HRPA HR POLICY ASSOCIATION
HR POLICY GLOBAL EUROPE

Newsletter
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In this week's special issue:

Introduction by Tom Hayes

As the summer ends, Brussels starts back to work. We call it the "Brussels Year," from the start of September to the end of July. Things go silent in August. This September, we don't just face into another year, we face into a new EU Parliament and, shortly, a new EU Commission.

Ursula von der Leyen's reappointment by heads of governments for a further five-year term as President of the EU Commission, has been approved by the new EU Parliament. The next step is the appointment and confirmation of a new College of Commissioners by early November. We know who the Member States are nominating, but we don't yet know how the portfolios will be assigned. There will be intense political manoeuvring over the coming weeks.

For now, we know that Finnish MEP, Li Andersson will chair the Employment and Social Affairs Committee in the EU Parliament. She is a member of the Left grouping. However, overall, the Parliament has tilted slightly to the right, though a solid centrist bloc still has control. How the new dynamics in the Parliament impacts policy remains to be seen.

Recall that when von der Leyen became Commission President five years ago, she committed to the Parliament that if it brought forward a legislative proposal then the Commission would act on it. Not just consider it, but act on it. Little commented on at the time, this commitment has significantly changed the Brussels legislative process. We refer to it as the "VDL Concession." Previously, only the Commission could bring forward fully developed legislative drafts to be considered by the Council and the Parliament.

Now the Parliament can bring forward draft legislation that both the Commission and the Council have to consider. It is a little bit more complicated than that when it comes to employment legislation because of

the need for social partner consultation but, in effect, the Parliament has the opportunity of "first mover advantage" by putting a draft text on the table.

We will see later how this will be important during the next five years. For HR Policy Global members, there is already an existing packed European agenda that need to be dealt with, no matter what happens in the Commission and the Parliament during the coming term.

There are four sections to this paper.

- *The first looks at EU laws that are already agreed and now need to be transposed into national law. Some already are.*
- *In the second we look at laws that are under discussion and will be adopted at European level eventually.*
- *We then look at law that we think will be proposed during the coming years by either the Commission or the Parliament (see above).*
- *Finally, we look at what is happening in the UK under the new Labour government. This section of the paper is written by David Hopper of Lewis Silkin LLP.*

1. Done Deals

Adequate Minimum Wage Directive

This Directive requires that where Member States have minimum wages, whether by law or collective agreement, they are adequate. It has to be transposed into national law by November 2024.

Article 4 will be of most interest to member companies. It requires the governments of Member States to put in place measures to "promote" collective bargaining where collective bargaining coverage falls below 80% of the workforce. At the time of writing, we are not aware of any Member State which has yet transposed the Directive. We will report in the newsletter as we become aware of Member States bringing forward laws. This lacy of urgence on the part of Member States in transposing the Directive suggests that it is not the priority for them that the trade unions think it should be.

It is important to note that the Directive requires Member States to "promote" collective bargaining, not to impose it. There is a major difference between "promotion" and "imposition."

It is also worth noting that collective bargaining coverage does not equal union membership. For example, in France union density runs at about 10%, if even that, but collective bargaining coverage is 98%. So, even if Member States find ways of extending collective bargaining coverage, it does not mean that it will deliver unions members.

Corporate Sustainability Reporting Directive (CSRD)

This is the first of two EU Directives on due diligence in corporate global supply chains. The other is the *Corporate Sustainability Due Diligence Directive.* Also worth mentioning are the Deforestation Directive and the Forced Labour Directive, but these impose obligations primarily on governments, and not on individual businesses. The *CSRD* was due to be transposed into national law by July 2024. The first companies in scope will need to report on 2024 data in 2025.

The *CSRD* requires undertakings in scope to report on what is known as "double materiality." "Double materiality" means; first, what is the material effect of an undertaking's environmental, social, human rights, and labour rights policies on its business performance. Second, what is the effect of these policies on the communities in which the undertaking operates. Undertakings will need to report on these issues within their operations and in their value chain, in accordance with standards developed by EFRAG (here) and adopted, sometimes with modifications, by the EU. Up to 50,000 undertakings in the EU will come into scope on a phased basis over the next few years

The data reported will have to be independently verified and made publicly available.

Employees' representatives will have to be involved at several stages during the data collection and publication process. How this is to be done is unclear from the Directive and will depend on how individual Member States transpose the Directive. For example, the French law requires management to report to the central works council. The Irish law would appear to require the election of representatives where they do not already exist.

