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EWCs: MEP wants to hit management with billion-euro fines



In a new report, Dennis Radtke, a German Christian Democrat Member of the European Parliament, wants the European Works Council Directive amended to allow courts to “temporarily suspend” management decisions where it is alleged that EWC information and consultation rights have been infringed.

Further, companies found to have breached information and consultation obligations would receive eye-watering penalties:

The financial penalties referred to in paragraph 2, point (a), shall amount to a maximum of at least €10,000,000 or 2% of the undertaking's total annual worldwide turnover in the preceding business year, whichever is higher.

In the case of intentional infringements, Member States shall provide for a maximum financial penalty of at least €20,000,000 or 4% of the undertaking's total worldwide annual turnover in the preceding business year, whichever is higher.

This wording suggests that companies could be fined up to €10M for **inadvertently** infringing information and consultation obligations, as opposed to **intentionally** doing so.

When you consider that, at best, all an EWC can do is to offer a non-binding opinion on proposed decisions, injunctions and billion Euro fines seem excessive and disproportionate. What possible justification can there be for the **\$9.4 billion** fine that Amazon could be hit with because management **inadvertently** infringed the EWC's right to offer an opinion that is not binding in any way? Or even **\$1.12 billion** that could be imposed on HP?

This table illustrates the size of the fines which 6 well-known US companies could be liable for because, without meaning to do so, they **inadvertently** failed to follow procedures in the eyes of the EWC, which then complained to a court about the matter.

Company	2021 Turnover (BN \$)	2% Fine (BN \$)	4% Fine (BN \$)
Amazon	470	9.4	18.8
Apple	365	7.3	14.6
HP	56	1.12	2.24
IBM	58	1.16	2.32
Coca-Cola	40	.8	1.6
PepsiCo	80	1.6	3.2

What sort of a signal do potential fines of such magnitude for a relatively minor offence in the scheme of things send to investors? To put these proposed fines in perspective, the *Financial Times* on Wednesday, May 25th reported:

Glencore will plead guilty to multiple counts of bribery and agree to pay a \$1.5bn penalty following US and UK investigations that uncovered corruption at one of the world's largest commodity traders. The Serious Fraud Office yesterday charged the group's subsidiary Glencore Energy UK with seven cases of profit-driven bribery and corruption in connection to oil operations in Cameroon, Equatorial Guinea, Ivory Coast, Nigeria, and South Sudan.

The SFO said: "Glencore agents and employees paid bribes worth over \$25mn for preferential access to oil, with approval by the company." Glencore said it would pay about \$1.5bn in overall penalties: \$1bn to US authorities, \$40mn to Brazilian prosecutors and the amount due to the UK to be finalised at a hearing next month. The company made a \$1.5bn provision for the settlement in February.

So, for accidentally infringing the EWCs' information and consultation rights Amazon could face a fine of up to €11 billion, but for multiple, intentional cases of bribery Glencore just gets hit with \$1.5 billion. Doesn't seem right, does it?

We have published a detailed [BEERG Perspective commentary](#) on the Radtke Report to accompany this newsletter article.

EWCs: EU Commission considers Irish legislation as deficient



Last week the European Commission wrote to the Irish government rejecting its assertions that the *Transnational Information and Consultation of Employees Act 1996* properly transposed the European Works Council Directive into Irish law. The correspondence between the Irish government and the Commission is confidential so what exactly is being said is not known.

However, from statements made by the government, including replies to Parliamentary questions, its defence appears to be that that legislation is compliant with the Directive because it has never been challenged in court. The complaint from SIPTU, the biggest Irish trade union, to the Commission that began the process was that the legislation was written in such a way that it was impossible for the parties, employers and EWCs, to go to court in the first place to resolve disputes.

It is Catch 22. You must go to court to prove the legislation is deficient, but you cannot go to court to prove the legislation is deficient because the legislation does not allow you to do so. It is understood that the Oireachtas (Irish parliament) Committee on Employment will soon schedule a hearing on this matter.

