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The Federation of International Employers
La Federación de Empresarios Internacionales
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**October 27th 2016**

## Inside this Issue:



## EDITORIAL: Opening up the job market

Governments and their agencies around the world have long been the principal enemy of service sector growth. Examples abound, from the Kenya Film and Classification Board (KFCB) clamping down on VoD companies such as Netflix for hosting films it does not approve, to threats by India's Telecom Regulatory Authority to impose controls on cloud computing to the needless impositions placed on lab testing in the US health system.

For the HR practitioner, few regulatory systems are more problematic than the way occupational entry is controlled. Leading the way is undoubtedly Germany where over 150 "professions" are subject to strict rules and 42 craft occupations require specific vocational qualifications before they may be practiced.

At a European Union level, around 47 million people require some kind of official authorization to perform their job and EU member states achieve this through over 6,000 regulations. Fortunately, after years of establishing rules about mutual recognition of qualifications (and latterly the prompting EU member states to undertake reviews of their professional regulatory systems) the European Commission is finally considering what more direct action could be taken to combat over-regulation. The outcome of consultations during the Summer have yet to be published, but it is likely that they shall be moving towards pan-European regulatory mechanism of the major professions such as lawyers, architects, accountants and medical practitioners. Resistance from current bodies will be fierce and it may therefore be necessary to superimpose institutions on top of the national structures.

It will require an entirely different approach to tackle the vocational entry qualification requirements for many trades. It has been calculated by Koumenta and Martins (QMUL) that deregulation of the "regulated professions" could generate 700,000 new jobs in Europe. But the deregulation of trades and the opening up of jobs such as shop-keeping to those from other EU countries could revolutionise the services sector, and even overcome Germany's problem about what to do with its new one million Syrian refugees.

Maybe what the employment world needs is a method pioneered in the UK financial sector. The "regulatory sandbox" approach allows new products and services to be launched without being punished by regulators. Safeguards exist, but are much more flexibly imposed. Such an approach will be more appropriate in countries such as Austria, the Czech Republic, France and Germany where qualifications are regarded as sacrosanct, even many years after they have been gained. Ironically, in the UK deregulation has been achieved in the legal profession without even going through the sandbox stage.

### GERMANY: Transient IPs: personal data

A long running battle about whether an individual's dynamic IP address constitutes "personal data" and thus comes under Data Protection law has finally been resolved by the European Court of Justice (ECJ). The Court came to the view that it is personal data, but that those storing it may have a legitimate interest to do so without the individual's explicit, prior consent (C-582-14).

The significance of this finding for employers is that such data is currently often stored on company systems for security purposes. It is generally not regarded as personal data because it does not, in itself, identify an individual. Yet coupled with third party information from an internet service provider the individual could be identified. There would be no defence for employers that the data has to be stored to deal with hackers as it would relate to employees and contractors. Hence in the future employment contracts will need to include a clause giving specific, informed consent to such processing - even in internal communications. It remains a moot point how such consent can be proven to be "freely given" when it is an operational necessity.

Things will get far worse under the EU General Data Protection Regulation because of the new right to be forgotten and the reduced scope for exemptions from the provisions. Consent will need to be verifiable and an "unambiguous indication" – so it may need to be gained for each communication. What is more, the company processing the data will need to explain each time what it plans to do with the data. This will cause havoc for even internal communications that will have to either contain preambles or clearly written footers – or, if strictly adhered to - a pre-transmission window containing a processing statement and requiring the recipient to agree to the communication before the email can be received.

Employers will not be able to wait for case law to find out how to deal with these new requirements. That is why it is so important that FedEE members attend our next HR Data Protection Forum meeting to ensure that our code of practice contains workable solutions to this otherwise impossible measure before it hits them in May 2018.

### GERMANY: Fears over class actions

Class action lawsuits are not currently permitted under German law. However, last Autumn - in the wake of the VW emissions scandal - the Justice Ministry revealed that it was reviewing the possibility of introducing new legislation that would permit such court actions.

The headline focus of this change has been about consumers collectively exerting rights against manufacturers, but little attention has been given to other situations where class actions could have an even greater impact. Consumers are often so scattered it is difficult to coordinate their actions, but employees have a natural cohesiveness – especially when brought together by trade unions. Class actions could therefore bring to court many labour relations matters that remain within the province of collective bargaining and industrial action.