Whether there is a role for EWCs in the process is uncertain. It will take some time before what is required of management around engaging with employees' representatives becomes clear.

- *We are working with Ius Laboris on a survey of what the CSRD legislation in major EU Member States has to say about employee engagement. We will explore the results of this survey at our September meeting in Brussels on September 18/19 (See: Meeting Agenda).*
- *The European Commission has produced a useful FAQ on the implementation of the CSRD reporting rules. You can find it here.*

Pay Transparency Directive

The *Pay Transparency Directive* has to be transposed into national law by June 2026. It will require all advertised positions in undertakings to carry salary details, or salary range details. It will give employees, or their representatives, the right to ask for pay data. Where data analysis shows gender pay differentials of more than 5%, which cannot be justified on a non-gender objective basis, then management will need to engage with employees' representatives to analyse the reasons for the gender gap and to develop ways of closing it.

The reporting has to be on a group/grade basis. Overall undertaking data will not suffice. While the Directive will not come into national force until June 2026, management should now be looking at what data they have and what extra data may be needed. In complex organisations, defining groups and grades will not necessarily be easy. Many managements will already be all too familiar with trying to define "comparable worth."

Management should also now be giving consideration to how to engage with employees' representatives on this issue. In some Member States, such as France, Germany, and the Netherlands, engagement will be with existing works councils. But the majority of EU Member States do not have such structures in place. National laws will have to define employees' representatives for the purpose of pay transparency engagement. For instance, existing Spanish law mandates that in the absence of in-house representatives, management must engage with officials from the relevant sectoral union(s), even if they have no members in the company. It is unlikely that the Spanish template will be used elsewhere.

The election of representatives seems the most likely approach that Member States will take up. We think management should now be examining how this can best be done in their undertaking and what training can be offered to such representatives so that they are in a position to add value to the process.

Status of Platform Workers Directive

After a contentious political and legislative process, this Directive was finally approved earlier this year. At the time of writing, it has not yet been published in the Official Journal, so we do not know exactly when it will come into force, but it will be before the end of 2026.

The main compromise agreed between the legislators provides for a legal presumption of employment, which will help determine the correct employment status of persons working in digital platforms:

- Member States will establish a legal presumption of employment in their legal systems, to be triggered when facts indicating control and direction are found
- Those facts will be determined according to national law and collective agreements, while taking into account EU case-law
- Persons working in digital platforms, their representatives or national authorities may invoke this legal presumption and claim they are misclassified
- It is up to the digital platform to prove that there is no employment relationship

The Directive requires that workers, or their representatives, are properly informed about the use of automated monitoring and decision-making systems regarding their recruitment, their working conditions, and their earnings, among other things.

- It also bans the use of automated monitoring or decision-making systems for the processing of certain types of personal data of persons performing platform work, such as biometric data or their emotional or psychological state.
- Human oversight and evaluation are also guaranteed as regards automated decisions, including the right to have those decisions explained and reviewed.

While this will be widely seen as a "Uber Directive" it is important to keep in mind that it will apply to any worker engaged through a digital platform and/or doing work through a digital platform even if that work is being done for a non-platform undertaking, i.e., a normal bricks and mortar company. ***We will come back to this when the official text of the Directive is published.***

Corporate Sustainability Due Diligence Directive (CSDDD)

The *CSDDD* was published in the EU's Official Journal in July of this year. It will become national law in 2026. The purpose of the Directive, according to the EU Commission is to "contribute to sustainable development and the sustainability transition of economies and societies through the identification, and where necessary, prioritisation, prevention and mitigation, bringing to an end, minimisation and remediation of actual or potential adverse human rights and environmental impacts connected with companies' own operations, operations of their subsidiaries and of their business partners in the chains of activities of the companies, and ensuring that those affected by a failure to respect this duty have access to justice and legal remedies".

As this Directive will not come into force for several years, we are not going to go into it in any detail, other than to note that like the *CSRD,* it provides for the extensive involvement of employees' representatives in the due diligence process. This Directive is much more limited in the number of companies in scope. Any company covered by the Directive will also be covered by the *CSRD* and can use any information and consultations systems put in place under *CSRD* to meet their obligations under this Directive as well.

- *See here from the European Commission, which includes a link to FAQs.*

2. Still in the Pipeline

European Works Council Directive

We have written extensively on the proposed changes to the European Works Council Directive, most recently comparing the positions of the European Commission, the Council, and the European Parliament as they prepare for trilogue negotiations later this year. This Directive arise directly out of the "VDL Concession," which saw the Parliament write a revised Directive and ask the Commission to act on it. Our best guess is that agreement between the legislators will be reached quickly, either late this year or early in 2025 with the revised Directive becoming law in 2027.

