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## EWCs: Timeline for review of the Directive is accelerated



In an interview with EURACTIV, [here](#) EU Commissioner for Jobs and Social Rights Nicolas Schmit said that the Commission would come forward with a legislative proposal to amend the European Works Council (EWC) Directive by the end of 2023. Schmit was responding to the request from the European Parliament, based on the report by Denis Radtke, a German Christian Democrat MEP (photo), for a major overhaul of the Directive.

The Parliament wants EWCs to be able to go to court to ask for injunctions to block management decisions when they believe they have not been properly informed and consulted. Courts would also be able to impose GDPR-size fines of up to 4% of global turnover, while all the EWC's courts costs would have to be paid by management.

With increasing numbers of European companies eying what is available in the US under the *Inflation Reduction Act*, the last thing European business needs is EWCs going to court “early and often” to challenge management decisions because they believe they have not been properly informed and consulted and there will be no short-term downside or costs for them in doing so.

Schmit told EURACTIVE “On Wednesday (1 March), we decided to inform the Parliament that we will follow up [and] that we will start the consultation of social partners, because this is something which needs the consultation of social partners.”

If Schmit plans to bring forward legislation by the end of the year then, clearly, he has little faith that the social partners consultations will go anywhere. Why would the unions want to negotiate with the Radtke Proposals in their back pocket? The speed at which any legislative initiative from the Commission will progress will be determined by the extent of the changes proposed.

If the Commission proposals allows for injunctions, GDPR-size fines and unlimited court costs then they are likely to run into serious opposition in the Council of Ministers. On the other hand, proposals that brought more certainty to the existing Directive, with more precise definitions of disputed terms like transactions, information, and consultation would be more easily adopted.

*This is a critical issue for members. We will shortly circulate briefing materials which members can use across EU member states. We are planning a number of online and P2P events on this, including an important discussion at our [June Members' Summer Summit](#) in Sitges, Barcelona.*

## AI: Californian court asked to rule against Workday

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As the use of Artificial Intelligence (AI) in human resource decision-making becomes more widespread it is inevitable that questions are going to be asked about the values and biases built into the system by human developers. There are also concerns about the historical data that is used to train such systems and whether that data is in itself biased. The upcoming European AI Liability Directive anticipates such situations and will provide methods of redress for those who believed they have been harmed by AI-based decisions.

Last week, saw a court action launched in California which claims that Workday's artificial intelligence systems and screening tools allegedly disqualify applicants who are Black, disabled, or over the age of 40 at a disproportionate rate.

Derek Mobley, a Black man older than 40 who suffers from anxiety and depression, allegedly applied for 80-100 positions since 2018 that use Workday as a screening tool. He has been denied employment every time, despite him holding a bachelor's degree in finance from Morehouse College and an associate's degree in network systems administration from ITT Technical Institute.

Mobley wants to represent all applicants in those protected classes who haven't been referred or hired for employment as a result of the discriminatory screening process, according to the complaint filed in the US District Court for the Northern District of California. The suit comes at time when federal agencies like the [Equal Employment Opportunity Commission](#) are pushing for enforcement on AI bias.

Workday provides its screening tools to hundreds if not thousands of companies, the complaint said. The company allegedly allows the preselection of applicants outside of protected categories, and the tools allegedly rely on algorithms and inputs created by humans who often have conscious and unconscious motivations to discriminate. Its administration and dissemination of the screening products "constitute a pattern and practice of discrimination," the complaint said. Mobley further alleged that Workday marketed tools it knew intentionally discriminated against him and class members in violation of the Age Discrimination in Employment Act.

Mobley seeks injunctive relief that would reform "Workday's screening products, policies, practices and procedures so that the Representative Plaintiff and the class members will be able to compete fairly in the future for jobs and enjoy terms and conditions of employment traditionally afforded similarly situated employees outside of the protected categories."

Workday believes the lawsuit is without merit, the Pleasanton, Calif.-based company said through a spokesperson. It is "committed to trustworthy AI" and acts "responsibly and transparently in the design and delivery" of its AI solutions, it added. "We engage in a risk-based review process throughout our product lifecycle to help mitigate any unintended consequences, as well as extensive legal reviews to help ensure compliance with regulations."