Separately, BEERG has learned that the Irish Labour Inspectorate has given the Irish multinational, Kingspan, three months to set up a Subsidiary Requirement EWC or else face criminal proceedings. Kingspan had stonewalled on setting up a Special Negotiating Body (SNB) since it received a valid request to do so over three years ago.

EWCs will feature on the agenda for our BEERG June Network Meeting in Sitges, Barcelona.

Future Work: A weekly roundup of developments

Many thanks to Philip Bickerstaffe for drawing out attention to a fascinating podcast featuring the well-known US labour relations academic, Peter Cappelli, from the Wharton School. In the podcast, Cappelli says:



- *Don't bet against what employers want. They have the money and power. If they want you back in the office, you will be back in the office.*
- *Early career individuals would be crazy not to work from the office.*
- *The biggest buyers of commercial property are tech companies.*
- *It's one thing to WFH when everyone is doing so (pandemic) and another when you have to put your hand up for it.*

Cappelli also has some interesting things to say about social media labour activism. **You can listen to the podcast [here](#)**

MEANWHILE A great majority (more than 85%) of UK finance workers no longer view the office as their main place of work, according to a YouGov poll of more than 500 finance executives commissioned by *Bloomberg* last month.

Just 14% now consider the office their main workplace compared to 42% for the home and 44% for a hybrid arrangement. *Bloomberg* notes that the rise of remote work is a particular challenge in finance given that some critical roles, such as trading, demand a fully staffed office.

But whether employers like it, or not, hybrid working arrangements are here to stay. “Everyone is going to have to engage with remote work to some degree,” said Claire Tunley, chief executive officer of the Financial Services Skills Commission, which is focused on building the UK finance sector’s skill and talent pipeline. “Working through the challenges of it is key.”

ALSO IN THE UK: more than a third of working adults in Great Britain spent at least part of their time working from home this spring, an official survey of working patterns shows, with the proportion of people hybrid working growing even as Covid restrictions eased. More than four in five workers – 84% – told the [Office for National Statistics \(ONS\)](#) they wanted to continue splitting their time between home and the office after the pandemic, while the ONS also found hybrid working patterns had shifted towards employees spending more working hours at home.

The ONS found improved work-life balance was reported to be the main benefit of working from home for at least some of the week, cited by 78% of the workers who split their time between office and home. Meanwhile, half (52%) of hybrid workers told the survey they found it quicker to complete their work at home, mostly because there were fewer distractions, while almost half (47%) reported improved wellbeing as a result of increased home working.

France: Court upholds complicity charges against Lafarge



An appeals court in France has upheld a charge of complicity in crimes against humanity against French cement group Lafarge - now part of the Swiss building materials conglomerate Holcim - over alleged payoffs to ISIS and other armed groups during the war in Syria. The appeals court sided with prosecutors who said Lafarge had “financed, via its subsidiaries, Islamic State [ISIS] operations with several millions of euros in full awareness of its activities.” ([Here](#) in French).

The European Union is currently considering legislation which would impose human rights, including labour rights, due diligence obligations on the vast majority of multinational companies with operations in Europe.

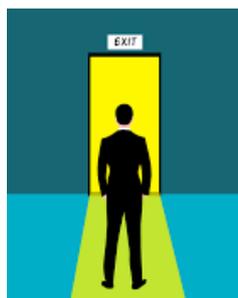
This is an issue which is on the agenda for our BEERG June Network Meeting in Sitges, Barcelona.

Pay: Gender pay-gap in Uber



As gender pay-gap reporting becomes a more and more common legal requirement, and with the European Union coming close to finalising a new Directive on gender pay transparency, our colleagues in the Dublin law firm, Matheson, take a detailed look at a recent study on gender pay difference in Uber. *You can read their article [here](#);*

Work: The “great resignation” will continue



The Great Resignation will continue apace in the year ahead as one in five workers say they are likely to switch to a new employer in the next 12 months.

