BEERG
AMEERG AFRICA MIDDLE EAST EMPLOYEE RELATIONS GROUP

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BEERG - Europe:

France: Talks on employee representation system collapse

Thursday, January 22, talks between French employers' organisations and trade unions on the "modernisation of social dialogue" broke up without agreement.

The government will now move to legislate on the issue and employers are already concerned that the legislation may not necessarily be helpful and may tip in favour of the unions.

In return for agreeing to an indirect form of employee representation in companies with less than 11 employees, the employers, principally MEDEF, the major employers' organisation, wanted the unions to accept the creation of a single instance of employee representation in all companies with more than 50 employees.

This *conseil d'entreprise* would have grouped together employee delegates, the comite d'entreprise, the health and safety committee (CHSCT) and the union representatives. The CHSCT, currently an independent, legal body with the right to call on experts and to go to court, would have become a subset of the conseil d'entreprise, losing its existing rights.

From MEDEF's perspective this consolidation of the various instance of employee representation would have resulted in a lot less meetings, streamlined information and consultation processes, a reduction in the number of h ours spent by employees on representative activities and, with the disappearance of the CHSCT, the removal of one source of potential legal challenge to management decision making.

MEDEF also wanted to limit the recourse by employees' representatives to multiple experts at different levels within a company, all dealing with the same issue. In the words of Pierre Gattaz of MEDEF, social dialogue in France as currently structured is "…rigid, formal, and overloaded with meetings…a dialogue of position and opposition…" *(And this is the system unions are currently pushing employers to adopt in European Works Councils…!)*

There was a significant split within the employer ranks, with the CGPME, which represents small employers, refusing to go along with the deal. On the union side the CGT and the FO were never going to sign an agreement which they saw as undercutting some of the power resources of employees' representatives within large companies, while the cadres' union, the CFE-CGT, somewhat late in the day, declared its undying opposition to the abolition of the separate legal standing of the CHSCT.

BEERG COMMENT: It was unlikely that these talks were ever going to succeed because what was in play touches on the balance of power within companies as between employers on the one hand and employees and their representatives on the other. And that balance is a zero-sum game.

By definition, anything that increases the power of unions and/or works councils constrains the ability of management to make and implement decisions they consider necessary to the successful running of the business. Likewise, any rolling-back of the influence of unions and/or works councils increases management discretion and makes decision implementation easier. There is no "*baguette magic*" which, at one and the same time, increases the power of both parties. In zero-sum games it is "winner takes all".

BEERG, in association with the Paris-based Planet Labor, is organising a two day program on French labour law in Paris on March 25/26. For more information email: derek.mooney@beerg.com

Germany: Union outlines 2015 priorities

In a recent interview (here: http://goo.gl/Wg7ugq) Detlef Wetzel (right), leader of Germany's IG Metall union, listed what he says were union achievements in 2014 and he also set out his priorities for 2015. Success in 2014 included:

- The introduction by the government of a national minimum wage of €8.50 an hour. This is the first time Germany has had a national minimum wage.
- Persuading the government to allow for retirement age 63 after 45 years of service.
- Ensuring, through new legislation, that pay rates achieved through collective bargaining are binding.
- Curtailing the use of temporary workers.
- Securing the right to return to previous working hours after parental leave.

Looking ahead to 2015, Wetzel said that IG Metall would push for:

- Legislation to stop employers moving to "more favourable collective bargaining sectors", i.e., sectors with lower rates of pay and less onerous working conditions. Unions are currently hitting Amazon with rolling strikes in an attempt to get it to pay the higher retail sector rates of pay as opposed to the lower rates applicable in the logistics sector.
- New regulations outlawing the "abuse of contracts for work and services."
- A minimum of €20 billion per annum of state investment

IG Metall also wants to see co-determination rights within Germany strengthened, though what it wants in this regard is currently unclear.

IG Metall has:

- Over 2 million members
- Over 230,000 members under 27 years of age
- Over 400,000 female members
- Over 150,000 white collar workers joined since 2007
- Over 10,000 temp workers joined in 2014.

