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Editorial: Why wait and see is not a wise strategy

Although many of us prepare regular plans, there is a huge gap between planning and execution. It is like the fire drills that turn out not to be drills at all, but periodic tests of the alarm system. In the event of a real emergency many people would remain at their desks — as they do in their beds when hotel alarms go off in the night.

That is the case for UK-based companies ahead of the 'Brexit' vote on June 23rd. Due to turnout factors the vote has a strong chance of being in favour of the UK leaving the European Union. But how many companies have contingency plans in place for this or are even likely to act quickly enough when the time comes? One reason why the impact of an exit vote could be strong and immediate is because the UK economy relies heavily on the London financial markets. If these declined

sharply the UK balance of payments would swing so much into the negative that the country would become bankrupt in a far more substantive and longer-lasting way than Greece. They are also so fragile because investors can switch their activity easily overnight from London to Frankfurt, Paris, Tokyo or New York. Even the mere prospect of the UK being outside the EU could well be enough to trigger such a reaction.

Without a major financial services market and facing a sudden balance of payments crisis, the UK would see its domestic demand collapse and companies reliant upon home markets would have to look for much more export business or — far more likely — relocate to markets where rising demand exists, such as in Eastern Europe or Asia.

HR departments would be at the forefront of any final decision to move operations, yet may not be significantly involved in any plans being drawn up. For some companies, of course,

there is still a 'wait and see' approach to the referendum — not realising that by the time the votes have been cast it will already be too late to protect the company from the sudden jolt that could occur. Unlike other sectors, financial markets tend to act very quickly. They have already hedged the 'Brexit factor' by reducing UK investment close to zero and by reducing the value of Pound Sterling by 9-10% over recent months. In such circumstances HR needs to adopt the 'precautionary principle' — if the Brexit firestorm never happens it will be just a lost week of contingency planning, but if it does come then the advantage of plans and paths to their actual execution will be invaluable

Persistent deflation has huge implications for HRM because it necessitates radical changes in pay determination and adjustments that will be highly unpopular with workers and unions alike. The best example of a pay system that is fair, flexible and productive is one that guarantees all employees in an enterprise the same level of basic hourly pay — but with individual enhancements because of 'job size'. This total pay figure would then be adjusted each year to reflect individual and company performance variations and rises and falls in national or local price levels. There would be no need to negotiate pay rates as these would automatically be adjusted and would only need to be reviewed if company fundamentals changed.

Deflation challenges our assumptions and the question for us to ask therefore is 'why isn't such a system in place?' not 'why should we interfere with established custom and practice?'

European Union: Slow economic recovery as storm clouds continue to gather

Over the year to Q1 2016 the EU economy grew by 1.7%, whilst between Q4 2015 and Q1 2016 average growth was 0.5%. Over the year the biggest gains were in Romania (+4.2%), Slovakia (+3.6%), Spain (+3.4% from a reduced base), Bulgaria (+2.9%) and Cyprus (+2.7%). However, annual growth was only 0.9% in Finland, 0.8% in Portugal and 0.5% in Hungary — whilst the Greek economy contracted by a further 1.3%.

According to the European Commission's Spring economic outlook, post-recessionary growth in the EU has been much slower than in the USA because of relatively low consumer confidence in the EU, slower productivity gains and labour market rigidities. Over the next 18 months EU GDP growth is set to remain fairly constant, with 1.6% growth this year 1.8% in 2017. Overall, capital investment next year is expected to rise by 3.8% and wages to increase less quickly than productivity. Whether the UK votes for 'Brexit' or not on June 23rd the prospect of the UK leaving the EU has been enough for the Commission to reduce UK growth from its earlier forecast of 2.1% in 2016 to 1.8% this year and 1.9% next year. Of course, this would need to be heavily revised if a vote was in favour of exiting the EU.

The Commission has also estimated the potential cost of reintroducing border controls within the EU's free movement Schengen area. This could add 1.7 to 7.5 billion euros to transportation costs, plus 1.3 to 5.2 billion euros due to delays for cross-border commuters and other business travellers.

