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Editorial: Not with a bang, but a whimper

With the passing of the deadline for companies to stop relying on Safe Harbor rules, a successor mechanism — the 'Privacy Shield' (PS) — has been hurriedly announced by the European Commission and the US Commerce Department. Unfortunately, details of the PS have yet to be revealed so employers must continue relying for the time being on standard contractual clauses (SCC) and binding corporate rules (BCR) to remain compliant.

Privacy has become an international battlefield with otherwise unimportant fringe organisations like the Electronic Privacy Information Center (EPIC) and the EU's Article 29 Working Party (A29) winning the war. EPIC has already issued a Freedom of information request in order to give it a chance to oppose the PS and, likewise, the A29 Committee has announced that it is going to call an extraordinary meeting to assess if PS overcomes their and the European Court of Justice's fixation about the US National Security Agency gaining access to personal date once it leaves European shores.

The A29 Committee has, however, indicated that it will continue to scrutinize the level of protection offered by SCC and BCR. It remains highly likely that these, too, will be eventually undermined. Fortunately, employers can safely ignore the A29 provided it does not scare the Commission into taking further action or find a further case to put before the European Court of Justice. Unfortunately, because of its covert situation, the NSA cannot make its own case for access to personal data and, in the wake of the Snowden revelations, many European politicians are not inclined to step in to silence such organisations as A29. The threat to the EU of an information blockade could seriously harm its economy, but it now remains down to multinational organisations to oppose the undue power of privacy campaigners.

Finland: Late attempts to stimulate the labour market

The poor performance of the Finnish economy has forced politicians and even trade unions to look for ways to stimulate the labour market. The country has never shaken off the last recession and real GDP has shrunk each year since 2012. This is partly because it was hard hit by the western trade embargo against neighbouring Russia, but also because it clings to outmoded and inflexible labour laws.

Last year the Finnish government set up a working group to consider how employment protection legislation might be relaxed. Their report has now been published and is open to public consultation. Three proposals have been made — introduction of the right to employ someone on three successive fixed-term contracts a year without a specified reason (provided they have not been previously employed by the employer within the last two years); extension of the probationary period from four to six months; and reduction of the period following redundancy when an employee must be re-hired if economic conditions improve.

A government task force has also been debating the general applicability of collective agreements. For Jari Lindström, the Minister of Justice and Employment, this principle remains sacrosanct and any move to relax it would clearly lead to a breakup of the current government coalition.

Meanwhile, after the breakdown of talks in December trade unions have finally agreed to go ahead with negotiations over a national general collective agreement. Discussions about the future structure of local bargaining will, however, have to wait until a review has been completed in March.

France: Bicycle mileage allowance finally implemented

A decree has finally been published in France detailing the conditions under which an employer may provide employees with a bicycle mileage allowance.

According to this implementing decree, private-sector employees who commute to and from work by bicycle or electric bicycle may be reimbursed by their employer in the amount of 0.25 euros (0.27 US dollars) per kilometre. Employees who use a bicycle or electric bicycle to travel to a public transport stop may also benefit from this allowance in addition to the reimbursement of their public transport season ticket, provided that their ticket does not also cover the bicycle route.

The bicycle mileage allowance is exempt from employer social security contributions and employee income tax up the limit of 200 euros (221 US dollars) per year per employee. Employers may introduce this employee benefit by means of an enterprise agreement or they may introduce it unilaterally following consultation with the works council or employee representatives, as applicable.

India/UK: Fears over effects of new non-EEA skills levy

The Indian Ministry of Commerce has written to the UK's Home Office (Ministry of Interior) to request that a recent report from the UK's Migration Advisory Committee (MAC) be ignored because it would adversely affect Indian IT companies.

MAC has recommended that a 1,000 pound (1,500 US dollar) skills levy be charged for every worker hired from outside the EEA and that minimum annual salaries for intra-company transfers be raised from 20,800 pounds (30,143 US dollars) to 30,000 pounds (43,490 US dollars) and 41,500 pounds (60,161 US dollars) for third-party contractors.

The Home Office has readily accepted the changes and they are due to come into force from April 6th 2016. This move follows a decision by the US government to double the levy on short-term foreign workers where a company recruits more than half its workforce from outside the country.

Irish Republic: Non-employee tax status under scrutiny

The Irish Department of Finance has published a consultation document on the tax treatment of personal service companies, other intermediary-like structures and self-employment status claims by individuals tied to a single client.

Clearly the exchequer would like to close any tax loopholes to which this gives rise. But, in many sectors (especially pharmachem, IT and airline industries) this remains the only way to secure the services of individuals who are psychologically averse to employee status, wish to be highly flexible about who they work for or are sufficiently mobile to relocate outside Ireland if burdened with greater tax liabilities. Such arrangements also free up employers from certain benefits and employment protection liabilities and the need to look for outsourced alternative service providers outside Ireland.

Companies that are heavily dependent on such services should consider making representations, although it is highly likely that the government will ignore all proposals that tax and social security advantages should remain — as four options to close down preferential treatment are set out in the consultation document. It is equally possible that submissions will alert the Department of Finance to companies heavily reliant on these arrangements and thus place them in the firing line for subsequent inspections. The closing date for receipt of submissions is Thursday 31st March 2016.

Norway: Amendments to the law on restrictive covenants

An amendment to the Norwegian Working Environment Act came into force on January 1st 2016, placing new restrictions on non-compete and non-solicitation clauses in employment contracts.

Non-compete clauses may now only apply once an employee has been with a company for six months and may only extend for up to 12 months after they leave. Compensation must be given equal to 100% of the employee's salary up to eight times the national insurance base amount, and 70% of the employee's salary above this amount. It is possible to agree to a maximum compensation amount of 12 times the national insurance base amount.

Mirroring similar new legislation in Denmark, restrictions on non-solicitation may also only last for up to 12 months and cover only customers that the former employee had previous contact with. Limited restrictions on non-solicitation of employees may also apply. Furthermore, pre-existing clauses must comply with the new rules from January 1st 2017.

Pacific: TPP agreement short on labour rights

The Trans Pacific Partnership Agreement (TPP) between the USA, Japan and ten other Pacific-Rim countries has finally been signed by the participating governments. It must, however, still be ratified by at least six of the signatory country parliaments. Once in force it will underpin around a third of world trade.

The TPP's principal weakness is that it still excludes a number of key players such as China and India and its social chapter talks of cooperation and consultation rather than supra-national directives. It is therefore a long way from an EU-style system of enforced harmonisation. The only specified labour rights are: freedom of association and collective bargaining; the elimination of all forms of forced or compulsory labour; the abolition of child labour; and the elimination of discrimination in employment and occupation. No detailed labour standards are laid down, although there is an obligation to maintain a legal framework covering such matters as minimum wages, hours of work and safety and health.

It has clearly been difficult for the parties to agree on a formal judicial mechanism for resolving non-compliance with the few labour provisions mentioned by the agreement. In fact, the TPP provides no mandate for governments or other parties to take law enforcement activities 'in the territory of another party', although Article 19.5 does permit parties to 'exercise reasonable enforcement discretion' and requires them to enter into consultations in good faith. It also provides a procedure and timetable for the consultations to follow. But if agreement is still not achieved the unresolved matters may then be referred to the TPP's somewhat vague general dispute settlement mechanism.

USA: New equal pay initiatives

The US government is proposing the introduction of additional employer reporting obligations in an attempt to close the gender and race pay gap. Under new legislation all companies with at least 100 employees would have to disclose salaries each year broken down by gender, race and ethnicity. This move follows concerns that women on average, currently receive only 79% of pay enjoyed by men — despite the fact that seven years ago the President personally sponsored the Lilly Ledbetter Fair Pay Act, designed to make it easier for women to bring pay discrimination lawsuits. The drafting of the legislation is currently with the Equal Employment Opportunity Commission (EEOC) and it is expected to become law by September 2016 — with first reports required a year later.

In addition, employers in California could soon face a further restriction on hiring in order to help achieve equal pay. Bill 1676, currently before the State assembly, prohibits employers from asking about previous salary history before hiring an employee. California's Fair Pay Act is already the toughest piece of equal pay legislation in the US — soon it will not be possible to offer an applicant a lower salary than normally paid for a job because the employee was underpaid in their previous job.

USA: Growth of local minimum wage ordinances

Whilst the US Federal minimum wage dates from 1938, in recent years there has been a progressive spread of state laws in the area of minimum wage — with all but nine states currently requiring employers to pay minimum rates above the federal level. Furthermore, the trend towards ever-more-localised rates has continued. Prior to 2012 only five US cities and counties operated local wage ordinances, whilst today the number is in excess of 30 and continuing to grow.

The driving force for localisation has been the periodic freezing of the federal rate and its increasing irrelevance to pay decisions. In 1979 13% of US workers were paid at the federal minimum rate, today it is less than 4%. Most of the most generous minimum wage rates are to be found in the west of the country, with the north-west state of Washington operating the highest state-wide rate. The highest municipal rate in the USA is 14.44 US dollars per hour in Emeryville, California, but many municipalities have set a target for 15 US dollars per hour to be reached in the next 2-3 years. Seattle has even announced that a rate of 17.25 US dollars per hour will be introduced by 2023.

The latest municipality to announce a local rate is the Washington city of Tacoma. Although at 10.35 US dollars per hour the rate is nothing exceptional, the local ordinance also illustrates a number of associated trends. For instance, tips will not be counted when assessing the rate and the rate applies to all workers aged 16 and over working at least 80 hours a year — with no lower rate for younger employees or smaller employers. Employers will also be obliged to post notices informing their employees about the rate and the ordinance prohibits employers from retaliating against any employee who exercises their minimum wage rights.

Pay, Tax and Benefit Trends

ASIA: A survey of Japanese companies operating in Asia conducted by Nikkei Research has found that the annual growth in wages and salaries is likely to be lower in Indonesia in 2016 (10.9%) than in 2015 (13.1%). Pay in China is expected to rise slightly slower this year (7.3% vs 8.1%) whilst reductions in the level of pay inflation are also expected in Hong Kong, India, Malaysia and the Philippines.

AZERBAIJAN: The Azerbaijan State Statistical Committee has just reported that at the beginning of 2016 only 41% of employees in the country worked in the private sector, with only 12.1% in industry and 1.7% in information and communications. Over the last year earnings rose across the economy by 5% and the average monthly salary on January 1st 2016 was 466.4 manat (294 US dollars).

BERMUDA: The latest payroll data from the Bermuda government's Department of Statistics indicate that total wages and salaries grew by 3.4% over the year to Q3 2015. This is significantly higher than the annual increases in the first two quarters of the year. The most buoyant sector was international business — where payrolls grew at an annual rate of 9.8%. However payrolls fell in both construction and telecommunications.

DENMARK: A Bill has been drafted by the Danish government to grant the beneficial tax treatment of share-based employee incentive schemes. The maximum tax liability would be set at 42% (rather than 56% on employment income) and the tax levied only when the shares are sold. However, the options would not be transferable and could only be up to 10% of the value of an employee's annual remuneration. One major disadvantage of the scheme would be that a company could not offset the cost of the lost equity and associated costs against their own tax liabilities.

GERMANY: The coming annual wage round will affect over twelve million workers in Germany. First off the blocks are Deutsche Telekom where negotiations will focus on job security as much as pay. According to the trade union Verdi, mergers in the mobile telecom sector should have had the effect of reducing competitiveness and opening the way to greater profitability — despite the longer-term trend towards price declines for telecom services. In manufacturing the trade union IG Metall is hoping to build on the average increase of 3.4% it achieved last year. However, Gesamtmetall, the umbrella association of German metal and electrical industry employers, has already signalled that much less will be on the table this round. Talks can therefore be expected to be prolonged, with few concessions made.

IRISH REPUBLIC: Employees of the Bank of Ireland have voted to accept a pay deal and pay grade restructuring exercise brokered by a mediator late last year. This will give employees average pay rises of 2.2% in April, backdated to January 2016. Next year the increase will be 2.6%. Just 0.9% of this year's rise is intended to compensate for changes in the cost of living, with the rest provided on a performance-related basis. It is hoped that the deal will help the bank to return to profitability.

MALAYSIA: The business community across Malaysia has reacted sharply against the sudden doubling of the government's annual levy on foreign workers. There are now some 2.135 million registered foreign workers in the country and the new levy on manufacturing, service and construction companies of 2,500 Malaysian ringgit (600 US dollars) per foreign worker will drive many companies either to relocate to Cambodia or Vietnam or hire unregistered foreign workers.

NAMIBIA: After three months of negotiations, Swakop Uranium and the Mineworkers Union of Namibia (MUN) have signed an agreement which increases wages by 7% over the next three years. In a further wage deal the Ohlthaver & List Group has signed an agreement with the Namibia Food and Allied Workers Union (NAFAU) giving an immediate pay increase of 7% and a commitment to give permanent jobs to 300 workers currently on temporary contracts.

UK: The new national living wage of 7.20 pounds (10.44 US dollars) per hour will be introduced in the UK on April 1st 2016. This will be for workers aged 25 and above. The existing national minimum wage will only continue to apply to those up to the age of 24. The new rate will affect around one million workers mainly in the hospitality, retailing and fast food sectors. It will increase in real terms each year until it becomes 9.00 pounds (13.06 US dollars) per hour by 2020.

Other Global HR News in Brief

AUSTRIA: A regional court in Innsbruck, Austria has awarded a man 35,000 euros (38,900 US dollars) in damages because he was dismissed from his job with the state administration of Tyrol during a trial period on the grounds that he was gay and HIV positive. The discovery of his sexual orientation and health condition only came about because the man had been stalked at work by an ex-partner. This is the first time an employee in Austria has gained compensation due to discrimination for being HIV positive. It is, however, now subject to an appeal before the Austrian Supreme Court.

DENMARK: We would like to remind our Members that a new law overhauling the rules on protective covenants in Denmark came into force on January 1st 2016. Full details are available in our HR Knowledgbase. Please see: Denmark :: Non-compete clauses; Denmark :: Non-solicitation clauses; and Denmark :: Customer clauses.

IRISH REPUBLIC: A recent case before the High Court in Ireland is a further reminder how even though a contract states an applicable country jurisdiction, it can still be disputed on material grounds. It also illustrates how judges can refuse to make a prior ruling on the applicable law — requiring instead the parties to prepare cases under two country laws in order to go to a unitary hearing where applicable law will be part of the entire dispute to be resolved. The case was not an employment one, but the same principles would clearly apply. [C & F Green Energy Limited and C&F Tooling Limited v Bakker Magnetic BV (IEHC 773)]

ITALY: Employers wishing to hire non-EU nationals to work in Italy this year should move quickly to submit their applications before the annual quota is met. The government published its annual decree on February 8th setting a limit of 30,850 non-seasonal permits, of which 22,000 are set aside for the conversion and renewal of various forms of existing permits. There is usually a heavy influx of applications as soon as the quotas are announced and applying for a permit in a timely manner increases the chances of success.

JERSEY: The Discrimination (Age) (Jersey) Regulations are due to come into force in this Channel Islands state in September 2016. This is the latest protected characteristic to be introduced under the Discrimination (Jersey) Law of 2013. The first characteristic was race in September 2014, then sex, sexual orientation, gender reassignment, maternity and pregnancy a year later. The remaining characteristic — disability — is likely to follow in September 2017. The age regulations contain many exceptions, especially if employers have a clear obligatory retirement policy in place.

NIGERIA: The World Bank is providing 31.5 billion naira (160 million US dollars) in financial support to help create jobs in Nigeria. The Nigerian government is seeking to reduce its oil dependence by encouraging greater industrialisation and a thriving tourism and IT service sector. It has announced a plan to create 3 million jobs each year. However the country is ranked 169th out of the 189 in the World Bank's own ease of doing business index and it is a condition in the funding programme that measures will be taken to radically improve current constraints.

