

In this week's issue:

- **EWCs:** The “expert” question
- **EU:** Deal on platform workers?
- **Due Diligence:** ING bank attacked over fossil fuel loans
- **Unions:** “Change public procurement laws”
- **Diversity:** Do as we say?
- **AI Act:** Unions want more
- **BEERG Bytes:** Knowing Me, Knowing EU... the EU's legislative agenda

EWCs: The “expert” question

Summary: Experts and union officials may be given the right to attend meetings between the EWC and central management, but this could change the dynamics of meetings and allow outside agendas



As the EU Commission's proposals for changes to the EWC Directive are considered by interested parties, one proposal that is generating a lot of concern on the part of undertakings with an EWC is to give experts, including trade union officials, the right to attend meetings between the EWC and central management.

While this proposal is only to be found in the Subsidiary Requirements, these have always acted as a “floor” for negotiated agreements. The proposed wording reads:

(Existing Directive, Subsidiary Requirements): *The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.*

(Proposed new wording): *Such experts may include representatives of recognised Union-level trade union organisations. At the request of the European Works Council, such experts shall have a right to be present at meetings of the European Works Council and meetings with the central management in an advisory capacity. The central management shall be informed in advance.*

The concern being expressed by many of our members who have been in touch with us is that giving the EWC a right to bring experts, including union officials, to meetings against the wishes of management will completely change the dynamics of meetings, especially in circumstances where union officials bring outside agendas to the table.

Further, it would seem that there is no limit on the number of experts that an EWC can bring to a meeting, which could mean that in certain circumstances more than one union official could be in attendance.

While experts can only attend in an “advisory capacity,” how that is to be defined is unclear. We know from experience with SNBs that “advisory” can mean that they dominate the meeting.

It has further been said to us that in many instances unions have few or no members in a company but may have one or two activists on the EWC who push for their involvement. Unions in jurisdictions, such as Ireland, where there is no legal obligation on an employer to recognise a union, will see the new EWC right as a way of getting “in front of management”.

This is an issue that we will discuss at our upcoming meeting in Brussels on February 28/29. In the meantime, we are interested in hearing from you on this, or any other issues concerning the proposed changes to the Directive, as we prepare for the meeting.

EU: Deal on platform workers?

Summary: *It looks like agreement has been reached on platform worker status in the EU, leaving it up to Member States to decide whether they are employees or self-employed*



It appears that agreement may finally have been reached between the Council of Ministers and the European Parliament on the proposed Directive on the Employment Status of Platform Workers through the expedient of leaving it to the Member States to decide whether platform workers are employees or self-employed.

Platform workers in the EU such as taxi drivers, domestic workers and food delivery drivers are a step closer to better working conditions, after a new provisional agreement was reached under the Belgian EU presidency on Thursday (8 January).

The EU Commission when proposing the new law estimated that 5.5 million out of 28 million platform workers were misclassified as self-employed when they should in fact be employees — a legal definition that would give them access to new employment and social protection rights.

While we have not seen a copy of the most recent text, press reports say that it does not include a list of criteria or indicators to trigger the legal presumption of employment, which means that there will be no harmonised conditions across Member States to reclassify a platform worker as an 'employee', as proposed by the Commission. The decision to reclassify a worker would be taken at national level, following national law and collective agreements, and taking into account the case law of the European Court of Justice.

EU governments will have to introduce a rebuttable presumption into their national law, which would aim to facilitate the reclassification process for gig workers and maintain the burden of proof on platforms in case they want to prove otherwise. It will also be up to member states to determine what facts indicate control and direction in order to trigger the legal presumption.

If formally approved, the directive will also create the first EU rules on algorithmic management and the use of AI in the workplace, ensuring human oversight of key decisions that directly affect workers. We understand that the Council will decide whether to approve the text on Friday, February 16. Once the final text is available, we will comment on it in more detail.

Due Diligence: ING bank attacked over fossil fuel loans

Summary: In June 2021, a Dutch court ordered Shell to reduce their emissions. Now, the NGO that brought the Shell case, is targeting the Netherlands's largest bank ING... here's why this matters



In June 2021, a watershed ruling from a Dutch court ordered Shell to reduce their emissions. This marked the first major judgement against a fossil fuels company in a climate case and resulted in more cases being brought on similar grounds (Shell has not implemented the ruling and appeals are ongoing). Now, the NGO that brought the Shell case, Friends of the Earth Netherlands, is targeting the Netherlands's largest bank ING – arguing that financing fossil fuels violates their duty of care under Dutch law “to not create any danger that could lead to avoidable damage to property or personal injury.” The *Financial Times* [reports](#) that the lawsuit:

“Covers all of ING’s greenhouse gas emissions including so-called indirect emissions from companies that the bank does business with and emissions generated through its lending and underwriting activities.”

While (for now) the financial sector is excluded from the scope of the proposed Corporate Sustainability Due Diligence Directive (CSDDD), we suspect that the cases such as the one being taken against ING will multiply as NGOs and advocacy groups look for opportunities to target multinational corporations. This is one of the reasons cited by the German liberal party, FDP, for opposing to the Directive.

FDP believes it leaves businesses widely exposed to legal risks. They have a point. Even if such legal complaints are found by the courts to be lacking in merit, which most of them will, the time, cost, and effort involved in defending against them can be substantial.

Unions: “Change public procurement laws”

Summary: In a letter to the EU's Competitiveness Council, the ETUC and IndustriALL Europe called for government-funded businesses to respect employees' bargaining rights and improve working conditions



In a letter addressed to the EU's Competitiveness Council (Ministers responsible for industrial matters) the European Trade Union Confederation (ETUC) and IndustriALL Europe called on ministers to ensure that government-funded businesses respect employees' bargaining rights and avoid the further “deterioration” of Europeans' working conditions. While the letter has not been published, according to *EurActiv*, the letter said:

“When we give vast amounts of taxpayers’ money to private industry, we should be ensuring they are creating quality jobs that make this collective investment worthwhile,” the letter reads.

UNI Europa has been running a campaign calling for a change to EU procurement rules to make collective bargaining a condition of the awarding of public sector contracts. In a recent web post, it said:

Every year EU governments and other public authorities spend one in every seven euros in our economies – two trillion or 14% of GDP – on purchasing services, works and goods. As the European Commission maintains flawed public procurement rules, too many public contracts are going to companies violating labour rights, undercutting competitors and delivering low-quality services. Instead, the EU and member states should make use of their spending power to support workers, to reward companies respecting labour rights and to advance social goals.

It is calling for changes to EU rules

...that allow, and indeed, demand that all levels of government – from municipalities to the European institutions – prioritise contracts with companies engaging in collective bargaining.

Were the EU to agree to what UNI is calling for then the majority of EU-based companies would be excluded from public sector work. Whether it could be legal for the EU to insist that employees must join a trade union, a private association, before their company could benefit from public sector contracts would quickly be raised.

Diversity: Do as we say?

Summary: Workers at environmental charities express frustration with the lack of diversity at senior leadership level and a lack of action on diversity and inclusion



[According to the Guardian](#) workers at environmental charities have expressed their frustration with the lack of action on diversity and inclusion, despite public statements from employers. A survey of the sector from the Race Report campaign shows that only around one in 20 workers identified as an ethnic minority, compared to one in eight in the wider UK workforce. Three-quarters of workers of colour reported they felt they belonged in their organisation, compared with 84% of white identifying workers.

The research also found that the senior leadership of environmental organisations lacks diversity. One in 10 of the firms that contributed to the research reported publishing or being in the process of publishing data on their race equity pay gap compared with one in 20 in 2022; two-thirds reported hiring a senior leader with responsibility for equality, diversity and inclusion, up from 44%; and 85% said they were carrying out reviews of the effectiveness of that work.

We believe it would be interesting to see similar data on the various NGOs working across Europe. Maybe the European Commission should consider a study on this?

AI Act: Unions want more

Summary: European trade unions welcome the improvements of the pending AI Act, but they want more as they claim it falls short in protecting workers' rights

While trade unions have welcomed the agreement between the European legislators on the AI Act, they do not think it goes far enough when it comes to workers' rights. They want a workplace specific AI Directive to be put on the table. Isabelle Barthès, Acting Joint General Secretary of industriAll Europe, commented:



"We welcome the improvements of the pending AI Act. But it is not enough for a world of work that is increasingly driven by AI, with potentially far-reaching consequences for workers and their jobs.