Germany: New rules for agency workers

Agreement has been reached amongst the German coalition partners on proposals for a revision of the labour leasing law. This will now be given Cabinet approval before being submitted to the Federal Parliament.

Under the proposals, temporary agency workers will be limited to 18 months with the same end-user, after which they shall be regarded as hired on a permanent end-user contract. Employers can extend this limit only through a formal deal with a trade union or works council, or by formally complying with an appropriate sectoral agreement.

Equal pay with core workers in the end-user company will be required after nine months of any work assignment. Once again there will be some minor exceptions that allow a longer period to achieve parity. These will include where temporary worker salaries have been raised before the nine-month term and also with respect to companies subject to branch surcharge wage agreements (*Branchenzuschlagstarifverträge*) where parity will be required after 15 months.

The prohibition against using temporary agency staff to cover for striking workers will remain, but not against hiring them to work in areas of a company not affected by a strike.

South Africa: Anti-trust restrictions not applicable to wage cartels

A rare challenge to the practice of wage cartels has been dismissed by the Gauteng high court in Pretoria. The case was brought against section 32 of the Labour Relations Act 1995 by the Free Market Foundation think tank. This section allows sectoral wage deals to be extended to parties who were not involved in collective bargaining. Although certain safeguards have — in the past — been inserted into the law to require publication of submissions for general applicability and to allow appeals by non-parties, the provision remains largely intact.

Interestingly, although this case failed, it did give rise to the conclusion by the court that bargaining councils are, in effect, organs of state due to section 32 and that therefore their powers may be subject to the Promotion of Administrative Justice Act. This will be small consolation to smaller employers, but may allow a way forwards for larger companies operating in South Africa.

Wage cartels are fairly common in Europe where some established employers collude with trade unions within each economic sector to set minimum wage rates — partly in order to dissuade smaller competitors from emerging and undercutting their dominant positions by offering lower wages. In France, for instance, the state automatically ratifies the agreements, making them generally legally applicable across the whole sector — even though many companies were not party to the negotiations. Two historical challenges to such actions heard before the European Court of Justice have also been dismissed.

Turkey: Privacy rights extend only to data made public

In a recent case before the Turkish Constitutional Court a claim for right of workplace email privacy was dismissed. The case had involved the dismissal of two employees accused of flirting over the internet. However, according to the Court the fact that the individual's names were not made 'public' was the deciding privacy factor and not the interception of emails by their employer.

Under Turkish law an employment contract may be terminated at any time for 'immoral, dishonorable or malicious conduct or other similar behavior'. Moreover, decision numbered 2009/447 E of the 22nd Civil Chamber of the Court of Cassation (the court of last instance) gave employers the right to supervise email accounts and monitor incoming emails. In this case the man involved was married and the dismissals took place after his wife visited the company's CEO.

As in many Islamic states, flirting in Turkey is frequently seen as sinful and can even lead to acts of violence by male relatives that are commonly perceived as above the law if intimacy of any kind is suspected, especially if any of the parties is married. As there is no legal definition of flirting even the process of talking between friends of the opposite sex can be seen as punishable, justified only by a feeling of jealousy by a family member.

USA: How the new Trade Secrets Act will impact upon HR

President Obama has just signed the long awaited Defend Trade Secrets Act (DTSA) 2016. This brings the protection of commercially sensitive data within the protection of federal law across the USA.

This measure is of particular interest to HR professionals because it will provide a general framework for imposing restrictions on departing employees. However, the DTSA does not go as far as some state laws do by banning departing employees from taking up positions with direct competitors because of what has become known as the 'inevitable disclosure doctrine'. But it does empower companies to apply for a 'seizure order' to remove property that is aiding, or could aid, the disclosure of secrets.

There is also some limited protection for whistleblowers — but not if they resort to public disclosure through the press or media. One important provision in this respect is a new requirement for employers to provide employees with a notice of whistleblower immunity if they have access to trade secrets or any other confidential information. This means that US employment contracts will need to be revised accordingly to comply with the DTSA.

