BEERG | The Brussels European Employee Relations Group

Newsletter

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CORONAVIRUS

COVID-19

Some useful URLS for BEERG members

https://beerg.com/covid-19/

If you have a link we should post here, email: tom.hayes@beerg.com

GDPR at 2: Unless Big Tech is being sued something is wrong?

Tom Hayes & Derek Mooney write: May 25th marked the second anniversary of the coming into force of the EU's General Data Protection Regulation (GDPR). The occasion was marked with a series of statements from a range of stakeholders, including the EU Commission, EU Data Protection Board and various privacy activists. Though some statements were less celebratory than others there was a common - and in BEERG's view, an imprudent - theme across them all, namely that implementation is only judged by the number of enforcement proceedings.

This message was least explicit in the EU Commission's statement and most forthright in the one issued by Austrian privacy activist Max Schrems, who specially targeted Ireland's Irish Data Protection Commission (DPC), saying:

> *"After two years, we feel that the time has come to shine light on the shortcomings of the GDPR's current enforcement in Ireland and bring the debate into the public… The procedure adopted by the Irish Data Protection Commission (DPC) was "highly inefficient and partly Kafkaesque."*

It is a charge which the DPC rejects, telling Reuters that it currently has 23 "big tech" inquiries open and has just announced significant developments in a number of these inquiries, including three that were initiated after complaints received from Max Schrems's privacy NGO, adding

> *"One of these complaint-based inquiries, which focuses on Facebook Ireland's obligations to establish a lawful basis for personal data processing, has now moved to the decision-making phase,"*

The charge that national data protection authorities do not have sufficient expert staff or the necessary budgets is set out in considerable detail in the April 2020 report produced by the creators of the Brave browser. (This IAPP GDPR 2-year review offers a wider range of expert analysis and critique: https://iapp.org/gdpr-at-two-expert-perspectives/)

BEERG COMMENT

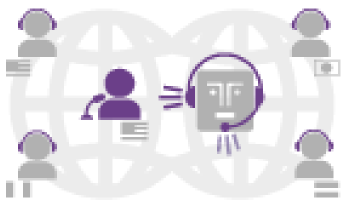
BEERG wonders where is the actual evidence that the GDPR is failing? The EU Commission statement offers a metric to suggest that GDPR is making citizens and businesses more aware of the importance of data protection, pointing out that its own web guidance information has been accessed by 4.3 million businesses and citizens over the last two years.

The broad assumption on the part of GDPR critics would appear to be that unless Big Tech is being sued there is something wrong. It is a jaundiced view, something which BEERG's good friend Eduardo Ustaran, a privacy lawyer at Hogan Lovells (and one of the expert contributors to IAPP analysis above) neatly summed up, tweeting:

> Judging the success of the #GDPR by the amount of the fines to date is like judging the quality of the football World Cup final by the number of yellow cards in the first ten minutes of the match (for those who remember what football was like).

It needs to be stated, and stated clearly, that the purpose of the GDPR is to protect the data privacy of EU citizens. It is a shield, not a sword to be used to hack at US web multinationals whose services billions freely engage with every day of the week. We need to be careful less the GDPR become the plaything of a small minority of self-appointed "guardians of the data universe".

EWCs: IndustriAll Europe recommends virtual on-line meetings



Given the urgent need for "exceptional circumstances" meetings resulting the economic and business damage caused by Covid19, IndustriAll Europe, whose officials act as experts to many EWCs, has recommended that:

> *…delegates in European works councils (EWC) and works councils of companies under the European Company Statute (Societas Europaea – SE) request an extraordinary online meeting with simultaneous interpretation at the earliest convenience, to be informed and consulted on the potential impact of the COVID-19 crisis on workers' interests.*

The union federation, the biggest in the EU, says that as Europe gradually emerges from two months of lockdown, "European workers and industries are facing one of their greatest social and economic challenges in decades, on top of the climate emergency." "Confronted with heavy financial losses, massive liquidity problems, disruption of production, drops in demand, some at risk of bankruptcy, companies in many sectors are now urgently adapting their operations and strategy", it adds.

