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EDITORIAL: Tackling the wage bubble

Across much of Europe, over the past two years, low levels of price inflation - or even contracting price levels (deflation) - have been running hand in hand with high levels of wage inflation. This illogical phenomenon is particularly evident in countries such as Ukraine (+27%), Hungary (+20.5%), Estonia (+14.2%), Romania (+11.9%), Moldova (+11.8%), Turkey (8.1%), Bulgaria (+7.7%) and Finland (+6.3%).

It is difficult to explain this outcome, as both low price inflation and deflation would naturally reduce pressure on wage levels, as workers would be either at a constant living standard or better off - even without a pay rise. There can also be little reason why private sector employers should voluntarily improve the rewards of workers at such levels when the priority after the past recession would appear to be to return profits to shareholders.

What would seem to be happening is a mixture of forces that expose the naivety of many, mainly local, employers to dealing with changing price levels. The biggest impact on prices in the last three years has been the cost of oil and its products. Although this has rebounded somewhat since its lowest level, the consequences for companies have been lower transport, heating etc. costs. This saving has only partly been passed onto consumers and has had a fairly modest overall impact on profits. The need for profits has been less necessary in the post-recessionary era as shareholders hold equities for even shorter periods than before and look less to dividends than returns through share volatility. Companies have also not been investing at levels which would have a longer-term benefit on their business as labour has been relatively cheap and few managers will trust a 7-10 year ROI period on capital investment any more.

It should also be remembered that some progressive harmonization could always be

anticipated between eastern and western European salary levels. Competition due to foreign direct investment (FDI) inflows in new enterprises has also been less intense, leaving many countries such as Romania (27th), Turkey (29th), Moldova (36th), Hungary (40th) and Finland 42nd) floundering in the per capita FDI investment league. Ironically too the decline in collective bargaining will have reduced an important link between pay and prices. Maybe, therefore, trade unions are good for us after all?

EUROPEAN UNION: E-privacy revision

Whilst no-one doubts the importance of protecting the security of sensitive data, data protection legislation has progressively extended its bureaucratic tentacles into every sphere of business and become a huge burden, especially to multinationals.

The European Commission has recently been making soundings about revisions to the E-Privacy Directive 2002/58/EC. This is the EU framework law regulating communications of personal data via the internet and other electronic means. It contains the ban on unsolicited communications which, if followed to the letter, would formally prevent all contact with any other named individual who someone has not previously obtained written consent from to contact them. In other words, virtually all communications - even with friends and family.

The purpose of the revisions will be to update the Directive in line with technological developments and the General Data Protection Regulations (GDPR). An important focus for the changes will be to bolster "informed consent" which will, in any case, become far more onerous under the GDPR. However, there is likely to be a much clearer

indication of situations where it is not necessary to obtain prior consent, such as where it is essential for the interests of the 'data subject' to introduce an urgent security feature or where personal data is collected in a system - but immediately encrypted or anonymized in some way. Unfortunately, neither enterprises in a post-Brexit Britain nor international enterprises elsewhere in the world, will be able to escape applicability of any further petty tyrannies - as they will be a precondition for communicating over the internet with anyone in an EU country.

GLOBAL: Misclassification of status

It is now becoming increasingly difficult for employers in the USA to classify any worker as an independent contractor. This is because the definition of "employee" in the revised Fair Labour Standards Act is very broad and also because the Federal Department of Labor has now teamed up with Labor Departments in 35 US states to enforce federal wage and hour laws. This means that now an offending employer could well face penalties at both a state and federal level.

Governments usually justify their concerns about misclassification by pointing out that it is associated with lower welfare provisions, poorer terms and conditions and greater vulnerability to dismissal by contracting companies. However, the most fundamental concern to governments is a loss of revenue from social security and income tax, especially as many independent workers remain under the radar for tax purposes.

The criteria used to distinguish employment from self-employment have been frequently defined in statutes and by the judiciary, but in actual instances the distinction can prove extremely difficult. The Norwegian Working

Environment Act is probably the clearest and most well written employment law in the world. It contains a statement of criteria that would justify the designation of self-employment. In applying these the high court has underlined that simply peppering a contract with references to “independent contractor” does not add any weight to its classification as such. But what the court has done is allow a judgment to be made on a scale of compliance under each criterion. It is therefore not necessary to absolutely meet all criteria such as “does the principal provide offices and work equipment?”. This makes it possible for a company to comply with the criteria where there is a “balance” of compliance in favour of independence.

From another perspective, self-employment can be a great benefit to society by providing a rapid source of new jobs. A recent study carried out by the Bank of Scotland found that since the recession in 2008-9 over 300,000 jobs in Scotland – almost its entire expansion of the employment market – has been due to self-employment. Even in Germany, where self-employment has traditionally been frowned upon, self-employment has grown from 1.8 million in 2000 to 2.3 million today. In some countries there is even a marked “self-employment gap”. One of these is South Africa where years of apartheid discouraged small producers and the economy is still heavily geared in favour of larger enterprises.

USA: “Cat’s Paw” Offence

A so called “cat’s paw” offence originally meant one that made employers directly responsible for discriminatory dismissals of employees - if their decisions were based on discriminatory views held, and recommendations made, by their supervisory employees. However, on August 29th, 2016, the Second Circuit Court of Appeal in the USA issued a judgment that expands the scope of this offence to include influences arising from all levels of employees. The case, *Vasquez v Empress Ambulance Service*, concerned a low-ranking employee who, in an act of retaliation, managed to influence management to dismiss the plaintiff.

As early as the 1990s, *Shager v Upjohn* ruled in favour of an employee who proved that he was dismissed by his employers due to the influence of his supervisor who was discriminating against him on the grounds of age. The supervisor had unfairly denigrated the plaintiff by evaluating him as poor performer, yet in fact he was the best performer in his position when compared to others. In a more recent landmark case, *Staub v Proctor Hospital* (2011), the offence was extended to any decision maker in the company - in this case the HR Manager. As a consequence, it is no longer considered relevant whether the person who actually laid off the employee had any knowledge of his subordinate’s biased views. It simply suffices for the plaintiff to prove that there is a link between the discriminatory opinion and/or advice and the dismissal decision.

HR practitioners in the USA must be very diligent about being influenced in their decision to dismiss any employee, even in ‘hire and fire at will’ states. It is therefore important that they watch FedEE’s training

film “Without Prejudice” which, although set in a UK context, illustrates very well the subtle roots of racial prejudice in the workplace. The film is available free of charge from admin@fedee.com and will shortly be on-line in ‘You Tube’.

USA: Slow advance of secure scheduling

Seattle is the latest US city to introduce a secure scheduling law. Two years ago the city council in San Francisco passed an ordinance protecting workers in chain stores and eating places from arbitrary changes in work shifts. Similar measures have also been introduced in Washington, D.C, Albuquerque, Minneapolis, and 12 US states.

From next July, retailers and restaurants in Seattle with 500 or more employees (locally or worldwide) will have to comply with a secure scheduling provision or face fines of up to \$US 1000 per individual violation. Where a company operates “full-service restaurants” the law will only apply if they have 40 or more outlets worldwide.

Under this ordinance, employers will not be able to impose “clopenings,” which involves employees working shifts back-to-back. There must normally be at least ten hours between shifts and a “predictability pay” premium will be payable when employers make changes to the posted schedule. Employers would also be required to offer existing part-timers additional hours before new employees are hired.

It is doubtful whether the city’s Office of Labor Standards, which employs four investigators, will be able to monitor compliance in detail and therefore it will have to rely on individual or trade union complaints to initiate investigations. There will also be no right for the city’s courts to make judgments about

compliance in other locations, whether in the USA or other countries. However, there is now a clear trend towards secure scheduling across the USA, mirroring - and going beyond - even the EU’s working time Directive. In fact, the next such measure will probably be in New York. Furthermore, the applicability of these measures is also eventually likely to extend into other economic sectors.

USA: Change to worker compensation

A private company’s rights to opt-out of the state worker compensation insurance in Texas is now being questioned in the aftermath of a Supreme Court decision in Oklahoma. This removed the freedom for companies to draw up their own plans to compensate injured workers. Currently 18% of workers in Texas are subject to alternative “nonsubscriber” plans run by companies such as Wal-Mart, Lowe’s and Costco.

There is now some interest in other states for reform of the one-size-fits-all approach. Only last month the Illinois Policy Institute issued a report attacking the “outdated” worker compensation regime in that state and recommending the adoption of an opt-out system.

Meanwhile, the Washington State Department of Labor and Industries has proposed that employers’ contributions towards the worker compensation coverage scheme should increase by 0.7% on January 2017. The actual annual cost per employee is likely to be US\$10 (EUR €8.89) although the final rate will not be published until December.

Pay, Tax and Benefit Trends

BULGARIA: The statutory minimum wage in Bulgaria will be increased by almost 10% to 460BGN (\$US 264) with effect from January 1st 2017. This move is part of the government's three-year plan to tackle low wages.

CHINA: Nine provinces and cities in China, namely Jiangsu, Tianjin, Shandong, Chongqing, Hainan, Hebei, Liaoning, Shanghai, and Beijing increased their minimum wage rates during September 2016. The average increase in these rates was 11%. This means that the highest monthly minimum wage in China is now RMB 2,190 (\$US 328) operating in Shanghai, and the highest hourly minimum pay is RMB 21 (\$US 3.15), operating in Beijing.

GERMANY: According to the Federal Statistical Office (Destatis) German real wages climbed by 2.3% year-over-year during the second quarter of 2016, following a previous quarterly rise of 2.6 %. These increases were mainly driven by pay rises in the catering, real estate, transport and logistics sectors.

NIGERIA: The Nigerian tax authorities are under considerable pressure from the government to increase revenues to make up for the shortfall due to the weak oil price. They have identified around 700,000 companies that have never paid any VAT, deducted income taxes or any other taxes due. In an effort to achieve compliance they are now offering generous amnesties to encourage company managers to declare their accounts. But even the threat of criminal sanctions will

be very difficult to enforce in a country where companies often keep few formal records and 80% of the national workforce is engaged in the informal economy.

UNITED KINGDOM: A tougher taxation regime will operate from next April in respect to salary sacrifice schemes. In future, individuals will be taxed on the greater of the salary sacrificed or the statutory cash sum that has been set. However, there will be some exceptions - such as company childcare, employer pension contributions, bicycles provided under cycle to work scheme and cash given in exchange for extra holiday entitlements. HMRC is also leaving time open for consultation until October 19th 2016, although these any views received are unlikely to change the tax reform at this stage.

UNITED KINGDOM: As employers plan HR budgets they should not forget that from next year there will be a special levy on each non-EEA migrant worker. The "Immigration Skills Charge" due to be introduced in April 2017 will amount to £1,000 (\$US 1,302) per employee per year for larger companies. It will not apply to jobs requiring a doctorate qualification, or where an international student takes up work in the UK following their studies or in the case of an Intra company transfer of a graduate trainee.

USA: In recent years the use of payroll debit cards has become increasingly popular, especially in the USA where over 11 million workers do not have a bank account. Many US states have introduced legislation that prevents employers from compelling employees to accept the cards if to do so would incur charges that would reduce their

normal net pay. Back in 2013 the New York Attorney General's Office launched an investigation into the use of payroll card practices by many large employers. Now the state legislature has enacted a new provision under the [State Administrative Procedure Act](#) which offers "clarification and specification as to the permissible methods of payment, including payroll debit cards." This measure will become effective on March 7th 2017.

Other Global HR News in Brief

ARGENTINA: In an attempt to constrain insurance costs in respect to employee injury compensation, the Argentine government wishes to set a fixed fee for both lawyers and investigators and prevent workers from receiving part of their claim before they go to court. The proposed legal amendments have the principal aim of removing an important negative factor in inward investment decisions.

AUSTRALIA: Up until now, in the state of South Australia, the absence of any reference to notice in an employment contract has led the courts to calculate an implied term of 'reasonable notice'. This practice has, however, been rendered inappropriate (subject to a current appeal) due to the District Court case *Kuczmariski v Ascot Administration*. Now there is no need to imply any notice period, other than the minimum set out by the *Fair Work Act 2009*.

CANADA: Up until a week ago, General Motor's vehicle assembly plant in Oshawa, Ontario was earmarked for closure in 1919. However, a four-year wage deal ratified by members of the trade union Unifor has now secured \$544 (\$US 412 M) investment in the

company's Canadian operations, an investment centered on the Oshawa plant. The deal will be worth an increase of just 2% on wage rates this Autumn and another 2% in September 2019. However, workers will also receive a bonus worth \$12,000 (\$US 9,088), half of which will be paid immediately as a signing bonus and the remainder over the next three years.

FRANCE: From October 1st foreign employers operating in France will have to file detailed online returns about all foreign employees seconded to work in their French operations. The details required will include the services that are being performed, names of company representatives in France, responsible directors, the social security collection agency and the composition of subsistence expenses provided. The details will be required even from companies based in other EEA countries and must be made in respect to all employees that have been seconded - other than French nationals. The penalty for non-compliance is 2,000 euros (\$US 2,245), but is capped at 500,000 euros (\$US 561,000) for repeat offences.

HUNGARY: The Hungarian government is currently spending only 1.22% of GDP on labour market policies. This is well below that for France (2.46%), Austria (2.20%) and Germany (1.60). High levels of migration to other EU countries in recent years has resulted in an unemployment rate of just 2.2% for those with tertiary education – the second lowest in the EU. It has also led to considerable growth in real salary levels. However, Hungary's job vacancy rate is currently just 1.9% of the workforce, which is around the EU average. These factors are the

driving force behind a draft government plan to be announced later this Autumn that will aim at stimulating job growth whilst introducing incentives to attract skilled foreign nationals, particularly those with expertise in the IT and construction sectors.

JAPAN: A pilot “technical interns” programme which has so far permitted 192,000 skilled foreign workers, mainly from India and SE Asia, to work in Japan for up to three years is to be extended by allowing them to stay for up to five years. Shinzo Abe’s government is also planning to relax hiring rules to allow companies to have a higher proportion of foreigners in their workforce. This move will be accompanied by several safeguards in respect to pay and working conditions.

KUWAIT: The Kuwait interior ministry has reintroduced a ban on the recruitment of male domestic workers from Bangladesh. This comes only months after a previous general ban on Bangladeshi workers - dating back to 2007 – had been lifted for certain blue collar workers. Currently there are over 200,000 Bangladesh nationals in the country and remittances back to Bangladesh from expatriates amounts to over \$US 1bn a year. In May it was reported that the market for white-collar workers from Bangladesh would soon be opened.

LUXEMBOURG: The government of Luxembourg has drawn up a new draft law that will penalize employers for work-related accidents. In 2014, the latest year for which statistics are available, 6.3% of employees in the Grand Duchy experienced a reportable work-related accident. It is anticipated that, under the new law, fines will be up to €50,000

per accident per employee, but up to €100,000 for repeat violations. This is over and above the insurance-based compensation paid once an accident is reported to the Accident Insurance Association.

SOUTH AFRICA: The procedure for granting temporary residence visas to South Africa has been recently updated. The validity of visas is now calculated from the date of entry in the country rather than from the date of application. The immediate impact of this initiative is that many people will not have to apply for renewal of their permit due to lapse of validity, simply because they applied much earlier than their date of arrival.

SWITZERLAND: A referendum in Switzerland last weekend resulted in support within the southern Italian-speaking Canton of Ticino for a proposal giving residents priority in the labour market. Once enacted into a local law, companies operating in the Canton will have to offer jobs in favour of Swiss applicants rather than those from neighbouring Italy. This will no doubt lead to a progressive reduction in the 62,000 Italian Commuters that cross the border each day to work.

USA: Company operations in transport and energy-intensive sectors across the eastern USA could be affected by a major rupture in an interstate gasoline pipeline that has taken place in central Alabama. This has spilt 338,000 gallons of fuel into an ecologically sensitive area and threatened fuel shortages.

USA: The United States Court of Appeal for the Eleventh Circuit has ruled that employers may ban employees from wearing the dreadlocks hairstyle. The lawsuit had been backed by the Equal Employment Opportunity

Commission because it related to a policy that appeared to be racially biased. However, the court held that hairstyle is a mutable physical trait that can be changed, unlike many other immutable physical characteristics such as skin colour. Therefore, a general hairstyle policy, that applied equally to all employees in a company, did not give rise to discrimination if it happened to exclude hairstyles favoured by certain ethnic groups.

VIETNAM: The depletion of social welfare funds due to Vietnam's aging population is forcing Vice Labour Minister Pham Minh Huan into a policy cul-de-sac. He would like to raise

the retirement age, but if he does so then there will be fewer jobs available for young workers. The International Labour Organization has predicted that unless social insurance schemes are reformed - and people encouraged to retire later - government welfare funds will be exhausted by 2034. For this reason, it is likely that Huan will be finally forced to relent. Current proposals are for the retirement age to be raised by two years to 62 for men, and three years to 58 for women.

Dates for your diary:

October 1st 2016: **Brazil** CRS international tax transparency rules take effect.

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**.

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: There is widespread **flooding** continuing in the central west part of New South Wales. This will affect communications, especially in the Lachlan river valley area. Disruptions will continue at **Australian airports** over the next two weeks as unions representing border control officers order 30-minute stoppages without prior warning.

COSTA RICA: Costa Rica's **turriabla volcano** has erupted several times in the last two weeks sending ash and smoke some 5,000 metres into the air and closing the main **international airport**.

FRANCE: Air traffic controllers have so far organized 14 strikes this year. Further **strikes** can be expected this Autumn with only minimal warning.

IRAQ AND LEBANON: The incidence of recent highly pathogenic H5N1 **avian influenza** outbreaks in Iraq and Lebanon pose a significant risk according to the United Nations Food and Agriculture Organization.

PR CHINA: **Typhoon Megi** has caused extensive devastation across the south-east of the Chinese mainland. The area is still suffering from heavy rain and wind gusts up to 200 km/hour.

THAILAND: All visits to **Yala** and adjacent southern provinces of Thailand should be avoided. A long history of **insurgency** by Islamic militants has led to over 6,000 deaths in the last decade – including 3 police officers in a bombing incident last week.

TURKEY: A US consulate in Turkey is warning of “**specific and credible**” **potential terrorist threats** against hotels run by American companies in the resort city of Adana. All foreign nationals from western countries should be particularly vigilant throughout Turkey - both in respect to religious extremists and arbitrary arrest by the police.

UNITED KINGDOM: Commuters travelling by **Southern Rail** will face 14 days disruption in October due to a long-running series of disputes involving the militant RMT union. Rail staff working for **Virgin East Coast Trains** will strike on October 3rd.

USA: Severe **flooding** has been affecting Iowa and parts of Wisconsin. It has been at its worst in the area around Cedar Rapids, Iowa. There has also been flooding this week in parts of southern Texas.

WESTERN EUROPE: The European Centre for Disease Prevention and Control has issued a warning about the **fatal infection** CCHF that is spread by ticks. The risk is especially high when walking in country areas or when in contact with livestock. Ticks should never be removed with the fingers.

FedEE News

FedEE's New Code of Practice: FedEE has prepared a draft **Code of Practice on Privacy at Work in Multinational Enterprises**. This has been prepared under provisions in the EU's General Data Protection Regulations (GDPR) that allows for such codes. Access to the code will be limited to FedEE members and the text will be finalised following the meeting of FedEE's **HR Data Management Forum in Nicosia** on November 18th 2016. If you would like to gain access to the code to help your organisation prepare for the GDPR and Privacy Shield then **be sure to book your place for the Forum meeting**.

Second HR Data Management Forum Meeting: The next meeting of the Forum will take place in Nicosia on Friday, November 18th. This will consider a number of useful draft documents drawn up by FedEE – including **a model policy and associated checklist on the conduct of pre-employment background investigations** and a **draft code of practice on data protection in multinational enterprises**. Access to Cyprus is relatively easy from all parts of Europe and outside the main holiday system can cost as little as a domestic train fare. Please send an expression of interest by sending the words “booking DMF”, plus your contact telephone number to admin@fedee.com and we shall call you with further details.

Employment Law Briefings: Make face-to face briefings in future an integral part of your corporate membership of FedEE Global. Would you benefit from a regular refresher on employment law developments around the world during the last year? Would you like to start thinking about key legal and HR changes that lie ahead in the next two years? Then be sure to secure your place at FedEE's forthcoming programme of six-monthly briefings that will be progressively rolled out to several locations worldwide – **London, Nicosia, Bangalore, Changsha, Sydney and Boston**. Briefings will commence this Winter and there will be significant discounts when making advance multiple bookings for designated centres. Please contact the FedEE Membership Secretary for further details or await your invitation in the next few weeks.

FedEE Publications: This year our **Pay in Europe Reports** have been discontinued as all the data is now available in our **JEAPS** service. Moreover, **JEAPS** itself has just been updated. If you have not received our new **Multinational Salary Planning Report** please contact the membership services unit and we will forward you a free copy in pdf format.

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