

CENTRAL ARBITRATION COMMITTEE

**TRANSNATIONAL INFORMATION AND CONSULTATION OF
EMPLOYEES REGULATIONS 1999 (AS AMENDED)**

DECISION ON COMPLAINT UNDER REGULATIONS 19B(1) and 21A(1)(c)

The Parties:

Hewlett Packard Enterprise Special Negotiating Body

and

Hewlett Packard Limited

Introduction

1. This is a complaint about an alleged failure to provide a member of a special negotiating body with the means required to undertake training, in circumstances said to be governed by the Transnational Information and Consultation of Employees Regulations 1999 (as amended by the Transnational Information and Consultation of Employees (Amendment) Regulations 2010) (the Regulations). Having consulted the parties, the Central Arbitration Committee (CAC) has agreed to determine, as a preliminary point, whether it has jurisdiction to consider the complaint.

2. The CAC's jurisdiction is questioned because of the disputed validity of a decision by the central management of a multinational company with a significant EU presence to move its representative agent for information and consultation purposes from the UK to Ireland, in view of the outcome of the June 2016 referendum in the UK on EU membership. The concepts of "central management" and "representative agent" are examined further below. The issue boils down to this: if the multinational company's decision was valid (as it contends), the CAC has no jurisdiction; by contrast, if its decision was invalid (as the employees' negotiating body contends), the CAC has jurisdiction and we should then proceed to uphold the complaint.

3. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to consider the case. The Panel consisted of Mr Barry Clarke as Chairman, with Mr Rod Hastie and Mr Malcolm Wing as Members, and who were later replaced by Mr Rob Lummis and Mr Paul Noon. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

Who's Who

4. Before examining the content of the complaint in more detail, it is helpful to identify the main actors in this case. They are set out below. We have adopted the terminology and abbreviations from the parties' schedule of agreed facts.

4.1 Hewlett Packard Enterprise Company (HPE USA) is the multinational company referred to above. It is situated in the USA, with its headquarters in California. It was formed on 1 November 2015 following the splitting of the Hewlett Packard Company into two: HPE USA (which is focused on business services) and HP Inc (which is focused on personal computers and printers).

4.2 Hewlett Packard Limited (HPE UK) is an undertaking situated in the United Kingdom. It is the corporate entity against which the complaint to the CAC has been brought. On 1 November 2015, HPE USA appointed HPE UK as its representative agent and instructed it voluntarily to establish a special negotiating body. It is common ground that HPE UK was the

representative agent until at least 12 October 2016; its status thereafter as representative agent is disputed.

4.3 Hewlett Packard Enterprise Ireland Limited (HPE Ireland) is an undertaking situated in Ireland. On 12 October 2016, HPE USA purported to appoint HPE Ireland as its representative agent in place of HPE UK. The validity of that appointment is determinative of the jurisdictional question before us.

4.4 HPE USA is the “controlling undertaking” of a “Community-scale group of undertakings” of which HPE USA, HPE UK and HPE Ireland are all members. Together, they can be referred to as the HPE Group. Regulation 3(1) of the Regulations defines a “controlling undertaking” as being, in essence, one with a dominant influence by virtue of its ownership or financial arrangements. The precise nature of that influence is not relevant to our decision. HPE UK and HPE Ireland are both “controlled undertakings”.

4.5 The HPE Special Negotiating Body (the SNB) is a body of employees’ representatives drawn from each member state of the EU and the EEA where the HPE Group has employees. It is the complainant in this case.

4.6 Ms Annette Maier is Chair of the SNB. It is not known, but is not relevant, which company within the HPE Group employs her, although it appears she is based in Germany.

4.7 Mr Jonathan Hayward is an International Officer with Unite the Union, which sought to make training available to Ms Maier in her capacity as Chair of the SNB.

The Regulations

5. The Regulations transpose into UK law the provisions of the recast European Works Council Directive 2009/38/EC (the EWC Directive).

6. By regulation 4(1), the Regulations apply where the central management of a Community-scale undertaking, or of a Community-scale group of undertakings, is “*situated in*

the United Kingdom". This requirement is key to the jurisdictional decision we must reach. Some provisions set out in the Regulations apply irrespective of the location of central management (see paragraphs (a)-(g) of regulation 4(2)), but they do not include the provision about training that led to this complaint.

7. In this case, we are dealing with a Community-scale group of undertakings (the HPE Group), which is defined at regulation 2(1) as a group which has (a) at least 1,000 employees within the member states, (b) at least two group undertakings in different member states, and (c) at least one group undertaking with at least 150 employees in one member state and at least one other group undertaking with at least 150 employees in another member state.

8. The obligations of such an entity to inform and consult are not automatic. If there is no European Works Council (EWC) in place, either because the central management has not initiated one or because the employees have not requested one, there is no obligation to inform or consult. However, if a written request has been made by employees or their representatives covering 100 or more employees in at least two member states, central management must set up a special negotiating body to negotiate an EWC or a procedure for information and consultation. If they fail to do so within three years, the default model EWC provisions apply. In this case, the default model EWC provisions had not been triggered at the time of the request for training. We are therefore dealing with a special negotiating body (the SNB).

Central management

9. In the case of a Community-scale group of undertakings, regulation 2(1) defines the central management as being the central management of the controlling undertaking. As we have noted, the controlling undertaking in this case is HPE USA.

10. The responsibilities of central management are described in regulation 5(1): it must create "*the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure in a ... Community-scale group of undertakings*". It must do so in three circumstances set out at paragraphs (a)-(c) of regulation 5(1). The relevant one in this case is set out in paragraph 1(b), which is where central management is not situated

in a member state and the representative agent of central management, to be designated if necessary, is situated in the United Kingdom.

11. That is the mechanism by which, on 1 November 2015, HPE UK was designated as HPE USA's representative agent for transnational information and consultation purposes.

12. Regulation 5(2) further provides, insofar as relevant to this case, that “*where the circumstances described in paragraph (1)(b) ... apply, the central management shall be treated, for the purposes of these Regulations, as being situated in the United Kingdom and the representative agent referred to in paragraph (1)(b) ... shall be treated ... as being the central management*”. This is a deeming provision. It means that it would be appropriate to describe HPE UK as being central management, at least until 12 October 2016. Even though central management of the controlling undertaking, HPE USA, remains outside the EU, it has, for the purposes of the Regulations, been supplanted by its representative agent from the moment of that agent's designation. All the relevant duties and obligations imposed by the Regulations (in implementation of the EWC Directive) thereafter fall on the shoulders of the nominated controlled undertaking in the UK.

13. We have been shown parallel provisions in the legislation applicable in the Republic of Ireland, although we have no jurisdiction to interpret or apply that legislation. We observe only that section 9(2) of the Transnational Information and Consultation of Employees Act 1996 of the Republic of Ireland similarly enables the central management of a Community-scale group of undertakings to nominate a representative agent in Ireland. For that purpose, section 9(4) provides that the representative agent in Ireland is to be “regarded as” the central management. It follows that, subject to that designation being valid, the representative agent in Ireland would similarly assume the relevant duties and obligations imposed by the legislation that implements the EWC Directive.

14. These deeming provisions transpose into UK law and Irish law respectively paragraphs 2 and 3 of Article 4 of the EWC Directive.

Training

15. Having identified the main actors in the case and examined some of the terminology used in the Regulations, we turn next to the provision that is relied on in this complaint.

16. Insofar as relevant, regulation 19B(1) provides that “*the central management shall provide an employee who is ... a member of a special negotiating body ... with the means required to undertaking training to the extent necessary for the exercise of the employee’s representative duties*”.

17. Paragraph 1(c) of regulation 21A provides that a complaint may be presented to the CAC by a relevant applicant who considers that, “*because of the failure of a defaulter, a member of a special negotiating body ... has not been provided with the means required to undertake the training referred to in regulation 19B*”. The remainder of regulation 21A contains provisions on time limits, remedies and rights of appeal.

18. We observe in passing that there is similar provision for training at section 17(6) of the 1996 Act that applies in the Republic of Ireland.

19. These provisions respectively transpose into UK law and Irish law paragraph 4 of Article 10 of the EWC Directive.

The background facts

20. The following background facts are taken from a schedule provided by the parties. They are agreed unless stated otherwise.

21. As noted above, HPE USA was formed on 1 November 2015. On the same day, it appointed HPE UK as its representative agent in the EU and instructed it voluntarily to establish a special negotiating body. In the subsequent months, HPE UK facilitated the establishment of the SNB by procuring the election and appointment of its members from the cohorts of employees, or their representatives, in each member state.

22. On 12 October 2016, HPE USA wrote to HPE UK, purporting to terminate its appointment as its representative agent, and it also wrote to HPE Ireland, purporting to appoint it as its new representative agent. As we have discussed, this would – if valid – mean that the duties and obligations of central management would pass from the agent in the UK to the agent in Ireland on that date. The following day, the SNB was informed that HPE Ireland was HPE USA’s new representative agent in the EU. It was the stated position of the HPE Group at the time, and remains so, that this re-designation would not affect the three-year negotiating timetable for the establishment of an EWC.

23. HPE USA says that it decided to replace HPE UK with HPE Ireland as its representative agent in the EU because of uncertainty caused by the outcome on 23 June 2016 of the UK’s referendum on membership of the EU; it wished its representative agent to be situated in a member state whose EU membership was not in doubt. The SNB objected to the re-designation, stating that it was not aware of any law that allowed HPE USA unilaterally to change its representative agent. The position of HPE USA was that it enjoyed this prerogative. This led to a disagreement between the HPE Group and the SNB over who should provide the training and what its content should be.

24. The three-year negotiating timetable ended on 31 October 2018. We understand that the parties remain in dispute about whether the implementation provisions of UK law or Irish law should apply.

The complaint to the CAC

25. We turn at last to the complaint before us.

26. On 17 September 2018, the CAC received a complaint from Mr Hayward under regulation 21A(1)(c), acting on behalf of the SNB. He contended that central management had failed to provide the means required for Ms Maier to undertake the training referred to in regulation 19B(1). He challenged the refusal of a manager, in a decision communicated on 16 August 2018, to authorise Ms Maier’s attendance as a delegate on a three-day course run by Unite the Union on aspects of the EWC process, insofar as UK law required. This was so that

Ms Maier could understand the implications of the default model that would apply under UK law, in the event that the parties reached no agreement by the end of the three-year period on 31 October 2018.

The response to the complaint

27. On 1 October 2018, the CAC received HPE UK's response to the complaint from its solicitors. It contented that the CAC did not have jurisdiction to hear the complaint because the Regulations only applied where central management was situated in the UK, which was no longer the case following the re-designation of HPE Ireland with effect from 12 October 2016. Attached to the response was relevant correspondence of that date passing between Mr Mike Dallas (Senior Vice-President of HR Global Operations for HPE USA) and Mr Marc Waters (Managing Director of HPE UK) and Mr Martin Murphy (Managing Director of HPE Ireland).

28. The response also contained an explanation for why HPE USA had appointed HPE Ireland to replace HPE UK as its representative agent. We set it out below, without commenting on the merits of the business decision:

The people of the United Kingdom voted on 23 June 2016 to leave the EU. The Prime Minister indicated shortly thereafter that the UK would not remain subject to the Court of Justice of the European Union and that the UK would end the free movement of people. This indicated that Brexit would involve the UK leaving not only the EU but also the EEA. The Prime Minister's statements created significant uncertainty about the legal viability of a European Works Council established under TICER. This threatened to hinder the negotiation of a long-lasting European Works Council agreement for the HPE Group that could guarantee that its employees would be properly informed and consulted in accordance with the EWC Directive. HPE USA wished proactively to mitigate this damaging uncertainty.

29. The response described HPE USA's ability to designate its representative agent as "unfettered". It added that HPE UK was:

... duly authorised to confirm to the CAC that HPE Ireland irrevocably agrees to the members of the Complainant relying upon these comments as evidence that HPE Ireland irrevocably agrees not to dispute that it is the duly nominated representative agent of HPE USA pursuant to section 9(2) of [the 1996 Act applicable in the

Republic of Ireland] if they wish to pursue their complaint as an alleged breach of section 17(6) of [the 1996 Act] in the correct forum for hearing this complaint.

30. HPE UK also contended that, in the event that the CAC did have jurisdiction, the complaint itself was without merit on two counts: (a) the SNB had been provided with the means required to undertake training to the extent necessary for the exercise of its representative duties; and (b) the further training requested by the SNB was not necessary for the exercise of those duties.

Complainant's comments on HPE UK's response

31. On 9 October 2018, the SNB provided its comments on HPE UK's response in disputing the CAC's jurisdiction to determine its complaint. We set out extracts below:

Unlike EU-based Community-scale undertakings or Community-scale group of undertakings, central management not situated in a Member State can unilaterally decide to designate a representative agent, in a Member State, to take on the responsibility of setting up a European Works Council. This ability has often been an area of controversy for both trade unions, who believe this gives Non-EU based companies too much flexibility to choose a legal system perceived more favourable to the employer and also EU based companies who believe it gives Non-EU based companies a competitive advantage of being able to choose the legal jurisdiction.

While the company conveniently uses Brexit as an excuse to unilaterally designate another representative agent, this is an irrelevant issue. What the company are claiming in principle is that it has the unfettered right to re-designate its representative agent of its choice at any time. This is simply against the spirit of directive, creates legal uncertainty and puts the employee representatives at a significant disadvantage as they will not know from day to day, which Member State's legislation applies.

In paragraph 11 of their submission the company claim that 'HPE Ireland irrevocably agrees not to dispute that it is the duly nominate representative agent of HPE USA'. This claim provides no legal guarantee to the employee representatives or has any legal standing. According to the principle argued by the company, if the SNB decided to pursue a legal challenge through the Irish court under [the legislation applicable in Ireland], there is nothing legally stopping the company re-designating the representative agent to Belgium, Poland or any other Member State in which they operate. In principle the company could move the representative agent multiple times in order to avoid any litigation against them. This is simply ludicrous.

In essence if the company's 're-designation of the representative agent at will' argument were to apply, there would be nothing stopping the company identifying the worst parts of each Member State's transposed legislation and simply moving to

that Members State’s jurisdiction, to deal with a particular issue at any particular time. This would not only provide a massive opportunity for a Non-EU based company to exploit the system and undermine the spirit of the directive, but it would also allow them to gain an unethical competitive advantage.

32. The SNB therefore maintained that it was within the CAC’s jurisdiction to determine its complaint.

Case management

33. On 20 November 2018, the Chairman of the Panel held a telephone meeting with both parties at which it was agreed that the CAC would determine the jurisdiction issue as a preliminary point, and which could be framed as the following question: *Was HPE USA able as a matter of law on 12 October 2016 to terminate the appointment of HPE UK as its representative agent and appoint HPE Ireland as its representative for the purposes of Directive 2009/38/EC?*

34. It was also agreed that written submissions addressing the above question would be sufficient to assist the Panel with its determination of the issue, and that an oral hearing was not necessary.

The parties’ submissions on the issue of jurisdiction

35. The parties duly submitted to the CAC their competing submissions on the jurisdiction issue, which have included further submissions by way of reply.

36. HPE UK’s solicitors have provided the Panel with four supporting bundles:

36.1 A 181-page bundle of case law authorities, publications and legislation derived from the UK (including the Regulations), from Ireland (the 1996 Act referred to above), from France and from Germany (the case of *DXC*, which we mention below);

36.2 A 209-page bundle of EU material, including the EU Treaty, the original and recast EWC Directives, six CJEU judgments (including the *Polbud* case, mentioned below) and European Commission publications;

36.3 A 163-page bundle of additional authorities, including the European Convention on Human Rights, the well-known CJEU judgments in *Factortame* and *Francovich*, a further CAC decision and additional material from Croatia and Ireland; and

36.4 A 36-page bundle of relevant correspondence.

37. The Union, acting on behalf of the SNB, provided a 115-page bundle. This included a 15-page table comparing the provisions implementing the EWC Directive in all EU member states and copies of the various implementation instruments for those member states.

38. Rather than set out the parties' competing submissions in full, we incorporate them into this decision by reference and will identify only those points we have found pertinent. The parties have, between them, provided the Panel with a very large amount of material. Moreover, they have crossed swords on some points of little or no relevance to the jurisdictional issue (one example is whether the provisions of Croatian law properly transpose the EWC Directive). By focusing on the points that we have found persuasive, we hope to keep this decision to a proportionate length.

39. Both parties acknowledge, and it is important for us to note, that the Regulations (and the EWC Directive) are silent on the issue of whether it is possible for a multinational company like HPE USA to re-designate its representative agent in the EU, with the effect of moving central management for the purposes of transnational information and consultation from one member state to another. There is, we are told, no UK or CJEU case law on the point. The sole exception is a decision of the Labour Court in Germany referred to below. We are therefore required to decide the jurisdiction issue in the absence of any authority binding upon us.

40. The parties disagree on the consequences of the absence within the Regulations and the EWC Directive of any provision permitting or prohibiting re-designation. The SNB's position

is that silence means prohibition. It says that a finding that re-designation is possible would amount to reading words into the EWC Directive and the Regulations to the effect that any nomination as representative agent lasts only “until central management decides otherwise”. They contend that it would be against the spirit of the EWC Directive, create legal uncertainty and put employees and their representatives at a significant disadvantage if a controlling undertaking had an unfettered right to re-designate its representative agent at will. It would mean, it says, that, if a multinational company so wished, it could re-designate its representative agent on a weekly, daily, hourly or even minute-by-minute basis. According to the SNB, the initial designation of agent is mandatory and definitive, and the absence in the Regulations and the EWC Directive of a mechanism for re-designation ensures that multinational companies cannot nominate agents in member states with less advantageous information and consultation provisions.

41. The SNB then poses numerous questions about what would happen in various re-designation scenarios, supported by examples of differences in the way that member states have implemented the EWC Directive. It refers to the inclusion of a mandatory meeting within 30 days of nomination (which applies in Croatia, Poland, Romania and Lithuania), bespoke arrangements for chairmanship (in Greece and Spain), bespoke arrangements for choosing venues for meetings (in the Czech Republic, Estonia, Latvia, Lithuania, Luxembourg and Portugal) and the availability of forms of insurance (Latvia and Lithuania). The UK and Ireland are described by the SNB as member states with “very little detail on how a European Works Council or an information and consultation procedure should be established or set up”.

42. HPE UK’s position starts with the well-established *Marleasing* principle that the CAC should interpret the Regulations in a way that, so far as possible, conforms with the aims and purpose of the EWC Directive, to achieve the results that it envisages. To this end, HPE UK refers us to the preamble to the EWC Directive and notes, in particular, recitals 9 and 24:

... part of the Community framework intended to support and complement the action taken by Member States in the field of information and consultation of employees [which] should keep to a minimum the burden on undertakings or establishments while ensuring the effective exercise of the rights granted (recital 9);

The information and consultation provisions laid down in this Directive must be implemented in the case of an undertaking or a group's controlling undertaking which has its central management outside the territory of the Member States by its representative agent, to be designated if necessary, in one of the Member States or, in the absence of such an agent, by the establishment or controlled undertaking employing the greatest number of employees in the Member States (recital 24).

43. HPE UK contends that there would be an adverse effect on employees' rights if a designation could only be made once and irrevocably. It would mean, for example, that a controlling undertaking outside the EU could simply place its representative agent in one member state into liquidation and not replace it. It would also mean that a representative agent could not be re-designated once a member state became a third country upon leaving the EU.

Discussion

44. It is possible to construct a hypothetical scenario in which a multinational company repeatedly or mischievously re-designated its representative agent between member states in the manner described by the SNB (for example, on a daily or minute-by-minute basis). If that happened, it would plainly frustrate employees' information and consultation rights. In such a case, we consider that it would be open to the CAC to decide that re-designation was invalid because it was not done in good faith. The purpose of the EWC Directive is to improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings (see paragraph 1 of Article 1), and repeated re-designation of the type caricatured by the SNB would undermine that purpose.

45. It follows that, in our view, the right to re-designate a representative agent is not wholly unfettered. A judicial determination of whether a multinational company's re-designation was done in good faith would require a fact-sensitive inquiry.

46. It is not necessary for us to delineate precisely the principles by which good faith might be tested, since we do not consider this a borderline case. It is abundantly clear from the agreed facts that HPE USA has not sought to re-designate its representative agent on multiple occasions; it has not sought repeatedly to move central management between different member states; and it has not sought to escape its obligations to inform or consult in the EU or to confuse

the SNB by such behaviour. Instead, HPE USA has carried out a single re-designation. That act was done, on the face of it, for a plausible reason. Although we make no comment on the commercial merits of its decision, we can see that it was rational to suppose that relocating central management to Ireland would reduce uncertainty in the light of the outcome of the UK's referendum on EU membership. The SNB has provided no evidence (and given us no reason to suppose) that the referendum outcome gave HPE USA, as the SNB describes it, a "convenient excuse" to relocate central management to Ireland. It is notable that, in re-designating its representative agent, HPE USA made clear that it was not seeking to restart the three-year negotiating timetable or take any other act detrimental to the SNB. This reinforces the impression that HPE USA was acting in good faith.

47. In opposing the validity of the re-designation, the SNB identifies another concern: it might be done, it suggests, by a controlling undertaking with a view to choosing a jurisdiction where central management would face less onerous information and consultation obligations. While it may be possible to construct such a scenario – and the SNB has provided many such theoretical examples as between various member states – it is not the situation we face here. The complaint in this case concerns an alleged failure to provide a member of the SNB with the means required to undertake training, and it has not been suggested to us that the law applicable in Ireland on this point is any weaker than its counterpart in the UK. This is not a case of a multinational company engaging in "forum shopping".

48. In any event, the SNB's argument in this regard is flawed for another reason. We have been referred by HPE UK to the CJEU case of *Polbud* [Case C-106/16], where the CJEU held that a decision to relocate the registered office of a company from Poland to Luxembourg (when the "real" head office remained in Poland), for the purpose of enjoying the benefit of more favourable legislation, would not, in itself, constitute abuse; the CJEU thereby furthered the Treaty principle of freedom of establishment. It follows that, even if it were the case that HPE USA wished to move central management to a member state with less onerous obligations to inform and consult (and, to be clear, it is not our view that this was its wish), it would not be against the spirit of the EWC Directive for it to do so. We agree with HPE UK that it would run contrary to the jurisprudence of the CJEU and undermine the Treaty principle of freedom of establishment for the CAC to interpret the designation of a representative agent as irrevocable.

Such an approach also conforms with the EWC Directive, recital 9 of which notes the need to “keep to a minimum the burden on undertakings or establishments” while ensuring the effective exercise of the rights granted.

49. We also agree with HPE UK’s submission that the re-designation in this case resulted in no dilution in the SNB’s ability to enforce its rights. Prior to HPE USA’s decision to terminate the appointment of HPE UK as its representative agent, it was open to the SNB to enforce its rights in the UK, including before the CAC in respect of the provision of training under regulations 19B(1) and 21A(1)(c). After HPE USA’s decision to appoint HPE Ireland as its representative agent, it became open to the SNB to enforce its rights in Ireland under section 17A of the 1996 Act applicable there, by complaining to the Workplace Relations Commission. Accordingly, the purpose and intent of the EWC Directive is maintained in respect of the provision of training as well as, more broadly, information and consultation in a transnational context.

50. HPE UK has also referred us to a decision of the first-instance Labour Court of Wiesbaden in *DXC* [11 BVGa 5/18]. It is the only case in any other member state that its solicitors have been able to find where there has been a legal challenge to the validity of a multinational company’s decision to re-designate its representative agent (in that case, from Germany to Ireland) for the purposes of transnational information and consultation. While it is not binding on us, we are asked to treat the decision as persuasive. In brief, the Labour Court held the re-designation to be valid and said that the employees’ information and consultation rights should now be asserted in Ireland. The affected employees appealed this decision to the appellate Labour Court of Hesse State on the basis that the first-instance court had failed to consider that its decision “*would lead to the central management ... being able to name a new representative constantly and in pursuit of its own interests and thus being able to affect the place of jurisdiction*” – a similar contention to the one the SNB makes before us. The appellate court upheld the first-instance decision and noted that the multinational company’s ability to re-designate a new representative agent derived from “*corporate freedom of action, which allows the company to arrange its structures autonomously and if necessary to redefine them*”.

51. Although not binding upon us, it reassures us that a labour court in another jurisdiction has recognised that a designation of a representative agent is not a one-off, irrevocable, act.

Panel's Decision

52. For the reasons given above, the Panel finds that the HPE USA was able, as a matter of law, to terminate the appointment of HPE UK as its representative agent on 12 October 2016 and to appoint HPE Ireland in its place for the purposes of transnational information and consultation, notwithstanding the fact that both the EWC Directive and the Regulations are silent on the point. We consider that such an interpretation conforms with the aims and purpose of the EWC Directive, and achieves the results that it envisages, because, in circumstances where there is no evidence of bad faith, the Community law rights of the affected employees have been preserved and the obligations on the HPE Group to inform and consult have been maintained. The important Treaty principle of freedom of establishment has also been accorded respect.

53. It follows that central management relocated from the UK to Ireland on 12 October 2016. Because central management was no longer situated in the UK at the time of the refusal on 16 August 2018 to provide Ms Maier with the means required to undertake training, the Regulations do not apply.

54. This complaint is inadmissible because the CAC has no jurisdiction to consider it.

The Panel

Mr Barry Clarke – Chairman of the Panel

Mr Rob Lummis

Mr Paul Noon

18 June 2019