Hammonds

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Human Capital (Employment)

German employees may share in business profits

Whilst Germany's two main political parties – the Social Democratic Party (SPD) and the Christian Democratic Union (CDU) - both agree that employees should receive a share of business profits, they do not agree how this goal should be achieved.

The SPD favours employees having the opportunity to buy shares in a "Germany Fund". Companies would also pay into the Fund and would be able to access it for capital. The Fund would pay its employee shareholders dividends and would also be responsible for repaying their original investment. The rationale behind the Germany Fund is to minimise the risk of market fluctuations and company bankruptcies.

Under the SPD proposals, married couples with an annual income of up to €40,000 (€20,000 for single people) would be able to invest up to €400 per annum in the Fund. The Government would subsidise this with a further €80 and would also act as a guarantor to the Fund.

By contrast, the CDU is proposing that employees have the opportunity to buy an equity share in their own employer of up to €1,000 (with tax incentives). The CDU's approach aims to create a stronger link between employees and their employers in the hope that this will lead to higher motivation and improved productivity amongst workers.

The German Government is unlikely to legislate in this area in the immediate future.

Poland increases minimum wage

The Polish Government has agreed with NSZZ Solidarność, one of the main trade unions, a significant 20% increase in the minimum monthly wage, which will rise from PLN 936 (€ 247) to PLN 1,126 (€ 297) in 2008. The bilateral agreement represents a significant departure from the tripartite social dialogue process between the Government, trade unions and employers' organisations. Employers expressed their concerns about the rise in the minimum wage and the negative effects that the higher labour costs may have on the competitiveness of small businesses. In response, the Government justified its decision to make a material increase to the minimum wage on the basis that by widening the difference between the minimum wage and unemployment it would make employment a much more attractive option.

Italy gets tough on health and safety

In August 2007 the Italian Parliament approved Law 123/2007 which requires the Government there to adopt decrees over the following 9 months amending the existing legislation on health and safety at work.

Several requirements took immediate effect, however. In particular, the Ministry of Labour Inspectors now have the power to suspend the business activity of a company if it "employs" 20% or more "off-the-books" individuals (ie the company is not deducting tax or paying national insurance on them) as a proportion of the total workforce. Business activity can also be suspended if the employer repeatedly breaches the rules relating to maximum hours of work or daily or weekly rest or if it repeatedly and seriously breaches health and safety regulations at work. The employer will be banned from public tenders and any other negotiation/transaction with public bodies for the duration of the suspension, up to a maximum of two years. According to Ministry of Labour guidance, "repeatedly" means breaches of the same type occurring more than once within a five year period and a "serious" breach would be one where there has been a breach of the rules applicable to management (which carry the highest penalties, including criminal conviction).

A suspension can only be withdrawn if the percentage of off-the-books individuals is rectified or the company can show that it is complying with the rules relating to working time and health and safety regulations at work. Suspended businesses would also have to pay a financial penalty.

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Irish Government holds back on illegal worker sanctions

A spokesman for the Irish Government has stated that Ireland is not going to opt into the new EU Directive on sanctions against employers who hire illegal workers and that it will reassess its position when other EU Member States have transposed the Directive. The proposed Directive was drafted earlier this year by the EU Justice Commissioner Franco Frattini and is part of a wider strategy aimed at tackling the problem of illegal migration.

German train drivers' strike

The recent wage dispute between the German train drivers' union (GDL) and the state-owned rail company ("Deutsche Bahn") shows that even small unions can tie up huge companies. GDL is asking for a 31% pay rise and organised several strikes throughout Germany in an attempt to put pressure on Deutsche Bahn after that company rejected its proposal. Called to decide on the legality of such strikes, the Labour Court of Chemnitz ruled that GDL could exercise its right to strike only with regard to regional passenger transport at national level but issued an injunction against strikes in long-distance passenger and freight services. The State Labour Court of Saxony upheld GDL's appeal with the consequence that stoppages on long-distance passenger and freight services could also now go national.

This decision highlights the fact that employers who were previously confronted only by one main union when negotiating collective agreements at company level, may now have to deal with the demands of several small unions, and also that unions which represent an occupational group that is important for the operation of the company, even if small, have the bargaining power to negotiate agreements in their favour. If GDL succeeds in its demands, it will be the green light for other small unions and employers will have to deal with the threat of small trade unions leapfrogging each other with their demands and strikes called at various times of the year in different operational sectors of the company. Any attempt by the Government to restrict strikes seems to be unconstitutional as the legislator cannot deny or restrict the small unions' right to strike.

European Union to introduce EU Blue Card

The European Commission is proposing to adopt a Directive that will introduce a residence and work permit, the "EU Blue Card", in an attempt to attract non-EU highly skilled workers and address the issues of its ageing population and skills shortage. Only highly skilled workers with an employment contract, professional qualifications and a salary at least three times the level of the national minimum wage could apply for the permit. After two years of residence in a Member State, the non-EU worker would be allowed to provide his services in another EU State. If the proposal is transposed into a Directive, the EU will be in a better position to compete against the USA, Canada, Australia and New Zealand in attracting overseas talent.

ECJ case watch

It looks as though the UK's mandatory retirement age of 65 and the duty-to-consider procedure under the Age Regulations are set to stay (at least for now) following the European Court of Justice's judgment in the Spanish age discrimination case of *Palacios v Cortefiel Servicios SA*.

The ECJ held that, whilst the European Equal Treatment Directive does apply to legislation on mandatory retirement, the compulsory retirement age contained in the collective agreement in question was a proportionate means of achieving the legitimate aim of increasing job opportunities and reducing unemployment. It could therefore be objectively justified and was not precluded by the Directive.

The ECJ's decision will come as a blow to Heyday (a membership organisation backed by the charity Age Concern) which is arguing that the Age Regulations contravene the Directive by allowing employers to retire employees at or above the age of 65. Even if Heyday continues with its challenge, the case is unlikely to be heard by the ECJ before 2009.

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