Greece: Could Syriza's win really herald EU's move to a softer austerity?

Charles Grant, the director of the Centre for European Reform, says there is a window of opportunity for Greece's new prime minister to renegotiate, however staunch the German resistance to softening austerity might appear.

Syriza's victory creates a great deal of uncertainty for the eurozone. It could possibly lead to Greece's ejection from the euro, an event which would have unfathomable consequences for its partners. With a bit of luck, however, the Greek general election will lead to a softening of the EU's current focus on austerity.

It is true that the German government does not want to see this kind of softening. The German political, financial and business establishment is convinced that the only policies required to solve the eurozone's ills are fiscal discipline and structural reform. They are impervious to Keynesian criticism of such policies, believing that the Anglo-Saxon recipes for growth are short-termist and will in the long run lead to excessive levels of debt, and an endless boom-and-bust.

Nonetheless, although the Germans dominate eurozone policymaking, with their Dutch and Finnish allies, even they are sometimes forced to compromise. A few months ago the European Commission allowed France and Italy more time to lower their public-sector deficits to 3 per cent of GDP. And last Friday the European central bank unveiled an €800 billion programme of quantitative easing, to generate some eurozone inflation – against German opposition.

So, if Alexis Tsipras presents moderate demands and shows himself to be a man one can do business with, Germany may feel obliged to agree to a renegotiation of Greece's debt burden. France and Italy will be urging it to do so, and behind the scenes both the US Treasury and IMF are likely to be pushing the Germans to acknowledge that the Greek electorate cannot be ignored.

A possible compromise would be for Tsipras to commit to a package of structural economic reforms – including attacks on oligarch privileges, which the Samaras government was unwilling to undertake – in return for a reduction of the debt burden (through lower interest rates, maturity stretch-outs or write-offs) and softer targets on budget deficits in the coming years.

Such a negotiation will be extremely difficult for Germany. Its politicians will be constrained by the state of public opinion, which is very hostile to any idea of transfer payments to the south. They have failed to explain to the German people that the euro benefits their country enormously, and that some generosity to Greece is a small price to pay for these benefits.

In this the SPD has been rather spineless: many of its leaders understand that excessive austerity in the eurozone has been counterproductive, but they are too timid to say so in public.

Ultimately, however, the Germans will have to realise that their current view of Europe contains contradictions. They think of themselves as good Europeans and believe that their economic success gives them right to lead the eurozone; but at the same time, they seek eurozone policies that maximise the immediate economic interests of Germany rather than of the eurozone as a whole. The Syriza victory may help them to understand that leadership carries responsibilities.

Charles Grant is the director of the Centre for European Reform and the co-author of How to build a modern European Union (CER, 2013). This article originally appeared on the Institute for Public Policy Research's IPPR Juncture website at http://www.ippr.org/juncture/

France: NGO pushes law on global supply chain due diligence

Over the past year, the French NGO, Forum Citoyen pour la RSE along with several French members of parliament developed a draft bill that would create a requirement for French companies to demonstrate, if sued in civil, commercial or criminal courts, that they have put in place preventive systems to avoid causing or contributing to harm as a result of their economic activity.

In essence, this means companies would be legally responsibility for the implementation of due diligence throughout their global supply chains. Were it to be adopted the law would have the potential to open the door for foreign victims harmed by the operations of French companies' subsidiaries or business partners to access the French courts.

The text of the proposal does not specify in detail the scope or boundaries of due diligence, leaving it up to the courts to interpret what constitutes reasonable due diligence on a case by case basis, taking into account the characteristics and the leverage of the company in question. The official text of the bill is available *(in French)* here: http://goo.gl/lTiGc3

It is not clear if the proposed law would apply to all companies located in France, e.g., the subsidiary of a US multinational, or just to companies having their headquarters in France.