Although several German newspapers reported last November that “the parameters for draft legislation were readied”, no draft law has yet been published. Suspicions about putting the measure deliberately ‘on ice’ have all been based on assumptions that the government is seeking to protect the automotive sector from further consumer challenges. But the real concern is likely to be its potential impact within the employment and labour relations spheres.

### GERMANY/EU: Exploiting a loophole

Concern is growing in the German government about the number of company takeovers that are in the pipeline concerning Chinese enterprises, many of whom are state owned, or partly state-owned. These include the acquisition by Beijing Jianguang Asset Management Co Ltd of chipmaker NXP Semiconductor, home appliance maker Midea buying German robot maker Kuka and Sanan Optoelectronics interest in taking a majority stake in Osram.

Many of these takeovers are hostile and the EU has very limited powers to prevent them. FedEE estimates that there are over 20,000 companies in China that are poised to become multinational and the Chinese government is clearly frustrated by the hesitancy of many private-sector enterprises to take the first step. That is why state funded enterprises are likely to lead the way.

Due to a loophole in the EU Acquired Rights Directive (ARD), such acquisitions would not necessarily be subject to normal employee consultation requirements when a merger or takeover occurs. This is because they do not involve negotiations over a formal transfer of ownership and simply take the form of a share acquisition in the open market. This would be the case even if the share acquisition meant a loss of effective control by the former entity. Provided the company remains intact – even if new board members are admitted from the shareholding company and some are excluded – ARD would not necessarily apply. HR practitioners, however, would be seriously affected, as the new dominant shareholders would probably not be familiar with local laws or seek to respect them. Works Councils and trade unions would also be likely to react strongly against any subsequent changes, suspicious that they emanate from the company’s new owners.

### GLOBAL: Supply chain secrets

Attempts by many governments in advanced economies to stamp out slavery in supply chains have largely been ineffective. Back in 1930 the US Tariff Act allowed customs officials to refuse entry to goods made by forced labour, but not if domestic production couldn’t meet demand for the products. This loophole was closed last year, but many companies – particularly in the confectionary industry – are still able to source their raw materials from West African states where slavery is in operation.

The first legislation to put accountability directly onto companies to police their supply chains was California's Transparency in Supply Chains Act (2010). This requires companies with annual revenues of $100 million or more to publicly disclose their efforts to fight slave labour. Last year the UK introduced its Modern Slavery Act. This applies to enterprises with global annual revenue of 36 million pounds ($US 52m) and also places an obligation on company board members to sign off on compliance statements. However, there are no due diligence processes that must be followed and it requires the Secretary of State to seek an injunction through the High Court in order to force a company into compliance.

The principal driving force for change in Europe might be expected to be EU Directive 2013/34/EU concerning "disclosure of non-financial and diversity information by certain large undertakings and groups", This must be incorporated into EU countries' domestic legislation by December 6th 2016 and be applied to companies in 2017. However, this contains a highly generic set of obligations, none of which needs to be covered in any depth.

The task for investigating supply chains for the incidence of slavery will often fall on HR, which will normally be ill-equipped to undertake such an exercise. In many cases even the commodity buyer will be unaware about practices within supplier's factories or on their plantations. Moreover, end-user companies that use a wide range of raw materials, have long supply chains and are distant from their sources will always stand the highest chance of being dependent in some way on forced or child labour.

## ITALY: Service sector executive deal

Following a national collective agreement for executives ("Dirigenti" and "Quadri") in the Industrial sector in 2015, a new agreement covering executives in the tertiary, distribution and services sector was agreed this Summer and has just come fully into force. The agreement sets an effective minimum gross salary of 3,890 euros ($US 4,268). Although backdated to January 1st 2015, there is no pay increase set for 2016, but non-consolidated increases are set at 80 euros ($US 88) a month from January 1st 2017, 100 euros ($US 110) a month from January 1st 2018 and 170 euros ($US 187) a month from December 31st 2018.

