PLANNING A SUCCESSFUL MULTIJURISDICTIONAL Reduction in Force IN EUROPE

Billie Munro Audia, "Planning a Successful Multijurisdictional Reduction in Force in Europe," *ACCA Docket* 20, no. 9 (2002): 90–109.

The following article is a primer for the U.S.-trained human resources manager tasked with handling a pan-European reduction in force ("RIF") for an American company. It sets out the key elements of a RIF plan, concisely overviews the European legal landscape, addresses seven key issues concerning collective dismissals in six European countries, and provides country-by-country guidance on those issues. If, for example, you do not want one of your company's directors to land in a French jail because you did not follow the correct procedures concerning the collective dismissal of your company's Avignon-based workers, then this article is for you. The article is certainly not a substitute for personal advice from in-house counsel geared to the particular matter at hand, but should help lay the groundwork for an effective RIF plan.

By Billie Munro Audia

As vice president of human resources ("HR") for La Scala Paper Corporation, a U.S.-based paper company that develops, manufactures, and sells paper products worldwide, you oversee an HR function that is responsible for the company's 7,500 employees in 12 different countries across the globe. La Scala's headquarters is north of Boston, and La Scala exceeded $6 billion in revenue last year. During the six years that you have been with the company, La Scala has expanded rapidly in Europe by adding several manufacturing and distribution plants in the United Kingdom, France, the Netherlands, Denmark, Spain, and Italy.

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The author wishes to thank Annemieke Mossou, Openwave human resources director (Europe), for her collegial support in effectively implementing pan-EMEA RIF plans and Ellen Temperton and Jenny Andrews of the employment law group at Baker & McKenzie (London) for their legal guidance.

This morning, during her estaff meeting, La Scala's CEO, Victoria Verdi, confirmed that La Scala will reduce its global workforce by approximately 30 percent. She said that it would be a challenge, but that it had to be done if La Scala was to survive the current economic climate and achieve its projected target of $8 billion in revenue by 2004. Hardest hit would be the European employees, because the European operations needed severe streamlining, and perhaps one or two of the manufacturing plants would have to close down. During the meeting, Victoria indicated that you would lead the company through this challenging task. She said that she wanted to announce the anticipated RIF next Tuesday during her regular web-based "state of the union" address to all employees. Specifically, now she wants HR's and legal's input on how best to handle the RIF in the six European countries where La Scala operates, because she expects the downsizing to have the most effect there. She also wants you to prepare a detailed RIF plan, including timelines, a cross-functional team, country-specific procedures and considerations, cost estimates, and so forth. What do you do? Where do you begin?

EUROPEAN LEGAL LANDSCAPE

When companies, such as La Scala, decide to implement RIFs that include economic-related terminations across the European Union ("EU"), HR and legal functions face a unique challenge to prepare for and lawfully institute such a pan-European redundancy plan. The main reason is that the European legal landscape is complicated and employment-related laws vary greatly from country to country.

Each EU member state[1] has its own employment laws, rules, and procedures, which have some common elements, such as laws mandated by EU directives,[2] and myriad varying elements. For a list of some of the employment-related EU directives, see the sidebar below.

EMPLOYMENT RELATED EU DIRECTIVES

The following EU directives, among others, govern employment matters in Europe. All EU directives are available at www.europa.eu.int.

- Collective Redundancies Directive 98/59/EC of 20 July 1998.
- Employer's Insolvency Directive 80/987/EC of 20 October 1980.
- Equal Treatment in Employment and Occupations Directive 2000/78/EC of 27 November 2000.
- European Works Council Directive 94/45/EC of 22 September 1994.
- National Work Councils Directive 2002/14/EC of 11 March 2002, at http://europa.eu.int/eurlex/pri/en/oj/dat/2002/l_080/l_08020020323en00290033.pdf.
- Parental Leave Directive 96/34/EC of 3 June 1996.
- Working Time Directive 93/104/EC of 23 November 1993.

Within the EU are both civil code and common law countries. Generally, civil codes determine continental European countries' employment laws, such as France's Code du Travail. On the other hand, common law is the basis for employment law in the United Kingdom and the Republic of Ireland, albeit coupled with a few key statutes. Uniquely, Denmark has minimal codifying legislation concerning employ-

ment, and in the absence of a lawful employment contract, the Danish courts will resolve an employment dispute in accordance with the custom and practice in that particular industry, and the court may consult with, for example, the manufacturing engineers union to discern that sector's customary practices. Hence, the Denmark redundancy plan should incorporate costs and time associated with researching the relevant industry practices, meeting union representatives, and answering in front of your company's Danish-based employees such union representatives' questions as "Will the employees have access to their cell phones during the consultation period?" and "What is your company's position vis-à-vis the recent Danish court case concerning treatment of employee stock options?" This scene could not be farther from the one that you will most likely encounter in France or the United Kingdom. Thus, it is key to understand that the procedures required to execute a collective redundancy vary greatly from country to country. Ellen Temperton, partner at Baker & McKenzie (London), advises, "To reduce legal headaches, businesses must be prepared to be flexible and accommodate regional differences—in both legal and employee relations issues. Be aware that obligations can be triggered and liabilities created in some EU member states even from the CEO's first webcast announcing the intended RIFs."

One common legislative element that EU member states' employment laws do share is the Collective Redundancies Directive.[3] The Collective Redundancies Directive has been implemented in all EU countries, albeit differently in each, with most member states adopting legislation that exceeds the directive's baseline requirements. In addition, the varying manner in which each country's own employment laws, industrial practices, and rules interplay with its directive-based redundancy laws adds to the differences among the EU member states' redundancy laws. Thus, a critical consideration when devising your RIF plan is to fully appreciate that there can be no single European strategy.

DEVELOPING YOUR RIF PLAN

Although each RIF plan will likely be unique, you can use the following steps for every RIF plan that you need to develop.

Plan Ahead and Start Early

As a result of this diverse legal landscape, you must preassess the anticipated RIF against each relevant country's laws and regulations, with enough lead time to ensure compliance with statutory timeline requirements, especially in the case of a possible collective redundancy that may require the company to obtain permission from the local labor authorities before initiating the dismissal process. For example, in France, the Code du Travail mandates timelines and procedures for notifying employees of the anticipated RIF, holding individual consultations, and responding to employee-elected representatives, which if not followed likely would result in the employee bringing an unfair dismissal claim against the company or possibly criminal sanctions against a company director.

Although U.S.-based company executives may want to announce the anticipated RIF as early as possible to alert employees and shareholders, such an announcement must be done with consideration for the dismissal-related legal requirements of countries in which the company operates outside of the United States. Annemieke Mossou, European HR director for Openwave Systems, observes, "How and when the company communicates messages concerning the anticipated RIF to employees is one main difference in dismissal practices between the United States and Europe. For example, in the United States, the usual practice seems to be to preannounce a date on which the affected employees will be notified. In some European countries, however, the dismissal process includes specific timeline and notification requirements that prohibit the company from notifying employees of an anticipated RIF until the company has properly notified local labor authorities or received preapproval from certain trade unions."

Collect Employee-specific Data and Determine Total Number for RIF

One key element in the preassessment stage will be the collection well in advance of the anticipated RIF date of all necessary information concerning the employees that the RIF will affect, such as age, seniority, marital status, and so forth.[4] In certain countries, the individual employee's age and length of service, as well as the total number of employees to become redundant, will determine how the company

must handle the situation. For example, in Italy, collective consultation obligations begin with a proposal to dismiss five or more employees over a 120-day period,[5] and generally, an employee's years of service will guide the determination of respective severance pay, which in some cases could be up to 12 months' pay. Once this data is collected, it is a good idea to elect one member of the RIF team to act as a "librarian" for the RIF-critical information.

Determine Who Should Be on the Cross-functional RIF Team

Although in most companies HR and legal likely will take a leadership role as concerns preparing for and implementing a RIF, a successful RIF generally will be handled by a cross-functional team. Ideally, a cross-functional RIF team should include people from HR, legal, finance, stock administration, operations, investor relations, corporate communications, and facilities. Trade union representatives or the like should not be included on the company's internal RIF team. In addition, if one or two specific functions may loose a large number of employees, you will need to assess whether to include the heads of those functions in the cross-functional RIF team. In some cases, it makes sense to include the head of a function that the company plans to dissolve. For example, if an engineering team is going to become redundant, the company should consider whether having a respected engineering leader on the RIF team could help smooth the process and, for example, ensure that the affected engineers comply with the company's requests to document their know-how.

Assemble the RIF Team

Given the sensitivity of an anticipated RIF, call (do not email) the people selected to join the RIF team, allow them time to digest the news, and ask them to maintain the confidentiality of the anticipated RIF. Once you have assembled the team, the team should assign a code name to the RIF, which the team should use in all slides, emails, memos, and the like when referring to the RIF. You may need additional code names for specific functional or location RIFs. For example, closing down the distribution plant in Greece might have its own code name, such as "Project Callas." The legal team member should assess which, if any, documents, including emails, concerning the RIF qualify for attorney-client privilege, and that lawyer should instruct the RIF team accordingly. The RIF team should adhere to a regularly scheduled meeting or conference call, such as every Tuesday and Friday at 7:30 A.M. PST, which would allow team members in San Francisco to be "live" with those in Boston and London. The team should designate one person to summarize each meeting or call and disseminate a list of the assigned action items with names and due dates next to each item. Basically, the company should treat the RIF the same way that it would treat any other high-priority company project, and the RIF team should manage it accordingly with regular war room meetings, status update charts, budgets, and conference calls.

Consider Country-specific Issues and Get Advice from Local Experts

First, determine which countries are on the list, and include the possible number of affected employees in each country. Include countries on your list even if the company is considering dismissing only one employee for economic-related redundancy there.

Second, use your legal department to (1) find local experts[6] in those countries, such as, for example, Italian labor law counsel, (2) confirm their availability to advise your company on this matter and make sure that they have no conflict of interest, and (3) negotiate a volume discount on total fees or the like, because costs will add up quickly. Multijurisdictional law firms may provide consistency with regard to approach, advice, and execution in a pan-European RIF, so your legal department may want to instruct such a law firm. Alternatively, small local law firms may know intimately the local labor tribunal procedures, which could be a helpful asset. The company's finance team should advise the RIF team as to which internal cost code will be charged the costs associated with outside legal advice, because these costs add up quickly and the company should budget for them accordingly.

Third, together with others on the RIF team, devise a list of questions to present to each of the local experts. Below are sample questions to assist you in developing or honing your own set of questions.

Last, ask the local experts to submit their responses by a set date and in an electronic written memo format so that you will have a collection of similar responses for each affected country, which you may assemble into a RIF notebook and/or dis-

tribute to RIF team members electronically with password protection. You likely will refer to these reference materials often throughout the RIF, so file and update them regularly.

Because the RIF may seem like an overwhelming project, break it down into individual tasks with specific due dates and designated action-item owners to make it more manageable. See the sample RIF timetable starting in the sidebar below.

RIF PLAN CONSIDERATIONS: TOP SEVEN ISSUES FOR EACH COUNTRY

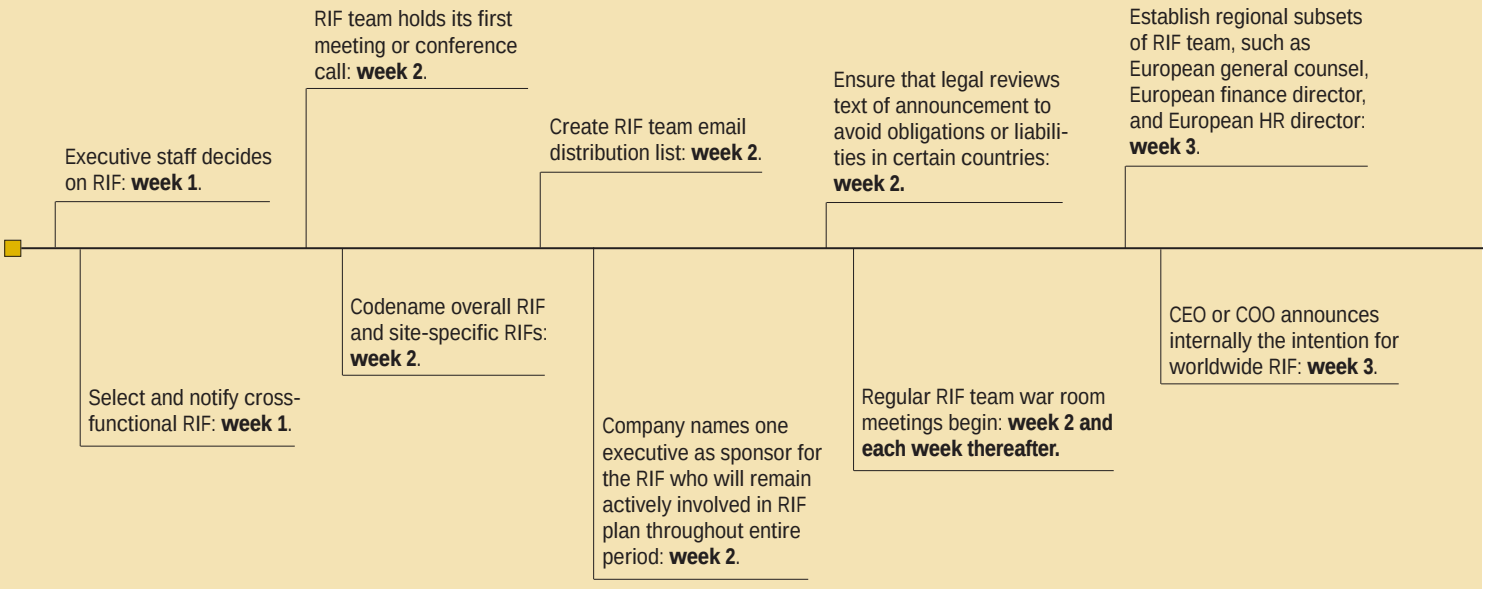
This section discusses the top seven issues that HR managers should address when devising the RIF plan and provides country-by-country guidelines for each concerning the six EU countries covered in this article: France, United Kingdom, the Netherlands, Italy, Spain, and Denmark.

As described below, in some countries, the company must adhere to precise notification timescales and procedures, depending, in large part, on the number of employees in that country and the number of anticipated dismissals. Thus, it is important for you to become familiar with those requirements for each affected country and appropriately build necessary timeframes into the RIF plan. For example, French law requires adherence to set timescales and processes. For example, the employer must provide written notice to an employee concerning the employee's predismissal meeting, and that notice must be either a hand-delivery against a signed discharge or a registered letter with return receipt requested. If you consider these issues early and incorporate related timescales into the RIF plan, you can gain some flexibility and increase the likelihood of the company successfully implementing the RIF by the target dates.

Because European labor laws frequently change, HR managers and the in-house regional lawyers should engage local labor counsel on country-specific elements to ensure that the threshold numbers, notification timescales, procedural requirements, and the like reflect the then-current regulations before finalizing a specific regional RIF plan.

Consider the following questions and answers as you devise your plan. Answering these questions for all 15 EU member states is beyond the scope of this article. The wide range of answers among the six countries listed under each question should give you a good idea of the importance of considering these questions early on and the various tasks that may face you as your company downsizes in Europe.

RIF PLAN: SAMPLE TIMETABLE



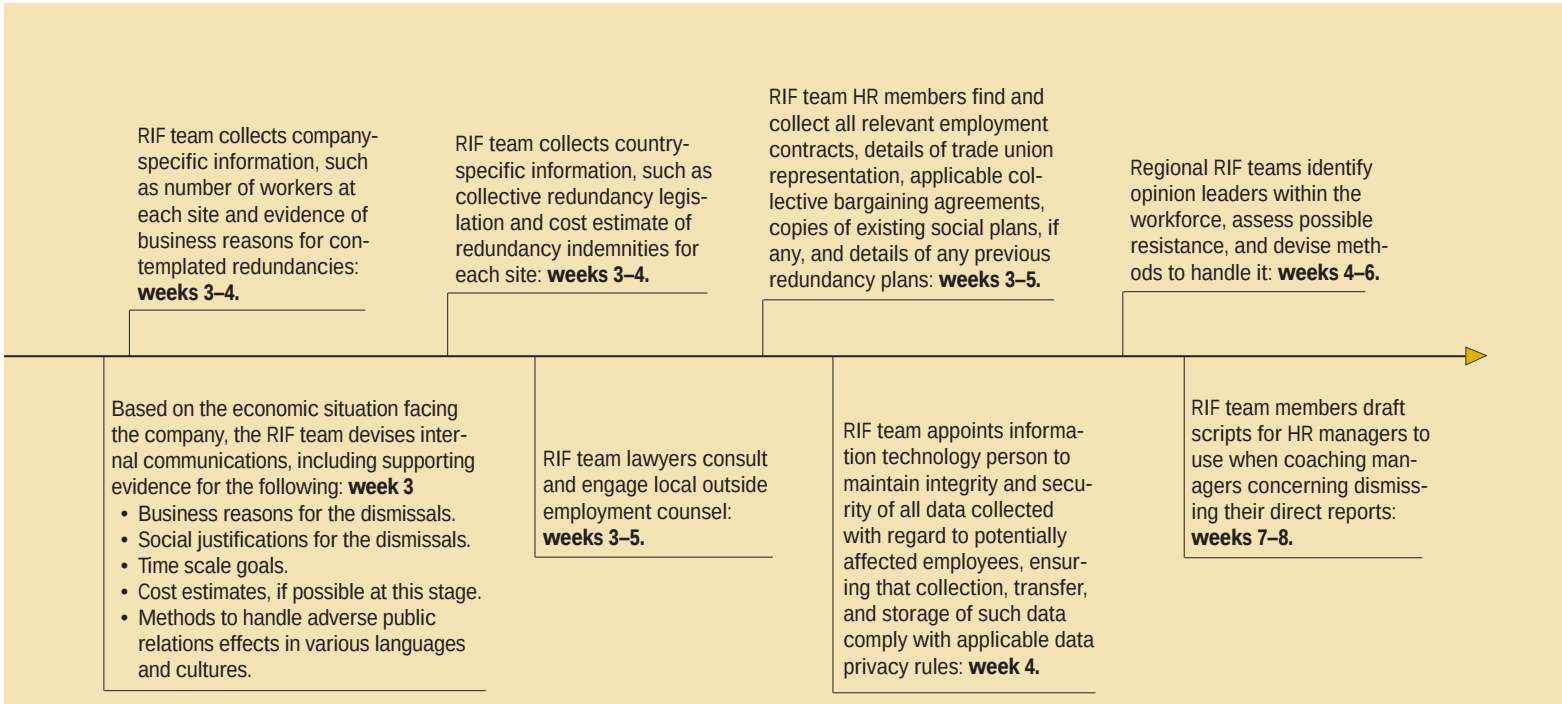
1. What are the primary sources of law that govern employment relationships and collective redundancies in each country?

France: French labor law applies to all employment relationships if the employment is performed in France, regardless of the nationality of the employer or the employee. The French Labor Code ("Code du Travail"), collective bargaining agreements (if applicable), and the terms of the individual employment contract will govern the employment relationship. Specifically, Article L.321-1 of the French Labor Code, which is the applicable statute for collective redundancies, allows companies to dismiss employees for, "among other things, serious economic difficulties, technological changes or a necessary reorganization of the company." Recently, the French courts have adopted an increasingly narrow definition of acceptable economic reasons, and a new draft bill[7] is presently in the French legislature to remove from the statute the words "among other things," which may further restrict the definition of viable economic reasons.

United Kingdom: UK labor law includes both common law and statutory law. There is no civil law code in the UK. All UK employees work under the terms of their oral or written employment contract, the terms of which may be incorporated from the relevant company employee handbook, for example. The series of statutes and regulations that determine the rights of UK employees include the Employment Relations Act 1999, the Trade Union and Labour Relations (Consolidation) Act 1992, and the Employment Acts 1988 and 1989. In some cases, the courts and employment tribunals rely on the Codes of Practice drafted by the Advisory Conciliation and Arbitration Service ("ACAS"), which sets guidelines for determining whether an employer has breached the applicable statutory protection obligations.[8]

Italy: Italian employment law applies to all employment relationships formed in Italy, regardless of the nationality of the employer or the employee. The main sources of law that govern Italian employment relationships include the Constitution, the Civil Code and labor specific statutes, such as Law 300/1970, known as the "Worker's Charter," which established, among other things, workers' basic privacy and unionization rights, Law 297/1982 (severance compensation), Law 604/1966 and Law 108/1990 concerning individual dismissals, and Law 223/91, which governs collective redundancies and implements the EU Collective Redundancies Directive 98/59/EC.

The Netherlands: Dutch employment law applies to all employment relationships formed in the Netherlands, regardless of the nationality of the employer or the employee. The main sources of law



that govern Dutch employment matters are relevant sections of the Dutch Civil Code, Works Council Act (Wet op de Ondernemiggsraden ("WOR")), and Collective Redundancy Notification Act (Wet Medling Collectief Ontslag ("WMCO")). The WMCO, which governs collective redundancies, requires companies to notify relevant trade unions and the director of the district employment office (Regionaal Directeur Arbeidsvoorziening ("RDA")) as concerns the company's anticipated collective dismissals. The WMCO sets out the procedures and timelines and requires that the employer first file an application and obtain the RDA's permission before dismissing employees, except when terminating executives in certain circumstances. Note that the RDA observes a one-month waiting period between the date on which the company notifies it and the date when it first reviews the notification. Generally, the RDA will handle the notifications more quickly if it is supported by a statement from the relevant trade union confirming that the company has consulted it.

Spain: The main sources of Spanish labor law are the Constitution of 1978, the 1995 Workers' Statute, which is the main labor legislation for Spanish workers' rights, individual oral or written employment agreements, and applicable collective labor agreements. The Worker's Statute Law Royal Decree 43/1996 gives employers the right to terminate employment contracts in accordance with its requirements if the company is encountering "serious financial difficulties that necessitate the company's reorganization."

Denmark: Danish labor law sources include Danish Salaried Employees Act, applicable collective agreements, and case law.