The proposal was tabled in December and had the backing of socialists and green members of parliament, who form a majority in the National Assembly. However, it was rejected in a committee hearing on January 16. The government said it was not opposed in principle to the proposal and intends to introduce legislation of its own later in the year. Watch this space….

MEANWHILE, a prosecutor in Lille, France, has rejected a claim by three NGO's that the French retailer, Auchan, was guilty of misleading the public over the "social conditions" in which clothes it sold in its supermarkets were produced. The NGOs alleged that Auchan should have known about the working conditions in Rana Plaza and taken steps to ensure that its suppliers' factories were fit for purpose. As of the time of writing the reasons for the prosecutor's decision to reject the claim have not been published. (*See also next story)*

AMEERG – Africa and Middle East

Bangladesh: *Social Europe* publishes papers on Rana Plaza implications

"Social Europe" (http://goo.gl/9nRAbM) a left-of-centre website, has recently published a collection of short papers (here: http://goo.gl/0orJ8u) on the implications of the Rana Plaza tragedy, which saw the deaths of over 1,200 people when a building manufacturing garments for western retailers and suppliers collapsed in April 2013.

Within about a month of the collapse of the building the global union federations, IndustriALL and UNI Global, drafted an "An Accord on Building Fire and Safety in Bangladesh" which, the unions claimed, would be legally binding on the companies which signed it. Quickly, around 17 companies, nearly all European signed, and the figure soon grew to around 180. Most US companies, wary of the legal entanglements that could result from signing the Accord, opted to go a different route.

Jenny Holdcroft, Policy Director at IndustriALL, said, in May 2014, on the first anniversary of the signing of the Accord:

> *The Accord replaces the ineffectual and piecemeal efforts by individual brands of the past with a binding agreement with trade unions. This is global industrial relations applied to global supply chain violations of workers' rights.*

From the start, one of the major objectives of the unions, stated openly, was to massively boost union membership in Bangladesh. At the time of the signing of the Accord unions had little or no members in the country. As far as we can make out UNI may have had none at all, at least in the textile manufacturing industry, while IndustriALL had affiliates which represented about 2-3% of all workers in that industry. In the Social Europe papers, Michael Sommer, former president of the German DGB union federation says:

> *The Accord…pushed for strong industrial relations with trade unions as equal partners, which can replace flawed auditing models and conduct constant safety inspections in a context where workers are empowered to refuse dangerous work.*

However, as of today, two years after the signing of the Accord union membership in the textile sector in Bangladesh still stands at less than 5%.

The Accord commits its employer side signatories to fund a program of factory inspections in Bangladesh and, subsequently, to financial assist factory owners to undertake any repair and upgrading work necessary. There is also an obligation to ensure that workers who may be laid off while a factory is being repaired will receive their wages for up to six months.

BEERG understands that while the brands and retailers who have signed the Accord had no difficulty agreeing to fund factory safety inspections (the non-Accord US companies also funded safety inspections) they have now made it clear that they believe that the financing of factory upgrades should, in the first instance, come from international lenders, such as the International Finance Corporation, part of the World Bank.

Some governments, including the German government, also appear willing to make funds available through aid programmes. However, the brands and retailers are themselves extremely reluctant to provide money directly to factory owners but would be willing to go guarantor on loans.

We also understand that the brands and retailers have pushed back strongly against a union proposal to establish a general fund to pay wages to workers laid off during factory repairs. The primary responsibility to pay such workers rests with the owners themselves. Only where the owners cannot make the payments should Accord members become involved. Rather than pay into a general fund which would be administered by Accord executives, the brands and retailers are only prepared to look at covering the payment of wages on a case by case basis.

To the best of our knowledge, to date, there has been no legal action taken against any brand or retailer for breach of the Accord. The only parties that can trigger a complaint under the Accord are the signatories to it. In practice this means that only the unions which are signatories to the Accord can sue a brand or retailer for being in breach of the Accord as brands and retailers are unlikely to sue one another.

But if the unions trigger this "nuclear option" against one brand or retailer how long are the others going to stay on board? The Accord may not be the game-changer the unions believed it would be.