Pay, Tax and Benefit Trends

ARGENTINA: A report just published by UNICEF has shocked the Argentinian government by revealing that one third of its children live in poverty. The government is now six months into its term of office and is struggling to control escalating price inflation — which it admits will probably be 25% this year. However, current figures are hard to obtain because the government has closed down its heavily discredited statistical agency. In *Buenos Aires prices rose by 7% in April alone* and President Mauricio Macri is seeing his 'zero poverty' policy slowly crumble away. In order to assist those on low incomes the government has called together its Minimum Wage Council — but the scope for adjusting wages without adding to the country's rising level of unemployment will be limited

EGYPT: Figures just issued by the government's CAPMAS statistics agency reveal that the average weekly wage in Egypt's private sector rose by 17.5% between 2014 and 2015 to stand at 594 Egyptian pounds (66.90 US dollars) — 615 Egyptian pounds (69.26 US dollars) for male workers and 510 Egyptian pounds (57.43 US dollars) for female workers. As the average working week in the private sector was 56 hours the average hourly wage amounted to 10.61 Egyptian pounds (1.20 US dollars). Egypt has no minimum wage in the private sector and attempts to set a maximum wage in the public sector has had very inconsistent outcomes.

JAMAICA: The Jamaican Minister of Labour and Social Security, Shahine Robinson, has announced that the government is exploring ways to encourage phased retirement programmes. One barrier to this is the current

pensions legislation that denies working people a state pension - even when they reach the new common retirement age of 65 - if they continue to work. Old age benefit only becomes an unqualified right at age 70.

GERMANY: Engineering industry employers in North Rhine-Westphalia — Germany's most populous state — have concluded a sectoral wage agreement with the IG Metall trade union. This deal covers 700,000 workers and will set the norm for bargainers in other states to follow. It gives a rise in basic rates of 2.8% in July, and a further 2% next April. In addition, workers will receive a one-off gross payment of 150 euros (170 US dollars) next month.

JAPAN: The Mitsubishi Motors Corporation has agreed to pay special leave allowances to employees laid off after revelations last month concerning fabrication of its fuel economy test results for several models. The allowances, amounting to around 80% of normal wage income, involve 1,300 workers at their Mizushima production plant in Kurashiki. Nissan has now taken a 30% stake in its smaller rival following a 40% fall in Mitsubishi's share price.

UNITED KINGDOM: Latest date from the UK's Office for National Statistics reveals that 3.9 million people in the UK experienced persistent poverty over the years from 2011 to the latest available year of 2014. Women, single and retired people were slightly more vulnerable than the population as a whole. By contrast, a third of the UK population experienced poverty in one of the four years, with this proportion rising to 43% for those without formal qualifications.

USA: The US Department of Labor has issued its final rules updating overtime pay regulations. The new standard salary level for an exempt worker (free from any overtime pay obligation) is the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region. The dividing line for highly compensated employees (HCE) under the Fair Labor Standards Act is the annual equivalent of the 90th percentile of full-time salaried workers for the USA as a whole. The actual percentile figures will be updated every three years. The new rules include a 'salary basis test' to allow employers to use non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. The effective date for these changes will be December 1st 2016.

Other Global HR News in Brief

AUSTRALIA: The government's new PaTH youth employment programme is set to be launched soon with employers being offered 1,000 Australian dollars (728 US dollars) for each young person hired as an intern for a 12-week period. Interns would also be paid 200 Australian dollars (146 US dollars) per fortnight on top of their welfare payments if they join the programme and work for 25 hours per week. There will be no limit to the number of interns taken on — but there must be a realistic prospect of them gaining ongoing employment after the internship ends.

CANADA: In Ottawa a specialist federal government committee on human resources, skills and social development has just begun a review of the temporary foreign worker (TFW) programme. Currently the focus of control is on the initial granting of work visas. Recently,

however, investigative media documentaries have shown the harsh conditions faced by many such workers. Therefore, it is likely that in future measures will be introduced to police the programme and ensure that TFW share the same basic rights as native workers. Businesses in many sectors are also seeking reforms that would ease the lengthy application procedures and allow more foreign workers to stay for much longer periods instead of being forced to return home after four years.

