



Mettre à jour

Latest News from the Federation of European Employers (FedEE)

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France: Courts conspire in frustration of plant closure

The difficulties and risks involved in closing an operation in France have been clearly illustrated by the recent experience of Unilever.

Last year, the company sought to close its Fralib Gémenos plant in Bouches-du-Rhône — the only plant in France to produce Lipton teas. However, its workforce refused to accept the decision and repeatedly resorted to the courts to cancel its redundancy plan ("Plan de Sauvegarde de l'Emploi or PSE"). After the third revision of the plan was rejected on appeal, the company went ahead and made the redundancies.

In October the Tribunal de Grande Instance of Nanterre will have to decide whether the company was justified in taking this action. The previous appeal court decision in Aix-en-Provence had set a penalty of 3,000 euros per day per employee, plus a one-off payment of 10,000 euros for any delay beyond 15 days in redrafting the former PSE.

Germany: Selection criteria for posted workers

An alleged case of discrimination against temporary workers was recently heard by Germany's Federal Labour Court. The case arose when a temporary worker had their contract terminated before the end of its fixed-term and was asked to relocate to a different branch of the same organisation to work through their remaining contractual period.

The worker noticed that such actions were only being taken in respect to those on temporary contracts and claimed that the action was discriminatory. Their employer claimed that, for budgetary reasons, permanent workers would have to remain at their current location. This also helped to keep up morale amongst permanently employed workers.

The Court concluded that, although the employer concerned had the right to ask workers to relocate for operational reasons, the selection must be made objectively from amongst all workers — not just those on temporary contracts. A number of related cases are still pending before the Court. [7 AZR 728/09]



Latvia: The EU's latest tax haven

If any non-EU citizen wishes to gain residency rights in the European Union they can do so through a scheme devised by the Latvian government.

Since 2010 any non-resident can obtain a five-year residency status in Latvia by purchasing a property to the value of 140,000 euros or more. Since the law was enacted, non-residents (mainly from Russia and Belarus) have spent a total of 377 million euros to by-pass normal EU residency status rules. This year Latvia has also introduced changes in corporation tax to make it an attractive place to locate holding companies, including a tax exemption for dividends paid to non-residents. From January 2014, Latvian holding companies will no longer be taxed on interest and royalties paid to foreign companies.

Luxembourg: From secret tax haven to open tax haven

Parliamentary approval in Luxembourg has just been given for double taxation treaties with Germany, Kazakhstan, Laos, Macedonia, Seychelles, Sri Lanka and Tajikistan, as well as for protocols to existing tax treaties with Canada, Italy, Malta, Poland, Romania, Russia, South Korea and Switzerland.

These changes are primarily in response to pressures on Luxembourg's government and banking system to become more transparent. However, whilst complying with OECD anti-tax haven rules, Luxembourg has also cheekily reduced withholding taxes — especially on dividends and interest — to make it an even more attractive country for locating a holding company. The treaties and protocols will generally be applicable from January 1st 2014.

Poland: Social security on private use of company cars

The Social Security authorities in Lublin, Poland have issued their view on an application submitted

by an employer concerning the payment of social security contributions for the benefit-in-kind gained by private use of a company car.

The employer pointed out that they made a nominal deduction from employee salaries to pay for private use of a company vehicle, and that employees used the cars for commuting purposes. They also referred to a previous decision by the social security board in Gdansk and a ruling by the Polish Supreme Court in 2008 that stated that every payment "including cash equivalents in respect of the costs incurred for commuting by any means of transport that is paid by employers on the basis of acts or labour laws are excluded from the calculation of contributions".

The Lublin authority agreed in part with the submission, but stated that exemption from social security contributions must be on the basis of a collective agreement concerning "compensation rules or regulations of salary" and that Polish law did not permit the basis for such an exclusion "derived only from an employment contract".

Poland: Driving time limits applicable to self-employed

An amendment to the Polish law on working time now applies driving hour restrictions to the self-employed.

Working time for self-employed drivers now includes loading and unloading and the supervision of loading and unloading, completion of documentation, the daily maintenance and cleaning of vehicles and trailers, stand-by time and "other work being undertaken to complete business-related tasks or for the safety of persons or the vehicle". All timesheets and tachographs must be kept for a minimum period of two years.

These changes bring Poland into compliance with EU regulations Nos 1071/2009, 1072/2009 and



1073/2009 (the so-called "road package") and EU Directive 2002/15/EC.

Spain: The sudden demise of collective bargaining

Employers in Spain have passed the watershed set for July 8th after which collective agreements that come up for renewal will not remain in force if no new accord is put in its place.