GLOBAL

Global: IndustriALL signs global union agreement with Total

Earlier this month, IndustriALL Global Union announced that it had signed "a landmark agreement" with Total, the French oil and gas multinational, guaranteeing employee rights across the company's international operations.

As part of the agreement (here: http://goo.gl/YAHDBX) with IndustriALL, Total, which employs 100,000 workers in more than 130 countries, commits to:

- Uphold the rights of workers to form **trade unions**
- Act with complete **neutrality** in dealing with unions and exclude any form of discrimination against employees based on union activity
- Take all necessary measures to **encourage social dialogue with workers**
- Recognize that **health and safety of contractor and supplier employees** is as important as the health and safety of its own staff
- Defend the right of **freedom of expression** guaranteeing that no one should be harassed on account of his or her opinions
- Ensure that **maternity absences** have no negative impact on employees' pay or career progression
- Provide **Life insurance** for all Total employees

Furthermore, Total agrees to promote the agreement among suppliers and contractors in its supply chain, and is prepared to terminate contracts with those who do not comply.

Jyrki Raina, general secretary of IndustriALL, said at the signing of the agreement:

> *"We applaud Total for its commitment to better rights and conditions for workers. IndustriALL's agreement with Total makes it clear that trade union rights and freedoms must be upheld across the company's operations and throughout its global supply chain. Total promises to act in strict neutrality in its relations with unions and is prepared to terminate contracts with suppliers if they breach the agreement. It sends a strong message to Total's suppliers and provides new levels of protection for workers.*
>
> *"I am pleased to sign this first agreement with IndustriALL Global Union, which is designed to extend the Group's tradition of corporate social responsibility to all of our operations around the world through quality social dialogue and insurance coverage for employees," said Total's Chief Executive Officer, Patrick Pouyanné.*

A committee including representatives from Total, IndustriALL and its trade union affiliates will meet annually to ensure the agreement is implemented.

The agreement also incorporates the UN's Guiding Principles on Business and Human Rights, as well as referencing key ILO Conventions on freedom of association, equal pay, discrimination and child labour.

US: Union membership declines further

In 2014, the union membership rate - the percent of wage and salary workers who were members of unions - was 11.1 percent, down 0.2 percentage point from 2013, the U.S. Bureau of Labor Statistics reported this week.

The number of wage and salary workers belonging to unions, at 14.6 million, was little different from 2013. In 1983, the first year for which comparable union data are available, the union membership rate was 20.1 percent, and there were 17.7 million union workers.

Highlights from the 2014 data:

- Public-sector workers had a union membership rate (35.7 percent), more than five times higher than that of private-sector workers (6.6 percent).
- Workers in education, training, and library occupations and in protective service occupations had the highest unionization rate, at 35.3 percent for each occupation group.
- Men had a higher union membership rate (11.7 percent) than women (10.5 percent) in 2014.
- Black workers were more likely to be union members than were white, Asian, or Hispanic workers.
- Median weekly earnings of non-union workers ($763) were 79 percent of earnings for workers who were union members ($970). (The comparisons of earnings in this release are on a broad level and do not control for many factors that can be important in explaining earnings differences.)
- Among states, New York continued to have the highest union membership rate (24.6 percent), and North Carolina again had the lowest rate (1.9 percent).

In 2014, 7.2 million employees in the public sector belonged to a union, compared with 7.4 million workers in the private sector. The union membership rate for public-sector workers (35.7 percent) was substantially higher than the rate for private-sector workers (6.6 percent).
Full details at: http://goo.gl/87zyAB

Asia: ASEAN countries discuss common labour standards

The Association of Southeast Asian Nations is a political and n income from work, irrespective of whether the person economic organisation of ten countries located in Southeast Asia, which was formed on 8 August 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. Since then, rounds Laos, Myanmar (Burma) and Vietnam.

Its aims include accelerating economic growth, social progress, socio-cultural evolution among its members, protection of regional peace and stability, and opportunities for member countries to discuss differences peacefully.

ASEAN is currently considering the text of an agreement which would establish common, minimum labour standards across its member states. The Agreement would cover "everyone who earns an income from work, irrespective of whether the person is working under a contract of hire or not".

It would apply to: the self-employed; agricultural workers; temporary contract workers; and workers hired through a labour agency. It would also cover posted workers, i.e., those sent to work by their employer in another ASEAN country.

The Agreement would protect workers' rights in the following areas:

- The right to work and to be employed;
- The right to freedom of association and collective bargaining;
- The right to social security;
- Child labour protection;
- The right to access health services and health security;
- Health and safety protection;
- The right to training and education;
- Protection of women workers;
- Non-discrimination of the grounds of race of immigration status.

The Agreement would also guarantee a right to compensation for laid-off workers, workers who are ill or who have suffered an occupational injury.

Application of the Agreement is to be overseen by a Committee on the Promotion and Protection of the Rights of Workers. The Committee will be composed of "labour rights experts from all ASEAN member states" and will have the authority "to accept and investigate complaints…"

All ASEAN member states will be required to amend their domestic laws to being them into line with the Agreement. As of the moment, it is unclear when negotiations on the Agreement will be concluded.

Draft Asean Agreement here: http://goo.gl/MLrEHC

THE BEERG AGENDA:

BEERG MEMBERS MEETING: Hotel Bloom, 250 Rue Royale, Brussels: Feb 4 - 5

The meeting will be held at the Hotel Bloom on Rue Royale. Directions: http://goo.gl/wH9X2O
Meeting topics include:

- EU Directive on Non-Financial Reporting
- Commission's Public Consultation on the Working Time Directive
- European Court of Justice and the Agency Workers Directive
- ETUC call for new a Worker Participation Directive
- Emerging issues in EWCs: expert costs and translation costs in SNBs

AMEERG Meeting: Africa and Middle East – London, March 18 and 19

We recently circulated outline details of this AMEERG conference on LR issues in Africa and Middle-East. Topics that will be covered at the conference include:

- An overview of political developments in the Middle East, North Africa and Turkey.
- Understanding the dramatic fall in the price of oil and the Ebola pandemic.
- Labour law developments across southern Africa.
- The implosion of the South African trade union movement.
- Labour relations developments in Turkey.
- Human rights and employee relations: a Molotov cocktail?

The fee is €2,000 for BEERG members (€2,500 for non BEERG members). For further information or to reserve a place, e-mail: derek.mooney@beerg.com

'Managing Employee Relations in Europe' April 22 - 24, Hotel Estela Barcelona

Managing Labour Relations in Europe is BEERG's flagship development program; designed to help labour relations practitioners "deep dive" into changes in the law surrounding works councils, restructuring and the management of change.

It also looks at "best practice" as regards the negotiating/renegotiating of EWC agreements. Trade union strategies are also examined as is the growing impact of social media. The program begins at 0900H on Wed, April 22 and finishes at 1130H on Fri, April 24. The fee is €4500 (€3750 For BEERG/HR Policy members) including accommodation, all meals and refreshments. We have a limited number of places still available on this programme – to enquire or to reserve a place: e-mail: derek.mooney@beerg.com

BEERG Dates for your Diary *(contact us for more information):*

Date	Event	Venue
Feb 4/5	BEERG members meeting	Hotel Bloom, Brussels
Mid-February	AMEERG networking meeting	Dubai
March 9	One day BEERG/Jones Day/AI Group: Emerging trends in international labour relations	Jones Day office, Sydney Australia
March 18/19	BEERG/AMEERG conference on labour relations in Africa and Middle East	London
March 25/26	Two-day event: "Managing the Intricacies of French Labour Law	Paris, France
April 22 - 24	BEERG flagship training program – Managing Labour Relations in Europe	Hotel Estela, Sitges, Barcelona, Spain
May 12 - 14	Key Labour Relations Issues in Global Supply Chains	Venue TBC