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Forward to a Colleague

Strategies and Considerations for Reducing Labor Costs in the EU

JONES DAY

COMMENTARY

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IN SHORT

The Situation: Targeted legislative and regulatory measures implemented by many EU Member States during the pandemic may ultimately prove insufficient to ease employers' burdens and prevent employment losses.

The Result: Companies may need to consider various strategies to reduce labor costs. The current uncertain economic situation may facilitate negotiation and implementation of alternative measures for reducing labor costs while avoiding large-scale employment losses.

Looking Ahead: Various tools to reduce labor costs other than reductions in force are available to EU employers, including modification of employment conditions, furloughs, and individual dismissals. Employers must carefully prepare and manage implementation of such measures and act in accordance local legislation and/or restrictions.

As the economic impact of the COVID-19 pandemic continues to be felt across the European Union, uncertainty about additional waves of infection, new lockdowns, and further business disruption remains. Most EU Member States have responded by implementing and/or extending temporary relief measures in an attempt to avoid or mitigate large-scale employment losses. Even with these measures, however, many companies still must consider ways to significantly reduce costs, including labor costs.

The local legislative and regulatory landscapes are changing quickly throughout the European Union, so employers must plan carefully before implementing cost-saving measures. Below we address various approaches that employers in Belgium, France, Germany, Italy, the Netherlands, Spain, and the United Kingdom may consider to reduce labor costs.

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Reductions in Force

Implementing reductions in force is one of the most challenging and definitive labor decisions an employer can make. Although subject to complex and highly regulated processes in each EU Member State, involving employee representatives and potentially local labor administrations (i.e., France, Germany, the Netherlands, Belgium, and Spain), reductions in force can be a useful tool to realize significant labor cost savings.

Due to the coronavirus pandemic, however, certain EU jurisdictions have restricted employers' ability to undertake reductions in force. For example, in Italy, both individual and collective dismissals for business reasons are suspended until August 17, 2020. Further, employers in France, Italy, and Spain that take advantage of partial unemployment schemes—pursuant to which the State helps private employers compensate employees who have lost income due to, e.g., a reduction in hours or temporary closure of the employer's facility—are restricted from terminating certain employees. The same type of restriction applies to employers that benefit from a wage sum subsidy in the Netherlands.

Of course, alternatives to reductions in force are available as well. While the consent of employees and/or their representatives may be necessary to implement some alternative measures, the uncertainty of the current economic environment and the real potential for significant employment losses may convince employees and/or their representatives to consider measures that, in other circumstances, they would not. We discuss three such alternative measures below: modification of employment conditions, temporary layoffs/furloughs, and individual dismissals.

Modification of Employment Conditions

Modification of employment terms or conditions typically requires the consent of the affected employees, especially when the modification impacts compensation and/or working time. However, recent legislation in Belgium, Germany, Italy, and Spain that was introduced in the COVID-19 context allows employers to implement some modifications unilaterally (subject to specific conditions), particularly when those modifications aim to preserve employment or address economic difficulties. In these jurisdictions, unilateral implementation of reductions in compensation and/or working time remains subject to the involvement of employee representatives and, in some jurisdictions (like Belgium and Germany), State approval.

Other jurisdictions, such as France and Germany (provided the employee is a member of the respective German union), have given special status to collective bargaining. These jurisdictions allow employers and unions to enter into company-level bargaining agreements modifying employee compensation and/or working time without requiring employees' prior consent and without needing an economic justification. An employee's refusal to abide by such negotiated changes is a valid justification for dismissal in these jurisdictions.

Beyond these specific measures, most jurisdictions allow an employer to offer new contractual conditions that are justified by economic reasons. Refusal of such conditions by an employee or employees would qualify as an individual or collective dismissal (as the case may be), subject to statutory payments and process.

Temporary Layoffs/Furloughs

As referenced above, many EU jurisdictions have implemented temporary and/or strengthened partial unemployment measures in an attempt to preserve employment during the pandemic. And, even after lockdowns ended and national economies began to recover, many countries continued these measures. For example, these measures continue until December 31, 2020, in Belgium and France; until August 30, 2020, in the Netherlands; and indefinitely in Germany, Italy, and Spain.

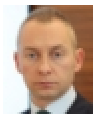
These measures are, however, subject to strict conditions in terms of economic justification, State approval and controls, funding, and employee-representative involvement. Moreover, as explained above, employers that take advantage of these measures in some EU countries (e.g., France, Italy, the Netherlands, and Spain) may limit their ability to implement reductions in force.

Individual Dismissals

Outside of Italy, where all dismissals for business reasons are suspended until August 17, 2020, and Spain, where dismissals based on objective conditions related to COVID-19 are suspended until September 30, 2020, there are currently no additional restrictions on individual dismissals in Belgium, France, Germany, the Netherlands, or the United Kingdom due to the coronavirus. Thus, employers in these five countries may be tempted to reduce head count through individual terminations or by not replacing employees who have left employment, in order to avoid the burdensome processes and costs associated with mass redundancy plans. This must be approached with great care, however, as terminated employees may use the current economic downturn to challenge their termination and claim higher severance/damages from their employers.

THREE KEY TAKEAWAYS

1. Given rapidly changing legislative and regulatory landscapes in many EU countries due to the COVID-19 pandemic, employers in the European Union seeking to implement measures to reduce



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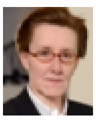

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labor costs must do so thoughtfully and consistent with applicable laws.

2. Recent legislation in some EU countries has expanded the ability of employers to unilaterally modify terms and conditions of employment in order to save costs, but this option remains subject to collective negotiations and/or State approval in most jurisdictions.

3. Implementing individual dismissals should be carefully thought through and managed as it may expose employers to higher severance/damages claims during the pandemic.


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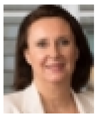
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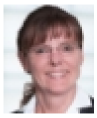
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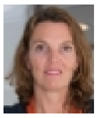
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