal remit in EU Member States is left unexplained in the legislation.

easyJet has set up a Subsidiary Requirements EWC based on German law. The company told the EAT that there would be “significant practical difficulties in maintaining an EWC in the United Kingdom at the same time as being required to create a new EWC within the EU.” The EAT judge took note of the “practical difficulties” involved but did not elaborate on them.

Since “Brexit” nearly all companies with EWCs that were based on UK law have moved their “representative agent” to other jurisdictions, with many picking Ireland.

We will come back to this judgement in more detail, in the near future.

The law on EWCs will be examined in detail in our “Managing European Employee Relations in 2023” program to be held in Sitges, Barcelona, next April – Brochure [HERE](#)

Twitter: The law of consequences



In this newsletter we rarely comment on individual companies, other than when a company is the subject of a court or tribunal decision, such as easyJet (*see easyJet above*) and all relevant facts are in the public domain. We do make exceptions when decisions by individual companies cause considerable public controversy, such as the actions by P&O Ferries in the UK earlier this year.

This time the exception is Twitter. As is well known, within the past weeks, Twitter was bought by Elon Musk, the owner of Tesla. Within days, Musk announced a 50% reduction in headcount, and dismissed employees were informed by email to their private accounts. Those dismissed were immediately locked out of all company IT systems.

In the US, where employment is “at will”, such actions can be legal, though they may fall foul of the *Worker Adjustment and Retraining Notification* (WARN) Act, [here](#). In Europe, including the UK, collective dismissals without notice is definitely illegal, with the minimum legal framework set out in the EU’s [Collective Redundancies Directive](#), though the laws in many Member States go considerably beyond the requirements of the Directive.

In general, collective redundancies can only take place after a period of information and consultation with employees’ representatives. In circumstances where there are no such representatives, then time must be allowed for such representatives to be elected.

As has been reported in the UK and Ireland, telling employees they are dismissed and then announcing an information and consultation process afterwards, is legally dubious, to say the least. Companies may calculate that that they will take the hit and pay the fine and move on, as happened in P&O Ferries. But, inevitably, such actions lead to calls for changes in the law. A future Labour government will certainly do so in the UK. The same could happen in Ireland, depending on the outcome of the next general election.

The ill-judged action of one can have adverse consequences for all. It is always best to follow the law and do what is required by agreements and national industrial relations practices and procedures. To coin a phrase: shortcuts to labour laws always end up in cul-de-sacs.

Platform Economy: A round-up of recent developments



Independent contractors and freelancers are living in a state of "continuous worry" about the effect a negative review could have on their business, according to university researchers in Bristol and Oxford who found review platforms are leaving so-called gig economy workers at the mercy of malicious customers ([here](#)).

Their study found popular review sites often operated without checks and balances to verify the ratings, and they also lacked effective processes for the contractor to seek redress. Lead author Dr Alex Wood, a sociologist from the Bristol Business School, said:

"It was shocking how workers expressed continuous worry about the potential consequences of receiving a single bad rating from an unfair or malevolent client, and how this could leave them unable to continue making a living."

Study co-author Professor Vili Lehdonvirta, from the University of Oxford, added:

"This study is important as tech companies continue to rewire the social fabric of our lives and platform rating and reputation systems are becoming increasingly ubiquitous beyond the gig economy. Countering these processes of reputational insecurity will not only be an important policy endeavour for improving gig work but also the wider platform economy."

EU: Unions concerned over accident rates



"Deaths at work will continue to blight Europe for almost a decade longer than previously forecast after a rise in fatal accidents in almost half of member states," trade unions have claimed. They say that fatal accidents at work are now projected to continue until 2062 based on the current rate, seven years longer than was [previously expected](#). This delay comes after a rise in yearly deaths at work in 12 countries between 2019 and 2020, most notably in Italy (+285), Spain (+45) and Portugal (+27). The European Trade Union Confederation (ETUC) is [calling](#) on the EU and national governments to stop workplace deaths by backing its Zero Death at Work manifesto.

EU: Law on women on boards moves closer



On Oct 17, 2022, the European Council gave its final go-ahead to EU rules to promote more balanced gender representation on the boards of European listed companies. The 'Women on Company Boards' Directive stipulates that at least 40% of non-executive board positions in listed companies should be held by members of the under-represented sex by 2026.

