ASSOCIATION OF CORPORATE COUNSEL

TITLE: **Management of Workforce Reductions in Europe**

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PRESENTED BY: **ACC's International Legal Affairs Committee**

SPONSORED BY: **Eversheds LLP**

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MODERATOR: **Kathryn Chapman,** International Legal Director, Comdisco Holding Company Inc.

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Operator: Just a reminder, today's conference is being recorded. Welcome to this ACC Webcast. Kathryn, please go ahead.

Kathryn Chapman: Welcome everyone. Good afternoon or good morning or good evening, whatever the case may be depending on where you are today. My name is Kathryn Chapman and I'm a member of ACC's International Legal Affairs committee. I'm currently serving as the co-chair of Program Planning for the upcoming annual meeting in October. My most recent in-house position was as International Legal Director of – for Comdisco, Inc., a technology services company which is currently phasing out. I'm in transition, which means I'm looking for the perfect in-house position and I'm having plenty of time to participate in webcasts.

I'm pleased to be the moderator for today's webcast. There are a couple of housekeeping items related to logistics of this webcast that I'd like to cover and then I'll have the pleasure of introducing today's speakers. The title for today's webcast is "Management of Workforce Reductions in Europe." This is a topic which should concern anyone with employees in Europe.

I've been through both the closing of operations and the sell of operations in Europe and this topic is of extreme importance and it's definitely different than what we find in the U.S. You are able to ask your questions online. If you have your screen open, you should have at the bottom left-hand corner, a box that says "Questions." Please type in your questions there and then click. You can enlarge that box in the upper right-hand corner if you need to. I'll see your questions as they are submitted and I'll try to get them to the speakers through the presentation today, however, there might be quite a bit to cover and if we can't get to your questions, we will – the presenters have agreed to provide answers to your questions to be posted on the committee's Web site.

There's another matter which is of importance to the speakers, to the ACC and The International Legal Affairs Committee and that's the evaluation form, which you are asked to complete after the webcast. In the middle of the left-hand side of your screen, you should see a link to "Webcast Evaluation." We would very much appreciate your taking a few moments to complete that evaluation form at the end of today's presentation. These forms are reviewed and used to continually improve the webcasts so they can remain a superior resource available to members of ACC.

As was said earlier, please note that this webcast is being recorded and will be made available on the ACC Web site. If you should have any technical difficulties during the session, please e-mail ACC Webcasts at commpartners.com and please note that there are two "M's" in commpartners. Having said that, I am pleased to introduce our presenters today, I'm looking forward to hearing what they have to say on the topic.

Our speakers today are both partners in Eversheds, LLP, which happens to be the sponsor of the IALC. It is one of the largest full-service law firms in the world, headquartered in London with 29 offices in major cities across the U.K., Europe at least and Asia. They cover six main practice areas, which are commercial, corporate, human resources, legal systems, litigation and dispute management. And the industry sectors that they tend to cover are government, education, energy, financial institutions, crude healthcare, local government, retail and public communications.

Our first speaker today is Martin Hopkins, and his practice areas are employment and labor law. He qualified with Eversheds in 1982 and made partner in 1989. He has led their commercial litigation team in Birmingham, I have to say that correctly, between 1991 and 1994 before he went on to establish the HR group where he remains today. In 2002 he was appointed Evershed's Head of Operations for North America coordinating all of their business development activities in this market. He advises mainly international businesses including Cisco Systems, Gap, Affiliated Computer Services, and he speaks regularly to groups of HR practitioners and strategists in North America on a wide range of issues impacting the workplace.

Our second speaker today is Stefan Corbaine, who is the senior office partner of Eversheds in Brussels. He is also responsible for the employment practice in Belgium. He has been tapped to coordinate and streamline the international HR offering for Eversheds. His expertise covers all aspects of individual and collective employment law as well as change management issues. He has considerable experience working with foreign companies at both Belgian and pan-European levels involving cross border operations with a focus on information and consultation of the employees' representatives and collective bargaining during company restructuring. He was admitted as a lawyer at the Brussels bar in 1996. In 1998, he was appointed as an Academic Assistant at the Vrije Universiteit Brussels. In October 2003, he was appointed Deputy Judge at the Brussels Labor Tribunal.

We're delighted to have both of our speakers with us today. Welcome to you both and now I will turn it over to Martin. Martin, please remember to unmute.

Martin Hopkins: Thank you very much indeed, Katherine, and good afternoon, good morning or good evening to everybody wherever you may be. Thanks for that very kind introduction. Stefan and I are very much looking forward to transferring some hopefully useful information to you during the course of the next 50 to 55 minutes.

I want to get straight in really, if I possibly can. We've got a relatively short period of time to cover quite a good deal of material. By definition, this can be no more than a fairly brief skim across the surface of what is, in reality, quite a complex and involve subject. And Stefan and I have made sure to leave some time at the end of the presentation for questions and if we aren't able to get to all those questions today, or if indeed if any or all of you have questions that occur after the webcast is closed, we'll be absolutely delighted to try and pick those questions up for you offline.

So what we're going to try and look at today is some of the common legal obligation as the currently sits across the continent of Europe. We'll also offer some headlines on a country-to-country basis, and in doing so, we've picked some jurisdictions that we hope will demonstrate some of the diversity of detail from the variation in detail that can often cause international businesses discomfort. And we'll also try, as very best we can as we go along, to offer you some experience-based observations based upon our practice and that of our colleagues.

By way of definition to start off with, what we're trying to talk about here really are pan-European, so multi-jurisdictional restructurings. Sadly, single country reductions in force, certainly not a rarity in the current economic climate, but they're not really our focus today, they're not without themselves. But I think most people who've been involved in this type of activity before will recognize the reality of that there are more and more complex issues to be addressed when you're trying to manage a reduction in force across a number of jurisdictions. And as I say, that's what we're going to try and talk about today. Pretty much all of the challenges that you will encounter in this environment that they nearly all derive from the variety of details and obligations as currently exist across each individual European jurisdiction.

So, you'll see on the slide that I've just thrown up on the screen there some indicators as to the generic areas in which you'll find a variety of practice and legal obligation. So country-to-country, there will be variations in your timing constraints and your timing boundaries. There may be differences in the topics that you are required to consult with. There may indeed be variations country-to-country as to who you should consult with. You'll find in some countries, as well, that state authorities are more actively involved than in others. There are obviously variations in the type of – so in the amount of severance payments that are due, too.

You'll find different risk tolerances and different risk levels in different countries, as well, which often make it somewhat more complicated to be addressing a multi-jurisdictional program. You'll also find cultural variations as well. Some jurisdictions tend to take a more emotive position in relation to risks than others do. And then, of course, from a – on a country-to-country and a company-to-company basis, you'll often find variations in the amount of experience that managers will have in attitude, that they may display toward the reduction in force program.

Just read by way of introduction as well, this next slide contains a list of the challenges that we most see international businesses try to deal with. And I think in generic terms, the better you can do with these issues, the better you will be able to navigate through your multi-jurisdictional program. And conversely, of course, the less well you do with each and every one of these topics, the more challenges and the more problems you're going to have to deal with on a day-to-day basis.

The first, and in many ways, self evident observation, but nonetheless vital, is that the people that you are working with and the people whose expectations you're trying to manage in an outputs direction within the organization, the more they understand the complexity of the environment in which you're trying to operate, the easier you're life will be and almost inevitably, the more modest will be your company's risk and financial exposure. Simply having an appreciation of the way in which the rules work in Europe, it's vitally important if you're to navigate the safe path through.

The second, and again, I make no apology for this being self evident observation, but time and risk in European HR law are so closely linked. We understand that this is in reality, it's not about getting the law right, it's about managing the risk profile of a business and making sure that you set her back on a strategy, which fits your level of tolerance to risk. And in very general terms, the quicker you try to do things in Europe, the higher your risk profile is consequently. Correspondingly, the slower you're prepared to take things, the easier it is to manage the company's overall risk burden.

We also see increasingly nowadays that there are delicate issues to be managed across international businesses around the suspicion that some might have that certain jurisdictions are being favored. That's a very emotive issue in the U.K., where in general terms, it's still easier and cheaper to cut heads than it might be in certain other European jurisdictions, and as a consequence, a lot of European businesses feel a lot of European emp – sorry, U.K. employees feel that they're being unfairly disadvantaged in multi-jurisdiction redundancy programs.