There are currently 1,098 company agreements and 226 sectoral agreements operating in Spain and, under the latest labour reforms, if a company agreement ends then the applicable sectoral agreement will directly take its place. If neither a company nor a sectoral agreement remains in force then the only legal framework will be the Statute of Workers. Indications suggest that more than half of collective agreements will not be renegotiated or their renewal will be subject to extended delays owing to failures to reach agreement.

UK: New tribunal charges and rules introduced

The UK's Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 have now come into force. The regulation introduces Tribunal and Appeal Tribunal fees and a number of important changes in procedures.

A Tribunal will no longer automatically issue a default judgment if a response has not been received by the 28-day deadline. Moreover, a review will take place as soon as possible after document submissions have been made to determine if there is an arguable complaint and defence. Case management discussions and pre-hearing reviews have been combined into one preliminary hearing and a new rule 45 allows a tribunal to impose limits on the time a party takes to present its evidence, question witnesses and make a submission.

The trade union, UNISON, has been granted permission by the English High Court to seek a judicial review of the fees. The hearing is expected to be held in October 2013.

Pay, Tax and Benefit Trends

BELGIUM: A new "fairness tax" has been introduced in Belgium — already the third most heavily taxed country in the EU. The new tax is aimed at companies that avoid paying corporation tax through such devices as transfer pricing, "notional" interest deductions and carrying forward losses, but that continue to pay dividends to shareholders. In future, where companies pay healthy dividends but declare low profit levels they will be liable for a tax equal to 5% of the difference between the dividends paid out and the pre-tax profits.

BELGIUM: Under a new amendment to Belgium's temporary tax regularization regulations, individuals and corporations will be able to admit to the tax authorities any unpaid social security contributions and tax — including serious and organized tax fraud. They will then have to repay the sums due, plus a fixed fine of 15% for minor infringements and 20% for serious evasions. The partial amnesty will end on December 31st 2013. Those taking advantage of this facility will, of course, be subject to increased future scrutiny by the tax authorities.

CZECH REPUBLIC: From January 1st 2014 Company Directors and Secretaries in the Czech Republic must have their remuneration approved by a general meeting of shareholders or the supervisory board. If they do not then, under the Civil Code, they will not have the right to receive remuneration. Other changes to the Civil Code will include a ban on the employment of children attending mandatory education (with exceptions for certain sporting, artistic and cultural activities) and a new limit for employer deductions from pay — which will be set at 50% of salary.



EUROPE: The European Commission has come up with a new way to cap executive pay in the banking sector. New state aid rules came into force on August 1st limiting the remuneration of senior executives to 15 times the national average salary or 10 times the average salary in the bank concerned. Bonuses will also be capped at twice fixed salary. This will only apply when a lending institution fails and seeks state aid to maintain its solvency.

EUROPE: The European Commission has launched a formal consultation with employers and trades unions at an EU level about what measures are necessary to prevent and deter "undeclared work". They are, in particular, seeking views on the structure and operation of the labour inspectorate, coordination with tax and social security authorities and the training of enforcement officers.

FRANCE: Just as the public onslaught against executive bonuses is gaining political momentum in comes another popular method to cool the enthusiasm of career executives. Hidden away in a new French Bill aimed at encouraging company-run employee savings plans to invest in the "social economy" are a new set of criteria to make it easier for social enterprises to qualify for such investments. Two of the five new criteria are that there must be "a cap on the spread between salaries at the top and bottom" of the organisation and the cap must be written into the articles of association of the business.

NORWAY: Norway's Banking Law Commission has drafted a new pension law which will bring occupational pensions into line with the new state pension. Details of its proposals have not been published — but it is believed that it will involve removal of the maximum guaranteed interest rate which currently sustains the value of defined benefit pension schemes. In future, all defined benefit schemes will have to have greater flexibility in contribution rates to meet the

scheme's final pension targets. The Ministry of Finance aims to clarify the exact nature of the changes next year.

RUSSIA: From January 1st 2014 the national minimum wage in Russia will rise to 5554 rubles (128.17 euros) a month. This change will directly affect the pay levels of 1.3 million workers, although it is also used as a reference point when setting wage tariffs in many sectors of the economy.

Other European HR news in brief

CROATIA: Negotiations on a new labour law will begin this Autumn in Croatia's tripartite National Economic and Social Council. Discussions will focus on working time, notice periods, severance pay and transfer arrangements between employers. Minister of Labour and Pensions, Mirando Mrsic, has recently replied to press speculation by confirming that the duration of vacations will not be on the agenda.

