

New EU Employment Law Directives: A “Third Information + Consultation Wave”

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Europe – An Exception

- The Member States of the European Union – 27 + the 3 Members of the European Economic Area – is the one area in the world where employees have the legal right to be represented, informed and consulted, without having to be members of a trade union.
- Non-union representation is voluntarily possible elsewhere in the world but generally does not happen.
- The only country where non-union forms of representation is illegal is the US.

Representation Waves

- **First Wave: 1970s**
 - Collective Redundancies
 - Transfer of Undertakings
- **Second Wave: Late 1980s/early 1990s**
 - Health and Safety Committees
 - European Works Councils (1996 – updated 2009)
 - European Company Statute
 - General Information and Consultation Framework

The Third Wave

- Agreed and Coming into Force/Transposition
 - *Corporate Sustainability Reporting Directive (CSRD)*
 - *Adequate Minimum Wage Directive*
 - *Pay Transparency Directive*
 - *AI Act*
 - *Status of Platform Workers Directive*
 - *Forced Labour Directive*
 - *Corporate Sustainability Due Diligence Directive*
- Under Discussion by the Legislators (Council and Parliament)
 - *AI Liability Directive*
 - *European Works Council Directive*

Corporate Sustainability Reporting Directive

- This Directive, which will be gradually rolled out over the next few years with more and more companies coming into scope – up to 50,000 eventually – requires management to report annually on a very wide range of non-financial issues, such as environmental impact, human rights compliance, and on a very significant number of human resource and employment related matters.
- A key concept at the heart of this law is “double materiality”.
- Management will have to engage with employees’ representatives, as provided for in national law and/or practice. National laws will determine the nature and extent of employee engagement.
- Management will have to engage with employees’ representatives on the auditing of this information and how that auditing can be independently verified.

Adequate Minimum Wage Directive

- This Directive is designed to ensure that were Member States have minimum wages, by legislation of collective bargaining, they are “adequate”, though adequate is not defined.
- The Directive also says that Member States should aim for 80% collective bargaining coverage, though this is an “indicator” and not a “target”. Collective bargaining coverage should not be mistaken for union membership (see France).
- Where collective bargaining coverage in Member States fall below 80% - and it does in the majority of EU Member States – then they should produce a plan to hit the 80%.
- We think this is a “Performative Directive” – looks a lot more important than it actually is. The unions think it marks the return of sectoral collective bargaining.

Pay Transparency Directive

- This Directive comes into effect in 2026 but preparation needs to start now.
- The EU Commission estimates that the European gender pay gap stands at 13%.
- Where analysis shows gender pay gaps of more than 5% that cannot be objectively justified then management will need to engage with employees' representatives to analyze the reasons for the gap and develop a plan to close it.
- EU case law suggests that where there are no existing employees' representatives then such representatives will have to be elected.

AI Act

- This is not a labour or employment law but will have workplace implications.
- It sets the framework for the use of AI in the EU. Think of it in the same way as the GDPR.
- It categorises AI-related HR decisions as “high-risk” requiring human oversight.
- For now, it only requires that management “inform” employees and their representatives over the deployment of AI in the workplace.
- Expect demands for a “Workplace AI Act” after the EP elections in June and the appointment of a new Commission later this year.
- What also needs to be kept in mind is that existing health and safety laws and the GDPR may also come into play when it comes to the introduction of AI in the workplace.

Status of Platform Workers Directive

- After having been blocked for months, this Directive finally found majority in the Council of Ministers.
- The major point of contention was the “presumption of employment” – the criteria by which platform workers should be judged to be employees or self-employed.
- The agreed version of the text left this to be defined in national law, so matters could differ from country to country.
- The text has a significant chapter on the use of AI/algorithms in human resource decision making which was uncontested and may be a marker for the future of wider workplace legislation on this issue.

Corporate Sustainability Due Diligence Directive

- Whereas the *CSRD* is mainly about reporting, this Directive will require undertakings to be proactive in identifying and mitigating potential harms within its own operations and within its supply chain, and value chain to some extent.
- Here is a requirement for extensive engagement with employees' representatives and trade unions over the due diligence process.
- The final version of the Directive increases the threshold to bring undertakings into scope, meaning that the number of undertakings in scope now stands at around 5,000, compared to around 20,000 originally. An undertaking must have at least 1,000 employees and a turnover of at least €450m.
- Further, there is a long phase-in period, with implementation not starting until 2027, and then only for the biggest companies.

Forced Labour

- This Directive is designed to prevent the placing on the European market of any products, whether produced in Europe or elsewhere, that uses forced labour.
- Member States will be responsible for monitoring for what happens within their own borders.
- The European Commission will be responsible for monitoring matters outside of Europe.



Under Discussion

AI Liability Directive

- This Directive is designed to complement the AI Act.
- Whereas the AI Act sets the governance framework for the use of AI in the EU, this Directive sets out what is to happen if people feel they have been injured by the use of AI in decision making.
- It will allow for claims for redress and compensation.
- Claims can come from individuals.
- “Class actions” may also be possible.
- Expect works councils, trade unions, and other employee representation bodies to pay close attention to this law.

Revision of the EWC Directive

- The end of Article 13 agreements
- The need to update Article 6 agreements
- An expanded definition of “transnational”
- A more formalistic information and consultation procedure
- New language on the payment of expert and legal fees
- Experts to be given a right to attend EWC/management meetings
- New language on the right to training

Looking Ahead

- Looking ahead to the next Parliament/Commission we can expect to see:
 - A Directive on AI in the Workplace – very much focused on the information, consultation and possibly the agreement, of employees' representatives on the use of AI in the workplace.
 - A Directive on the "Right to Disconnect", and aspects of WFH and remote work.
 - A union push to update EU laws on public sector procurement to include "social conditionality" clauses to limit public sector contracts to undertakings with collective bargaining agreements.

A Provisional Conclusion

- Taken together, the “three waves” create an extensive information and consultation framework covering multiple issues to a greater or lesser extent.
- There is an unstated assumption underlying many of them that there are extensive employee representation structures in place in businesses across Europe. This is simply not the case, even in “old Western Europe”.
- What will these new laws mean for employee relations in your business? What should you be doing about it now?