We will keep readers informed of the progress of this case over the coming months. It is not the first such case and certainly will not be the last.

## France: Bid to force ferry companies to pay French minimum wage

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The French parliament is set to consider a bill that if adopted would force ferry companies operating on UK-France routes to pay their staff at least the French minimum wage - a move that particularly targets P&O Ferries, which last year sacked its UK-based staff and replaced them with low-paid foreign workers. It would also hit Irish Ferries which operates across the English Channel.

Three MPs who represent constituencies along the Channel coast plan to present a bill to the Assemblée nationale next month, aimed at forcing any company that operates regular services on routes between France and the UK to adhere to French labour and minimum wage standards. The three are from opposing parties – Sébastien Jumel of the Communist party, Pierrick Berteloot of the far-right Rassemblement National and Didier Le Gac of Emmanuel Macron’s Renaissance group – but all represent coastal constituencies where cross-Channel ferries operate.

They say that the employment practices of P&O allow them to offer cheaper tickets than the French company Brittany Ferries and the Danish DFDS, creating unfair competition on cross-Channel routes.

Their bill is backed by the seafarers’ union CGT, which claimed that P&O’s employment practices are “inhumane”. The CGT’s Marc Sagot [told French newspaper Libération](#): “At P&O, employees can work for up to seventeen weeks at a time without setting foot on land. At the Danish shipowner DFDS the rule is fourteen days at sea, fourteen days off, whereas at Brittany Ferries it is more like seven and seven. And once the P&O staff return to shore, they have no paid rest, no holidays.”

The Dubai-owned P&O Ferries was severely criticised last year when it fired all of its UK-based seafaring staff via a video call and replaced them with lower-paid foreign workers.

## Future Work: A round-up of recent developments

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According to the US news-site, CNBC [“...people are over the 40-hour work-week: ‘We don’t want to waste our time’](#). It would appear that the Covid pandemic has broken the “work above everything else” culture that has long gripped the US.

Between 2019 and 2022, the number of hours people spent working in the U.S. fell by the equivalent of 33 fewer hours a year per person, according [National Bureau of Economic Research](#).

The Covid-19 pandemic, says the CNBC report, didn’t just disrupt where and how we show up to our jobs: It has led people to question when and why they should be working in the first place. While resignation rates have been [slowly ticking up](#) over the last decade, other factors related to the lingering pandemic – burnout, the rise of remote work, a national existential panic – have pushed workers to re-consider what they’re giving and getting out of their jobs. As a result, more people are breaking out of the 40-hour workweek.

“There’s a growing annoyance with work tasks that add no value to our lives,” Anthony Klotz, a professor of management at London’s UCL School of Management, says. “People have a much lower tolerance for this, and are less afraid to say, ‘We don’t want to waste our time.’”

*Read the full article [HERE](#).*

MEANWHILE, the latest “workmonitor” for 2023 from BEERG/HR Policy Global member, **Randstad**, reflecting the opinions of 35,000 workers from around the world, says they want secure, flexible, inclusive and financially stable employment.

Currently, 48% of workers would quit a job if it prevented them from enjoying their life. In addition, 45% of workers said they wouldn't even accept a job if it did not offer accommodating hours. In the current polycrisis climate, 52% of workers are worried about the impact of economic uncertainty on their job security. While 70% feel their financial position prevents them from retiring as early as they would like. Lastly, a 57% majority of workers said their job fulfills their need for a sense of purpose.

The full report looks at the key themes for workers in 2023. These themes include: attitude, expectations, security, unretirement, and belonging.

*You can download the report [HERE](#)*

## Platform Economy: French parliament push for employment status

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A left-wing French MP Danielle Simonnet wants to examine “the reality of generalised self-employment in the platform economy”, which she claims brings “instability to the taxi market, undermines workers’ rights to social protection and impoverishes the State”.

She said that ‘bogus self-employment’ must be done away with and called for general reclassification of workers.

“Self-employment is a race to the bottom,” Ludovic Rioux, delivery workers’ representative for the CGT union, told EURACTIV. He accused the government and platforms of working hand in hand to “generalise” self-employment – to the detriment of workers. It’s about ending ‘social dumping’, drivers’ representative Yassine Bensaci added, so platforms can go ahead with full-fledged employment without facing unfair competition.

The general demand from politicians and trade unions for status reclassification is in line with the majority of French legal precedence that found platform workers to be employed, as was held in March 2020 by the Cour de Cassation (France’s top court) ruling.

On the other hand, Uber has warned against mass reclassification, which it claims could lead to job losses – up to 250,000 across the EU, an industry-sponsored [report](#) contends.

The status of platform workers, and other solo self-employed workers such as IT contractors, will be at the centre of discussions between the EU Commission, EU Council and the Parliament later this year as they seek consensus on the proposed Employment Status of Platform Workers Directive. The Parliament leans heavily in favour of a presumption of an employment relationship unless platforms can prove otherwise. The Council is more hesitant, believing that a presumption of employment could put jobs at risk, especially as platform work is seen as a pathway into employment for many from minority communities and recently arrived immigrants.

## Due Diligence: Proposed amendments from Parliament

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Last week, members of the European Parliament's Employment and Social Affairs Committee (EMPL) voted through their opinion on the proposed Directive of Corporate Sustainability Due Diligence. This committee is not the lead rapporteur on this issue. It is the Legal Affairs Committee (JURI) that has the responsibility for drafting the parliament's position, which will then be voted on in plenary session. Nonetheless, the opinion of EMPL has to be taken into consideration.

EMPL wants to see strengthened trade union involvement in corporate due diligence processes. (The text in bold below are amendments proposed by EMPL to the original Commission proposals). When it comes to lodging complaints with multinational businesses about alleged human rights shortfalls, EMPL proposes:

*Organisations who could submit such complaints should **involve worker's representatives, including trade unions, who represent** individuals working in the value chain concerned and civil society organisations active in the areas related to the value chain concerned, **especially** where they have knowledge about a potential or actual adverse impact.*

This seems particularly wide ranging, giving unions and NGOs *carte blanche* to lodge complaints, no matter how tenuous their link to the business concerned. And it extends to the whole value chain, however that is to be defined. While many complaints will be judged to be ill-founded, the time, effort and cost dealing with them can be significant. While the managers of a business have a business to run with all the complexity that involves across multiple disciplines, unions and NGOs generally only have one activity and can devote considerable resources to that one activity which they would describe as "holding businesses to account".

Again, the wide brief that EMPL would like to see given to unions and NGOs can be seen from this proposed amendment:

*stakeholders' means **the potentially affected groups such as** the company's employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships. **It also includes the representatives of potentially affected groups, such as human rights or environmental organisations.***

Where human rights shortfalls are identified, business will have to put them right or else draw up an action plan to put them right over time. EMPL wants to see "representatives of affected stakeholders" be able to monitor the proposed plan.

*Where relevant, the corrective action plan shall be developed in consultation with stakeholders. **That corrective plan shall be shared with and monitored by the representatives of the affected stakeholders.***

Again, the assumption appears to be that unless the "representatives of stakeholders" ride shotgun, businesses will not do the right thing.

There is a further assumption underlying all this that needs to be challenged. It is that businesses are considered to be inherently inclined to violate human rights in the interest of making money, while unions and NGOs are always morally righteous and therefore in a position to call out such wrongdoing. But we now know from recent events in the European Parliament, the "Quatargate" affair, that this may not be the case when it comes to NGOs, and over the years there have been plenty of example of union corruption.



The general secretary of the International Trade Union Confederation is currently suspended from office because of his involvement in “Quatargate”. Further, there have been examples of less than exemplary behaviour of the part of some NGOs. ([here](#); [here](#); [here](#); and [here](#))

Should due diligence obligations not extend to all organisations and not just to commercial businesses? Many NGOs are multinationals in their own right. Why should they be exempt from the same standards as commercial multinationals?

## GDPR: Irish authority publishes its 2022 annual report

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[Derek Mooney](#) writes: The Irish Data Protection Commission (DPC) has just published its 2022 annual report ([HERE](#)). The DPC is pursuing a case at the ECJ/CJEU against the European Data Protection Board (EDPB) saying that the EDPB does not have a general supervision role akin to national courts (as outlined in [BEERG newsletter](#) #1 of 2023).

This fact may explain why the report and the accompanying statement highlights the DPC’s robust approach to achieve the *highest standards of personal data protection processing* and the DPC’s willingness to apply sanctions “*where warranted*”. Both the report and statement strongly make the point that the DPC issued two-thirds of all fines issued across Europe last year. See extract from the statement below, with our emphasis in bold.

*“2022 was a year that saw significant outputs from the DPC...*

*While the DPC encourages and guides organisations in achieving highest standards of protection in their processing of personal data, the DPC has also demonstrated it **does not shy away** from enforcing the law and applying sanctions where warranted. **Two-thirds of the fines issued across Europe last year, including the EU, EEA and UK, were issued by the DPC** on foot of detailed and comprehensive investigations, a fact that underlines both the outsized role, and exceptional performance, of the organisation in effectively holding those guilty of non-compliance to account.”*

## And finally ... congratulations to Organon

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***Many congratulations to BEERG/HR Policy Global member company Organon for this initiative.***

*Global pharmaceutical group Organon, which specialises in healthcare treatment for women, is to give staff time off on International Women’s Day on March 8. The firm decided to give its 11,000 staff members across the world this day off as part of efforts to raise awareness of specific healthcare matters, as well as to boost employee loyalty.*



You can read the company’s full statement [here](#).

## HR Policy Global: 2023 Asia-Pacific Membership Summit

March 21 & 22, Singapore

**Emerging Employee Relations Issues in this Challenging Time** the summit brings together senior HR & Employee/Labor Relations professionals from the HR Policy Global network over one-and-a-half days, to discuss the most urgent and challenging issues that employers are facing in the region. Join - in person - at the [Four Points by Sheraton Singapore](#) on March 21–22 - in the beautiful and diverse Lion City, for the first time in three years

[BOOK Asia Pacific Summit](#)

## Training: Managing ER in Europe

April 18 – 21, Hotel Estela, Sitges, Barcelona

This is BEERG's flagship training program: *Managing European Employee Relations In Europe* – its goal is to familiarise attendees with the architecture of EU-level employee relations and issues of current concern. We look at the cultural gap between the EU and the US when it comes to understanding of how labour relations should be structured in individual companies. [Program details](#)

[Book April Training](#)

## BEERG Members Annual European Summit

June 14 – 16, Hotel Estela, Sitges, Barcelona

The 2023 Summer Network Summit will be at the Hotel Estela, Sitges, Barcelona, from Wednesday, June 14 to Friday lunchtime, June 16. The meeting will open with a welcome networking reception on the evening of June 14.

Agenda items on Thursday and Friday include: *State of play on EWCs/Radtke Report; Anticipating the EU's Due Diligence Directive; AI and GDPR; 50 years of EU membership: UK and Ireland; What's happening in the US; and, a general round up of EU developments.* The meeting attendance fee is €250. [Meeting brochure](#)

[BOOK June Members' Summit](#)

\*BEERG/HR Policy Global Members can self-register for these events via the links above. If you get a "No Tickets Available for Purchase" message make sure you are logged in – if the issue persists contact [Derek](#).

## Upcoming BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
March 21 - 22	<b>2023 Asia-Pacific Summit - Emerging Employee Relations Issues in this Challenging</b>	<a href="#">BOOK Asia Pacific Summit</a>	<a href="#">Four Points by Sheraton, Singapore</a>
April 18 - 21	<b>BEERG Training: "Managing ER in Europe"</b> <a href="#">Program details</a>	<a href="#">BOOK April Training</a>	Hotel Estela, Sitges, Barcelona, Spain
June 14 - 16	<b>BEERG Members Annual European Summit</b> <a href="#">Meeting brochure</a>	<a href="#">BOOK June Members' Summit</a>	Hotel Estela, Sitges, Barcelona, Spain
Sept 27 & 28	<b>BEERG Members Meeting</b>		Brussels, Belgium
Oct 10 - 13	<b>BEERG Training: "Managing ER in Europe"</b>		Hotel Estela, Sitges, Barcelona, Spain