We do not expect that the rewritten Directive will provide for injunctions, or for GDPR-size fines as asked for by the Parliament. Neither the Commission nor the Council are in favour of either. But it will provide for: an expanded definition of transnational; the need to make provisions in agreement for EWCs to have financial resources to engage experts and legal advisors, where necessary; a minimum of two meetings a year (in the Subsidiary Requirements); and restrictions on confidentiality.

Procedures for resolving disputes between EWCs and management will need to be set out in detail in national law, a response to the obfuscation of the Irish government over this issue over the past few years.

Of course, the biggest change the rewritten Directive will bring is to put an end to the "Article 13" exemption from the terms of the Directive for the 350 or so undertakings that had arrangements for the transnational information and consultation of all employees in place before September 22, 1996. Immediately the rewritten Directive becomes law, employees in these companies will be able to request the establishment of an SNB to negotiate an EWC agreement, as provided for in the existing Article 5 of the Directive.

Article 5 says that a request for an SNB can be submitted by 100 employees from at least two EU/EEA Member states, **or their representatives,** which can mean just two people. We know from talking to member companies that union-affiliated members on Article 13 EWCs have already been briefed to trigger such requests as soon as the law allows. Member companies with A13 EWCs need to start thinking ahead now. We will keep members fully up to date on this as matters develop.

Right to Disconnect

This is another piece of legislation that was initiated by the EU Parliament under the "VDL Concession." Following the call for legislation, the Commission prepared to open consultation with the social partners, as provided for in Article 154 of the European treaty. However, the social partners, ETUC and BusinessEurope primarily, said they would prefer to negotiate an update to the 2002 Framework Agreement on Telework. This was a procedural move outside the Article 154 process, a voluntary decision to open negotiations.

Substantial progress was made in the negotiations, but at the end of 2023, the employer side said that that a basis for an agreement did not exist and the talks ended. The matter returned to the Commission which

then opened the formal Article 154 consultation process of the social partners. However, it is unlikely that having failed in their voluntary negotiations, the social partners will take up the option of Article 154 negotiations between themselves. So, we can expect a Commission legislative proposal in the coming months.

3. Looking Ahead

We have used the quote before from the Irish politician who said, *"all predictions are hard, but predicting the future is very hard."* This is especially the case with a new EU Parliament just beginning to bed in, and a new EU Commission yet to be appointed and portfolios allocated.

But we can predict, with a degree of certainty, some of the issues that legislators in the EU Parliament are likely to focus on. And, as with all things political, it is necessary to enter the caveat that there will be "unknow unknowns" ahead which will blindside us all. We think there are three issues that the Employment and Social Affairs Committee of the Parliament will seek to legislate on:

1. *A Directive on* ***AI in the workplace,*** *with a particular emphasis on extensive employee information, consultation, and consent. In other words, a push for workplace codetermination on the use of AI in human resource decision making. The AI Act, which has now come into force, provides that employees and their representatives be "informed" about the use of AI in the workplace. A workplace AI Directive will go a lot further than this.*

2. *A demand for the rewriting of the* ***EU's laws on public procurement*** *to include a "collective bargaining conditionality" clause. All public sector contracts throughout the EU, at every level of government, should only be on offer to undertakings which engage with unions and have collective bargaining arrangements in place. We cannot see this proposal having a great deal of traction with Member States.*

3. *An attempt to bring forward a law which would* ***limit the ability*** *of multinational undertakings to* ***move operations across borders in Europe*** *or outside the European Union. We refer to this as the "nail them to the floor" law. Again, we think this is unlikely to get very far.*

These three issues are likely to have some traction within the Employment and Social Affairs Committee. Whether they will have traction within the Parliament as a whole is another matter. But the "VDL Concession" means that activist MEPs can drive legislation as Radtke has done with the EWC Directive, with minimal wider political oversight. For example, do members of the centre-right EPP, of which Radtke is a member, know that he is pushing proposals that every employer group in Europe opposes?

Commentary on Parts I - III

While the above list of laws covers everything from due diligence in global supply chains, to the rights of platform workers, taking in gender pay equity and, in the future, the right to disconnect, all of them will require information and consultation with employees' representatives. Over time, there could be four or five different information and consultation streams, and, unlike collective redundancies consultations, they will not be "one-off" consultations but ongoing. Not to forget EWCs.

Member companies would do well to start think now about how to manage these new challenges. Would it make sense to channel all the streams into one overarching information and consultation forum, or is it better to keep them separate?

