FINAL TRANSCRIPT

Thomson StreetEvents℠

**ACC - `Whistleblower` Anonymous Hotlines and SOX - Dealing with the French and German Decisions

Event Date/Time: Nov. 17. 2005 / 12:00PM ET

CORPORATE PARTICIPANTS

Carol Seaman
Cook Group Incorporated - VP & Chief Compliance Officer

Paula Barrett
Eversheds, LLP - Partner

Christel Cacioppo
Eversheds, LLP - Avocat

Constanze Hewson
Eversheds, LLP - Associate & Rechtsanwaltin

PRESENTATION

Operator

Good afternoon, and welcome to this ACC Web cast of "Whistleblowers" Anonymous Hotlines in dealing with the French -- recent French and German Decisions. My name is Carol Seaman. I am Vice President and Chief Compliance Officer for Cook Group Incorporated, a privately held multinational manufacturer and distributor of medical devices based out of Bloomington, Indiana. I am also a member of ACC's International Legal Affairs Committee, known as ILA.

This Web cast is brought to us today by Eversheds LLP, the 2004-2005 sponsor of the ACC's International Legal Affairs Committee. Eversheds is one of the world's largest law firms with over 2,000 legal advisors based across the globe. From internationally renowned specialists to leading regional teams, they provide a complete legal service to many of the biggest names in business and acts for over 75 of the Fortune 500. Clients in the US include Cisco, DuPont, General Electric and IBM.

With an approach that emphasizes innovation, accountability and total client service, they are regularly recognized as one of the most forward-thinking firms in the legal industry. The Eversheds Web site can be accessed from the ILA Web page if you'd like to learn more about the firm. I want to mention that Eversheds was chosen the 2005 Outstanding Committee Sponsor of the Year at the recent ACC Annual Meeting in Washington DC. We congratulate them for their honor and thank them for their support of the ILA Committee and this Web cast.

And now to the subject at hand. In an effort to have truly effective comprehensive compliance programs that are designed to prevent and detect non-compliant or unethical behavior in their business, many corporations with international divisions or subsidiaries maintain anonymous hotlines, mailboxes or other forms of anonymous communication with their employees, and sometimes the public. Corporations may also have mandatory employee reporting requirements in their codes of conduct or employee manual. The anonymous hotlines may be publicized on Web sites or through the use of business cards.

Publicly traded corporations must have these anonymous reporting mechanisms to comply with Section 301 of Sarbanes-Oxley that went into effect in 2002, also known as S-Ox, in order to maintain a listing on US stock exchanges. Pharmaceutical and medical device companies are the subject of guidance from the Office of Inspector General of the US Department of Health and Human Services in 2003, suggesting that employees should be permitted to report matters on an anonymous basis.

Any US corporations trying to comply with the US Federal Sentencing Guidelines definition of an effective compliance program, including the new 2004 amendment, must have internal controls such as these hotlines. And finally, other countries such as UK have whistleblowing laws for corporations. Recent French and German rulings are directly in opposition to these mandates for internal controls. In this webcast we will discuss these German and French decisions on what can be done to resolve the resulting conflict these decisions pose for corporations.

Now I am pleased to introduce our speakers for today. Paula Barrett is Head of Eversheds Data Privacy Practice. Paula has specialized in technology and data privacy since qualification in 1993. She joined Eversheds as a Senior Lawyer in 1999, having

spent most of her career at Clifford Chance in London. Paula has superb experience in advising on multi-jurisdiction compliance programs, and currently projects have her engaged in advising on data privacy in 28 jurisdictions throughout Europe, Africa and Asia Pacific.

Christel Cacioppo is specialized in employment law, and joined Eversheds' team in Paris in October 2001 after having worked for a leading French firm. Fluent in English and Italian, she advises both French and international companies on employment issues, in particular, on HR related data protection questions. Christel regularly contribute to the EU and international employment laws published by Jordan, and to the introduction to French employment law for the Franco-British Chamber of Commerce & Industry, as well as writing articles through a number of law journal.

Constanze Hewson is a German and English qualified lawyer in Eversheds team and recourses practice group. Constanze regularly works in a cross-border environment, advising UK and US clients on German law and German clients on English law in all matters relating to employment, including litigation and the employment aspects of corporate transactions. The dual qualification enables her to bridge cultural and legal gap between the Anglo-American and the German approach to employment issues.

Before we get started, we need to discuss a few details. The presentation slides available to you on the Web site will not automatically advance. You will be directed by the speakers when to advance the slide. We have reserved time at the end of the presentation for questions. At any time during the conference, questions may be directed to the speakers by sending an e-mail message to the following address: "SamSpencer@eversheds.com." It's S A M S P E N C E R@eversheds.com. At this time, I will turn this Web cast over to Paula Barrett.