The next two points are in many ways a mirror of each other, but they're absolutely fundamental in this overall environment. As I say, time and risk are inextricably linked in European HR law. These are two of the purely European concepts that are generally seen as being alien to U.S. multi-nationals. Persuading top management that they have to make announcements or they have to share information with employee representatives before they might other wise want to, that is something that takes, often takes a good deal of persuasion, but it's very, very important. And also, this is not essentially a U.S. issue, this is often a U.S. and U.K. issue. There's often a real struggle to be had in persuading senior management to announce what are truly proposals at the start of a consultation process around a possible reduction in force program rather than decisions.

And again, if you find yourself having to push against that, if you're – if you – if you're – if your colleagues have already announced a decision to make a reduction in force in Europe, then you are inevitably and from very much day one, you're pushing water uphill and your risk profile will be higher and your tasks will be harder as a consequence.

So just by way of a very brief background before we dive into the proper substance of this, just to remind you, the continent of Europe is actually 47 sovereign countries at the current time. The European Union is therefore no more than a part of the continent. It's just over half in terms of countrydom. But, in fact, today the European Union is made up of 27 independent member states and it is, in general terms, it's a federal system. It's not quite as refined a federal system as the one you're familiar with in the U.S., for example, or as you might find in Switzerland, but we are moving inextricably in that direction where a large and increasing proportion of our law emanates from Brussels rather than from our own independent domestic legislature.

If you go all the way back to 1954, the Treaty of Rome established the European Union with basic (case) to ensure economic and social progress and to create a sing market. And I've made that observation simply because the harmonization of employment rights duties and obligations was and remains a key part of that drive to create the single market. If you have unbalanced rights, duties and obligations, they will inevitably impact on labor costs and for that reason, you continue to see a very high proportion of all European law impacting the workplace. And beyond that, if you've got individual jurisdictions, you'll find that a very high proportion of (all right HR) impacting or emanating now from Brussels.

The way in which Europe goes about its basic tasks is by use of the simple tool, which is the directive. The directive is a simple, very simple concept and it involves the European Union out of Brussels. So I thought directing all member states to introduce legislation within their legislative environments to mirror the core elements of the directive, so it requires everybody to establish the same framework, a very simple concept and if it were operated perfectly, then we all find that we had identical sets of rights, duties, and obligations across Europe. But because implementation of these directives is not always perfect, you do sometimes find that there is inaccurate transposition and that is one of the things that sometimes constitutes or causes the difficulties that we struggle with on a country-by-country basis.

What I'm going to do now is I'm going to introduce my good friend and partner, Stefan Corbaine. Stefan is going to look at a couple of the most important directives that impact upon this particular space and then what we'll do when we've done that is we'll have a look at terms and country portraits one by one to see if that helps to show up the various differences. Stefan, you should be showing on your screen as leader and you should be able to advance the slides.

Stefan Corbaine: Thank you, Martin. Indeed, looking at the legal framework, we have four directives here that are relevant in this situation, this framework. We have the Information Consultation Directive of 2002. We have the older European Works Counsel Directive of '94, and we can already say that this directive is going to be under revision. We have the Collective Dismissals Directive of '98. And we do have the transover of a vendor taking directives of '98 and 2001, which we are not going to deal with in this case, but who are definitely irrelevant to this situation.

Looking at the legal framework and the first directive, the general information consultation acted, we can say that this directive is applicable to companies with at 10 employees and establishments with at least 20 employees. I'm not going to dive into the detail, but it is about the interpretation of the company entity as a legal entity as opposed an establishment. It has created the minimum legal framework when an employer needs to inform and about what consultation is required. We see that this general framework, as such, had the aim to create uniformity, but in the reality we that country-to country difference prevail.

Important as a general element is the fact that there is – there are two concepts that are introduced by the directive, which ((inaudible)) the information that is giving the employees or their representatives sufficient information to examine the measures that your are considering. On the other hand, you have consultation and a consultation is a dialogue between the employer and the employee slash employee representative. But this is an exchange of views. Country-to-country difference will give you on this consultation aspect, the range between just talking between – to parties, and the other hand, coming to an agreement.

The general rule for Europe is that most European countries do not force you as an employer to reach an agreement. Everything needs to be done in the end to reach an agreement. That I think is a basic element for Information Consultation Directive.

Moving swiftly on, we have the European Works Counsel Directive. It's an older directive. The context is that you need to be in a transnational restructuring involving at least two European countries. The information consultation requirement needs to be done at the European level first. If you do have such as a European Works Counsel, please know that this European Works Counsel is only to be established when there is a request form by the employee. So if an employer has a company, you do not have the obligation to start this process of setting up a European Works Counsel unless there is an employee or representative asking for it. And obviously you need to meet a couple of thresholds, 1,000 employees and in each country, you need to have a – you need to employ at least one of the 50 employees.