UGANDA: One of the biggest issues in the forthcoming presidential and parliamentary election in Uganda on February 18th is disability. People with disabilities constitute 16% of the population and, although an anti-discrimination clause is in the constitution and the Equal Opportunities Act has now been in operation for ten years, most disabled adults remain unemployed. The Building Control Act contains accessibility standards and the government gives a 15% reduction in tax liability for employers taking on a disabled employee — yet both are generally ignored. This is ironic in a country which operates a system of disability quotas for all political bodies and consequently has the highest number of elected people with disabilities in the world.

USA: The restructuring of the US labour market is continuing primarily to benefit white males taking up full-time employment in the retail and food service sectors. Although employment numbers rose slightly in manufacturing last month after being static in 2015, there was a continued decline in educational services, transport, warehousing and mining. Working time and the number of long-term unemployed have remained stable, whilst average hourly earnings for all employees on private nonfarm payrolls increased by 2.5% to 25.39 US dollars over the year to January 2016.

VIETNAM: Amendments to maternity regulations come into force this month in Vietnam. Since 2013 Vietnam has had one of the most generous maternity leave and pay regimes in Asia — with six months leave paid in full, an extra 30 days leave for each additional child and a lump sum on giving birth. The latest changes concern the position of fathers when the mother dies on giving birth or subsequently during her maternity leave period. In such cases, the father will be able to claim benefits equivalent to those the mother would have been entitled to, with only slight reductions if they — or the mother — were not fully paid up through the social security system or failed to meet eligibility conditions.

Dates for your diary:

February 22nd 2016: Amendments to the rules on fixed-term contracts and other Labour Code amendments come into force in **Poland**.

March 2nd 2016: New rules on drug testing professional drivers come into force in **Brazil**.

March 14th 2016: In the **USA**, amendments to Philadelphia's Fair Criminal Screening Standards Ordinance come into force.

April 1st 2016: A new law requiring large companies to encourage the employment and promotion of women comes into force in **Japan**.

Latest news for business travellers:

Staff of **France**'s national railway company, SNCF, are due to go on strike on March 9th. The extent of disruption to rail travel on this day will not be known until nearer the date.

The threat from terrorism remains high in **Turkey**. On February 17th there was a large explosion in the country's capital, Ankara, killing 28.

From March 15th 2016, visa-exempt foreign nationals flying to, or transiting through, **Canada** will require an Electronic Travel Authorization (eTA). US citizens and those with a valid visa are exempted from this requirement.

UK nationals are now able to obtain two-year multiple entry visas to **China** and Chinese nationals may obtain two-year multiple entry visas to the **UK** under a reciprocal visa arrangement between the two countries.

FedEE news:

SEMINAR IN MALTA MID-TO-LATE APRIL: If your company is thinking about expanding into a new country — and you would like to catch some early Mediterranean sun — then be sure to book for our next Seminar in Malta. '**Going Global: How to overcome the barriers to international expansion**' will involve talks from international legal and accounting experts and a top HR professional giving their own first-hand experience. We have timed the event to allow participants to fly in and out on the same day from over 20 European cities — although being held on a Thursday will perhaps tempt FedEE members to stay over for the weekend to explore this lovely island. Further details will be posted on our website soon, or please call us on (UK) (0)117 975 8612.

WEBSITE IMPROVEMENTS: We are delighted to announce that the first stage of our website upgrade is now live! Our **Members' Area** has a **new look** and it is now possible to **search** our resources using our **new and highly-effective search function**. We also have some **new material** in our HR Knowledgebase including a brand new country section on New Zealand. Furthermore, we have introduced a facility that allows members to **change their passwords online** at any time, day or night. We hope these changes will have a positive impact on your experience of using our resources. Further website upgrades will be taking place over the coming months and we will keep you informed of the latest developments.

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