CHINA: A labour arbitration panel in Guizhou, China has dismissed a sex discrimination claim by a former transgender employee on the grounds that there was no evidence they had been dismissed because of their sexual orientation. This was the first case of its kind in China and underlines how even voice recorded admission by a line manager that the employee was not acceptable because the 'way he dressed would negatively affect the firm' is not regarded as sufficient proof of discrimination — due to the fact that the manager concerned 'did not work in the personnel department'.

FRANCE: The controversial labour reforms currently being debated in the French National Assembly include a 'right to disconnect'. This would mean that employers with 50+ employees would have to negotiate with a trade union about the times at which employees that are not on duty would be expected to answer incoming work-related emails and telephone calls. In smaller companies there would simply be a requirement to inform employees about the company's communications policy.

IRISH REPUBLIC: A recent survey report (the Regional Business Barometer Study 2016) reveals how rapidly cloud-based systems are transforming the employment market in Ireland, particularly for smaller companies. The survey of over 500 companies revealed that two-thirds of employees in companies with 1-9 employees regularly worked from home, but in companies with 250+ employees this averaged only 15%. Small companies also provide more staff with smartphones (48%), laptops (42%) and tablets (28%) than larger companies. The driving forces for remote working included reduced costs (58%), mobility (55%), and greater productivity (37%).

ITALY: A first instance court in Verona has denied access to a corporate email account by a dismissed employee who was seeking reinstatement. This decision was on the grounds that access to the account arose from a working relationship that no longer existed. The near-sighted logic of the court further illustrates a global redefinition of privacy away from its origins as a human right and the once sacrosanct nature of subject access.

NEW ZEALAND: The stringent nature of labour relations laws in New Zealand were recently illustrated by a fine imposed upon a meat company for reprimanding workers that were distributing union literature in the workplace. Talley's-owned South Pacific Meats Company was required by the Employment Relations Authority to pay a total of 38,500 New Zealand dollars (26,070 US dollars) to two workers. This decision follows a further 144,000 New Zealand dollar (97,500 US dollar) fine placed on the same company for breaches of union access requirements to several of its operations

SLOVENIA: The Slovenian government has established a new EU 'Guarantees for Youth Scheme' with an annual spend of around 70m euros (\$US79M) over the period 2016 to 2020. This will seek to build on past initiatives to improve the employability of young workers by overhauling internship and apprenticeship systems and helping young people set up their own businesses. The first EU initiative under this scheme was in Finland where 85% of under 25-year-olds received a job offer within three months of becoming unemployed. In Slovenia's original scheme participants benefitted from 40% more referrals for job vacancies, 10 times more meetings with employers and 70% more involvement in training than companies outside the scheme.

SOUTH AFRICA: A legal question that often raises its head in different jurisdictions is 'at what point will a temporary agency worker be regarded as an employee of the end user?' In a recently-reported South African case the employees concerned claimed under section 198A of the Labour Relations Act (LRA) that they should be regarded as an employee of the client company. The court disagreed, stating that according to case law the employees could only be seen as having dual employment status for the purposes of the LRA and not other labour legislation. [*National Union of Metalworkers of South Africa obo Nkala and others v Durpo Workforce Solutions* [2016] 3 BALR 229 (MEIBC)].

TURKEY: The Turkish parliament has given approval to a draft law that will allow a flexible working relationship to be established through registered temporary work agencies. These workers may replace employees who are absent due to maternity leave or military service, because of an unforeseen increase in

the work load, to perform short-term projects or in case of emergencies. Contracts must be in writing and agency workers may not be used in companies subject to strikes or lockouts. Moreover, limits are set to the proportion they may represent of the total workforce. There is also a six-month waiting period before former employees can be rehired via an agency. One interesting feature of this measure is that it specifically allows for deployment on a teleworking or 'on-call' basis.