So says PwC's [Global Workforce Hopes and Fears Survey](#) of 52,195 workers in 44 countries and territories. The survey finds that 35% are planning to ask their employer for more money in the next 12 months. Pressure on pay is highest in the tech sector where 44% of workers surveyed plan to ask for a raise and is lowest in the public sector (25%).

While an increase in pay is a main motivator for making a job change (71%), wanting a fulfilling job (69%), and wanting to truly be themselves at work (66%) round out the top 3 things workers are looking for. Nearly half (47%) prioritised being able to choose where they work. According to the survey:

- *One in five say they are likely to switch to a new employer in the next 12 months*
- *More than a third plan to ask for a raise, but finding fulfilment at work is just as important*
- *Skilled employees are most likely to ask for promotions and pay raises and to feel listened to by their manager, while those lacking skills lack power in the workplace*
- *By a margin of more than 30 points, respondents felt discussing social issues at work has had positive rather than negative impacts on them*
- *But only 30% state their companies provide support to work effectively with people who share different views*



[Derek Mooney](#) writes: As we reported in [BEERG Newsletter \(#11\)](#) on March 25 President Joe Biden and European Commission President Ursula von der Leyen announced that the US and EU had reached a political agreement in principle on a new "Trans-Atlantic Data Privacy Framework" though neither side set out the terms of the new Framework in legal documents or proposed a timing for the passage and adoption of the Framework.

Responding to the 'agreement in principle via an [open letter](#) published this week, Max Schrems and "NOYB.eu" warned U.S. and EU officials that the announced framework risks "sharing the same fate" as its two predecessors: Safe Harbour and Privacy Shield 1.0 "unless substantive (legislative) reforms are conducted in the United States". The specific reforms he wishes the US government to make are detailed in this article by DLA Piper which can be [found HERE](#) on Lexology.

THE BEERG AGENDA:

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

BEERG Members' Network Annual Summit

Hotel Estela, Sitges Spain: Jun 15 - 17

Our June Summit will have 4 working sessions:

- EU Employment and Labour Law Legal Landscape,
- Disrupting the Disruptors: A Company Case Study,
- From the Fax to the Cloud - From Working 9-to-5 to Timeless Work,
- Political Perspectives: Europe: Ukraine/Russia; post-election France; A US view

The full agenda, with the list of guest speakers, is available [online](#)

Please note the Hotel Estela is almost fully booked for accommodation

[Book June meeting](#)

Executive Training: Fundamentals of Global LR

Webinar: June 28 - 30

This course of three sessions, over three days, explores the strategic mindset and thought process of a successful global labor relations executive. This course is not an introduction to LR principles, it examines the strategic awareness needed to lead global labor relations.

[Book June Webinar](#)

BEERG Members' Network Meeting

Pullman Hotel, Gare du Midi Brussels Sept 29/30

The September BEERG Network Meeting in Brussels is open to BEERG members, HR Policy Global members. Click link on right to book a place at the meeting. A draft agenda with details and accommodation booking form will be available by mid-July

[Book Sept Meeting](#)

BEERG Training: Managing European Employee Relations

Hotel Estela Sitges: Oct 18-21

Over the past fifteen years, hundreds of executives have participated in our twice yearly BEERG training programs. We have radically restructured our program to include a twin track component offering participants a tailored choice of modules. Download the training brochure and draft course schedule [ONLINE HERE](#).

[Book Oct Training](#)

*BEERG/HR Policy Global Members can self-register online for these events via the links supplied. Members who get the "No Tickets Available for Purchase" message online should contact [Derek](#).

BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
Jun 15 – 17	BEERG June Members' Network Summit Meeting	Book June Summit	Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain
June 28 – 30	BEERG Training: Fundamentals of Global Labor Relations: A Training Program for HR Executives	Book June Webinar	Webinar on Zoom
Sept 29/30	BEERG Members' Network Meeting	Book Sept Meeting	Hotel Pullman, Gare du Midi, Place Victor Horta 1, 1060 Brussels
Oct 18 - 21	BEERG Training: "Managing European Employee Relations"	Book Oct Training	Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain