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Editorial: Le Roi est mort, vive le Roi

UK voters will go to the polls on June 23rd to decide if Britain will stay within the European Union (EU). With the country heavily divided and the vote swinging at present in favour of an EU exit, what is the likely impact of such an outcome on UK-based HR professionals in multinational companies?

The EU is the UK's principal trading partner and therefore the imposition of tariffs on UK exports would not only affect UK inflation rates — and therefore wage demands — but also make it less attractive for overseas companies to be based in the UK. The drift of regional head offices to locations such as Amsterdam or Zurich is already happening to a certain extent, but this could accelerate in the event of a UK exit.

However, the UK could still remain part of the European Economic Area (EEA), like Iceland and Norway, so that tariff barriers would not be imposed. Being outside the EU could also leave Britain free to conclude its own trade deals (especially with China), set its own rate of VAT and have more freedom to cut corporation tax. This would not stop the UK making certain contributions to EU budgets — especially the

cohesion and regional support funds — but there would be a substantial saving by releasing it from major financial obligations under the EU's notorious common agricultural policy.

As an EEA member the UK would continue to operate a visa-free regime with EU member states, and UK-based employers would be able to move employees easily between the UK and EU. The UK would also continue to be obliged to enforce EU directives and regulations — such as those applying to health and safety, works councils, jobs posting, agency workers and data protection. Moreover, as the UK is not currently a Schengen member, non-EU status would not affect border controls. The UK is also not in the eurozone and already operates an opt-out from the Working Time Directive so conversion to EEA status would not change as much as if another country — such as Greece or France — left the EU. In fact, the biggest sufferer from a UK exit would be the EU itself as it would leave a major European national economy outside its formal domain and weaken its international credibility and bargaining powers. It may also encourage other countries, such as Denmark, to consider giving up their membership.

The mantra of those supporting the UK's exit from the EU is 'let's take back control', but politicians who espouse this creed are just dishonestly courting popularity when they know full well that a vote to exit may not actually affect the UK's fundamental position in the European market place, nor its imposition of EU rules. With a dash of typical British irony, it is just a case of doublethink, with a regime living on even though it is officially dead.

Bosnia and Herzegovina: Disparity between maternity rights

Pressure is growing across the Balkan state of Bosnia and Herzegovina for women to be given equal treatment in respect to maternity leave.

The country is divided administratively into two halves. In the Federation, maternity rights are decided on a localised basis and therefore differ in each of the ten cantons: in Sarajevo, for instance, an employee taking maternity leave will receive 60% of the average salary in the canton, whilst in the western canton of Una Sana a female employee would receive 50% of their own average salary over the previous six months. In Neretva canton there is no initial maternity benefit at all. In the other administrative half of the country — Republika Srpska — maternity pay is centralised and based on an employee's average salary during the three months prior to taking leave.

A petition and a programme of events has been launched by numerous women's groups, backed by several influential NGOs and politicians. New legislation can be expected later this year.

France: Latest on Labour Code Reforms

Proposals to reform France's Labour Code have been met with strong opposition from trade unions, with the

result that submission of the draft law to the Cabinet has been postponed until the end of March 2016. The controversial proposals, which were revealed to the Council of State in mid-February, would make French employment law significantly less rigid — much to the benefit of employers.

Under the provisions of the draft law the maximum length of a working day would remain 10 hours, with the possibility of this being extended to 12 hours in certain circumstances. The maximum working week would also remain 48 hours, with the possibility of this being extended to 60 hours in exceptional circumstances. The difference under the draft law is that these extensions of maximum working times could be implemented more easily — through an agreement at company level alone (i.e. not involving negotiations with trade unions).

Similarly, the draft law does not propose changes to the minimum wage supplements that apply to overtime work, but rather makes it easier for companies to apply the lower threshold. Currently, employees must be paid a wage supplement of at least 25% for the first eight hours of overtime and 50% for subsequent overtime hours — unless a collective agreement sets a different wage supplement rate, which may not be less than 10%. Under the proposed draft law, these wage supplement rates would remain the same — but, unlike under the current law, it would be possible for a company to apply a rate lower than that provided by an applicable sectoral agreement (again provided it remains at least 10%).

Finally, the draft law clarifies what circumstances may warrant termination for economic reasons — effectively making such terminations less difficult to make — and sets limits on the compensation that may be granted to employees by the employment tribunals.

The draft law was due to go before the National Assembly in April and then on to the Senate in May,

but now it could well be July before it is through the legislative process.

Global: Trend continues towards later retirement

As life expectancy increases across the globe, governments are progressively adjusting the normal state retirement age in order to minimise pressure on pension funds. In some countries the driving force is also growing labour shortages.

At the end of February the official retirement age for nationals in the UAE increased by one year. However, nationals normally retire early in this gulf state, so the change means that they now retire at age 49. The retirement age for expatriates remains age 60.

The Chinese government is concerned about the falling population of workers aged 16-60. This is now declining by 2% every five years. Men in China currently retire at age 60, white collar women at 55 and blue collar women at age 50. The precise changes have not yet been announced — but they will start to take effect in 2017.

Moving against this trend, the Polish Prime Minister, Beata Szydło, has announced that she intends to reverse the reforms begun by her predecessor in 2012. This gradually increased the normal retirement age to 67. This decision is in spite of the country's low birth rate and shedding of labour to other EU countries.

New Zealand: Wide-ranging changes in the area of employment law

A number of employment law reforms are expected to come into force in New Zealand during the coming

months. The reforms cover such areas as leave, zero-hour compensation and health and safety. Employers should ensure they are aware of all the changes and are ready to comply with the new rules as soon as they take effect.

The Employment Standards Bill (which proposes amendments to the Employment Relations Act 2000, the Parental Leave and Employment Protection Act 1987, the Minimum Wage Act 1983, the Holidays Act 2003 and the Wages Protection Act 1983) is currently before Parliament for its second reading. If the Bill is passed, the amendments will come into force on April 1st 2016. Some of the key elements of the Bill include an extension of eligibility for parental leave, a requirement to provide appropriate compensation to workers on zero-hour contracts and a stricter obligation to record the working time of employees. The Bill would also increase maximum penalties for failure to provide minimum employment standards.

Also on April 1st 2016, the minimum entitlement to paid parental leave will increase from 16 weeks to 18 weeks. This follows a previous two week increase that took place on April 1st 2015.

On April 4th 2016 the Health and Safety at Work Act 2015 will come into force. The Act introduces personal liability for directors and other officers of 'persons conducting a business or undertaking' (PCBUs) who fail to exercise reasonable due diligence to ensure health and safety obligations are complied with.

Changes to the country's Easter trading laws have also been proposed. The Shop Trading Hours Amendment Bill passed its first reading in parliament last year and a Commerce Committee report on the Bill is expected on May 3rd 2016.

EU/USA: New transatlantic data safeguards still allow NSA to snoop on personal data

The latest developments in transatlantic personal data safeguards are contained in a set of documents made public at the end of February. These reveal details of the latest negotiations between the US government and European Commission on a new 'Privacy Shield' to replace the safe harbor approach to transatlantic data privacy that was declared invalid by the European Court of Justice (ECJ) last year.

The son of safe harbor still requires US companies to self-certify that they comply with EU data protection principles. However, there are a few extra safeguards — such as a proposed limit of 45 days for companies to respond to complaints about their handling of personal data sent to the USA; a requirement to use alternative dispute resolution mechanisms to resolve problems; and the creation of a new 'Privacy Shield Panel' that may invoke binding arbitration.

Although it is claimed by the Commission that indiscriminate monitoring by government intelligence agencies — such as the NSA — shall not take place and a new Ombudsman will be appointed to investigate alleged snooping incidents, doubts remain about how far this latest protocol will meet ECJ concerns. For instance, article 5 of the draft agreement contains a clause stating that 'adherence to these Principles may be limited to the extent necessary to meet national security, public interest, or law enforcement requirements'.

A final text of the deal is likely to be submitted to the ECJ by June this year and their ruling issued this Autumn.

UK: Holiday pay must include commission

The UK Employment Appeals Tribunal (EAT) has confirmed that employers must take into account results-based commission when calculating holiday pay.

The EAT rejected the appeal brought by British Gas in the case *Lock v British Gas Trading Limited*, upholding the decision of the Employment Tribunal (ET) that the UK's Working Time Regulations 1998 can be interpreted in a way that is compatible with EU law.

At an earlier stage in the same case the ET had asked the European Court of Justice (ECJ) whether, under EU law, pay during annual leave should include commission. The ECJ held that the European Working Time Directive requires workers to be paid their normal remuneration during periods of annual leave and, where pay is made up of different elements, those intrinsically linked to the worker's contractual duties (e.g. results-based commission) must be included when calculating holiday pay. The case was then referred back to the ET to decide whether or not UK law could be interpreted in line with EU law, which the ET decided it could. [*Lock v British Gas Trading Limited*]

UK/USA: Independent contractors under fire

Because of changes in the tax treatment of travel and subsistence expenses through salary sacrifice arrangements under umbrella schemes, many independent contractors in the UK will be demanding higher rates from agencies through which they obtain work. This, in turn, will impact on overall contractor costs for end users. To complicate matters further, there will be a new supervision, direction or control

(SDC) test to assess if travel and subsistence expenses are allowable.

Additionally, the US Department of Labour (DoL) has announced that under its developing 'misclassification initiative', it is going to audit contractor arrangements and fine parties that do not comply with its new definition of independent contractor status. According to DoL an independent contractor is a worker who is 'really in business for himself or herself' and not 'economically dependent' on an employer. This is the case even if they are employed through an agency — which must therefore become the employer. In practice, this will be a difficult test for many contractors, even if they register themselves as a limited liability company and obtain a business licence. Therefore, many end users and agencies are being forced into taking such workers on as employees and assuming responsibility for tax deductions by providing W-2s instead of 1099s. In such cases the extra costs for the employer of providing social security and Medicare will be met by deducting all or part of the employer contribution from the salary paid.

USA: Vermont becomes fifth state to introduce statutory paid sick leave rights

Draft legislation that would require employers to grant a minimum amount of paid sick leave to employees has been approved by the legislature in the US state of Vermont. The law is expected to be signed by Governor Peter Shumlin shortly and would then come into force on January 1st 2017. In enacting this law, Vermont will become the fifth US state — after Connecticut, California, Massachusetts and Oregon — to grant employees a statutory right to paid sick leave. A number of major municipalities, including New York City and the District of Columbia, also give workers a statutory right to accrue paid sick leave.

Under the provisions of the draft law, employees in Vermont will accrue one hour of paid sick leave for every 52 hours worked and may use the leave for their own illness or injury or to care for a sick or injured relative. Employers will be permitted to limit the right to paid sick leave to a maximum of 24 hours (three days) per year during the first two years after the law comes into force (i.e. from January 1st 2017 until December 31st 2018) and 40 hours (five days) per year thereafter. Employers will also be entitled to impose a waiting period of one year on new employees — during which time they may accrue sick leave, but not use it.

Pay, Tax and Benefit Trends

CZECH REPUBLIC: An application has been made to the Constitutional Court by the Czech State 'Defender of Public Rights' (PDR), Ombudswoman Anna Šabatová, to annul the separate minimum wage for people with disabilities. In her view having a lower minimum wage rate for people with disabilities is wholly discriminatory. The current monthly minimum wage rate for people with disabilities is 9,300 koruna (379 US dollars) whilst the general monthly minimum rate is 9,900 koruna (403 US dollars). Whilst waiting for a court decision, the PDR has advised the Labour Inspectorate to enforce the general rate for all workers.

EUROPEAN UNION: The European Central bank remains concerned about the possibility of sustained deflation across the EU — particularly within the eurozone. Latest figures from Eurostat, the EU's statistical agency, reveal that in January year-on-year producer prices declined by 1%, following a 0.8% fall in the year to December 2015. Consumer prices normally lag behind changes in producer prices. Even so, the harmonised index of consumer prices is already pointing towards a future price fall, with a drop in the eurozone of -0.2% in March. The countries most in danger of sustained deflation are Bulgaria, Croatia, Cyprus, Greece, Latvia, Poland, Romania, Slovakia,

Slovenia and Spain. Deflation not only slows consumption (because things may be cheaper tomorrow) but they also squeeze margins as costs, such as salaries, are mainly fixed and employees still expect periodic pay hikes — even though the spending power of their pay packet rises as the cost of items fall.

GLOBAL: The Organisation for Economic Cooperation and Development (OECD) has secured signatures from 31 country governments on its Multilateral Competent Authority Agreement (MCAA). This is a document obliging governments to share financial data about multinational companies that pay taxes in their jurisdiction. It will help authorities combat transfer pricing and other financial strategies to minimise tax burdens. However, all it will do is encourage companies to declare earnings in non-signatory states such as Singapore, Hungary, Latvia and Hong Kong.

GREECE: The Greek government is struggling to meet a 550 million euro (610 million US dollar) budget deficit without abolishing tax breaks for the lowest paid and pensioners. It is likely that the solidarity tax for the highest paid will rise from 8% to 10% this coming year and that the top level of income tax will be set at 50% or even 60%. There is also a danger that a retroactive tax will be levied on last year's personal income. According to the Economist, over 10,000 Greek-owned companies have moved abroad since the start of the economic crisis and many more plan to follow now that the government has raised corporation tax to 29%.

UKRAINE: The national minimum wage in Ukraine is set to increase on May 1st 2016 from the current 1,378 hryvnias (50.31 US dollars) per month to 1,450.50 hryvnias (52.96 US dollars) per month. The national minimum wage last increased on September 1st 2015.

USA: An appeal by the IRS, the US Tax service, could alter the whole way share-based remuneration is regarded for tax purposes within multinational enterprises. The appeal is against a decision of the US

tax court last July in favour of Altera Corp, an Intel subsidiary, which ruled that IRS regulations were unlawful. It is widely accepted the IRS will lose its appeal, meaning that share-based remuneration for those in foreign operations would not have to be taxed only locally. A significant element of this cost could therefore be loaded onto cost sharing arrangements with the corporate head office in the USA — thus reducing the huge corporate US tax burden. Given the corporation tax rate is higher in the USA than in most other countries around the world, the saving to the biggest US multinationals could amount to over one billion US dollars per year.

VENEZUELA: Although the official price inflation rate in Venezuela last year was 180.9%, the International Monetary Fund (IMF) believes it was actually 275%. This year the IMF predicts it will jump by 720%. The country's woes stem from many years of economic mismanagement and the uncontrolled printing of money by the central bank. This has been further exacerbated by the collapse in oil prices and a substantial contraction of its GDP — estimated by the IMF to fall by 18% over the next year. In the face of such pressures the real value of pay levels is also falling as minimum wage increases fail to keep up. On March 1st the national minimum wage increased by just 20% to 11,577.81 bolivars per month.

Other Global HR News in Brief

AUSTRIA: It is reported by a leading Hungarian newspaper that the Austrian Chancellor Faymann wants to tightly restrict the flow of intra-company transfers from abroad and the flow of immigrant workers from eastern EU member states. In order to stem both flows it is reported that the Chancellor will 'revise the conditions of employment so that it would not be worth if for employers to hire foreign labour' even though this would be contrary, in many cases, to the EU free movement of labour rules. One of the new

preconditions would be that all foreign workers must be paid the same as native workers.

BANGLADESH: The government of Bangladesh has given its approval to a draft employment law that would apply to those working in the country's eight Export Processing Zones (EPZ). The draft law lays down a retirement age of 60, minimum levels for retirement benefits, worker injury compensation, pay in lieu of earned leave, 16 weeks maternity leave and two holiday bonuses per year. In addition, workers will have the right to form trade unions (Workers' Welfare Associations legally acting as trade unions), enter into collective bargaining and have representation on a new EPZ Wages Board. However, before a union is set up 30% of a workforce must agree to its formation. Then it will only be able to function once it has at least 50% of workers voting for it.

CHINA: Following changes to China's national Population and Family Planning Law, the City authorities in Shanghai have amended their local Population and Family Planning Regulations to allow people to have a second child and further reward early marriage. The new regulations, which came into force on March 1st 2016, give all couples a right to ten days' marriage leave regardless of their age and all women an additional 30 days of maternity leave on top of the national right to 98 days' leave. Previously, men under the age of 25 and women under the age of 23 were only entitled to three days' leave on the occasion of their marriage and only women giving birth after the age of 24 were entitled to additional maternity leave. Paternity leave has also been extended under the new regulations — from three to ten days.

CHINA: Despite the fact that China's economy is growing more slowly than in the past, that the stock market is at a 15-month low and that the government has announced a redundancy programme affecting 15% of workers in the coal and steel industries, a number of other official statistics point to a buoyant

labour market. This includes a 13.12 million rise in urban jobs last year and a 6.6% year-on-year jump in output per worker. Moreover, the People's Bank of China has just ordered a further cut in the Reserve Requirement Ratio (RRR), which means that more money will be available to the banks for investment.

