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EWCs: An update on developments

Summary: Discussions will begin soon within the European Council, European Parliament, and European Commission on revising the EWC Directive. These negotiations are critical as they will shape the future of the EWC Directive, impacting European labor regulations



Between now and the end of the year, discussions will begin - between the European Council, the European Parliament, and the European Commission - to see if an agreement can be reached on the text of a revised EWC Directive.

The European Parliament still needs to finalise its negotiating mandate on the matter, while the Commission awaits the appointment of a new Employment and Social Affairs Commissioner. The Commission's position is as set out in its original proposals, but the new Commissioner will have a say on the compromises that may be made in the tripartite negotiations. The Council of Ministers has already fixed its position.

What will the outcome be? Our best guess is that there will be no injunctions and no GDPR-size fines. Penalties will be left to Member States. However, the "Article 13" exemption will go, the definition of "transnational" will become even more theological (meaning no one will understand it) and negotiated agreements will need to include language on the financing of training, experts, and legal costs. The Subsidiary Requirements will provide for 2 meetings a year, and for EWCs to have the right to have their expert at meetings with management.

Meanwhile, as our colleagues in Lewis Silkin LLP say [here](#), the UK's Employment Appeal Tribunal recently decided that Irish law has applied to HSBC's EWC agreement since the end of the Brexit transition period following the British bank's appointment of an Irish representative agent with effect from that time.

It also decided that, unlike for easyJet and what we understand to be just two other businesses, which operated under the UK's subsidiary requirements before that time, there is no need for it to run a parallel

“UK law EWC” alongside its EWC operating under the framework of the EWC Directive. The same applies for any other undertakings that had an EWC under UK law but moved it to Ireland because of Brexit.

The deadline for the HSBC EWC to apply for permission to appeal against the EAT’s decision has now passed without it having made any such application. Bottom line: Just three businesses have to run 2 parallel EWCs because of a badly written piece of UK law.

At the same time, a response from the new Labour Government’s to the consultation on reforming the UK’s EWC legislation launched in May by the previous Conservative Government is awaited. **Lewis Silkin wrote [here](#).**

- **Lewis Silkin LLP have also published a comment on the recent Irish Labour Court decisions on the complaints from the Verizon EWC. You can find their comments [here](#). They complement our [own comments](#) on the case.**

EU: Will Draghi report mark a turning point?

Summary: Mario Draghi's report urges the EU to invest €800bn annually for radical reforms, warning against falling behind the US and China. He highlights the need for the EU to relax competition rules, integrate capital markets, use joint procurement in defence, and adopt a new trade agenda to become economically independent



This week saw the publication of a significant report from Mario Draghi, the former head of the European Central Bank, which called for a “new industrial strategy for Europe,” saying the EU needed to raise investments by €800bn a year to fund radical and rapid reform to stop the union falling behind the US and China.

Key recommendations include relaxing competition rules to enable market consolidation in sectors such as telecoms; integration of capital markets by centralising market supervision; greater use of joint procurement in the defence sector; and a new trade agenda to increase the EU’s economic independence. Draghi also called attention to what he described as the “regulatory burden” on EU businesses, noting the reporting requirements mandated by laws such as CSRD and CSDDD.

In an [article](#) that appeared the day after the Draghi report was published, the *Financial Times* quotes Alexander De Croo, the Belgium prime minister, as saying:

“The feeling is that it is just reporting for the sake of reporting ... It stifles entrepreneurship, it stifles innovation... [it] is definitely one of the elements that reduces GDP growth.”

Not something he was saying as the Belgian Presidency of the Council of Ministers pushed through a raft of new laws in the first six months of this year. The *Financial Times* piece also quotes a leading business figure as saying that the EU’s “Green Deal” laws require even large businesses to seek external help to meet them, and that they are “100% a cash cow for consultants”.

Will the EU Commission, and national governments, act on the Draghi report? The first clue will come next week then the portfolios assigned in the new Commission are announced. Watch this space.

The report can be downloaded [here](#).

Unions: Some win, some lose

Summary: UK unions are seeing significant membership changes, with some growing their memberships, while others decline. Dutch union membership is declining, especially among the over 55s. We have published a [Perspectives paper](#) exploring the reasons for the decline of the European trade union movement



The UK union-side consultancy, Labour Research, reports that “more than half of the TUC’s 48 member unions arrive at this month’s TUC Congress in Brighton having grown their memberships significantly since last year.” The TUC conference is taking place this week.