2. Collective Redundancy[9]: What are the thresholds and timeframes for a collective redundancy in each country?

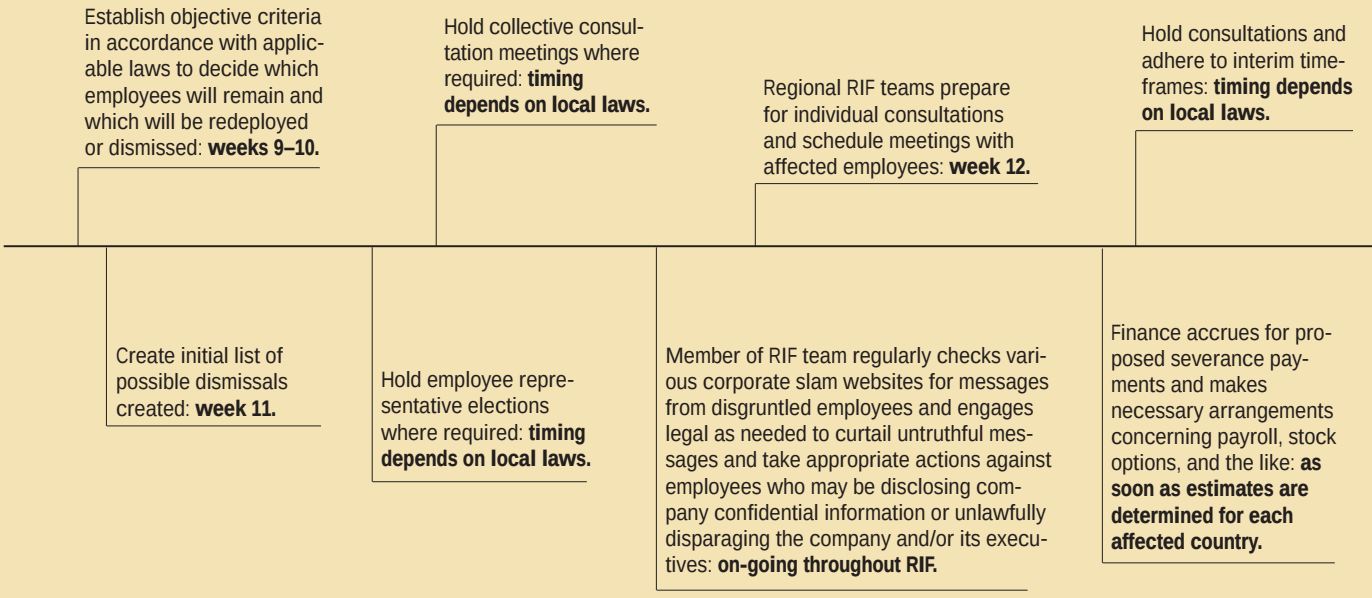
France: Proposal to dismiss 2 or more employees over a 30-day period.

United Kingdom: Proposal to dismiss 20 or more employees from one site over a 90-day period.

Italy: Proposal to dismiss 5 or more employees over a 120-day period.

The Netherlands: Proposal to dismiss 20 or more employees over a 90-day period. If fewer than 20 employees will be dismissed, then the applicable Cantonal Court should terminate the employment agreements, which is an action that the employer initiates.

Spain: Proposal to dismiss 10 employees in companies with fewer than 100 employees, 10 percent of employees in companies with 100–300 employees, or



30 employees in companies with more than 300 employees—all over a 90-day period.

Denmark: proposal to dismiss 5 percent of employees in companies having 20–100 employees or 10 percent of employees in companies having 100+ employees.

3. Is a social plan required?

The labor laws of several European countries require the companies that are considering a collective dismissal to draft and present to the appropriate local labor authorities a social plan. Generally, the social plan must include steps taken by the employer to avoid the layoffs and to redeploy the dismissed employees into other positions in the company, details of the compensation offered to the affected employees, and programs that the company will provide to the dismissed employees, such as assistance with outplacement and/or vocational training.

France: A social plan must be implemented if the company has more than 50 employees, 10 of which are to be dismissed over a 30-day period. The company submits the plan to the local labor authority, which has eight days to review and determine whether the plan meets redeployment requirements and provides sufficient measures in favor of the affected employees. A copy of the social plan must be provided to the employee representative, as well.

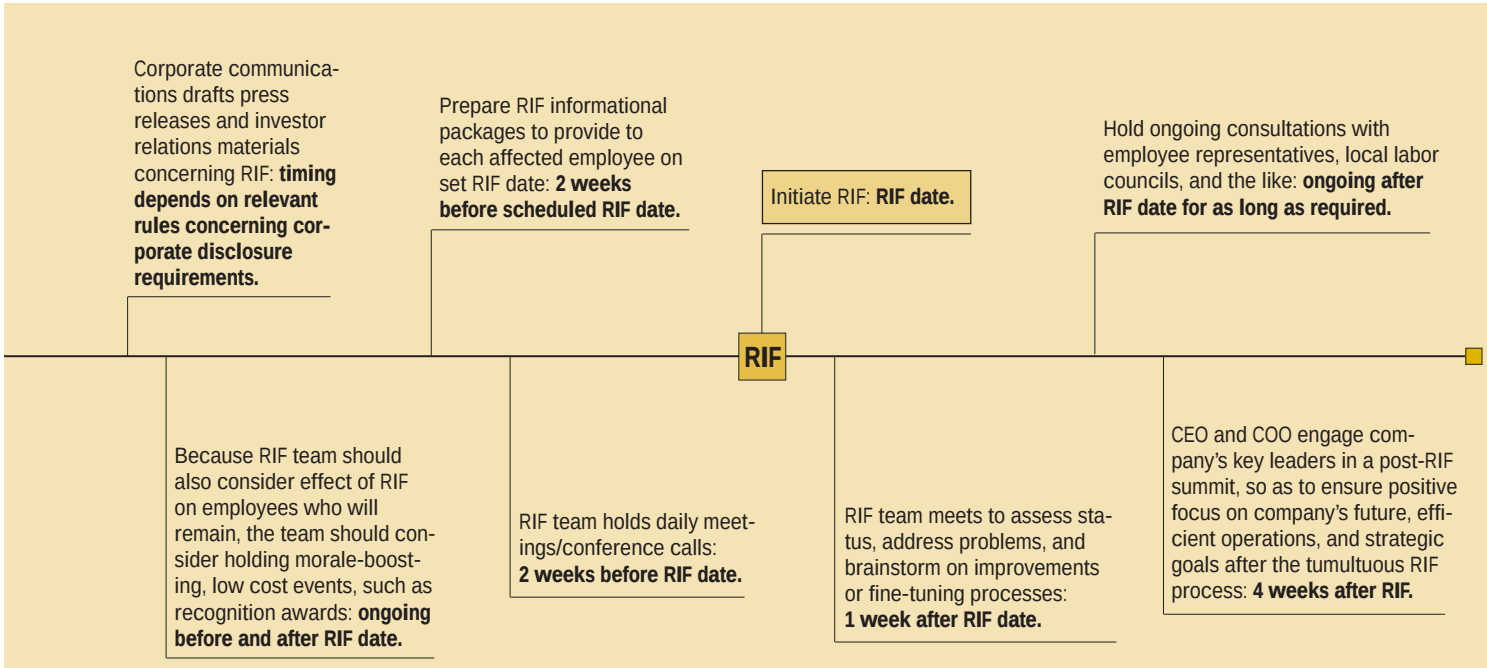
United Kingdom: No social plan is required.

Italy: Although no social plan is required, if the company is considering a collective dismissal, it must submit to the relevant unions a written notice of its intentions. A copy of this notice must also be sent to the local employment office ("direzione provinciale del lavoro").

The Netherlands: Dutch law does not require a social plan. Trade unions and works councils, however, generally will not accept a collective redundancy if the employer has not drafted a social plan. It is advisable that, if the company is dismissing 20 or more employees, the company invite the relevant trade unions to discuss directly the terms of the social plan before the company drafts one.

Spain: A social plan is required when the company has more than 50 employees, regardless of the number of possible dismissals. The company must obtain the approval of the local labor authority (Autoridad Laboral) before implementing a collective dismissal.

Denmark: Although no social plan is required, in the case of a collective dismissal, the company must prepare and provide to the affected employees a notification addressing topics normally covered in a social



plan. At a minimum, the notification should address reasons for the downsizing/plant closure, number of affected employees, dismissal criteria used, and compensation to be provided to each dismissed employee. The company must also send it to the local labor market council, which may call the employees and the company representatives together for a Q&A session concerning the details of the notification or, for example, query the company as to its redeployment efforts and severance compensation plans.

4. Severance Indemnity: How much severance pay is required, and what factors should be considered when determining the amount?

First, it is important to understand that actual redundancy packages, in general, are not calculated according to legislated formulas, if in fact any such formulas exist. Rather, they generally are a product of many factors, including negotiation with the affected employee or employee representative, terms of a collective agreement (if applicable), or a general sense as to what may be the then-current going rate in a particular industry sector and/or geographic location. Companies should be prepared to be flexible in order to quickly and amicably settle employee dismissals in many European countries.

As in most cases, if there is no agreed redundancy term in the employment contract or if there is one but it is voided by statute, then a complex interplay of negotiation, notification, consultation, and unfair dismissal rights will contribute to determining the employees' severance packages. Thus, it is difficult to determine the costs associated with the severance packages at the beginning of the RIF plan, so the RIF team's company finance members need to estimate these costs while acknowledging that the amounts will vary on a case-by-case basis.

Second, it is important to note that, if the specific procedure for collective dismissals is not followed accurately, then in some countries, such as Italy, the redundancies can be declared void, and the employment relationship will be deemed to remain in force.

France: The severance for dismissed employees will vary based on many factors, such as employee's status as executive or nonexecutive, years of service, and age. Once you have determined these aspects for each affected employee, you should consult a French labor specialist to assist in determining the appropriate severance pay range for individual employees. Once you have determined the range, your company should negotiate the specific amount with the individual employees in accordance with the procedural rules and within the required timescales. It is important to note that documentation indicating the contemplated indemnity amount should be marked as attorney-client privilege and presented to the employee representative (or the employee's lawyer) via the company's local outside counsel; otherwise, the employee may likely use it as evidence that the company may have considered the dismissal to be unfair if the employee were to bring the case to the labor council. Once the amount is mutually agreed, it must be paid to the employee on the same day as the employee's last payslip—that is, on the last day of the employee's notice period. In addition, if the dismissed employee is over 50 years old, then the company will have to pay a penalty to the ASSEDIC (French unemployment authority), the amount of which will range from one to six months' gross salary (depending upon the employee's age).

United Kingdom: When an employee is dismissed as redundant, the employee is entitled to receive the employee's regular base salary and benefits during the notice period. Generally, the notice period will have been set out in the employee's employment contract, which the company may offer to pay in lieu of requiring the employee to work the notice period. If an employee has more than two years' continuous employment with the same company and is made redundant, the employee will be entitled to statutory redundancy pay, which is calculated on a sliding scale based on employee's age, length of service, and salary. Note that the company must provide the employee a written statement specifying how the redundancy payment was calculated. The statutory redundancy payment is paid without deductions for tax and national insurance. If the company conducts individual consultations as required when the redundancy is not a collective dismissal, then the company must follow the proper process or risk an unfair dismissal claim, which could result in the company having to pay the compensatory award to each affected employee, the amount of which is capped at £52,600 (approximately U.S.$80,000).

Italy: The statutory payment applicable for redundancy terminations equals approximately one month's pay per year of service. In situations in which the employee may claim unfair dismissal, however, the

company should consider offering a lump sum payment in the range of 6 to 18 months (depending on the individual case) so as to quickly and amicably resolve the matter. It is important to keep in mind that, upon dismissal for any reason, employees in Italy are entitled to the "Trattamento di Fine Rapporto" ("TFR"), which is deferred severance compensation that accrues annually and is paid to all employees in any termination situation, including resignation. The TFR should not be considered as a cost of the redundancy, however. In addition, the company must pay the social security authorities an amount equal to one month's unemployment benefit ("indennita di mobilita") for each redundant employee.

The Netherlands: The Cantonal Court formula is one month's gross salary per year of service up to 40 years of age; 1.5 months' gross salary per year of service if employee is between the ages of 40 and 50; 2 months' gross salary per year of service if the employee is over 50. If it is a collective redundancy, then the trade union, together with the company, will set the severance packages for the affected employees.

Spain: Employees dismissed as part of a collective redundancy are entitled to a statutory minimum severance payment of 20 days' salary per year of service, up to a maximum of one year's salary. In practice, the severance payments negotiated between the employee representative and the company are considerably more than the statutory minimum. The severance compensation is paid to each dismissed employee at the end of the collective redundancy procedure only after the local labor authorities have issued their resolution authorizing the terms of the collective redundancy agreement and the social plan.

Denmark: If an employee has been employed for more than 12 years, then the employee is entitled to at least one month's pay ("compensation for long service"). If the employee proves that he or she was unreasonably terminated, then the employee is entitled to an amount between three and six months' wages, depending on the employee's age and years of service.

5. What benefits must an employer continue to provide during the notice period? After the employee has been terminated?

France: Benefits must be provided for the entire notice period, even if the employee has been released from the performance of the employee's duties. Once the notice period has ended, the company is under no obligation to provide any further benefits to that employee unless that employee's employment contract provided otherwise, in which case the company must provide those benefits, such as payment made in consideration for a noncompete obligation.

United Kingdom: Benefits should be continued during consultation and notice periods. If the employer chooses to pay in lieu of notice, then the severance pay should include compensation for net salary and benefits that would have been given to the employee had the employee remained employed during the notice period, unless the individual employment contract lawfully excludes the entitlement to benefits. It is important to note that this situation can sometimes create particular issues for bonus entitlement, for example, and stock options, so the rules of the relevant schemes should be reviewed with local counsel as needed. There is no legal obligation to continue benefits as of the termination date.

Italy: In general, all benefits must be provided during the notice period, and they may be discontinued lawfully as of the termination date.

The Netherlands: In general, all benefits must be provided during the notice period, and they may be discontinued lawfully as of the termination date.

Spain: In general, all benefits must be provided during the notice period, and they may be discontinued lawfully as of the termination date.

Denmark: In general, all benefits must be provided during the notice period, and they may be discontinued lawfully as of the termination date.

The benefits to which employees are entitled during the notice period include those benefits to which they were entitled before the notice period began, including pension contributions, cell phone use, company car, and use of laptop and company email systems. With prior agreement of the employee, it is possible to discontinue some benefits and compensate the employee for the value thereof.

6. Does the company have an obligation to redeploy or rehire the dismissed employees?

France: The company is legally obliged to attempt, in good faith, to redeploy the dismissed employee. This obligation remains for 12 months following that employee's termination date, and it extends to the company's global operations: it is not limited to business activities or operations in France. For example, if

From this point on . . .
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ONLINE:

- Mark N. Bonaguro, "Managing Termination: How to Avoid Litigation by Treating Employees Fairly and with Respect," *ACCA Docket* 19, no. 3 (2001): 60–76, available on ACCA Online℠ at www.acca.com/protected/pubs/docket/ma01/terminatepage1.html.
- Jim Goh, "Preparing for and Implementing the Reduction in Force: Who Goes and Who Stays," available on ACCA Online℠ at www.acca.com/protected/legres/employment/reduction.pdf.
- Shirley E. Goza, "Legal Guidelines for Layoffs and Reductions in Force," available on ACCA Online℠ at www.acca.com/protected/legres/employment/layoffguide.pdf.
- Carmine A. Iannaccone, Gerald F. Spada, and Ronald K. Silversten, "Arbitration and Employment Disputes: Drafting to Maximize Employer Protection," *ACCA Docket* 18, no. 2 (2000): 16–35, available on ACCA Online℠ at www.acca.com/protected/pubs/docket/fm00/arbitration.html.

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the company belongs to an international group of companies, the employee is dismissed in France, a position opens up in Beirut within 12 months of the employee's termination date, and that position is well suited to the French employee's skill set, then the company should offer to redeploy that person into the Lebanon-based position. In addition, the company must officially inform the employee of this redeployment right in the employee's redundancy letter. Failure to offer redeployment opportunities would expose the company to a claim for dismissal without due cause even though the economic reasons for the dismissal are sufficiently supported. If within 12 months of the employee's termination date the company desires to fill the role from which that former employee was dismissed, then the company must first offer it to that person.

United Kingdom: The company is under no legal obligation to redeploy a dismissed employee or to rehire a dismissed employee in the event that the job becomes necessary in the future, unless the tribunal has ordered redeployment in the context of an unfair dismissal.