The proposal for the Directive was first presented by the European Commission in 2012 with the aim of promoting gender balance in decision-making at the highest levels of corporate governance. However, the proposal was blocked by several member states on the grounds that such legislation should be made at a national level.

[Research](#) shows that on average 31.5% of board members and only 8% of board chairs are women. [The Directive](#) aims to introduce fair and transparent selection and appointment procedures, so that at least 40% of non-executive board positions, either members of supervisory boards or non-executive directors in

a one-tier board, are occupied by the under-represented sex. If member states choose to apply the new rules to both executive and non-executive directors, a target of at least 33% of all director positions applies. Small and middle-sized companies with fewer than 250 employees are excluded from the scope of the Directive.

Future Work: The rise of the “Chief Remote Officer”



According to the London [Times](#) “the rise of working from home has prompted a recruitment boom for a new role: ‘chief remote officer’ “. It reports that within the past month, 107 British companies were recruiting someone to oversee hybrid working, up from 52 in October 2019, according to the jobs search engine Adzuna.

The title of chief remote officer has been particularly popular in the technology sector. Facebook was an early adopter, having begun its recruitment process for the role in September 2020. The social media giant, which is owned by Meta, said it was looking for someone to develop a long-term remote working plan and lead the firm’s push “towards remote-first ways of working.”

The percentage of UK workers who reported that they work exclusively from home fell to 22% between February and May, when the latest Office of National Statistics (ONS) survey figures were published. A separate recent survey by LinkedIn showed that fewer than 12% of job adverts in the UK were for fully remote roles — the lowest level since the company began collecting the data in September last year.

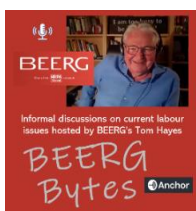
Paul Lewis, chief customer officer at Adzuna, said although remote working could be good for productivity and performance, “the lack of face-to-face communication and social interaction can lead to employee disengagement and burnout.” He said chief remote officers would be responsible for “future-proofing the business to avoid employee disengagement.”

Spain: URL correction to last week’s story...



In [last week’s issue](#) we reported on a case in Spain in which the Constitutional Court upheld the right of a company to use hidden video cameras to monitor an employee suspected of stealing without telling employees about the use of such cameras. We included the wrong URL link. The URL link we meant to use is this: [here](#), from *EL Pais*, in Spanish. The link we used stated position of the Spanish data Protection Agency which does not consider the use of cameras without notice to be valid.

BEERG Bytes: Second episode of *Knowing Me Knowing EU* Podcast



Check out our new monthly podcast stream: [Knowing Me Knowing EU](#) looking at developments in the EU that are of particular interest to HR professionals. All episodes are available as podcasts via your favourite [Podcast](#) search engine – you can find it by searching for “BEERG Bytes” or find it here on these platforms: [Spotify](#) / [Google Podcasts](#) / [Apple Podcasts](#) / [Anchor RSS](#)

Webinar: Global Inflation and its impact on Pay Strategy

Online Nov 17, 9:00am EST

Countries around the world are facing record high inflation and global employers are now pressured by their employees and unions to provide pay raises and bonuses to offset the impact. This webinar will examine these issues with a panel of speakers and will share the results of a BEERG survey conducted by BEERG on pay negotiations around Europe

[Booking Page](#)

Webinar Training for Global Leaders: Fundamentals of Global Labour Relations

Dec 6 - 8

A unique offering designed for CHROs and senior executives who need to understand the basics of strategic global labor and workforce relations management. The course will take place on December 6-8 with three / four sessions each day. Details of Agenda [HERE](#)

[BOOK Dec Training](#)

Training: AI in HR management processes

Feb 14 – 16, 2023, 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 which together create complex new challenges for employee relations and human resource executives. [Download Brochure](#)

[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 check that you are logged in online – if the issue persists contact [Derek](#).

BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
Dec 6 - 8	Training Program for Global Leaders: Fundamentals of Global Labour Relations	Book Dec Training	Online
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		Hotel Estela, Sitges, Barcelona, Spain

Other BEERG Dates for your 2023 Diary:

2023 Dates	Event	Venue
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