How do you ensure that the employees elected to these forums are genuinely representative of the workforce, and that the forums are not "captured" by small groups of activists with their own agendas?

What training should be put in place for the elected representatives to ensure that they add value to the process and don't become "obstructive blockers"?

Whether it is decided to put in place one overarching system, or to run separate streams, then it seems to us that management should draw up a framework document which sets out the procedures and processes to be followed. Management should also make itself familiar with the EU Directive 2002/14/EC of the 11 March 2002, as transposed into national law, which provides for a general information and consultation framework, and which could now easily come into play, even if it has been much ignored in the past/

We will pick up on these issues in our Network Meetings. We also intend to run a Sitges workshop in April 2025 focused on these challenges and what you can do now, to complement our October workshop on EWCs.

4. In the UK...

David Hopper of Lewis Silkin writes:

In the UK, the year ahead is likely to be dominated by the newly elected Labour government's ambitious reform agenda. Labour has pledged to introduce an Employment Rights Bill by 12 October 2024, which will set out the most significant changes to UK employment law for a generation.

- Labour's proposals include a commitment to remove minimum periods of qualifying service from a number of 'basic' employment rights. Most significantly, Labour has promised to make unfair dismissal protection a 'day 1' right, scrapping the current two year period of qualifying service required to bring claims in Great Britain. While Labour has said that probation periods will still be permitted, this will nonetheless represent a major increase in workers' rights, which will require many employers to review their performance management processes and policies for new hires.

- The Employment Rights Bill will also significantly empower trade unions. The Labour government has promised to introduce new rights of access for unions, which are likely to give them a general right to access workplaces without management consent for the first time. Labour will also make it easier for unions to secure statutory recognition and repeal the restrictions on industrial action brought in by successive Conservative governments since 2010.

- Other worker-friendly reforms to UK employment law will include a ban on zero-hour contracts, a new 'right to disconnect', extending equal pay legislation to cover ethnicity and disability and far-reaching reforms to employment status. As with all of these proposals, we are eagerly awaiting further detail from the government in the coming months.

- In addition, it remains to be seen whether the government will amend the legislation governing 'UK EWCs.' As a reminder, the Court of Appeal's decision in *easyJet* last year has meant that a small number of UK business are required to operate two EWCs: one under EU law and a second 'legacy' EWC under UK law, though the recent decision in *HSBC* has helpfully established that this obligation only applies to businesses operating EWCs under the UK subsidiary requirements. We now understand that the HSBC EWC will not be appealing this decision, so it would seem that only three undertakings are caught by the *easyJet* ruling, easyJet, the British Council, and the Two Sisters Food Group.

- In May, the previous Conservative government launched a consultation on proposals to fix this legislative mess by scrapping the UK's legal framework for EWCs altogether. However, since coming into power, the new Labour government has not said what, if any, plans it has to reform the legislation governing UK EWCs.

For your diary...

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

HR Policy Association's Washington Policy Conference — *Sept 10-11, Arlington VA*

The HRPA Washington Policy Conference is a unique platform for peer networking and knowledge exchange. Join us as we foster a collaborative environment, bringing together thought leaders, industry experts, and seasoned HR leaders to collectively address the challenges and opportunities that lie ahead in the realm of human resources and workplace public policy.

Book Washington Policy Conference

Europe Members' Network Meeting — *Pullman Hotel, Gare du Midi Brussels Sept 18/19*

Attendance at our September networking meeting in Brussels is open to all members. Click link on right to book your place at the meeting. Download the agenda and list of guest speakers.

Book Brussels meeting

Prepare for EWC Directive III: What You Can Do Now — *Oct 8 – 10 Sitges, Barcelona*

The EU is rewriting the European Works Council Directive - it is expected to become national law, across the EU, by 2027. This specialised workshop to be held at our regular venue outside Barcelona on Oct 8 – 10 incl, will enable participants to start preparing now, in practical ways, for its many implications – Download Draft Programme

Oct EWCD III Training

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	*Europe Members Network Meeting*	***Book Brussels meeting***	*Pullman Midi Hotel Brussels, Belgium*
Oct 8 - 10	*Prepare for EWC Dir III: What You Can Do Now - European Training Academy in Sitges/Barcelona*	***Oct EWCD III Training***	*Hotel Estela, Sitges, Barcelona, Spain*
Dec 12	*HR Policy Global Paris France Networking Luncheon*	***Book Paris Event***	*Flichy Grangé Avocats 16 Rue du 4 Septembre, 75002 Paris, FR*