However, IndustriAll says that it has been made aware "of announcements to cut thousands of jobs without informing European and local works councils, let alone giving them the possibility to discuss alternatives with real decision-makers. We hear about companies adopting Europe-wide cost saving plans with major impacts on salaries and working conditions without engaging in discussions with trade unions at local and transnational level." Luc Triangle, General Secretary of industriAll Europe comments:

> *"Such behaviour is ill-judged. We would like to recall how social dialogue proved its worth during the early phases of the COVID-19 crisis. The agreements reached throughout Europe at national, sectoral and company-level on short-time working schemes and other instruments really helped cushion the effects on workers' jobs and income. The dialogue with trade unions and health and safety representatives has also provided for a safe return to the shop floor in many companies where protocols for work resumption were defined jointly."*

BEERG COMMENT

The IndustriAll advice to EWC members to engage in virtual, online meetings is to be welcomed. Such meetings are the only realistic option for the foreseeable future. But it is important for management to prepare for and engage in such meetings properly. For some thoughts on this, see our recent paper EWCs and Exceptional Circumstances in 2020.

For online interpretation check out: *https://www.context.ie/international-meetings/*

UK: Unions boycott redundancy talks in BA

Unite and the GMB, two of the major unions in British Airways (BA) have refused to attend information and consultation meetings over the airline's plans to cut up to 30 per cent of its 42,000-strong workforce. Commenting on its absence from meetings, Howard Beckett, assistant general secretary at Unite, said:

> *"The law requires BA to meaningfully consult with Unite and allow the union access to the workforce. That is impossible when the workforce is furloughed under a scheme that specifically precludes employees from working … British Airways is opportunistically going through the motions in the knowledge that meaningful negotiations cannot occur … Unite believes that BA is acting unlawfully, and when its sham consultation exercise is complete the union will undertake legal action on behalf of its members."*

Unite has called on BA to remove its redundancy threat by lifting its Section 188 notice — which paves the way for consultation and is triggered when an employer proposes to make redundant 20 or more jobs — and engage in "meaningful" talks.

Postscript: ***It looks like Unite and the GMB may not have read the IndustriAll memo.***

Covid-19: ILO return to work guidance

The International Labour Organization (ILO) has issued two guidance documents for creating safe and effective return-to-work conditions during the Covid-19 pandemic The Guidance Note says that return to work policies need to be informed by:

> *"[a]… human-centred approach that puts peoples' rights at the heart of economic, social and environmental policies. Social dialogue – bringing together governments, workers' and employers' organizations – will be critical in creating the effective policies and trust needed for a safe return to work."*

You can find the documents here

Brexit: Business travel complications

What could a no-deal Brexit on January 1 next mean for business travel between the UK and the EU? In the absence of an agreement could it become impossible or, at the very least, extremely difficult? Anyone under the age of seventy has lived the entirety of their adult lives in the EU. Anyone under the age of 50, their entire lives. We take ease of travel and the absence of borders within the EU as the natural order of things. (Ease of travel should not be confused with "freedom of movement", the right to go and live and work in another EU member states).

But borders, and not their absence, between countries are the natural order since the emergence of the modern nation state. Certainly, agreements between countries can make travel easier, such as the ESTA system used by the US, visa waiver programs, and so on. Many such agreements provide for and facilitate short-term business travel. But in the absence of country-to-country agreements, such trips can be problematic. Think about the difficulties in organising a trip to Russia, for example.

On January 31 last, the UK left the EU and became a "third country", a non-member. The consequences of this step, however, will not become apparent until January 1, 2021, because of the transition period which lasts until December 31 of this year. What happens thereafter depends on whether or not the EU and the UK can reach an agreement on future relationships.

While a great deal of the focus of what will happen if there is no-deal is on new barriers to trade in goods and the possibility of long queues at Dover/Calais, what gets overlooked, among a very great many other things, is the potential for disruption to business travel. Two recent agreements signed by the EU one with Japan, the other with Canada make the point. The right of entry for temporary business visitors can be found in the Japanese agreement on Page 219 Article 8:24, and in Chapter 10 in the Canadian/EU CETA text. Now, of course, before these agreements were signed there were older agreements between the parties covering the issue. Which is the point. There were agreements. In the absence of agreements, business travel can become problematic, if indeed it is possible at all.

