

## In this week's issue:

- **EWCs:** Employers adopt policy position on EWC Directive revisions
- **CJEU:** Bans on religious symbols in government offices upheld
- **Future Work (I):** Unions call for Right to Disconnect Directive
- **Future Work (II):** New report from Eurofound
- **Dutch Ruling:** A taste of things to come?
- **Sweden:** Telsa strike is a “culture clash”

## EWCs: Employers adopt policy position on EWC Directive revisions

**In brief:** BusinessEurope warns EU Commission to be careful with changing the EWC Directive saying that injunctions should be rejected and that any changes must not damage European competitiveness or endanger local information and consultation processes.



BusinessEurope, the main representative body for private sector employers in the EU, has urged the European Commission to be careful with the changes it proposes to the EWC Directive. Changes should not damage European competitiveness or endanger local information and consultation processes. Injunctions should be rejected as they would

have the effect of turning EWCs into de-facto co-determination bodies. And it should be for national governments to determine the level of fines for breaches of EWC information and consultation obligations. They should not be decided at EU level. The full BE policy position can be found [here](#). Among the key points made in the submission are:

- *As employers we believe that the European Works Councils proved they are useful bodies for strengthening social dialogue and employees' representation, bringing added value for management in terms of reaching company strategic objectives, including improving workers' openness and adaptation to change.*
- *The up-coming initiative on European Works Councils Directive must be coherent with the European Commission's policy approach aimed at strengthening European companies' competitiveness and reducing regulatory burdens, and as such should take into account the context in which European companies find themselves with respect to the functioning of European works councils.*
- *Transforming EWCs into co-decision bodies through granting a right to injunctive relief in the case of an alleged violation of their information and consultation rights would distort the purpose of the directive and represents a real danger for European companies' competitiveness and their ability to take decisions effectively. Therefore, any form of co-determination should be absolutely avoided.*

- *If the Commission deems changes in the Directive necessary, these changes should promote and safeguard companies' prerogative and ability to make decisions and manage their operations. Effective transnational information and consultation of employees should take place without delaying companies' decision-making processes and their implementation of decisions.*
- *It is essential to protect the EWCs that are functioning well through ensuring that possible changes for these bodies are not automatically mandatory for existing agreements. It should be possible that agreements can remain unchanged as long as they are valid. Moreover, as regard the voluntary EWCs agreements concluded under Article 13 of the original EWCs directive 94/45/EC or concluded or revised during the transition period following adoption of the recast directive 2009/38/EC from June 2009 to June 2011 i.e., the pre-Directive agreements, their specific nature needs to be valued and protected.*
- *The initiative should respect the prerogatives of the Member States to impose effective, dissuasive, and proportionate sanctions in line with national laws and practices. Calls for GDPR-size fines should be rejected as this would be totally disproportionate and not in line with the EU legislative practice under the social policy chapter in the EU Treaty, whereby it is up to the Member States to provide for sanctions that are effective, dissuasive, and proportionate. This practice needs to be respected by the Commission.*
- *It is essential that the definition of transnational matters remains unchanged, and that the text of the definition includes that matters can only qualify as transnational if they concern at least two undertakings or establishments of the undertaking or group situated in two different Member States.*
- *The ability of management to keep information confidential needs to be maintained as proprietary information is a key element to the success of many businesses. The Commission must therefore avoid provisions increasing the risk of disclosure of confidential information.*
- *The Directive must respect the importance of local consultation and continue allowing EWC consultations running in parallel to national ones ensuring national information and consultation procedures can be conducted in accordance with national legislation and practices. The Commission should therefore avoid any provision demanding the conclusion of EWC opinion prior to the conclusion of national consultations.*

## CJEU: Bans on religious symbols in government offices upheld

---

**In brief:** Government offices across the EU can ban employees from wearing religious symbols, in the interest of neutrality. This echoes previous EU Court of Justice rulings saying private sector employers can limit the expression of religious, political, or philosophical beliefs when there is a genuine need for neutrality.



Government offices across the European Union can ban employees from wearing religious symbols, such as Islamic headscarves, in the interest of neutrality, according to a ruling by the EU's Court of Justice. The court emphasised that such bans must be applied equally to all employees and within the legal context of each member state.

The decision came after a Muslim employee in Belgium was told she could not wear a headscarf at work. The court stated that bans on clothing or symbols linked to religious or philosophical beliefs must be applied uniformly and limited to what is strictly necessary. The decision echoes previous rulings by the same court, which stated that private sector employers can limit the expression of religious, political, or philosophical beliefs when there is a genuine need for neutrality.

## Future Work I: Unions call for a *Right to Disconnect* Directive

---

**In brief:** ETUC urges the EU Commission to propose a new law on remote work after talks on a new accord failed. It envisages a guaranteed right to disconnect, to ensure equal treatment for teleworkers, protect privacy, and involve trade unions in telework decisions.

Following the ending of talks between European and employers on a new accord on remote work without agreement, the European Trade Union Confederation (ETUC) is calling on the European Commission to propose a new law on the issue. The unions want such a law to:



- Guarantee the existing right to disconnect.
- Ensure equal pay and treatment for teleworkers.
- Protect privacy and prevent invasive surveillance.
- Ensure that the decision to telework is in the hands of the worker and is not about replacing workplaces.
- Guarantee trade union involvement through collective bargaining in design and delivery of telework.

ETUC General Secretary Esther Lynch said:

*"During the pandemic, millions of people were rushed into makeshift telework situations. While lockdowns have been and gone, telework is here to stay. It is now time to learn the lessons of what has worked and fix what still isn't working.*

*The ball is now in the European Commission's court. They did the right thing in putting the legislative process on pause to allow the space for negotiations. They need to now fill the gap and bring forward legislation at an EU before the end of this mandate. Working people shouldn't be left without adequate protection."*

Given the internal procedures that need to be followed to enable the Commission to prepare a legislative text, and in view of the fact that there are European Parliament elections in June 2024, it is unlikely that any new law will get serious consideration until, at the earliest, late 2024, with possible adoption in 2025. This means it would not come into force until 2027. In the meantime, individual Member States are putting their own laws in place. (See next story).

## Future Work II: New report from Eurofound

---

**In brief:** Telework and flexible working patterns have intensified concerns about an 'always on' culture. This Eurofound report says the impact of constant connection on employees' work-life balance, health, and satisfaction highlights the need for a right to disconnect policy.



According to a new report from Eurofound, the rise in telework and more flexible working patterns, speeded up by the pandemic, has "intensified concerns" about an 'always on' culture and employees' constant connection to their workplace, leading them to work additional and often unpaid hours.

One of the solutions put forward to help address this issue is the introduction of a right to disconnect. Based on a survey of HR managers and employees, this report explores EU Member States' legislation

around the right to disconnect and assesses the impact of company policies in this area on employees' hours of connection, working time, work-life balance, health and well-being, and overall workplace satisfaction. The survey found:

- *That workers who regularly work remotely using information and communication technologies are more likely to work longer than is contractually required. Close to one fifth of the survey respondents reported working additional hours because they are contacted outside of working hours.*
- *Eight out of ten workers surveyed in both companies with and without a right to disconnect policy reported that they regularly receive work-related communications outside their working hours.*
- *Findings show several differences between workers in companies with a right to disconnect policy and those without. A larger share of workers in companies without a right to disconnect policy said they experienced health issues such as frequent headaches, stress, and anxiety. In companies with a right to disconnect policy, very high levels of job satisfaction are reported by twice as many workers and they also report a better work-life balance (92%, compared to 80%).*
- *Over 70% of workers in companies with a right to disconnect policy considered its impact to be positive; however, the introduction of a policy on its own is insufficient and requires a range of accompanying measures such as awareness raising on the risks of constant connection, training for workers and managers and assessments of the reasons for over-connection, effective measures to limit out-of-hours connection, as well as monitoring systems where results and solutions are discussed regularly between management and worker representatives.*
- *A match between working time and workload is crucial. The new survey findings demonstrate that 37% of workers work additional hours to complete tasks they were unable to do during working hours.*

You can find the full report [here](#).

## Dutch Ruling: A taste of things to come?

---

**In Brief:** In a landmark ruling, an Amsterdam Court held G-Star RAW accountable for abruptly ending a contract with Vert, a Vietnamese clothing manufacturer. The decision sets a precedent for suppliers to sue buyers for contract terminations during the pandemic, potentially leading to more legal action and increased scrutiny on due diligence and human rights issues.



In a landmark ruling on 22 November 2023, an Amsterdam Court held Dutch retailer [G-Star RAW](#) accountable for abruptly ending a contract with Vert, a Vietnamese clothing manufacturer.

In 2018, G-Star entered into a three-year contract with Vert to produce 100,000 winter coats annually, among other items. However, G-Star terminated the contract in 2020, citing the COVID-19 pandemic as the reason. This decision had a significant impact on Vert, leading to hundreds of layoffs and the eventual shutdown of its factory. The court awarded:

- *Damages: G-Star was ordered to pay Vert US \$2.6 million compensation, with legal interest accruing from January 1, 2021. The damages include severance costs, monthly operational costs over six months, and one-time costs.*
- *Additional costs: G-Star is also liable for additional costs amounting to USD 16,298 for damage assessment and up to €25,000 for Vert's out-of-court costs, with legal interest from January 12, 2022.*

- *Legal and Seizure Costs: the verdict included a payment of more than €30,000 for legal and seizure costs, including the associated interest.*

Vert is considering an appeal because it believes that the damages awarded by the Amsterdam Court have not been calculated correctly and are insufficient. The ruling, in Dutch, is available: [here](#). Our colleague, Aurret van Heerden said:

*"It's very unusual to see a supplier sue a buyer, and win, but my guess is that a lot of pandemic-related force majeure contract terminations would not stand up to legal scrutiny. Will this court victory encourage more suppliers to sue buyers for contracts they broke during the pandemic? The threat of legal action by suppliers will only add to buyer's woes since NGOs are planning to ramp up complaints and cases concerning due diligence and linkage to adverse human rights and environmental impacts. Just look at how many cases the Cerrejón coal mine in Colombia has generated."*

## Sweden: Telsa strike is a "culture clash"

---

**In Brief:** *The strikes against Tesla over its refusal to sign a collective agreement is a clash between the Swedish and American way of 'doing business'. It highlights the differences in labour practices between Sweden and the US, and the number of unions ready to protect Sweden's labor model.*



The strikes against Tesla over its refusal to sign a collective agreement is a clash between the Swedish and American way of 'doing business', a union leader told journalists. Some 130 mechanics at 10 Tesla repair shops in seven cities across Sweden walked off the job on October 27th, and the strike has since grown into a larger conflict between the US auto maker and a growing number of unions seeking to protect Sweden's labour model.

In addition to the metalworkers' union IF Metall, which launched the strike, nine other unions have announced "sympathy measures", including dock workers and postal workers. Marie Nilsson, head of IF Metall, told AFP that the foundation of the strike is failed negotiations to reach a collective wage agreement. "We have tried to negotiate with them for a couple of years to reach our collective agreement, but they have declined that," Nilsson said. Unions in Denmark and Norway have also said that they plan to take sympathy actions against Tesla.

*"I think this is kind of a clash between the Swedish or the European culture and the American way of doing business,"* Nilsson said. Tesla could have avoided the strike by joining the relevant employers' association and accepting the terms of the sectoral agreement. This would have created an arms-length relationship with the union. It declined to do so, leaving itself open to the demand for an individual enterprise collective agreement through direct negotiations with Metall.

There appears to be little, if any, support for Tesla's position among Swedish employers. They are unlikely to want to put themselves at risk of labour problems in support of Elon Musk's anti-unionism. Musk now also runs the risk of having to face coordinated, aggressive union organising campaigns all over the world in the months ahead. The UAW have already announced such a campaign in the US, while IG Metall in Germany is focused on the upcoming works council elections.

*For more, see this [BEERG Reflections paper](#) issued today, written by our former colleague, Mats Andersson*

## BEERG/HR Policy Global - Déjeuner De Réseautage à Paris

12 noon, Dec 14, 2023

### Special Guest : Anne Lore Coury, Conseillère sociale de la Présidence de la République

HR Policy Global/BEERG invites you to our Paris event on Thursday Dec 14, from 12H-15H CET. The meeting is hosted by [Flichy Grangé Avocats](#) at their office at: 16-18 rue du Quatre Septembre, 75002 Paris. The meeting will mainly be conducted in French, there will be a light lunch. The agenda is as follows:

12:00 – 12:30	Light Lunch
12:30 – 13:00	What's happening in the EU – Tom Hayes, BEERG
13:00 – 13:30	Atténuer les risques et changer le discours : comment gérer efficacement les campagnes mondiales syndicales- Laure Bomo, Directrice Relations Sociales de Coca Cola EuroPacific Partners
13:30 – 14 :30	L'équipe de Flichy Grange abordera les nouveautés du droit du travail français et ce à quoi nous pouvons nous attendre en 2024, avec l'intervention de Madame Anne Lore Coury
14:30 – 15:00	Q+A

[Book Paris lunch meeting](#)

\*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, please make sure you are logged in – if the issue persists, contact [Derek](#).

## Upcoming BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
Dec 14	HR Policy Global/BEERG - Déjeuner De Réseautage à Paris	<a href="#">Book Paris lunch meeting</a>	Flichy Grangé Avocats - 16-18 rue du Quatre Septembre, Paris
<b>2024 meeting dates:</b>			
Jan 16	HR Policy Global + BEERG/CMS Global Labour Relations Workshop (Email Tom Hayes for further details)	To book, email: <a href="mailto:tom.hayes@beerg.com">tom.hayes@beerg.com</a>	CMS office in Frankfurt, Neue Mainzer Str. 2-4, 60311
Feb 28/29	Members' Network Meeting	<a href="#">BOOK Online</a>	Hotel Pullman - Gare Midi, Brussels, Belgium
March 6th	Dublin lunchtime event - Hosted jointly by BEERG/Matheson from 12:00 – 15:00	<a href="#">Book Online</a>	Matheson LLP office: 70 Sir John Rogerson's Quay, Dublin D02 R296
June 19 - 21	Members' Network Annual European Summit	Link to follow	Hotel Estela, Sitges, Barcelona, Spain
Sept 18/19	Members' Network Meeting	Link to follow	Hotel Pullman - Gare Midi, Brussels, Belgium