New compensation payments apply for contract termination. These are 6 months' salary for up to 4 years' service; 8 months' salary for 4 to 10 years' service; 10 months' salary for 10-15 years' service and 12 months' salary for over 15 years' service. However, the maximum compensation for unfair dismissal now ranges from 8 to 18 months' salary. If an executive becomes sick or is injured they are now entitled to full salary for a period ("periodo di comporto") of 8 rather than 12 months.

Although social security contributions (CBA) are reduced for certain categories of executive, increased contributions to supplementary pensions (the Mario Negri Fund) are payable. These start at 23.69 euros ($US 26) in 2015 and rising to 165.83 euros ($US 182) in 2018. The backdated contributions to the fund were payable by October 10th 2016.

**ROMANIA: Geographical mobility**

An emergency ordinance comes into force on December 1st 2016 aimed at increasing the flexibility and encouraging the perseverance of job hunters in Romania.

Those registered as unemployed will receive a state bonus if they receive a minimum guaranteed income level and stay with an employer for at least three months. A travel subsidy will also be paid if someone takes up a job 15kms or more from their residence. If an unemployed worker decides to change residence in order to secure work they will be entitled to a relocation allowance of 12,500 RON ($US 3,041) and, if it is over 50kms from their previous residence, a further allowance of 3,000 RON ($US 730) will be payable for relocating family members.

Employers taking on workers from the unemployment register will also receive 900 RON ($US 219) a month for up to 12 months – or 18 months if the employee is disabled.

## Pay, Tax and Benefit Trends

**CYPRUS:** Between 2012 and Q2 2016 labour costs in Cyprus enterprises fell by 5.9%. the fall was greatest in the financial and insurance (-12.7%) and hospitality (-8.5%) sectors. However, average labour costs actually rose in the real estate sector over the same period, by 1.9%. One factor contributing to declining labour costs has been the consumer price deflation that has been depressing the economy since 2014.

**GERMANY:** In a landmark decision (Number 8 Sa 324/16), the Higher Labour Court of Cologne, decided that upon an employee's death in service, their heirs are entitled to receive payment in lieu of their outstanding annual leave. The rationale behind the judgment lies in Directive 2003/88 concerning certain aspects of the organisation of working time and specifically s. 7(2). Employers should proceed to payment on account against death in service by crediting a former employee's thereby avoiding a claim being brought against them on behalf of their heirs.

**MONTENEGRO:** Over the year to August 2016 average gross earnings in this small Balkan state rose by 5.2% to 755 euros ($US 821) a month. The unemployment rate continues to be high, reaching 17.5% in Q2 2016, a level that has barely changed since 2012.

**SLOVAKIA:** The Statutory minimum wage will rise in Slovakia on January 1st 2017 from €405 (US$ 446) and will be raised to €435 (US$ 479). The Slovak Cabinet has stated that their target is to decrease the difference between the statutory minimum wage and average actual wage from 60% to 50% at the earliest opportunity.

**USA:** Higher paid Americans will have to pay significantly more in payroll taxes next year due to an $8,700 rise in the upper limit on social security charges. The climb to a new limit of $127,200 will be the greatest increase for over 30 years and will affect 12 million taxpayers.

## Other Global HR News in Brief

**CANADA-EU:** The trade deal between Canada and the European union is now seriously at risk because of a veto by the Belgian regional government in Wallonia. The deal has been seven years in the making and could have generated thousands of jobs on both sides of the Atlantic. However, it has been threatened by pressures from the dairy sector that fears competition from Canadian farmers. But it is precisely this sector that has attracted €500m ($US 544) more this year from the EU's common agricultural policy through an economic support package to compensate for the ending of milk quotas. Agriculture contributes 1.8% to the EU's GDP but accounts for 47% of EU funding. Maybe it is time to call bluff to the special pleading?

**CHILE:** There is growing public disquiet in Chile about the current state pension system that produces a very poor return on mandatory contributions. The scheme was established in the Pinochet dictatorship era and is privately operated. It generates retirement pensions that average around $US 300 a month.

**CHINA/USA:** Currently thousands of businesses in China and the USA depend on individual holders of 10-year B-1/B-2 multiple-entry visas to allow Chinese staff to enter the USA when required. From November 29th 2016 holders of such visas will have to complete an entry in the new Electronic Visa Update System (EVUS) and update it every two years. This requirement must be met before the business traveler leaves China.

**FINLAND:** The Central Organisation of Finnish Trade Unions SAK collates regular data on statutory notifications being given to employees ahead of collective redundancies. During Q3 2016 the total number of workers subject to such notices was 11,849, the lowest level in any quarter for the last five years. The principal sectors to be affected by future layoffs will be IT and retailing.

**GLOBAL:** Although some countries publish quick and reliable statistics for accidents at work, there are no recent figures for workplaces on a global basis. The international Labour Organization claims that there are 317 million work-related accidents and 2.3 million workplace fatalities a year, but it does not reveal on what years its figures are based. Curiously, if its figures are recent there would be almost twice as many workplace fatalities as road fatalities worldwide each year. This is highly counter-intuitive, until we reflect that the typical working age person may spend an hour or two in their car, but six to ten or more hours on the job each working day.

**KUWAIT:** Following further restrictions on workers from Bangladesh reported by us last month, Kuwait's Ministry of the Interior has now imposed tighter and more comprehensive restrictions on family reunification for low paid workers. This has been achieved by effectively doubling the qualifying pay threshold from 250KD (US$824) to 450 KD (US$ 1483). In a country where the average expatriate salary is 1000KD (US $3.650) this still leaves a significant proportion of lower paid workers able to apply for entry visas for family members

**IRAN:** It does not require a formal law in Iran to establish a probation that the police will enforce. In fact, any statement by Ali Khamenei, the Iranian regime's supreme leader, will suffice. His latest fatwa is against women riding a bicycle in public. Other bans are also largely about women. They include the employment of women in coffee shops, sitting in men's sections of buses, obtaining a passport or going abroad without a husband's permission and being trained, educated or employed in operations such as drilling and processing and any job requiring physical "activities in operational areas and sites".

**QATAR:** The establishment of a Labour Resolution Committee has been proposed by Qatar's Ministry of Administrative Development, Labor and Social Affairs. This is intended to speed up the processing of work-related disputes. It would be chaired by a first instance court judge and be formed in conjunction with a new appeals panel chaired by an Appeals Court judge. Currently it can take many months for disputes to be resolved, especially if it is based on a complaint from a foreign worker. It remains unclear how the new system will prevent employers from retaliation, deal with language barriers or parties who do not turn up to hearings.

**ROMANIA:** Companies wishing to transfer management staff and highly qualified specialists to work in Romania may now take advantage of a new permit allowing transfers for up to three years - or up to one year for trainees. Intra- company transfers may also be made in respect to such workers from assignments in other RU states for a period of up to 90 days. The new ordinance 25/2016 brings Romanian law into compliance with Directive 2014/66/EU on the conditions for entry and stay of third-country nationals in the context of a transfer within the same company.

**RWANDA:** The development of the Rwandan economy is reaching a turning point as more than 50% of jobs are now in the non-farm sector. The government has plans to generate over 200,000 jobs each year, but non-farm jobs are predominantly unskilled. Thus, although the official unemployment rate is just 2% the rate for University graduates is 13.5% and all young people are finding it increasingly difficult to secure employment. The Ministry for Public Service and Labour is trying to tackle this problem through a National Employment Program. However, what the country still lacks is overseas investment and good examples of success stories relating to local entrepreneurs.

**SWEDEN/DENMARK:** The Southern Swedish Chamber of Commerce has appointed lawyers to pursue a 2.5 m euro ($US 2.72m) compensation claim against the Swedish government on behalf of 565 Swedes and Danes. They claim that the ID checks introduced in January 2016 "pose a serious threat to integration and economic growth in the Oresund Region" as well as infringe EU border control rules. The challenge has very little chance of success as the European Commission has approved the temporary controls and is likely to extend permission for a further six months beyond November 11th 2016.

**TURKMENISTAN:** Companies operating in Turkmenistan should be aware that it has now, like the DR Congo, become a dictatorship and therefore not a good environment for free enterprise. This has been achieved by the President forcing through a change in the constitution which extends his presidential term to seven years and removes the 70-year age limit from holding office. President Gurbanguly Berdimuhamedow, who already wields absolute power, may therefore now remain in office indefinitely.