Twenty-nine of them saw a rise in numbers between 2023 and 2024, two remained steady, while 16 saw a decline. Figures for Unite were not available. The National Education Union saw by far the largest jump in numbers, pulling in 39,268 new members and reaching a total membership count of 498,384. Other substantial increases came at the GMB general union (up 4,964), Usdaw retail (up 3,742), CSP physiotherapists (up 3,300), Prospect specialists (up 2,754) and POA prison officers (up 2,169) unions.

But other unions saw membership losses. The Communication Workers Union shrank by 14,766, taking its 2024 membership tally to 172,354. Others suffering substantial losses were the University and College Union (down 8,424), the RMT transport union (down 2,654) and the NUJ journalists’ union (down 1,195).

Meanwhile, just 15% of the Dutch workforce are members of a trade union, down three percentage points on five years ago, according to the research institute TNO. The biggest decline is among the over 55s. Five years ago, 31% of older workers were union members, but this has now dropped to 25%. Union membership in the public sector is around 25%, which would suggest that union membership in the private sector is considerably lower than 15%.

We have just published a [Perspectives paper](#) exploring the reasons for the decline of the European trade union movement.

Ireland: First remote work decision

Summary: The Irish Workplace Relations Commission (WRC) issued its first decision on remote working under the 2023 Act. This decision clarifies that the Act gives employees the right to request remote work but does not oblige employers to grant it



The Irish Workplace Relations Commission (WRC) has issued its first decision on a request for remote working made under the *Work Life Balance and Miscellaneous Provisions Act 2023*, which gave employees the statutory right to request to work remotely and/or flexibly for the first time. The Act gave employees the right to complain to the WRC if requests for remote working were turned down.

The WRC has now issued its first decision on such a complaint in the case of *Karabko v TikTok*. Ms Karabko began working for TikTok in 2022. Her contract stated that her place of work was the company’s Dublin office. However, she was allowed to work remotely because of Covid. Later in 2022, the company announced that employees had to work from the office 2 days a week, but Ms Karabko was given permission to continue to work remotely.

In 2023, the company mandated 3 days a week in the office, but Ms Karabko continued to work remotely without authorisation. When she was told she needed to work from the office she complained to the WRC. See this [comprehensive report](#) on the case from Matheson LLP.

The WRC found that the company had properly considered the request to work remotely from Ms Karabko but had decided against it. The WRC decision made it clear that the Act does not give employees the right to work remotely, only the right to request such work. There is no obligation on the company to agree to such a request, only to consider it. The decision also made it clear that it was not the role of the WRC to “second guess” management. Its role, as set out in the law, was to ensure that proper procedures were followed.

The decision seems to have come as a surprise to many who thought the Act gave employees the right to work remotely. That was never the case. It will always be up to the employer to decide where and how work should be done. Insisting that employees work a certain number of days a week from the office may not necessarily be a smart thing to do, but it is for the employer to decide. They may lose talented staff as a result, but it is for the employer to decide.

GDPR: Dutch authority lands Uber with a perplexing €290m fine

Summary: *The Dutch Uber GDPR fine is proving controversial with some experts arguing that the situation is essentially a matter of interpretation, questioning why a company should be penalized for a legitimate, interpretation of GDPR that is backed by the EU Commission’s own guidance*



Derek Mooney writes: As many members will already know the, *Autoriteit Persoonsgegevens* [Dutch Data Protection Authority (DPA)] has fined Uber €290 million (\$324m) for [what it deemed](#) a ‘serious’ GDPR violation. The case arises from complaints made by French drivers that the company was allegedly transferring EU driver data to US servers without adequate protection. The complaint was made to the Dutch Authority as Uber is HQ-

ed in Netherlands. (see [AP report](#) for background). Uber has labelled the decision and the fine “flawed and unjustified” and will be appealing both.

The data was transferred in breach of the GDPR, as Uber was not using the Standard Contractual Clauses that provided a valid basis for such transfers at the time. The EU’s highest court had invalidated the previous EU-US data-transfer agreement, Privacy Shield, in 2020. Since last year, Uber has been using the successor to Privacy Shield.

Both the decision and fine has left many GDPR observers perplexed, with some privacy activists expressing anger at the Dutch authorities reasoning and arguing that this situation is essentially matter of interpretation... and why should a company be heavily penalised for a legitimate and rational interpretation of GDPR and the application of Standard Contractual Clauses (SCCs) that is supported by the EU Commission’s own guidance?

See Point 24 on this [EU Commission guidance](#). It asks:

24. Can these SCCs be used for data transfers to controllers or processors whose processing operations are directly subject to the GDPR?

No... *These SCCs provide a comprehensive data protection framework that has been developed to ensure continuity of protection in case of data transfers to data importers that are not subject to the GDPR. They do not work for importers whose processing operations are subject to the GDPR pursuant to Article 3, as they would duplicate and, in part, deviate from the obligations that already*

follow directly from the GDPR. The European Commission is in the process of developing an additional set of SCCs for this scenario,

The Commission believes that an enterprise already covered by GDPR should not be required to implement a contract that would either duplicate or even contradict GDPR. So, how can a company be fined so heavily for not using SCCs, as is the case here?

Note too that Commission in its guidance accepts that this area may cause confusion and commits to... *develop an additional set of SCCs for this scenario.* Over one year later we all still awaiting their development. (For a more detailed presentation of this argument see this excellent [LinkedIn post](#) by Robert Bateman).

Uber spokesperson Caspar Nixon told Reuters that the company was confident that "common sense will prevail" as:

"Uber's cross-border data transfer process was compliant with GDPR during a 3-year period of immense uncertainty between the EU and U.S."

We hope he is correct... but how much energy and resources must businesses across the EU waste in the meantime?

Our Bytes Podcast: *Knowing Me, Knowing EU*



In our latest [EU Byte podcast](#) Tom discusses some of the key pieces of EU legislation that are set to be implemented shortly, with a particular focus on the Corporate Sustainability Reporting Directive (CSRD) and the Gender Pay Transparency Directive – which were featured heavily in [last week's newsletter](#).

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](#)

There will be no *HR Policy Global Europe* newsletter next week due to our Brussels Members Meeting. We will return with issue #30 on Sept 25th



A Walk On The Wild Side

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



New Episodes

For your diary...

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

Europe Members' Network Meeting

Pullman Hotel, Gare du Midi Brussels Sept 18/19

Attendance at our September networking meeting (next week) in Brussels is open to all members. Click now on the link on right to book your place at the meeting. [Download the agenda](#) and list of guest speakers.

[**Book Brussels meeting**](#)

Fundamentals of Global Labor & Employee Relations

Virtual Training Oct 1 - 3

A unique offering for senior executives who need to master the basics of leading a successful global labor relations function, this course explores the strategic mindset and thought process of a global labor relations executive. *Day One: "The Table Stakes" Day Two: "Thinking Globally with Local Empathy" Day Three: "Getting to Grips with Big Issues"*

[**Book Online Training**](#)

HR Policy Global Paris France Networking Luncheon

Paris Dec 12, Midday

Graciously hosted by our good friends Flichy Grange at their central Paris office, this 3-hour networking luncheon event provides members an opportunity to meet and discuss the latest developments in France and the EU

[**Book Paris Event**](#)

*HR Policy Global Members can self-register for events via the links above. If you get a "No Tickets Available for Purchase" message, make sure you are logged in. Non-members should contact [Derek](#).

Upcoming Events Across Europe: See also: [Online list](#) of all upcoming HR Policy Global events

Date	Event	Booking Links	Venue
Sept 18 & 19	<i>Europe Members Network Meeting</i>	<u>Book Brussels meeting</u>	<i>Pullman Midi Hotel Brussels, Belgium</i>
Oct 1 - 3	<i>Fundamentals of Global Labor & Employee Relations</i>	<u>Book Online Training</u>	<i>Oct 1, 10am - Oct 3, 01pm Time Zone: New York (GMT-04:00)</i>
Dec 12	<i>HR Policy Global Paris France Networking Luncheon</i>	<u>Book Paris Event</u>	<i>Flichy Grangé Avocats 16 Rue du 4 Septembre, 75002 Paris, FR</i>