EUROPEAN UNION: A number of EU member states are continuing to step up border controls to deal with the transit of Syrian refugees. Austria has for some time had in place a daily quota on refugees transiting to Germany and the country has now joined with Slovenia and Macedonia to filter out refugees at the Macedonian border. Meanwhile, Sweden has introduced laborious identity checks on the Oresund Bridge where the country borders with Denmark. These measures are significantly delaying international journeys for many business travellers.

EUROPE/USA: A study by the Maryland-based National Center for Health Statistics has found that overall mortality levels are significantly different in the USA compared to much of Europe. For instance, life expectancy at birth is 78.7 years in the USA, compared to 81.5 years in the UK and 82.6 years in France. The principal reasons for this difference are the relatively high incidence of gun crime, drug-related deaths and motor vehicle accidents in the USA.

SPAIN: It is difficult to gauge the health of the Spanish labour market, even though there appear to be some promising signs. According to statistics issued by Spain's Instituto Nacional de Estadística, the number of people who became unemployed during the 4th Quarter of last year dropped for the fourth year in succession. However, the number of people who ceased being unemployed also fell — largely because more people were being reclassified as 'economically inactive'. Official statistics also indicate that the number of workers who had their working day shortened decreased by 56.6% during 2015, compared to 2014.

SWEDEN: A new Inventor Agreement has been negotiated between the Confederation of Swedish Enterprise and the Council for Negotiation and Cooperation (a body representing 25 trade unions). The Agreement is widely recognised as the basis for determining ownership and compensation in respect to employee inventions in Sweden. Many changes are quite modest, but legal action can now be initiated up to ten years from the date of a patent application, instead of the date when an employer first became aware of an invention. Furthermore, a decision has been made to establish a special arbitration tribunal to settle disputes — with the outcomes made public and a facility to stay a hearing up to four years to determine the commercial value of an invention.

USA: Just in case someone should want to kill their fellow man, the State legislature of Texas in the USA has now passed an 'open carry' law allowing any licenced handgun owner to carry their loaded weapon in a shoulder or hip holster in public. The only places where they are forbidden to do so are near schools, polling places, courts and court offices, airports and

sports events. If an employer wishes to limit this insane right they must 'provide notice to the person carrying a handgun [...] in both English and Spanish and in contrasting colors of a certain height that is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.' However, the law does not allow employers to forbid employees from storing weapons in locked vehicles on company premises. So maybe taking up that offer of a lift home from work would not be a good idea...

VIETNAM: Vietnam's labour market is being opened up to foreign workers for the first time since 2003. From April 1st 2016 employers will be able to hire workers from outside the country if, after 30 days search through a government employment agency (60 days if 500+ workers are required), no suitable local candidate has been found. The average processing time for work permits will be reduced from ten to seven days and permits will remain valid for two years. New graduates from foreign international educational establishments will no longer require a permit to undertake an internship.

Dates for your diary:

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](#).

April 1st 2016: Employers will be able to hire foreign workers in [Vietnam](#) for the first time since 2003.

April 1st 2016: The minimum entitlement to paid parental leave increases from 16 weeks to 18 weeks in [New Zealand](#).

April 4th 2016: The Health and Safety at Work Act 2015 comes into force in [New Zealand](#).

May 1st 2016: The minimum wage will increase in [Ukraine](#) to 1,450.50 hryvnias.

Latest news for business travellers:

A strike by staff of SNCF, [France](#)'s national rail company, is set to go ahead in Paris on Wednesday, March 9th. As a result of the strikes travellers can expect traffic jams, taxi shortages and crowding on those public transport services that continue to run.

Workers on LUAS, Dublin's tram network, plan to strike on March 8th and March 17th (St. Patrick's Day). Over 100,000 overseas visitors are expected to visit [Ireland](#)'s capital during the St Patrick's Day festivities which will put significant extra strain on rail and bus networks during the tram strike.

Douala International Airport in [Cameroon](#) is now closed until March 21st for reconstruction work. Many flights will be rerouted to Yaounde Nsimalen International Airport during this period although others may be cancelled entirely.

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.

FedEE news:

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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