**USA:** The Governor of the State of California signed a new bill with effect as of January 1st 2017, that no longer allows employers to enquire about current or future employees' juvenile convictions. The law provides for only one possible (and rather limited) exception - and that it is where the job will be dealing with pharmaceutical drugs and medication. Failure to comply with the new legislation will allow a prospective employee to claim damages.

**USA:** Employers in California may, on future, be under some pressure to introduce gender-neutral "bathrooms" (toilets) following new legislation concerning public facilities. The state's public single occupancy law is aimed at the LGBT community and mirrors local measures already introduced at a city level in Philadelphia, San Francisco and Washington, D.C – as well as in over 150 US colleges and Universities.

## Dates for your diary:

**November 8th 2016: US** Presidential Election

**November 29th 2016: Mozambique** introduces new immigration regulations. These will impose severe limitations on the use of foreign labour.

**December 1st 2016:** FLSA new overtime rules become effective in the **USA.**

**December 4th 2016 Italian** referendum on constitutional reform.

**April 6th 2017** Introduction of apprenticeship levy for large **UK** employers.

**April 23rd and May 7th 2017**: **French** Presidential Election.

**May 25th 2018**: Final effective date for **EU** General Data Protection Regulations.

## Travel Warnings

**AUSTRALIA:** A serious crime wave is affecting the southern city of Melbourne (especially the Greater Dandenong area). Visitors should be especially vigilant, especially when leaving things in hotel rooms or leaving cars in public places.

**CANADA:** Travel disruptions may still occur is the Quebec and greater lakes area after heavy rains. This includes the continued risks of flooding and landslides.

**CENTRAL AFRICAN REPUBLIC:** Violence involving rival armed groups and attacks on aid workers has recently made this the most dangerous country in Africa.

**CHILE:** Widespread demonstrations and a national strike have been called for November 4th.

**ETHIOPIA:** A six-month state of emergency has been declared throughout Ethiopia.

**FRANCE:** A stomach flu outbreak has now been designated as an epidemic in France. Infected areas include Paris, Grand-Est and Occitanie.

**IRELAND:** The risk of crime will be heightened in the Irish Republic each Friday in November because of 24-hour strikes four by the Gardai (Police).

**NORTHERN IRELAND:** There has been a much higher incidence of muggings and robberies taking place in West Belfast recently, particularly aimed at foreign tourists. This is likely to intensify as Christmas approaches.

**PHILIPPINES:** US and other western citizens should avoid visits to the Philippines due to violent protests there against the USA. Much of the violence is by the local police, including running police vehicles over protesters and by-standers. The after effects of Typhoon Lawin are still being felt in the Cordillera Administrative Region.

**THAILAND:** Gun crime continues to be the highest in Asia and one in every eight citizens owns a firearm. The clamp down on public activities in the wake of the king's death is also seriously affecting tourism.

**TURKEY:** There is a general terror alert in operation within Ankara and its surrounding province. The national state of emergency is in operation and all public gatherings are banned until November 30th 2016.

**UNITED KINGDOM:** Rail strikes on the Southern Rail Network are scheduled for the following dates and will last all day. These will affect rail services from Dover and Gatwick airport to

London. Tuesday 22 November to Wednesday 23 November and Tuesday 6 December to Thursday 8 December 2016. The strike on November 3rd to 5th has been postponed.

**USA:** Travel to the USA should be avoided in the immediate aftermath of the Presidential election on November 8th. Donald Trump has repeatedly refused to confirm whether he would accept the outcome if he lost. This creates significant uncertainty and the possibility of political or civil unrest across the country.

## FedEE News

**KNOWLEDGEBASE:** The full texts of employment laws and regulations for over 60 countries are now published and available to members in our database. These replace the less reliable links we previously provided to sources outside FedEE.

**HR DATA MANAGEMENT FORUM:** Places still exist for this one day event in Nicosia, Cyprus on Friday, November 18th. Please contact Vasiliki Filippou for further details on (00357) 22256381 or email her at vasiliki.filippou@fedee.com

### Source and Disclaimer

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