Italy: The company is under no legal obligation to redeploy a dismissed employee. If, however, within 12 months of the date of the collective redundancy, the employer desires to fill the role from which the former employee was dismissed, then that person has the right to be rehired under Article 8 of Law 223. If the company has more than 16 employees in a territorial area in Italy, then an employee dismissed without just cause will have a right to reinstatement and to receive damages for improper dismissal. If the company has fewer than 16 employees in a territorial area, then an employee dismissed without just cause will have a right to reinstatement or to receive an indemnity equal to at least 2.5 months' salary under Article 18 of the Worker's Charter.

The Netherlands: In cases in which the termination is obviously unreasonable or irregular, such as a case in which the company did not observe the statutory or contractual notice period, then the employee can claim reinstatement to the employee's role, unless the employee is a statutory director of the company for whom this right does not apply.

Spain: There is no legal requirement to redeploy or rehire an employee when the dismissal occurs for economic reasons. If, however, the company hires a new person to fill the role previously filled by an employee who was dismissed for economic reasons, then the previous employee could claim unfair dismissal and likely be entitled to receive monetary damages.

Denmark: The company is under no legal obligation to redeploy or rehire a dismissed employee, as

long as the employer is able to substantiate why the change is necessary.

7. What challenges could the company face if it does not comply with the local laws concerning the collective dismissals?

France: If, during a collective redundancy, the company does not comply with the consultation requirements, such as giving the works council written notice convening the first meeting and all necessary information concerning the anticipated redundancy, then the company could trigger criminal sanctions that could include one-year imprisonment for directors of the French entity and/or a monetary fine of about $3,500 per offense.

United Kingdom: If a company fails to consult in accordance with the required procedures, the Department of Trade and Industry ("DTI") may fine it, or an employment tribunal may make it pay a protective award (up to 90 days' pay) to an employee who successfully petitioned the tribunal. Even in such a case, however, the company will not be forced to consult nor will any additional delays be imposed on the planned dismissals.

Italy: If the company does not follow the procedural requirements concerning notice and consultation with regard to a collective redundancy, then the court may deem the dismissals null and void, the employees may be reinstated, and the employer may have to pay damages, including the salaries for each employee for the time period between the dismissal date and the reinstatement date. All dismissals in Italy must be in writing, because verbal dismissals are deemed void and thus nonexistent.

The Netherlands: If a termination is irregular, such as, for example, if the company did not observe the statutory notice period, then the employee may institute legal proceedings for an unfair dismissal. If the employee is successful, then the court may order the company to pay either fixed damages (gross salary over applicable notice period) or actual damages suffered because of the unfair dismissal. In addition, the dismissed employee has a right to be reinstated into the employee's former role, except for a statutory director for whom this right does not apply.

Spain: If the company does not follow the labor authority's ruling concerning the collective dismissal, then any consequent dismissals will be null and void. In that case, the company must reinstate the dismissed employees.

Denmark: If the collective dismissal is found to be unreasonable for employees with more than one year of service, then those employees will be entitled to compensation. The compensation will be determined in relation to the employee's age and years of service. For example, if a 30-year old employee was employed by the company for more than 10 years, then the employee will be entitled to at least four months' salary as compensation. If a termination is unreasonable according to the Salaried Employees Act, that fact will not invalidate the termination. Note that applicable collective agreements may contain provisions that differ.

CONCLUSION

On March 11, 2002, a new directive designed to ensure that companies inform their employees in a timely manner concerning collective redundancies was formally adopted. Although this directive was three years in the making, its timely approval followed a series of recent episodes in which employees at some companies learned of layoffs from the news media. The directive will affect companies with at least 50 employees in the EU and those with at least 20 employees in any one EU member state. It calls for penalties for noncomplying companies and empowers workers to propose alternatives to layoffs and plant closures. As with all EU directives, this one will act as a baseline from which individual member states will implement their respective legislation in accordance with national laws and local industrial relations practices. This directive is another example of how labor law entitles employees to certain rights as concerns their company's plans to downsize or reorganize in Europe.

Because labor laws change frequently in these countries, please consult with appropriate local labor counsel before setting the RIF plan into action or taking any other actions concerning a redundancy in any particular country mentioned in this article.

This article is geared for the U.S.-based HR manager tasked with handling a pan-European RIF for an American company. It guides you in devising a RIF plan, gives you a concise overview of the European legal landscape, addresses seven key issues concern-

ing collective dismissals in six European countries, and provides country-by-country guidance on each of those key issues. Most important, the reader should take away the fact that there is no one set of European laws governing dismissals in Europe, but rather each country has its own rules and regulations that must be followed if the company is to effectively conduct a reduction in forces in that country.

NOTES

1. The 15 EU Member States are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.
2. EU directives act as legislative baselines for each EU member state's individual implementing corresponding statute.
3. The Collective Redundancies Directive (EU/75/129). EU directives are available online at www.europa.eu.int
4. In accordance with data protection regulations, the collection, storage, and transfer of an employee's personal data must comply with that country's specific data protection and privacy regulations.
5. Italian Law 223/91.
6. Reliable sources for finding local experts and outside counsel include the ACCA international directory, past employment law conference agendas, Martindale-Hubbell, and employment law journals.
7. *Projet de Loi de Modernisation Sociale.*
8. Note that the contract law of England/Wales varies from that of Scotland and that Northern Ireland is a separate legal jurisdiction. Its employee protection legislation, however, is similar to that of England/Wales; the main difference is that Northern Ireland's laws protect employees against religious discrimination. The Republic of Ireland is a different country from the UK and has its own employment laws.
9. Collective redundancies generally are permitted only if the company is suffering economic difficulties or planning a global reorganization or drastic technical or operational changes. In some countries, such as Spain and the Netherlands, the company must prove the existence of the dire economic situation and obtain preapproval from an appropriate labor authority before it lawfully may engage in a collective redundancy. For the most part, the collective redundancy statutes will dictate the timeframes, procedures, and notifications with which the company must comply.