CZECH REPUBLIC: The number of work accidents that occurred in the Czech Republic during the first five months of this year was 13.3% higher than during the equivalent period last year. This represents a rebound on an otherwise long-term downward trend in the level of workplace accidents. The Labour inspectorate believes that the recent rise in accidents is due to employers trying to improve productivity by relaxing safety procedures and removing safety devices in the face of sustained economic pressures.

DENMARK: Death in service is always a difficult and sensitive issue for HR, but in Denmark, at least, its incidence is declining. According to Statistics Denmark, the proportion of people dying in the 20-60 age cohort fell consistently from 12% in 2008 to 10.9% in 2012.

FINLAND: In its latest report on racism and intolerance, the Council of Europe found that



immigrants in Finland "still suffer discrimination in various fields including employment, and that the Aliens' Act contains discriminatory provisions". It also pointed out that "the National Discrimination Tribunal does not award compensation to victims of discrimination nor deals with cases of discrimination in employment or immigration matters". The report recommends that the government expand the powers and scope of the Ombudsman for Minorities service in order to combat discrimination on grounds of colour, language, religion or race.

FRANCE: The struggling French automaker, PSA Peugeot Citroen, is planning to establish a recruitment agency for the benefit of its own employees that will be made redundant during the company's proposed restructuring. The human resource department hopes to launch an "external job service" carrying adverts from employers outside the Group. Employees will also be given assistance to set up their own businesses by taking unpaid leave — with an option to return to the company within two years if the venture is not successful. In addition, where restructuring results in redeployment to another location, employees will be entitled to take 70 hours paid leave to "upgrade their core competencies".

GERMANY: Two years ago the Confederation of German Trade Unions launched a project called "fair mobility" and it now operates six information centres to assist immigrant workers. These principally provide legal support for eastern European workers who are often employed in Germany without a work permit. The German labour market is very attractive for people from Croatia, where the unemployment rate is approaching 20% and its non-EU neighbour Bosnia/Herzegovina where the unemployment rate is much higher. Although Croatia is now an EU member state, access to all but the most qualified Croatian nationals will remain restricted until at least mid-2015.

GERMANY: The German Federal Labour Court recently ruled that a works council had the right to veto the use of agency workers in their company because the workers were not subject to clear limitations on the duration of their deployment period. The Federal Court overruled an earlier judgment by the Labour Court of Lower Saxony because the legal status of such workers rests on the fact that they are temporarily allocated to a user company. Moreover, under German codetermination rules a works council may object to the use of agency workers if it deems their use unlawful. [7 ABR 91/11]

ICELAND: By September 1st 2013, publicly quoted and traded companies employing 50 or more people in Iceland will have to have women in at least 40% of boardroom appointments. Currently just 3% of company Directors are female.

ITALY: Italy's constitutional court has ruled that a clause in the 1970 Statuto dei Lavoratori (Workers' Statute) that allowed the automaker Fiat to bar the Fiom metalworkers' union from representing its workers was unconstitutional. This decision calls into question all the collective agreements with other unions to improve flexibility and productivity — which have provided a basis for the company to turn its fortunes around and invest heavily in new models. However, as the fault lies with the government in enacting an unconstitutional law, the company may have cause of action against the state for consequential losses.

NETHERLANDS: An advisory body to the Dutch government — the Socio-Economic Council (SER) — has recommended that non-unionised employees should be given a direct say in collective agreements (CAOs) operating in their economic sectors. Around 80% of employees in the Netherlands are subject to CAOs, but only 20% are trade union members. The previous



Social Affairs Minister, Henk Kamp, proposed this change, but his successor, Lodewijk Asscher, has not yet responded to the SER report.

SWEDEN: A campaign in Sweden is being led by the white-collar trade union, TCO, against the practice of employing staff on indefinitely renewable temporary contracts. Currently, it is

legitimate in Sweden to employ someone as a temporary worker for two years as a substitute for staff on leave then switch to a general fixed-term contract without the employer becoming legally obliged to offer a permanent contract. In a recent Novus poll, 11% of respondents said that they had worked on temporary contracts for five years or more.

FedEE news:

TRAINING FILM OFFER: FedEE's professionally produced training film on workplace racial discrimination is now available on special offer at just £75 (c \$113.75/ 86.81 euros). The film stars Shereen Martin (RSC/Royal Shakespeare Company), Simon Slater (Mama Mia, Dealers), and Adam Kotz (Doctors, Last King of Scotland) and was made with the support of the UK government's Advisory, Conciliation and Arbitration Service. This is a deeply moving 25 minute drama that could be used to illustrate key issues common to most jurisdictions. To purchase a copy whilst this offer lasts please go to our online eShop at <http://www.fedee.com/products-page/media-publishing/without-prejudice/>.

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