UAE With the start of Ramadan (which begins on June 6th) quickly approaching, employers should be preparing for the reduction in working time required under UAE labour law. The Ministry of Labour will be releasing guidelines on working hours shortly, but under existing legislation normal working hours must not exceed six hours a day and employees must not receive any consequential pay cut. Within the Dubai International Finance Centre working time reductions will not apply unless an employee is fasting.

USA: The California Court of Appeal has recently established an important precedent by allowing a new interpretation of the term 'reasonable accommodation' under the disability provisions of the state's Fair Employment and Housing Act. Although the Act requires employers to make accommodations for the 'known physical or mental disability of an applicant or employee', the court went further by ruling that where an employee has a dependant who is disabled then that fact also makes the associated employee disabled. [*Luis Castro-Ramirez v. Dependable Highway Express*]

USA: The US Justice Department has filed a lawsuit against the Governor of North Carolina and other officials because the State's discriminatory new HB2 antigay legislation violates federal civil rights law. Two state representatives have also submitted a comprehensive LGBT non-discrimination Bill to the North Carolina General Assembly and called for the HB2 law to be repealed.

Dates for your diary:

June 1st 2016: Freedom of movement restrictions on Bulgarian and Romanian citizens removed in **Switzerland**

June 1st 2016: OSHA hazards communication standard deadline in the **USA** for labelling and employee training.

June 9th 2016: **California (USA)** introduces new anti-smoking law – 21 becomes the minimum smoking age and the e-cigarette is then classified as a tobacco product for the purpose of public restrictions.

June 18th 2016: Effective date for **UK** regulations concerning posted workers (enforcement of employee rights)

July 1st 2016: Increase in levies on construction sector and service sector work permits and S-Pass permits in **Singapore**.

July 1st 2016: Effective date for **EU** Directive on the protection of workers from risks associated with magnetic fields

July 1st 2016: **Mexico** introduces visa exemption for business travellers from Columbia, Chile and Peru.

Travel Warnings:

Business travellers are advised not to visit **Somalia** or northern **Kenya** due to operations of the Al-Quida affiliated group al-Shabaab

Insurgent groups in the Sulu Archipelago of the **Philippines** present a serious threat to all foreign travellers, especially in the form of kidnappings.

There is a high threat of criminal activity in the border areas of **Cameroon** and especially in the northern districts. Insurgents from Boko Haram are also operating in many parts of the country. For similar reasons all travel to **Mali** should be avoided.

Many parts of **Burma (Myanmar)** are affected by civil unrest and many thousands of displaced persons are seriously affecting internal travel – especially near border areas.

The Turrialba volcano in central **Costa Rica** has seen ever increasing eruptions in the last two weeks with ash falling across a wide area of the country and affecting air travel.

FedEE Events:

DATA MANAGEMENT FORUM: Learn all about the latest developments in data protection and workplace privacy around the world and how they impact upon HR. The new EU's General Data Protection Regulations and transatlantic "Privacy Shield" (replacing "Safe Harbor" procedures) are just two of the many issues that will be covered in our round table forum in London on Wednesday, July 13th. To join us contact Karen Wallace on (UK) (0)117 975 8611 or email her on admin@fedee.com.

NEXT FELLOWSHIP MEETING: The next Fellowship Meeting will take place on Tuesday, July 12th 2016. Fellowship meetings are a great opportunity to share insights and experiences 'off the record', with no notes taken. This allows participants to see what is really taking place outside their organization - in contrast to conferences where they are given a certain amount of 'window dressing'. If you are not currently a Fellow but are interested in becoming one please contact us on +44 (0)117 975 8611.

FedEE News

CYPRUS OFFICE: We are currently establishing a new finance office and research centre in Nicosia, Cyprus. It will begin to operate in late June and be fully operational from August 1st 2016. This will help us to improve our support services to members in Eastern Europe and the Middle East.

NETWORK WITH OTHER FEDEE PROFESSIONALS: Don't forget to sign up to FedEE's face-to-face networking community, butN. Join for free today at <http://www.but-n.com>.

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