Paula Barrett - *Eversheds, LLP - Partner*

Thank you for that introduction, Carol. As Carol has said, the recent decisions in France and Germany, which Christel and Constanze will explore in more detail, have certainly caused quite a lot of concern. As the multinational public companies that must comply with Sarbanes-Oxley Act of 2002 but also those who are a lot more privately listed and are trying to comply with the Federal Sentencing Guidelines, which as Carol mentioned. And there are seven principal characteristics of comprehensive compliance programs to refer to anonymous reporting tools being used.

The French CNIL decision and the German labor court's decision, I think, reflect some historically in many EU countries over the concept of encouraging individuals to inform against them anonymously and who is actually immediate opportunity for the accused person to respond. However, for many US companies, and there is -- and indeed, here in the UK and elsewhere -- anonymous hotlines and other reporting mechanisms are now in place and are actually considered to be tools, which help the flow of information within a company and also be encouraged.

The US requirements -- just focusing on those more specifically -- is that essentially to maintain effective global control systems -- it's regarded as being important and to ensure the possible Code of Ethics violations and conduct and fraud, are reported promptly. S-Ox requires the companies to have control systems in place to make sure that they have timely and truthful public disclosures, as required by applicable securities law, and they issue accurate financial statements.

This, in turn, necessitates adequate reporting or in US parlance "whistleblowing procedures" in order to detect fraud, permit proper information flow, and then identify issues that could impact the veracity of the financial statements. A company's independent auditors will then audit these controls and publicly disclose the results of that audit. Accordingly, maintenance as appropriate and just turn to compliance have become the hallmark of appropriate corporate governance. And the absence of the proper controlling environment can cause the company to fail an evaluation of its control.

In addition, S-Ox and the related US Securities & Exchange Commission and stock exchange regulations require audit committees of companies listed on a stock exchange to establish procedures for the confidential and anonymous submission by employees of that company of concerns regarding questionable accounting or auditing and receipt retention and treatment of complaint

received by that company relating to accounting internal -- excuse me -- accounting, internal accounts controls or auditing methods.

Now, it is important to note that no particular complaint submission is described. Companies can, therefore, provide a variety of employing reporting methods, whether by phone, e-mail, mail, fax or even a complaint drop-box, provided that at least one confidential anonymous method is available to employees. The US Congress intended to provide an environment where fraudulent accounting improprieties would be discouraged, and whistleblower is encouraged to come forward, especially in the wake of scammers such as Enron and WorldCom.

A company subject to S-Ox that fails to meet these requirements may potentially face SEC enforcement actions, potential SEC civil penalties, and/or delisting from the stock exchange on which their securities are traded. Because of the severe consequences of S-Ox violations, US companies will likely decide to adhere to minimum S-Ox requirements. Unless the SEC somehow relieves them of that burden, even the risk of potential EU infraction it seems. So let's look at the decisions in the UK -- in Europe.

There is -- I want to highlight just very briefly the relevance of data protection and why is this important. Two elements -- two types of data are being collected, when hotlines are being operated. The first is information in relation to -- primarily in relation to the individual whose actually reporting. Now that -- if it's anonymous, then it may well but not to be personal data, which is covered by the Data Protection Legislation in Europe. However, it's quite likely that in the reporting process, there will be details reported of an individual. And it's that individual who is being reported about, which has caused the concern, particularly in France.

On that, I'm now going to turn to my colleague, Constanze, and get here to explain it in a little more detail the recent decisions made in the German court.

Constanze Hewson - *Eversheds, LLP - Associate & Rechtsanwaltin*

Thank you very much, Paula. If you could move to your slide "Setting the scene in Germany," because that is what I would like to do at first, to say, what happened in Germany that caused the concern? In June of this year, there was a German labor court decision and that coincided with some French cases in the French Data Protection Authority.

And press reports covering both decisions, and particularly in the US but also here in Europe, basically summarized the effect of the French and German decisions as making whistleblowing hotlines, anonymous whistleblowing hotlines illegal, which, of course, did raise a lot of concern, because as Paula just explained, that is a very common tool to ensure compliance with Sarbanes-Oxley and various other US legislation and guidance.

But I want to look, in some more detail, at what the German case was actually about, because there was, I think, some confusion caused by the fact of the German case being around the same time as the French cases.

If you move to your next slide, "Who Was Involved," the German employment court or labor court that decided here was the first instance employment court. It's quite unusual to put forth -- decisions of those courts to be reported, because they have a very large workload, and most of their cases are very much run of the mill, not very exciting. The fact that this case got reported shows that it hits a nerve and deals with an important issue.

The defendant in the case was, in the first instance, just referred to as "X Stores," but I think somehow it did get out that it was Wal-Mart. And actually we've had an appeal decision, just now, and to that it was quite openly referred to as Wal-Mart Germany. And the claimant in the court was the Wal-Mart Germany Works Council.

Now, I'm not sure how familiar you are with the concept of works councils. I know that in the US they are some times referred to as "in-house unions," and that is not what they are. They are separate and distinct from trade unions. They have a very long

history in Germany and are part of the industrial and state internal employee representatives. They're literally employees of the company that get elected by their colleagues to represent their interests. And they've been around for decades in Germany.

The employment courts or labor courts do adjudicate about disputes between works councils and companies when there is an argument as to what rights a works council has. And there is legislation, "Works Constitutional Act," which gives very specific right to works councils, and I'll mention a bit more about that in a minute.

So what was the dispute here between Wal-Mart and its works council? Wal-Mart had, on a worldwide basis, introduced a Code of Business Conduct & Ethics, which is obviously very common these days. It was part of their S-Ox compliance program. And the way they introduced this in Germany was by sending a very short summary of the key points of the Code of Ethics to all employees together with the salary(ph) pay slips. And then they also put it on the Company's intranet.

And they indicated, very clearly, in this communication that went with the pay slip that everyone should look at the intranet, read the code and was obliged to adhere to it. And this code did not only deal with anonymous whistleblowing hotlines, of course. That was just a reporting tool. It dealt with lots of other conduct issues, like office romances, accepting gifts and bribes in the worst case harassment, insider trading, appropriate behavior in the workplace -- all the sort of things that we are familiar with from a Code of Ethics.

So it all sounds, I would think, from a US perspective, very normal. How did this end up in court? If you could move to the next slide, "What Were the Issues," the issue here was that the works council or the German works council claimed that when introducing this Code of Ethics in Germany, Wal-Mart should have involved it. They hadn't. They'd just done it unilaterally, by sending it to the employees and putting it on the Intranet and the works council had never been involved.

And so the works council said, "No, we have a right to actually not only be informed of this and not only to be consulted of this -- on this, but we need to agree to this being introduced." And that was really what they were arguing about. They were not arguing about whether the existence of an anonymous whistleblower hotline had any data protection or privacy issues. There might be, but they didn't argue this point. They simply said, "We didn't agree. So you haven't validly implemented it. It has no effect in Germany."

And that is because German works council law does list a number of areas, where if there is a works council, it actually has to agree to the employer doing certain things. And if it doesn't, then those actions the employer takes are not effective. There is a specific list in the relevant statute, and one of the areas -- and that was one of the main once discussed here was that whenever rules of conduct of employees in the establishment or in the company are set out, the works council has to agree. And that was the key arguing ground in this particular decision.

Now, what did the works -- the employment court decides on this question. If you move to your next slide, "What Was the Outcome," I will limit myself to the issue of whistleblowing hotlines, because this is the topic today so I won't talk about all the areas that were that were dealt within the Code of Ethics and were point-by-point explored by the court as to the requirement of works council consent.

Regarding whistleblowing hotlines, the court did agree with Wal-Mart's works council and said, "Yes, it should have been involved, and it would have had to give consent to the introduction of such a hotline. And because it hadn't been involved, the hotline couldn't be operated." Now, why was that?

I mentioned just now that one of the areas where works council consent is required is rules regarding employee conduct in the establishment. In this case, the court said, "It is a conduct rule because employees are basically told, if you notice anything untoward, then you have to and you are under an obligation to ring this hotline and report it. And if we find out that you knew of something and didn't report it, then we could discipline you for failing to report it."

So they said it was a mandatory conduct rule. It wasn't just an option; it was more than that. But, there was a second point as well. One other area where the German legislation says a works council has to give consent, is in relation to technical equipment which is designed to monitor employee conduct or performance.

And the court said, "In this case, the whistleblowing hotline, because it's via telephone, is technical equipment, and it clearly is aimed at monitoring employee conduct because it's aimed at establishing whether people are doing something that is in breach of the law or a regulations.

So again they said, under the separate heading, "It would have required works council consent." So based on this, Wal-Mart were told they couldn't operate their whistleblowing hotline. Of course, that could be remedied if the works council did consent, but that hadn't happened.

I mentioned a few minutes ago that there was actually an appeal in this decision by Wal-Mart. On your slide, there is unfortunately a wrong date. It wasn't the 15th -- the 156th of November, it was the 14th of November, this Monday, three days ago. And we had a colleague, who was actually in court and listening to the proceedings and gave us a very prompt and very interesting feedback.

The decision was reported as well in the press and there will be a public decision. And the appeal court upheld the first instance decision. And we understand that the court acknowledged that companies do have difficulties because they have these requirements under US law and obviously they need to comply with them. So it's not that the German court ignores the difficulty companies like yours are finding themselves in, but it did insist that local national laws will have to be complied with. So in the case of Germany, if there is a works council, it will have to be involved. They didn't, again, go in any detail into other issues like data protection or privacy except for in the instance of office romances which isn't our topic.

So what's the deal now? If you move to your next slide, the direct consequence of the German decision is actually quite straightforward and less worrying than the press might suggest. If you do have a works council in Germany, then basically you should get its consent. And hopefully, most works councils will be sensible and not refuse it. If you don't have a works council, you don't have a problem arising from this particular decision.

I did say that the court did not deal with data protection and privacy issues. And basically, those have not really been dealt with yet in Germany. So I cannot guarantee that somebody might not, at some stage, look at the French situation, which my colleague will describe in a minute, and say actually, German Data Protection Law isn't that different from Data Protection Law in France and there are issues. But those haven't yet been raised. So at this stage, certainly, I would say that there isn't an obvious problem, although everything would have to be looked at on a case-by-case basis. So that's the position in Germany, which I hope you'll find is actually not as dreadful as it might have sounded from the press reports.

I would like to pass you on to my press colleague, Christel Cacioppo in Paris, who will tell you about the French situation, which I understand is somewhat different. Christel?

Christel Cacioppo - *Eversheds, LLP - Avocat*

Thank you very much, Constanze. We will now move to the slide -- to the next slide, "Setting the Scene in France." The French issue on whistleblowing is quite different from the German one as whistleblowing raises issues on cultural differences. Indeed, the whistleblowing tool infers the idea of denouncing colleagues which is directly is hermeneutic(ph) due to unhappy memories of the Second World War.

In France, asking people to denounce a colleague or neighbor is not socially acceptable. For this reason, the first reaction of the French authorities was to reject the whistleblowing tool. The main French authority involved in this is CNIL -- C N I L -- which is the French Data Protection Authority. Why this authority? Because the implementation of hotlines, free-phone lines et cetera

as whistleblowing tools entail the collection and processing of personal data and therefore, the application of the Data Protection Act of 1978 as modified in 2004. We are, therefore, face with the data protection issue as the CNIL considers the risk of stigmatization. Obviously, the press almost intensely reported that whistleblowing hotlines are illegal in France.

We will now move to the next slide. Why did the issue arise? During its session of May 26, 2005, the French Data Protection Authority refused to authorize the use of anonymous employee whistleblower hotlines operated by telephone, fax, mail or e-mail as implemented by an affiliate of Exide Technologies and McDonald's France. The whistleblowing tools were designed to enable employees to "blow the whistle" on their work colleagues' wrongdoings. These hotlines were set up by the companies in order to comply with the US Sarbanes-Oxley requirements under which anonymous complaints mechanisms such as this are necessary. The main reasoning was to ensure compliance with the Sarbanes-Oxley law. This system would permit all or part of the group to communicate with accounting surveillance committee of the Exide board on subjects such as accounting irregularities or inaccuracies which could be committed.

At the same time, the hotline was to permit the work force to alert the group management on violations on laws of company ethical or commercial behavior principles. As regards McDonald's, the implementation was to underline any breach of corporate ethics. In the two separate decisions involved, the CNIL expressed particular concern over the risk of directing the companies to dismiss employees is considered to be at fault following the disclosure made by one of its employees under the whistleblowing system in the absence of any legislative or regulatory provision providing for this type of treatment.

There was a further risk of organized defamatory denunciation by non-concerned(ph) means. Also reproached was the disproportionality between the whistleblowing tools objective compared to the risk of defamatory denunciation and the stigmatization of employees subject to an ethical alert condemned the disloyalty of the tool. It was considered that the means are used to collect and treat personal information were unfair, due to employees who are the subject of a tip-off not getting immediately informed of the registration of information concerning them. Further, to the decisions it was suggested to stop the use of this tools in France, but what is the real impact of these decisions?

We will now move to the next slide. What's the impact of the CNIL decision? Further to the decision of May 2005, most of the French subsidiaries of US listed companies had to face the real issue. There was clear conflict between French Data Protection Law and S-Ox requirements. This was even more problematic that companies had until July to implement whistleblowing tool. Another issue was the place of these companies in the market as our competition(ph). Indeed, not complying with S-Ox does not look good for customers and clients and is not the guaranty of SEC corporate practice.

In addition to this decision, the case was brought before the French civil court by a trade union against the French subsidiary of a US-listed company, which implemented a whistleblowing tool. In this case, the trade union and workers' comp sales aim was to remove a whistleblowing tool implemented by way of notes from the management. The management had posted two memoranda in the factory, one entitled "Ethics Hotline" and the other entitled "Factory Management Ethics-Free Phone Number."

The court decision was issued on the 15th September 2005. Judges declared them self-competent due to the quick and short impending damages for the employees, due to the breach of their right to defend themselves. As a protective measure, the judges ordered to the company that they remove these controversial notices from the notice board until a full ruling is issued. However judges did not order a daily fine up until the removal of the notices, as requested by the claimant.

Judges also ordered the company to pay each of the claimants compensation of legal expenses. Based on the limited wording of the decision, it cannot be said that judges definitely condemned whistleblowing tools, but indicated that the procedure followed did not sufficiently protect employees' rights. This case is interesting, as the court suggested a solution, indicated -- indicating that an agreement with the employee representative in relation to the matters of enforcement of the US legal requirements in conformity with French legislation would be acceptable. A large petroleum group acted along this lines and to our knowledge, no legal action has been taken by the trade unions. So there might be some solution.

We will now move to the next slide. How to resolve this conflict? The question is, therefore, what alternatives can be considered due to the French decision? Due to the press report of the decisions of May 2005 from the CNIL that directly challenged the obligations of French subsidiaries of American Group under Sarbanes-Oxley law and the whole issue that they raised, the CNIL decided to refer the whistleblowing cases to the French minister for employment as well as the relevant American authorities in order to find a solution in line with French Data Protection Act and the principles of the Sarbanes-Oxley law.

Discussion started between the CNIL, the SEC and NASDAQ in order to find solutions on how to conciliate French and US requirements. The CNIL measurably asked for additional time for companies to implement S-Ox in France and obtained three-months until end of November. In this context, the CNIL issued some draft guidelines to explain how to implement S-Ox and comply with French law.

If we now move to the next slide, what is the next step? The CNIL's guidelines. What do these guidelines say? First of all, it has to be noted that these are drafts and that official recommendations from the CNIL should be issued quite rapidly, as it was announced for the end of October. The discussions ended on the 10th of November. We're still waiting for the official guidelines but the main points are as follows.

The aim was to ensure that individual specific rights under the Data Protection Act or under European directive of October 2005 are respected when data relating to them are processed. This individual rights are following, the right to ensure that this data is collected fairly, the right to be informed that such data is being processed, the right to object to such processing for legitimate reasons, the right to have any inaccurate, incomplete, ambiguous or outdated information rectified or removed.

In each draft guidelines, the CNIL pointed out that the decisions concerning the two whistleblowing hotlines have been often misunderstood. This was a good opportunity for the CNIL to explain their position. The guidelines contain 11 points, which I'll list and explain rapidly. The first guideline is the impact of whistleblowing schemes. The CNIL pointed out that the whistleblowing tool must have a subsidiary nature. This means that in France there are other means which are available and the whistleblowing tool should be only a subsidiary tool. Then, the whistleblowing should have limited scope. This means that this should only concern facts relating to internal auditing of credit institutions and all financial and accounting matters. And then this should not be for a mandatory use.

The second guidelines is the limited categories of individuals to be involved in whistleblowing scheme. For instance, workers who do not have access to accounting information should not be concerned.

Third guideline, the restrictive processing of anonymous reports. The idea behind that is that the right to file anonymous reports can only increase the risk of slanderous reports. Therefore, anonymous report should be avoided.

The next guideline -- communication of clear and extensive information on the whistleblowing scheme. This should include the identification of the entity in charge of the scheme, the proposes and the scope of the scheme, its optional nature, the fact that employees will not be sanctioned for not using it, the recipients of the reports, as well as the right of incriminated individuals to access and rectify their data. This is, therefore, a transparency requirement.

The fifth guideline -- collecting reports through dedicated means. This means that the reports should be exclusively for their initial purpose, sorry.

The sixth guideline -- relevant, adequate and non-excessive data in reports. This means that the report should only mention objective data that are directly related to the scope of the scheme and is strictly required for verifying the alleged facts.

The seventh guideline -- processing of internal reports must be reserved for specialists in a confidential framework. There should be a limited number of individuals in charge of taking action in the report management process. These individuals should be specifically trained and subjected to special contractually-defined, confidentiality duties. Data should not be disclosed to other legal entities unless such disclosure is required for processing the report.

The next guideline relates to the circulating anonymous business reports. The company may provide entities in charge of processing such reports within the group with any statistical information useful for the performance of their duties. This means that the identity of the person should not appear in the report.

The next guideline -- limited data retention periods. This means that the data should not be kept more than two months after the investigation work is closed, unless disciplinary action is taken or court proceedings are filed against the individual incriminated or the author of an abusive report.

The 10th guideline is the accurate information provided to incriminated person. This means that an identified individual that was incriminated by a report should not be notified by the person in charge of the process as soon as data concerning him or her is recorded, whether electronically or not, so as to enable him or her to object promptly to his or her data being processed.

And finally, the last guideline is complying with rights of access and rectification, which is a high and most important right according to the Data Protection Act. Any person identified in the professional whistleblowing process may access his or her data and request the rectification or deletion thereof, if applicable. His or her right of access does not entitle him or her to request the disclosure of information about third parties, such as the whistleblower's identity.

This is the guidelines we had from the CNIL. Obviously, this is only trust and we are still waiting for the official recommendation. The main idea behind that is that the CNIL seems to change its mind and finally accept the whistleblowing tool in France, provided this in compliance with the Data Protection law. So we will now wait for the official guidelines.

Constanze Hewson - *Eversheds, LLP - Associate & Rechtsanwaltin*

Thank you, Christel. So where does that leave those who have to now implement decisions? We are expecting the CNIL decision to be finalized very soon -- indeed, I expect it to be issued this week. We understand there has been a lot of interest and they have received a lot of comments on the draft guidelines, mostly requiring them to be clarified in relation to the use of the hotlines. And our intention is that once this is issued, we will issue a briefing note. So those of you who are interested in receiving an update, if you send your email to Sam Spencer as Carol mentioned at the top of the program, we would be happy to send to you the briefing that we produce. But on the point of where the others will follow --

---

Carol Seaman - *Cook Group Incorporated - VP & Chief Compliance Officer*

Sorry, Paula, could you speak up a little bit?

Paula Barrett - *Eversheds, LLP - Partner*

Yes. I will do.

Carol Seaman - *Cook Group Incorporated - VP & Chief Compliance Officer*

Thank you.

Paula Barrett - *Eversheds, LLP - Partner*

The -- I will repeat that for those who haven't heard me initially, we will be issuing a briefing note when the CNIL decision is issued. We expect that to be issued, in fact, this week and you'll -- depending briefing moves out, if you wish to receive that briefing note then please send an email to Sam Spencer, and we'll happily pass that on to you. As to who else will be interested

in the CNIL decision, certainly other regulators are looking at this quite closely, as to whether -- I have received a question from - prior to the program -- one of the question asked was will other jurisdictions be following suit?

The view from the UK regulator was quite clear from the outset that they thought that the hotlines could still be operated. They've recognized that personal data was being processed, but provided that the data protection principles were being adhered to -- i.e., only appropriate amounts of data were being collected primarily, and that notice was available that these hotlines were operating, data wasn't being kept any longer than was actually necessary. Then they felt reasonably comfortable about the continued operation of those hotlines balancing that against the goodsthey did in terms of corporate structures and corporate governance.

I have heard that Italy are looking very closely at the CNIL decision and may look to issue some directives themselves on the use of hotlines. So certainly, my Italian colleagues are keeping a keen eye on reports coming from the Italian Data Protection Authority in that regard. Similarly I've heard them saying that otherwise most of the -- rest of the data protection authorities are taking the, I believe the same periods in UK.

On that point, I'd like to just now read some of the questions which we have received during the course of the Web cast.

QUESTIONS AND ANSWERS

Paula Barrett - *Eversheds, LLP - Partner*

Question here is, is there is a further level to which Wal-Mart will take its case? And do Eversheds have a sense of the likelihood of data protection being used as a grounds for objecting to the use of whistleblowing hotlines?

Constanze Hewson - *Eversheds, LLP - Associate & Rechtsanwaltin*

On the first point, the further level of appeal, yes. There is one more level of appeal to the Federal Employment Court. And the Appeal Court who decided on Monday have, in fact, permitted an appeal to that highest level. So I don't know if Wal-Mart will take it further. But they certainly have the options to do so. And the second question -- sorry, that was the likelihood of data protection being?

Paula Barrett - *Eversheds, LLP - Partner*

Data -- yes, the likelihood of data protection being used as a grounds for objecting to the use of whistleblowing hotline. I suspect that have answered that to some degree in the statement I just about the case being taken elsewhere. We have yet to see it really being used outside of Germany and France. There are being objections arising in relation to this as most of regulators seem to believe that it is appropriate to use the hotlines.

Constanze Hewson - *Eversheds, LLP - Associate & Rechtsanwaltin*

And from what our colleague reported from the appeal hearing on Monday, obviously that is not a binding decision because it was an arbitor(ph) by the judge in that case. But I do think that there is a recognition that there are important reasons for having hotline whistleblowing tools. And although, yes, there may be data protection issue, but as long as guidance like, for example, the UK Information Commissioner issued, which Paula referred to, and as long as if there's a works council, it has agreed, I think, there might well be an inclination of German court to say, "Well, you know, employee representative have agreed to this. We think overall it's probably reasonable." But obviously, no guarantees, but my feeling is its probably not going to be as big an issue at it was at the moment in France.

Paula Barrett - *Eversheds, LLP - Partner*

Another question I have is how do you go about impacting the Works Council?

Constanze Hewson - *Eversheds, LLP - Associate & Rechtsanwaltin*

It would be probably the matter for a US parent company to do that, because the Works Council's counterpart is the German employer. So it should really be German management who deal with the Works Council. Very -- usually if there's an HR function, it would be the HR function, and there is basically an ongoing relationship between the German employer and the Works Council.

They normally have regular meetings, at least, between the Chairman of the Works Council and one employer representative, usually the HR Director or some other senior manager. So there is, generally speaking, a regular flow of information. But it doesn't mean that the US parent, who is normally the instigator of hotlines, isn't really the appropriate initiator of that contact. So local management should be involved and should be given the task to involve the Works Council.

Paula Barrett - *Eversheds, LLP - Partner*

Thank you, Constanze. Another question I have, probably one for Christel, is -- so what do we do in France now? We are a US-listed company with a subsidiary in France. We have a whistleblower hotline. Do we not use the hotline in France until further clarification from the CNIL?

Christel Cacioppo - *Eversheds, LLP - Avocat*

Well, the first advice would be, yes, to wait. But I'm quite sure that in the next few days we will have this guideline that -- I think that if this is in a huge company with at least employee representatives, then it would be good to discuss with them and to bring a way to implement it that would, I would say, mitigate the risk with an illegal hotline, because this was one of the alternatives that was proposed by the judge.

Paula Barrett - *Eversheds, LLP - Partner*

Okay. So talking with your works council in France would be a good idea as to -- how to implement this hotline.

Christel Cacioppo - *Eversheds, LLP - Avocat*

Yes. I think it would be a good idea to discuss it with them or if this is a smaller company with (inaudible - accent) that the citizens, employees you should have that really gets them. You should discuss it with them, inform and consult them, and see how they would agree to implement this and be as transparent as possible.

Paula Barrett - *Eversheds, LLP - Partner*

Yes. I think it's fair to say, and correct me if I'm wrong here Christel, but the -- looking through the guidelines, which we suspect will not be heavily amended, that the information provided on the draft guidelines is something you should be taking onboard and perhaps reviewing how your hotline currently operates, what information are you collecting, do your employees know about how it operates?

Christel Cacioppo - *Eversheds, LLP - Avocat*

Yes. I think that's been explained. I think that there must be a transparent way to avoid two anonymous -- and eliminate the scope of the whistleblowing tool to a deepened financial fact and avoid any other, I would say, an inflation(ph) on all of the things they need to cover -- things that could have been fixed. As we have other means in France such as on arrestments and/or disciplinary, we have internal regulations that have to be implemented and which are legally regulated.

Paula Barrett - *Eversheds, LLP - Partner*

So there are other options The key point for me here is recognizing that the hotlines have been increasing because that's been such a good idea. And generally from a corporate compliance perspective, they've been useful to cover -- avoid such a very wide range of ills. And therefore, for example, concerns that we're talking about in the context of the Wal-Mart hotline, it covers a large array of different topics. Here the CNIL's saying very strongly to keep it to financial information, which is the source of information that you'd need reporting on the S-Ox compliance really. So they are trying to give you a way forward of being compliant with data protection law in France and also in Eastern Europe parts.

Yes. I'm just looking through if there are other questions coming through. What you have - see as the likelihood of the European Commission issuing a directive or other legal guidance on whistleblowing? And it sounds that the CNIL are taking the lead on this on behalf of the EC, in which case a narrower approach might be that is your applied outcome. I think - shall I speak on that? I think the -- France is sort of one voice within the European Commission.

And I think if you look at the way that regulation comes out -- in relation to data protection, there are other quite strong voices. For example, I always think of Europe in context of data protection. If you look on the left-hand side, you've got Europe which has -- sorry, the UK, which has, I believe, probably the more liberal interpretation of the legislation. And sort of the further south you go, the more strict the interpretation becomes. And so, for example, they have very tight controls on data protection and construethe directive very narrowly, adds on service and controls on top of that.

There is a mix between those, and what you tend to find is the countries in the north have a more liberal view -- the countries in the south, the narrower view. There is a middle ground reach. I wouldn't necessarily say that the CNIL side will necessarily and -- the results in there are very narrow construction from a European perspective, because here the voices from the more liberal, countries will be heard in that mix as well. And move onto another question --

---

Carol Seaman - *Cook Group Incorporated - VP & Chief Compliance Officer*

Well, Paula, while you get that question, I just want to remind all the speakers to speak up. It's easy to drift off as you go through a question.

Paula Barrett - *Eversheds, LLP - Partner*

Okay.

Carol Seaman - *Cook Group Incorporated - VP & Chief Compliance Officer*

Thanks.