Further, in the absence of an EU/UK agreement, it will fall to the 27 individual member states of the EU to fix entry requirements for UK business travel. And, of course, such deals will depend on whatever requirements the UK itself puts in place for business visits. Traveling into the EU and between EU countries could become very messy.

One final point. After January 1 next, the UK will not just be outside the EU's single market, but also outside the EU's customs union. This means all goods entering the EU from the UK will be subject to new regulations and new checks at borders. In the absence of an agreement, that could include personal electronics such as laptops and phones. "Sir, why have you two phones, is one of them for sale?", a customs officer might ask. Remember, the last time the UK was outside the EU's customs union was in 1972 when such things did not exist.

To repeat, borders, regulations and customs inspections are the natural order of things. It is agreements that makes them disappear. In the words of the song, "You don't know what you have got till it's gone".

Brexit: Government to miss 50,000 customs agents target?

According to a report in the *Financial Times,* the UK government is falling far short of a target to train an estimated 50,000 new customs agents who will be needed after Brexit. The National Audit Office has estimated that 145,000 British businesses could need to complete customs formalities for the first time from next January, leading to an additional 200m customs declarations a year.

Michael Gove, Cabinet Office minister, endorsed the 50,000 industry estimate in parliament in February and told MPs last month that the government was in discussions about creating a new customs agent academy while working with industry "to ensure that they have the capacity required".

However, Robert Keen, the director-general of the British International Freight Association (Bifa), the industry group that is the main provider of customs training, told the *Financial Times* that the UK was falling "many thousands short" of the target.

> *In a letter to parliament's future relationship with the EU committee where Mr Gove gave evidence on April 27, Mr Keen raised "ongoing concerns" over "potentially misleading and ambiguous comments" from politicians and government. Mr Keen said that Bifa had managed to put just 1,298 people through its online customs declaration training in 2019. A further 244 online courses were completed by February this year, but in March and April there were only 96 enrolments, a drop attributed to coronavirus.*

Industry insiders said that many of those who had taken up training were already working in customs and were taking advantage of grants to enhance existing skills, rather than bringing new capacity to the industry.

France: Car package has 'relocalise' strings attached

French president Emmanuel Macron has announced an €8bn package to help reboot the country's motor industry. The plan, outlined this week, includes increased subsidies for buyers of electric or hybrid cars and support for research into hydrogen power and self-driving cars. It aims to ensure that the country's motor assemblers and suppliers survive the crisis and emerge as leading global manufacturers and exporters of clean vehicles.

In announcing the package, Macron made clear that the aim was to "relocalise" manufacturing in France and "to make France the leading country in Europe for the production of clean vehicles", with an output target of 1m a year by 2025.

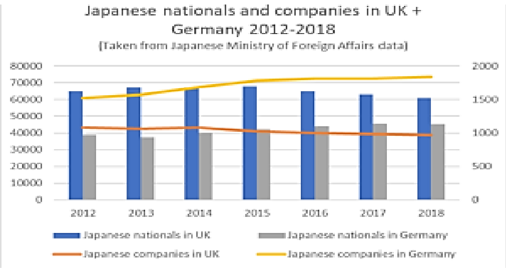
"The state will provide more than €8 billion in aid to the sector. In return, the car manufacturers have committed to relocate value-added production to France and to consolidate and maintain all industrial production at our sites," the president said. He added that any car models currently built in France should not be manufactured elsewhere.

PSA has undertaken to increase its output of clean cars from zero last year to 450,000 annually, while Renault will triple its production by 2022. PSA, Renault and Total have agreed to jointly collaborate in a multibillion-euro project to produce batteries for electric vehicles within the EU; currently, most come from China and South Korea.

The motor industry in France employs 400,000 directly, a number that rises to nearly 1m if associated services are included. Mr Macron's plan includes a €600m fund to take equity stakes in struggling suppliers and consolidate them to strengthen the industry as it retools and invests in automation; two-thirds of the fund will come from the state and the rest from the big French car groups. France has also brought forward its target to have 100,000 electric vehicle public charging points to next year, from 2022.