"We are therefore calling for a directive that provides for adequate information and consultation of workers before AI is introduced in the workplace, and for a legislative framework that provides

robust protection for workers in the context of AI and a better understanding of employment-related risks.”

According to the unions, while the AI Act includes an obligation to inform workers and their trade unions about the introduction of high-risk AI systems in the workplace, this *“does not extend to consultation with workers.”* Further, “... ambiguities and loopholes remain in the proposed legislation.”

Workers will only be informed about the introduction of high-risk AI systems. An AI system is considered high risk if it causes 'significant harm' to fundamental rights. This leaves a lot of room for interpretation. It is also difficult to determine in advance and in concrete terms what constitutes a 'significant risk'.

The unions want to see a Directive which will:

- *set European minimum standards for the use of AI systems in the work context*
- *ensure that AI systems are transparent and understood by workers*
- *ensure proper involvement of workers and their unions, including negotiated solutions*
- *give trade unions and workers' representatives the right to external expertise*
- *require employers to carry out impact assessment to assess the effect of AI systems on working conditions*
- *prohibit intrusive AI application that monitor workers*
- *ensure the human-in-command principle*

The unions will be pressing the incoming Commission and Parliament for a new law along these lines.

BEERG Bytes: The EU’s legislative agenda...

In our first [BEERG Byte podcast](#) of 2024 (part of our Knowing Me, Knowing EU stream) I dive into the EU legislative agenda (some of which we have also considered above) and explore items of significant interest, including the AI Act, Corporate Sustainability Due Diligence Directive, Status of Platform Workers Directive, and proposed changes to the EWC Directive.

This episode is available on [Spotify](#) or via your favourite Podcast search engine by searching for **“BEERG Bytes”** e.g.: [Spotify](#) / [Google Podcasts](#) / [Apple Podcasts](#) / [RSS](#)



Check out Alan Wild’s two new podcasts on:

- *the evolving history of EWCs, and*
- *the changing labour landscape in Mexico*



A Walk On The Wild Side

10-minute podcasts by Alan Wild...
...for HR professionals managing employee relations in global and millennial times



For your diary...

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

HR Policy Global: Winter Members Meeting

Feb 28/29, Pullman Hotel, Brussels

The next HR Policy Global, Network Meeting is on Wednesday afternoon/Thursday morning, Febr 28 & 29 at the Pullman Hotel, Gare Midi. [Draft agenda](#) (updated - PDF). Members can self-register via the link >>>>

[Book Feb meeting](#)

HR Policy Global: Irish networking lunch

March 6th 12 noon, in Dublin

We are holding a networking lunch in Dublin on March 6th, kindly hosted by our colleagues in Mathesons LLP at their Dublin city centre offices. You can register your Dublin and Irish based colleagues via this link >>>>

[Book Dublin Meeting](#)

European Academy Training Program

April 16 - 19, Hotel Estela, Sitges, Barcelona

We will shortly circulate a detailed programme for our upcoming April training programme in Sitges, outside Barcelona, Spain. Use link to book >>>>

[BOOK April 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 make sure you are logged in – if the issue persists contact [Derek](#).

Upcoming Events Across Europe:

Date	Event	Booking Links	Venue
Feb 28 & 29	<i>Europe Members Meeting in Brussels</i>	Book Brussels meeting	Pullman Midi Hotel, Brussels, Belgium
March 6	<i>Members' networking and information lunch</i>	Book Dublin Meeting	Matheson LLP, 70 Sir John Rogerson's Quay, Dublin, D02 R296
April 16 - 19	<i>Europe Academy Training</i>	Book April Training	Hotel Estela, Sitges, Barcelona, Spain
June 19 - 21	<i>Europe Members Annual Summit</i>	Book Barcelona 2024 Summit	Hotel Estela, Sitges, Barcelona, Spain
Sept 18 & 19	<i>Europe Members Meeting</i>		Brussels, Belgium
Oct 10 - 13	<i>Europe Academy Training</i>		Hotel Estela, Sitges, Barcelona, Spain