Paula Barrett - *Eversheds, LLP - Partner*

So we think - reading through the questions. Okay. I have quite a specific question here which I think given time constraints I don't necessarily need to go through all of it and will contact the person concerned, that if I read it out, it gives some interesting contacts. What practical effect results from these French and German decisions for example, a US holding company with an operating first case subsidiary in Belgium and second, a operating subsidiary in France and Germany establishes a -- an employee hotline with a company in Oregon, USA.

An employee of the French company, reports a matter involving a supervisor in compliance with French law via the hotline. If such evidence excluded, should action be taken against the supervisor in France. If the supervisor is terminated as a result, does the supervisor have a claim? And if so, against whom? Suppose the report concerns a muster involving compliance with the US company's ethical or accounting practices, what are the results?

Christel Cacioppo - *Eversheds, LLP - Avocat*

Well, I will start with the answer for France. As for the first question, each such evidence excluded should action be taken against the supervisor in France. And does the supervisor have a claim. Basically, it will depend on the evidence -- if there are real and serious grounds behind the investigation, he would have a claim on unfair dismissal if there is no real and serious grounds. This means that if there is only identification without proof behind that, there is no real and serious grounds to dismiss or to well to dismiss the supervisor. So yes, he would have a claim.

Another side of the question, would be to avoid as regards to the hotline and it's validity in France would be to avoid the application of Data Protection Act and view that no process of data is in France because the hotline and the process of data is based in the USA. So in this case, the CNIL would not be competent to say that this hotline is valid or not. If the CNIL is competent, because it is considered that the process of data is in France, then it could be argued that based on the decision of May 2005, that the hotline is illegal and then this could not be used as evidence and then could not base -- could not be a real on serious grounds to dismiss the supervisor, sorry.

Then, there might be an issue on the person that sanctioned the supervisor, against who? Because if this is the U.S. that tried to sanction the supervisor, the issue is that the U.S. is not the employer. The employer is the French -- the French representative of the French company. Finally, suppose the report concerns a matter involving compliance with the U.S. companies ethical or accounting practices, what's the rule. The issue is that, if the matter only involved compliance with the U.S. company's ethical or accounting practices, this is not finding upon French employees. So, this is the same thing. This is -- the US Company is not the employer and can't argue that U.S. ethical and accounting practices were not affected.

Paula Barrett - *Eversheds, LLP - Partner*

Thank you very much, Christel. Constanze, I've got a question for you. We have a works council in Germany that can be quite unreasonable and it most likely that we would not be able to get consent although it will take years to consider the consent. While this is being worked out, should we be disabling the hotlines?

Constanze Hewson - *Eversheds, LLP - Associate & Rechtsanwaltin*

I think the answer to that depends somewhat on whether the works council has actually brought any -- raised the issue. I presume from the question that it has. And I think, yes, it hasn't -- if the works council hasn't been at all involved, then you'd probably be better off disabling the hotline because the German Court would hold that you haven't actually properly implemented it. So any evidence you gather from that might be tainted. If it has -- if the works council has raised the issue, then I think, yes, I would disable it --

Paula Barrett - *Eversheds, LLP - Partner*

Okay.

Constanze Hewson - *Eversheds, LLP - Associate & Rechtsanwaltin*

-- and look for alternatives, means or the only other option I can see because the issue was it -- was a conduct rule is to say it is a totally voluntary hotline. So it's an option for people if they want to use it. But if somebody doesn't use it to report, then, I think arguable, it's not something regulating conduct in the sense of that people are obliged to report. You might get away with that. It hasn't been tested because the only case we know about the one that I referred to, earlier. But that is a possible argument. So if you make it clear that if people don't use the hotline, they're not going to get disciplined, that might be just about okay still.

Paula Barrett - *Eversheds, LLP - Partner*

Okay. Well, I believe that brings the Web cast to a close. Carol, would you like to --

Carol Seaman - *Cook Group Incorporated - VP & Chief Compliance Officer*

Yes, thanks Paula. I'd like to remind all listeners that a replay of this Web cast will be available. It will take about three hours. You can access it through the ACC Web site or the ILA Web site, the Web page. It will remain available for one year after this date. You'll see that there are other Web casts available there, as well, that you can listen to when you have time.

Also, please consider joining the monthly teleconference for ACC's International Legal Affairs Committee. We speak together every second Thursday of each month at 11:30 Eastern Standard Time. Those times, the agendas the teleconference dial-in information, the minutes are all posted on the ILA Web site.

At this time, I'd like to thank Eversheds again, on behalf of the ILA and the participants on this call, with special thanks to Paula, Christel and Constanze for sharing their expertise on this important subject and for all the practical advice we received today. Thank you for joining us. That will end the call.