Important is that the European procedure prevails on the local procedure, and this is real law. It stink about the decision of renew the car manufacturer and Vivo the '98 – '97 deciding to close its facilities in Filldortha, Belgium. That had – that caused decisions at various local levels for not respecting the European Works Counsel Directive.

Another important directive is The Collective Dismissals Directive. Collective dismissals, the scenario there is that you are talking about a larger scale reduction in force. Thresholds could be 10 percent of your workforce, and in general, you need at least a couple of employees to employ there. So generally, you could say 20 employees need to – need to be employed by this employer. Collective Dismissal Directives, again, tried to harmonize, but did not in reality. Again, huge differences country-by-country, albeit on the level of the – this Collective Dismissal definition. The thresholds are different; the reasons for dismissal are different for each country. Some countries say a collective dismissal needs an economic reason, others do not, just the number of employees play. Sometimes you need 20 employees in Italy, five will suffice and you can continue.

Information consultation procedure is different in each country. In general, you could say all procedures are similar to the extent that there is a phase where you inform and consult on your intention to take any measure of restructuring, and then you confirm this intention, and then you have a social plan negotiation. That could be a general framework. Who do you talk to? It's different in each country. Some countries have works counsels, others do not, some countries have union delegations, sometimes you need to talk to employee representations or the employee directly. The involvement of the authorities is different in each country and the way they intervene will also be different depending on much – local legislation. The package that you

need to pay as an employer in a – in the case of a restructuring will differ and the concept of social plan will not be in every country the same.

Then finally, you will find that dissensions for not complying with the Collective Dismissal Directive are definitely different in each country. Sometimes you have criminal sanctions, sometimes you need to pay damages as an employer, some courts impose injunctions to respect the procedure. When you do not respect the procedure, some courts, they see that as an unfair dismissal or the dismissals can be considered null and void and even worse of the worse employees that are dismissed against the procedure, could be asked reinstate it in their rules.

Other elements that might impact on the – on the restructuring in Europe are the fact that you have to live with protected employees. You will find that, if you are restructuring, it happens more than often that. Also the people who are representing the employees are a victim of your measures, and, therefore, you need to be careful that certain of these employees do have a certain protection and that protection will need to be envisioned before you do that because it could cause you additional damages and then it could it bring the price for ((inaudible)).

Each country will have it's way of dealing with confidential information and employers will be worried about disclosing this confidential information on projects or measures they are intending to take. Again, be careful and inform yourself beforehand. The company's group of – or financial performance group, it will be irrelevant. You will find that if you are doing well as a company, this might have a serious impact on both of the procedures – on the procedure and the consequences from the social plan. I think this is self-evident.

And then finally, selection criteria; who is going to have to leave the company, again, their laws can impact because they can oblige you to respect certain termination rotas. Holland has a LIFO principal, last in, first out. Then you have to be careful that you meet the European and local discrimination rules. Now I think we are having over again to the country specifics and Martin, you are back on track.

Martin Hopkins: Thank you, Stefan. So what we are going to try and do now, it will be a mastery achievement if we can – if we can manage it just to cover downsizing law in four European countries in essentially 10 minutes in total. So we'll do this, as I say, very much as a headline that will – and simply so as to demonstrate some of the – some of the material and significant differences of detail that you'll encounter country-by-country.

Look very briefly to start off with then, Germany. Interestingly, Germany doesn't actually have a legislative concept of redundancy. Redundancy dismissals in Germany fall within the generic category of dismissals, which flow from a change in establishment. If you're in that situation in Germany, then certain works counsel rights are triggered. It's the first important point to make in relation to Germany, but the management of your reduction in force program isn't that you manage with the works counsel rather than with the trades union, even if you have both of those two organizations active in the workforce.

If you are in such a situation in Germany, you have an obligation where you have a workplace with more than 20 employees and a proposal to make redundancies, you have to commence a consultation process in what the legislation describes as a timely way, and you must do so with two objectives at the front of your mind. There are two things you have to achieve in Germany, you have to negotiate what's called an Equalization of Interests Agreement or sometimes you see it referred to as a Balancing of Interests Agreement, and then you have to agree to terms of The Social Plan. Equalization of Interests Agreement is something that is almost unique to Germany and it is in simple terms, it's the agreement between the works counsel and the company as represented by its management to the proposal that the management will make that the redundancy dismissals should take place at all.

So the simple question is, can you achieve an agreement just to whether the change will take place? And if you can, then can you agree on when and how that will take place? So that was the most fundamental feature of all with Germany that you have to secure agreement from the works counsel to the proposal that you make. You'll find that's not the case elsewhere in Europe. In Germany, if you don't have that fundamental agreement to the proposals you want to make, and you necessarily force the issue and you continue without that agreement, the statement I previewed a few minutes ago, it's one of the jurisdictions where there is injunctive relief to present you from doing that.

Now, of course, it's – it would be quite wrong to think an employer is unable to secure the agreement of a works counsel to a proposed reduction in force. And that would be quite wrong. It's the thing that happens on an almost inevitable basis. It sometimes takes longer than others and it is sometimes more expensive to achieve than in others cause the rule of thumb it's the kind of thing that will typically take between three to four months to complete. I have, however, been involved in negotiations that have taken over a year. That might sound a long time because it is, but at the end of that period we have actually secured the agreement, so in 99.9 percent of cases, it is achievable, it sometimes takes longer than others. There is also a process available that you can use if you are concerned that you're simply not going to achieve the agreement, there is a forced mediation process that you can require the works counsel to submit to.

The second element, and vital element in Germany, as you'll find elsewhere in Europe, is, of course, the social plan. And the social plan is the thing that's aimed at mitigating the economic consequences suffered by the employees, who are essentially going to be made redundant. So it is the package of financial measures, be they redundancy pay, be they in harms notice pay, be they outplacement consultancy services, it's all of the things that go together and that vary from case to case, which are, as I say, designed to moderate the impact of the redundancy on the individuals in question. Germany's provide no rigid time frames in contrast to certain other jurisdictions, so it doesn't take a minimum time frame for the consultation process to proceed against, but what it does say quite clearly is that that consultation must be completed before the restructuring is implemented and if you as an employer don't do that, if you plow on regardless, then there are material, financial and injunction penalties that are available to force you to come to heel.

It is said that consultation in Germany is with all its counsel rather than the trades union. You'll have an extensive range of detailed obligations as to what information you are required to provide them with. And you won't find that essentially very different when you were off in Europe. But, of course, the thing that is different is that you're providing that information with the intention of dissuading the works counsel that what you propose is necessary and, indeed inevitable.

Germany also operates very strict control on the question of selection. Selection is a concept that you'll find is common across all of Europe. Relatively and usually for your ((inaudible)), Germany will actually specify what selection criteria are available. And they are pretty simply, length of service, age, social and maintenance obligations and disability. So if you are using the selection criteria, which sit outside those core definitions, you are at serious risk of having your process unpicked, not by the court. You are at liberty to weight those criteria as long as you apply those criteria in a consistent way across the pool of people who are being car matted into what you would fit. Traditionally find in Germany is that the employer will be advised to operate a point system through which he will evaluate each individual within the pool against a common list of criteria.

As you will see in the slide, one of those countries where dismissal in breach of the social selection rules, it is actually void. So void means you have to go back and start all over again. In most other parts of Europe, you'll find a breach of obligation being remedied by cash damages, but in Germany you have to start again and keep trying until you get it right. There are legal minimum notice periods, but it's very common to find that the social plan and what we call The

Reconciliation Aid of Interests Plan provides for enhanced notice provision and compensation and to say that will vary – that will vary from company to company and workplace to workplace.

If you look at the cost that you will experience in Germany, obviously you've go your notice pay obligations, you've got whatever social planned severance obligations you've voluntarily accepted as part of the notice, so it's part of the social plan, you'll obviously have to pay the salaries on the continuing basis whilst the consultation program continues. Interestingly enough, this all often stops people in their tracks. The works counsel will be entitled to legal representation to present their interests as against the employer, when the employer has the obligation to pay those legal costs, as well. Still we will be asked how long and how much is this going to cost? The cost is impossible to predict with legal certainty, but the general rule of thumb, if you do better than pay half a month salary for each individual's year of seniority, you're generally doing well. Next you're forced to pay more than a half a month's salary for each year of seniority. Then the employee represents this can pat themselves on the back as happens on a good deal.

If you look to the U.K., I'll just say you'll find a really quite different environment. I think most people in Europe would accept that if you were to string all of the European districts out on a piece of string from left to right, making no judgments about whether being on the left or the right is a good thing, you would find the U.K. at end and Germany pretty much at the other. The U.K. is probably the most liberal environment in which to manage reductions. And I would say that Germany is probably the most restrictive. So the contrast here should be well defined as it will be anywhere else.

Your Collective Contemplation Obligations in the U.K. are triggered when you're proposing to lay off more than 20 individuals in one place within 90 days. Here in the U.K., your principal obligation is to talk about the proposed redundancies with the trades union, as opposed to the works counsel, as would be the case in Germany. If you don't have a recognized trades union in the U.K., you'll have to talk to an organized body of employee representatives. And if you don't have one when you embark upon the process, you'll have to ensure that one gets selected to do that. There's standard obligations as to what information you are required to provide the consorted – the consultative body with when you weren't finding the immaterial differences there between the U.K. and the rest of Europe.

Timing in the U.K. tends to depend on the number of people you're looking to make redundant. If you're looking to make less than a 100 people redundant, then you could in most cases get that done within one to two months. If you're looking to make more than a 100 people redundant, then you're probably looking at a – an overall time commitment of at least three months, 90 days.

Fundamental points of difference between Germany and the U.K., in the U.K., you do not have to agree with the works counsel or the trades union what you propose to do. You have an obligation to set out with the intention of getting an agreement and with an open mind and a solid disposition, but you have no obligation to agree. So as long as you've done everything you'd be expected to do, consider that for representation made to you that you are entitled to move on in a relatively risk-free way if you don't have that agreement.

Scary case last year, I don't tend to include case references in my presentation, this is very much the exception to prove the rule. It's scary because it reminded U.K. employers that you must consult, if you're to remain risk-free, you must consult before you've made your mind up. And in practice, of course, very, very few employers actually do that. They consult after they've made a decision. Whether or not they're prepared to advertise that practice is another matter, but they do it the other way around. If you do that, then you're risk profile, as I previewed earlier, your risk profile goes up. You also I see do in Germany and elsewhere, you have state verification obligations, you have to notify the – essentially the labor authorities and the time scale within which you have to do that depends on how many people it is that you're proposing to lose.

In the U.K. it's a – it's a – it's a – it's a less expensive and less risky environment. You'll have a statutory redundancy pay obligation, which will vary depending upon an individual's age and length of service, but which he's capped basically at around $20 thousand. You'll often see employers enhance those payments followed either by custom practice or by specific agreement. And you may also see employers agree to pay more by way of notice and to extend the notice period voluntarily.

Then in terms of potential cost issue, get your consultation obligations wrong, there are penalties, but they are financial penalties rather than stop and start again, as would be the case in Germany. Penalties in the U.K., you run the risk of being ordered to pay up to 90 days salary for each employee affected by your consultation failure. Obviously, in the U.K. everybody has unfair dismissal protection, and therefore, if you get your consultation right, but you get your selection wrong, for example, you can still be liable to all employees whose employment is terminated. I mean those circumstances, your exposure is up to about £63,000 per employee in the absence of any discriminatory motives. That's the picture in the U.K., I'd have to say, on a whistlestop-basis.

I'm just passing over now to Stefan, who's going to talk to you about France and then Belgium.

Stefan Corbaine: OK, thank you, Martin. Again, moving on to Le Duce France, I think we can, in general, summarize the position – information and consultation will be required to enter in the project affecting your organization and management, the operation of the business and where jobs are going to be involved. Jobs loss and the working conditions is – are going to be affected. The economic or legal organization of the corporate entity is going to be affected or in the effect in the event of a collective redundancy depending on the thresholds. So basically we're talking about the events such as, mergers, acquisitions, transfers of our business outsourcing, the famous Transform undertaking, and the major redundancy operations.

And who do you talk to? You talk to The Works Counsel and that is obligatory in France as from 50 employees. You do not talk to the trade union. And I saw one of the questions coming in, "What are the differences between the works counsel and the unions, the trade unions?" Works counsel is an organization, it's a body created at the level of the company, whilst the trade unions or the trade unions are the independent organizations outside the company where employee representatives are united and they might have certain rights to come and talk in to your company about specific issues.

Now looking at this slide, you will see that the various players in France will impact on the PSE, which is nothing more and nothing less than the ((inaudible)), which is the social plan, the ultimate result of an information and consultation. I'm not going to talk about them all, but you will see the employment authorities, the local communities, the members of parliament, the inspector, a very important person in the process, the various subcontractors and even the courts that can have an impact. You will see, on the other hand, the trade unions, the external trade unions and the local internal works counsels, you will find the prefect too, which is an organization of the government and the police when there are – when there is social turmoil. In that case, you will also find involvement.

And the time scale, basically, it must happen before you have taken your decision that is very common to what I said before. There is no legal time scale involved, but once you hit a corrective redundancy, which is at least 10 employees, in that case, you do have a specific time scale, which can in principle take 75 days, which is a legal requirement, but could bring you up to a year and more if you do not follow the procedure. Also, the 75 days, that's obviously the legal requirement. I can already tell you that in certain cases you manage to bring these time scales down, but that will have an impact on the price you're going to pay (and disappear).

The entire Works Counsel involvement has one aim. It's to obtain a vote, an opinion, and it doesn't matter if this opinion is positive or negative. As we said before, you do not need an agreement, but then you need an opinion. And this is very powerful because the unions can still

make your life miserable by dragging on the negotiations without taking a position and asking expert advice and more explications and more explanation.

Let's go to those circumstances in which you can have a social plan and information and consultation negotiation. You need to demonstrate economic difficulties, both at the company level and at group level, if necessary. You could justify this project by the need to preserve a competitive advantage and sometime technical changes might lead you to restructuring. The information and consultation happens at the level of the economic context, and the reason that the first part is, "How do you justify your decision?" On the other hand, the social end ((inaudible)), which is nothing more than a payment has been. Dos the social plan and a measure that will follow your decision.

And you will find involvement of the government, the DDTA, they will verify if you have, indeed, respected the procedure, they can intervene, they can make your life miserable, but if you did follow the proceedings, and you do have the rubber stamp from your works counsel, in general, our experience is that the government will not be a difficult – will not be difficult or (impulse). If you don't do it, if you don't do any of this operating information presentation requirements, determinations could be basically regarded as unfair and employees could be reinstated, the dismissal could be seen as null and void, and there are criminal sanctions possible.

Moving on swiftly to the other major state in Europe called Belgium, basically, the information and consultation process is similar as in France. You have a formal proceeding where you have to need to inform and consult on your project of restructuring. You have a period during which you negotiate your social panel, but albeit not required by the law. You have a period during which you can not terminate the employment contact as from you announced your intention to restructure. Your extension, such as ((inaudible)) of the dismissal and reinstatement possibility have not followed the proceedings. There is a difficult period of 90 days to conclude between your communication of intention and the finalization determinations. You talk to the works counsel, if you don not have a works counsel, you talk to a delegation of the unions or to the employees. The government is involved and new legislation will involve you to create reemployment cells for 45 plus to find another job.

The social plan in Belgium, in the event of a termination, you will have to pay the normal price as it would say, which goes to notice periods for blue collars from 35 days till two – 112 white course. At least leave a minimum notice of three months per the starter period of five years. But in reality, case law formulas are asked at the very start of negotiations. There are additional indemnities. I'm not going to go in detail, but you can find them in the slides. And you have to be careful about earlier retirement where people can not talk of the unemployment benefit for a period and until the age of pension, receive an addition to their unemployment allowances.

I think this is it for Belgium. I think we can conclude with a number of key message to take away. One would be that if you are intending contemplating a restructure in Europe, you need to respect the cultural differences and the diversity of the various countries, as we said, the directives only try to harmonize, but you still would have to go and look at each single country to see how they have implemented it, the directives, and how the cultural differences will impact. Acclimatize yourself if local lore is actually a consequence. Avoid dangerous assumptions, such as, Europe is one place, it is not. California law will apply because we have contract saying so, it is not the case. And I have a European customer, I'm tuned in. Thank you very much. That is not the reality.

A fourth thing to remember is that the fact that every employee has an employment contract. It's either written or implied. We do not have the concept of employment at will and there's no – not no single contract.

And then we are moving back to Martin.

Martin Hopkins: Thank you Stefan. Yes, in the – in the classic day, we met him in pop 10 list. So I remember five is that we don't have employments at will. Again, very fundamental difference between Europe and the USA.

Yes, number six, to chime with the theme that I introduced earlier on, pre-plan as best you can. The earlier you can get involved in this process, the easier it will be for you to manage risk, the easier it will be for you to manage timing, and the easier it will be for you to get a clear view and to advise the business accordingly as to the costs that will run the budget and all arms of the financial program.

And number seven, consultation and co-determination on the business justification and selection criteria is really, really important. Stefan has walked you through this very, very European concept of consultation. I have given you the most fleeting preview of co-determination, which these euros speak for agreement. So the German system is one that is predicated on the basis of co-determination. So, if you can't agree to the letter of reconciliation of interests, with the company's proposal, then you basically got no where to go. Whereas, in most other, apart from Europe, you're in a consultation environment, which is much narrower, so therefore, when you're looking at a multi-jurisdictional program that you understand what it is that you've got to do in each of the different jurisdictions where you're looking to do it.

Let's cancel Callisist Management. That's a very, very simple statement, but it's incredibly important. Interesting to me to see the first question that popped on our screens was around the difference between Works Counsels and Trades Unions. Stefan and I spent hour upon hour helping U.S. multi-nationals with this genetic level difference between Europe and the U.S. I – and so much of our legislative environment in Europe is keying off this pivotal role of The Works Counsel.

A number of things to say about the works counsel, first of all it is not a trades union in any way, shape or form. It has no power to bargain collectively is vitally important. It has no power to organize industrial action either. The classic mistake that Stefan and I see with U.S. multi-nationals in their dealings with works counsel is they try to treat it as if it is a Trades Union, and they therefore behave in a somewhat competent way towards it. That's simply not the right way to do it in general terms. Works counsels very often have very functional, very valuable, and very productive relationships with the organizations that they're a key part of.

And so much of European legislation is predicated on the basis that dialogue and consultation will be previewed and will be encouraged with the works counsel. And as I say, they are very often a key body in the overall process who have the power to assist you, the business, in achieving your business objectives.

Also very important to understand that your previous restructuring history, and in particular, the structure of any financial arrangements that you've – that you've incorporated as part of the previous restructions, can affect your plans this time. In simple terms, if you've paid "x" per head in the past, your chances of paying less than "x" per head in the future are pretty limited because the concept of precedent will apply.

Point number 10 is something that Stefan and I feel very, very strongly about. It's the – it's the notion that we'll often get challenged with the fact that our system, whether it's the Belgium system or the U.K. or just the European system, it's actually just worse than the system that you operate in the U.S. I always say that whether it's better or worse, is just irrelevant to the business issues that you're trying to work through. If you want to discuss whether it's better or worse, Stefan and I are always happy to buy you a beer and discuss it in that environment.

The key thing is it's different. We have a different set of rules and if you're looking to manage a program of this sort in that kind of environment, then the only safe way to do it is just to recognize it as being different and to work in that very, very different environment.

That concludes the material that Stefan and I wanted to cover. I'm just looking to see how many questions we have actually got.

"Please elaborate briefly on the difference between works counsels and trade unions. In France, how easy it is to reorganize on the basis of the need to maintain competitiveness. It seems very broad. Can the works counsel challenge this as a legitimate basis as a practical matter?"

I think, from the base of my experience, you have to go further than just saying that you're looking to maintain competitiveness and the ((inaudible)) to maintain margins. In my experience, you have to be able to further than that and you have to be able to demonstrate that the business is in some form of financial distress, which is traditionally loss making.

Stefan, would that reflect your experience as well?

Stefan Corbaine: That is true. On the other hand, if you have a solid view and we want to make more money and it's not shared by the works counsel, this will mean in reality you will pay more to in the social plan. That's the reality, I think.

Martin Hopkins: OK. I don't see any other questions. And unless anybody wants to add on in the next couple of minutes, I think that what I would therefore do is seek to wind up. To some consternation amongst your presenters, we appear to have lost our moderator, so that's why I'm…

Kathryn Chapman: Oh, I'm here.

Martin Hopkins: There you go, fantastic. We were worried that you'd gone.

Kathryn Chapman: Oh no, no. I'm here. I am here and I wanted to thank you both very much. This will conclude today's webcast. And on behalf of the International Legal Affairs Committee, I want to thank Stefan and Martin.

Again, I want to remind everyone who's attending to tape – today's, to please take few moments to complete the webcast evaluation and remember that if there are any questions we get in at the last moment here, the answers will be posted on the committee's Web page. The ILAC mission statement is on the ACC Web site. Please have a look at it and you want, we'd really welcome your joining the committee. Everyone, you may disconnect now and thank you very much.

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