For an interesting discussion on UK supply chains see [here]()

Germany: "Japanese shift to Germany continues"



According to Rudlin Consulting, Germany has historically been the main rival to the UK in Europe for Japanese investment. The UK absorbs about 40% of total Japanese investment into the EU but according to the Japanese Ministry of Foreign Affairs, there are actually 50% more Japan originated companies (703) in Germany compared to the UK (471)." Read the full article here

UK: Joblessness threat grows

Robbie Gilbert writes: The unemployment level tells us a lot about the state of a country's labour market. But it does much more than that. It also carries deeper and broader messages about the state of the economy, the health of that society and the stability of its political architecture.

Many eyes have been looking to the unemployment figures to tell us how countries are doing now, in the wake of Covid-19 and the lockdowns introduced to slow its spread. There is no previous experience of lockdowns to offer us any guidance.

In Britain, the advent of a firmly pro-Brexit administration in December, and its proclamation of January 31st as 'Brexit Day', brings the latest jobless figures under particularly close scrutiny. On 19th May we saw the first figures for 2020. They were better than expected. The unemployment rate was 3.9%, close to its lowest level since 1975. Meanwhile, the employment rate – the proportion of people of working age in employment, stood at 76.1%, the highest since modern records began in 1971. But there's a problem here. In the first place, there's a time-lag in the data.

These figures cover the period January to March. While the figures suggest little or no immediate jobs impact from Brexit (we'll come back to that question later), they do not tell us anything about the effect of coronavirus. The lockdown measures in Britain were not announced until 23 March. We are now two months on from the introduction of Covid-19 measures. The official jobless figures released this month tell us nothing, though we know from the media that many people have been 'furloughed'.

The House of Commons Library has put out a useful Briefing Paper on the impact of Covid-19 on the labour market to throw more recent light on what is really going on. It summarises data from a range of sources; and it is not good news.

1. *Unemployment has already risen steeply. The latest official figure for unemployment, covering the first quarter, was 1.35 million. In April 2020, however, 2.1 million people claimed unemployment related benefits, some 850,000 more than in March. It is difficult to be sure of the precise numbers, because major changes to the UK's social benefits structure are underway with the roll-out of the Universal Credit, replacing various payments, including Unemployment Benefit ('Jobseekers' Allowance'); but clearly this is a massive jump in just one month.*
2. *The number in employment has started falling. Tax data shows that between March and April this year, the number of paid employees fell by 1.6% or over 450,000.*

3. *There were an estimated 637,000 vacancies in the UK in February to April 2020; this is 170,000 fewer than the previous quarter and the largest quarterly change, up or down, since the current time series started twenty years ago.*

Two measures have been introduced by the British government that are aimed at providing assistance to businesses and their workers hit by the recent coronavirus control measures. The aim in both cases is to help people remain employed until some future date by when it is hoped that the economic activity will have recovered sufficiently so that they can resume their previous work.

- *The biggest of these is the government's Coronavirus Job Retention Scheme (CJRS). It went live for claimants on 20 April. By 17 May, 8 million jobs had already been furloughed. That represents one in four of all UK employees (33 million).*
- *The second measure is aimed at the self-employed. Self-employment covers some 5 million people, or 15% of all employment. This measure, the Self-Employment Income Support Scheme (SEISS) did not open for applications until 13 May. Within just 4 days no less than 2 million claims had been lodged.*

The House of Commons Library report notes where coronavirus and the measures have had a disproportionate effect. The social impacts are very unevenly spread and many disadvantaged groups and communities are among those hardest hit.

- *15% of UK employees work in a sector that has largely or entirely been shut down.*
- *32% of businesses continuing to trade reported decreasing working hours. The accommodation and food services sector, alongside the arts, entertainment and recreation sector have the largest number of firms cutting working hours. NB 11% reported that they were increasing working hours, presumably for non-furloughed employees.*
- *Low-paid workers are more likely to work for shut down sectors and less likely to be able to work from home.*
- *Workers on zero-hours contracts and temporary workers, are – like the self-employed – particularly impacted.*
- *Women, young workers, BAME workers and those with disabilities are amongst those most badly hit.*

The report reviews several forecasts for unemployment. Forecasters' findings vary dramatically, but all of those reviewed predict 'a significant increase'.

- The Bank of England expects unemployment to climb to above 9% this year. That would be over 3 million people
- The Treasury advises that the average of independent forecasts for 2020 was 6.9%, and the average by the fourth quarter of 2021 would still be 5.4% or 1.9 million
- The National Institute, NIESR, project unemployment rising to 10% in the second half of 2020, before slowly falling back thereafter to current levels.

BEERG COMMENT

The House of Commons Library paper makes no mention of Brexit. Before Covid-19 hit, the UK economy was already at threat from the consequences of Brexit. The official unemployment figures indicate that these have been slower to emerge than some had expected. That may well be because Britain has not yet really left the EU.

Despite the fanfare following the rather arbitrary selection of 31 January 2020 as 'Brexit Day', the UK continues at present to be treated for most purposes as if it was still a member state. The real crunch date will be 31 December 2020 – unless Boris Johnson can be persuaded to change his mind and *agree an extension, which seems even more unlikely now given his obstinacy during the latest 'Durhamgate' saga.*

From the first day of 2021, the UK will no longer have free access to the 445 million consumers in the EU. Instead, it will be trading with the 27 countries under more difficult WTO rules. These countries currently account for almost half of the UK's trade; and any hopes of rapidly replacing that through new trade deals with countries across the rest of the world must have been seriously prejudiced by the impact of coronavirus, the effects of which will still be felt across much of the world by that date.

The other imponderable here is what will actually happen to the 25% or so of the UK workforce currently on furlough. Some other countries are used to these bridging arrangements, designed to ease the troughs and peaks experienced in recessions and recovery. The UK (like the US) is not. Will this innovation turn unemployment's covid-19 trough into a blip? Operating in a less regulated labour market than applies in other major European countries means that, absent these furlough procedures, UK employers would have been more likely to shed workers and sooner in the downturn; but they would also be more likely to take on more workers and sooner in the upturn.

Will employees furloughed by employers in the UK be welcomed back to their previous jobs? By no means all of them. Businesses are reviewing their future structures right now, and all the signs are that many expect to resume with lower numbers, sometimes much lower. The crunch could come as soon as August, when the Government aims to change the furlough rules to compel a higher financial contribution from the current employer. That could lead to a tidal wave of redundancies.

All in all, as we write, the outlook for jobs in the UK is not a bright one. One forecaster, the Resolution Foundation, anticipates that the impact of a continuation of current social distancing requirements alone, or their reintroduction after a flare-up of Covid-19, could lead to unemployment in the UK hitting between 14% and 21%. It all looks set to pose major economic, social and political challenges for Brexit Britain.

BEERG Bytes: Like Brussels & Sitges meetings… but, online and byte-sized

If you have not already done so, check out our series of ***BEERG Bytes*** videocasts. ***BEERG Byte*** is a deconstructed Brussels or Sitges BEERG meeting… served online in "bite-sized" pieces. These are not a replacement for our meetings, just our bid to capture the BEERG meeting vibe online, while we wait to get together again in Brussels or Sitges.

Go to: www.beerg.com/beergbytes to view the first four episodes, you will require a BEERG password for some of these.

COVID 19 pandemic

The **April BEERG training program** is cancelled.

The **June BEERG members' summit meeting** is postponed

Existing bookings for the April training program are being transferred to our October training program. This will run on October 14/16, provided that international travel restrictions have eased at that point.

We plan to move our October members' meeting from Brussels to Sitges on Sept 30 – Oct 1.

These arrangements **remain provisional for the moment.** We will circulate confirmation of dates and agendas when we can plan with some more certainty.

BEERG events will conform with all Covid-19 regulations and restrictions in place at that time.

BEERG Dates for your Diary:
Events are all subject to confirmation

Date	Event	Venue
30 Sept & Oct 1	BEERG Members' Network Summit	*Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain*
14 - 16 Oct	BEERG October Training Programme	*Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain*