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Report on collective dismissals

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December 2016

Governance
and Tripartism
Department

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**A comparative and contextual analysis
of the law on collective redundancies
in 13 European countries**

Nicola Countouris, Simon Deakin, Mark Freedland,
Aristea Koukiadaki and Jeremias Prassl



European Union
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Foreword

In 2013 the Greek Government requested technical assistance from the ILO in order to review the legal framework regulating collective dismissals in Greece, so as to bring it into line with EU and ILO norms, and with good practices in European Union member States in terms of managing workforce adjustment.

In order to respond to this request a group of independent experts, under the supervision of the ILO, was asked to produce the present report which provides a comparative analysis of the law on collective dismissals in a selected number of EU Member States. The experts were Professors Nicola Countouris (University College London), Professor Simon Deakin (Cambridge University), Professor Mark Freedland (University of Oxford), Aristeia Koukiadaki (Senior Lecturer, University of Manchester), and Associate Professor Jeremias Prassl (University of Oxford). The experts conducted their analysis between December 2013 and January 2014, through the use of country-specific questionnaires and the cooperation of a number of national experts. Its comparative findings set out the law in force as of December 2013. The sections covering Greece and those covering EU legislation and other supranational sources set out the law in force as of October 2014.

An earlier draft version of this report was presented on the occasion of a one-day High Level Tripartite Meeting held at the ILO Headquarters in Geneva with the participation of the Greek Minister of Labour, Social Security and Welfare; the Secretary General of the Ministry; and the leadership of the five institutional social partners operating at the national level (GSEE, SEV, ESEE, GSVEE, and SETE).¹ The meeting was facilitated by the ILO Director-General, and focused on the areas of collective dismissals and industrial action, on the basis of comparative studies including an earlier version of the present report. The authors subsequently had the opportunity to revise some aspects of it in light of the comments made during that meeting, as well as through subsequent ILO reviews.

The report has benefitted from the contributions of Janine Berg, Sean Cooney, Colin Fenwick, Youcef Ghellab, and Corinne Vargha. The report would not have been possible without the support and guidance of the Director of the ILO Research Department, Mr. Raymond Torres, and the Deputy Director of the ILO Regional Office for Europe and Central Asia, Ms. Rie Vejs-Kjeldgaard. Special thanks are also due to Mr. Konstantinos Papadakis, who at the time was the Senior Liaison Officer for Cyprus and Greece/ILO Athens.

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Moussa Oumarou
Director
Department of Governance and Tripartism

1. General Confederation of Greek Workers (GSEE); Hellenic Federation of Enterprises (SEV); Hellenic Confederation of Commerce and Entrepreneurship (ESEE); Hellenic Confederation of Professionals, Craftsmen and Merchants (GSVEE); Association of Greek Tourism Enterprises (SETE).

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Abbreviations and acronyms

BAG	Federal Labour Court (Germany)
CBA	collective bargaining agreement
CJEU	Court of Justice of the European Union
CRNA	Collective Redundancy Notification Act (Netherlands)
ECA	Employment Contracts Act (Estonia)
ECJ	European Court of Justice
EGAF	European Global Adjustment Fund
ERA	Employment Relationship Act (Slovenia)
ERM	European Restructuring Monitor of the Eurofound
ESC	European Social Charter
ESEE	Hellenic Confederation of Commerce and Entrepreneurship
EU	European Union
Eurofound	European Foundation for the Improvement of Living and Working Conditions
GSEE	General Confederation of Greek Workers
GSEVEE	Hellenic Confederation of Professionals, Craftsmen and Merchants
ILO	International Labour Organization/Office
IMF	International Monetary Fund
KSchG	Protection Against Dismissal Law (Germany)
OECD	Organisation for International Co-operation and Development
OJ	Official Journal of the European Communities
SETE	Association of Greek Tourism Enterprises
SEV	Hellenic Federation of Enterprises/Federation of Greek Enterprises
SLC	Supreme Labour Council (Greece)
TULRCA	Trade Union and Labour Relations (Consolidation) Act 1992 (United Kingdom)
UIF	Unemployment Insurance Fund (Estonia)
UWV	Institute for Employee Benefit Schemes (Netherlands)

Executive summary

Introduction: Research context and methodology

1. This report provides an overview of collective dismissal regulation in 13 EU Member States, and examines both national and supranational rules shaping collective redundancy processes in those countries. It was produced by a group of independent experts, all of them labour lawyers,¹ and most of them academic labour lawyers, with a view to assisting the International Labour Office (ILO) in the context of the ongoing technical assistance programme developed with the Greek Government in a number of areas, including “labour legislation to regulate collective dismissals”.² As is widely known, since May 2010 the Union’s Euro-area Member States and the International Monetary Fund (IMF) have been providing financial support to Greece through an Economic Adjustment Programme in the context of a sharp deterioration in the country’s financing conditions.³ This support has been accompanied by a request on the part of the lending institutions’ representatives to implement a number of reforms aimed at improving the competitiveness of the Greek economy. Amongst a series of detailed specifications, Greece has been asked to adopt “reforms [that] will ease interpretation of and foster compliance with labour laws with a view to bring legislation in line with EU best practices, and to this end a review will be carried out [...], comparing Greek regulations on [...] collective dismissal rules and procedures, with those in other EU Member States”.⁴

2. In this context, between December 2013 and January 2014, the authors of this report set out to conduct a comparative analysis of the law on collective dismissals in a selected number of EU Member States. This review was carried out through the use of country-specific questionnaires and the cooperation of a number of national experts that responded to them;⁵ the resulting comparative findings are presented in Section 4 of the report, setting out the law in force as at December 2013. Section 2 of the report, providing an overview of the main issues arising from the socio-economic impact of collective dismissals, was produced mostly on the basis of work carried out, between January and July 2014, by a team of independent experts coordinated by the Working Lives Institute of London Metropolitan University,⁶ with further assistance from a number of ILO officials and experts.⁷ The remaining sections were drafted jointly by the authors of this report, who gratefully acknowledge the general support to their research work which they respectively received from the Labour Rights Institute of University College London, St John’s College, Oxford, the Centre for Business Research at the University of Cambridge, and the School of Law of the University of Manchester. Throughout this process the main authors of the report have greatly benefited from discussions and exchanges with a number of ILO and Greek experts.⁸ An earlier version of the report

1. Nicola Countouris (University College London, United Kingdom), Simon Deakin (University of Cambridge, United Kingdom), Mark Freedland (University of Oxford, United Kingdom), Aristea Koukiadaki (University of Manchester, United Kingdom), Jeremias Prassl (University of Oxford, United Kingdom).

2. ILO: *Regional perspectives on technical cooperation: Europe and Central Asia*, Governing Body, 320th Session, Geneva, Mar. 2014, GB.320/POL/7, p. 9, para. 31. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235534.pdf.

3. For latest updates, see http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/.

4. European Commission Directorate-General for Economic and Financial Affairs: *The Second Economic Adjustment Programme for Greece, Third Review – July 2013*, European Economy Occasional Papers 159 (Brussels), p. 7.

5. Tamás Gyulavári (Hungary), Frank Hendricx and Aline Van Bever (Belgium), Mijke Houwerzijl (Netherlands), Anu Laas (Estonia), Jose Maria Miranda Boto (Spain and Portugal), Andreja Poje (Slovenia), Jenny Votinius (Sweden). The editors of this report also acted as national experts in respect of the remaining jurisdictions, namely France, Germany, Greece, Italy and the United Kingdom. The editors also gratefully acknowledge the help of Cathleen Rosendahl and Elisabeth Kohlbacher.

6. By Sonia McKay and Steve Jefferys and with the assistance of Nick Clark, Sylvie Contrepois, Leroi Henry, Leena Kumarampan, Anna Paraskevopoulou and Cilla Ross.

7. This review was guided in particular by Janine Berg and Daniel Vaughan-Whitehead, Senior ILO Economists.

8. The comments and views shared by Corinne Vargha, Kostas Papadakis, and Maria Ntotsika are gratefully acknowledged.

was presented during a meeting hosted by the ILO on 30 September 2014, in the presence of the Greek Minister of Labour, Social Security and Welfare, and of the Presidents of the main Greek social partners, GSEE, SEV, ESEE, GSEVEE, and SETE.⁹ The main authors of the present work were given the opportunity to revise some aspects of that report in light of the comments expressed during that meeting. However, unless otherwise indicated, they remain solely responsible for the views expressed throughout the report. This executive summary provides a succinct overview of the main sections of the report and of the key findings therein.

The economic and social aspect of collective dismissal regulation: The role of public authorities

3. As acknowledged in the opening paragraphs of Section 2 of the report, collective redundancies are in many ways a natural and structural facet of capitalist industrial economies. Economic transformations and cycles, industrial restructuring processes, and the dynamics of competitive market economies all dictate that managers may have to contemplate restructuring businesses in ways that are likely to have an adverse impact on either the number of jobs in the company or the terms and conditions of employment, or both. The law is called upon to regulate this natural facet of capitalist economies, while striking a balance between a number of (often) competing interests, typically those of businesses, workers and society at large. Subsection 2.2 reviews a number of recent studies and statistics indicating the significant dimension and volume of these restructuring processes in Europe, especially since the economic crisis of 2008. This analysis is followed by a more general assessment of the socio-economic impact of collective redundancies on societies, and some justifications for the involvement of public authorities with these processes.

The supranational regulation of collective dismissals in Europe: Minimum harmonization

4. The analysis of the main supranational sources shaping or influencing the regulation of collective redundancies in Europe highlights that, although of disparate institutional origins, all measures' key contributions align in a strong emphasis placed on the information and consultation rights of the representatives of those workers affected by proposed collective dismissals. Of the three key instruments analysed in Section 3 – the ILO Termination of Employment Convention, 1982 (No. 158), the European Social Charter, and EU Directive 98/59, the latter is arguably the most influential and relevant, both in terms of the relative detail of its provisions and in terms of its coverage and legal effects within the European Union: all Member States are, by virtue of their membership of the Union, bound to transpose the Directive's provisions into their national legal order. In addition to attributing a number of information and consultation rights to workers' representatives, the Directive also prescribes a duty on the part of employers to notify projected collective redundancies to the relevant domestic public authorities.

5. Section 3 notes that the provisions of Directive 98/59 are relatively flexible: it is a minimum harmonization instrument that does not set out in great detail most of the obligations and rights contained within it (though the role of the EU Court of Justice in fleshing out some of these provisions and rights was also recognized). Crucially, its provisions are not to be understood as a limitation on Member States' right to apply or introduce rules that are more favourable to workers (Article 5). To the extent that Directive 98/59 can be seen as an instrument on the rights to information and consultation of European workers, it must furthermore be considered alongside other EU instruments and provisions on "information and consultation", including notably Article 27 of the EU Charter of Fundamental Rights, which since the Treaty of Lisbon has been elevated to the primary status within the Union's hierarchy of sources.

9. General Confederation of Greek Workers (GSEE), Hellenic Federation of Enterprises (SEV), Hellenic Confederation of Commerce and Entrepreneurship (ESEE); Hellenic Confederation of Professionals, Craftsmen and Merchants, Association of Greek Tourism Enterprises (SETE).

Regulating collective dismissals in Europe: Unity and diversity

6. The comparative analysis carried out in Section 4 of this report concludes that all EU Member States surveyed share a number of fundamental similarities in the ways in which they regulate collective dismissals, but also suggests that a number of very significant differences persist. It should be noted that this part of the study does not analyse possible implementation challenges which may exist across EU Member States, as this particular point was seen as going beyond the scope of the present work. The key similarities, unsurprisingly, tend to reflect the core provisions and principles contained in Directive 98/59; in particular the idea that the restructuring processes resulting in collective redundancies ought to be accompanied by a series of information and consultation procedures involving workers' representatives and public authorities. Beyond this minimal common core, however, this section registers a number of important differences in respect of the definition of collective redundancies (over and above the minimum requirements prescribed by Article 1 of the Directive), the detail, timing and intensity of the information and consultation obligations, the extent to which such duties may be accompanied by more coordinated co-decision or bargaining practices, the nature and relative power of the workers' representatives involved, the type of social measures that must accompany and/or follow the adoption of collective redundancies, the nature and powers of the public authorities involved, and in particular the extent to which collective agreements cover and regulate specific or more general aspects of collective redundancy processes.

7. The concluding paragraphs of Section 4 of the report also note that the relevant EU institutions appear to consider that the degree of compliance with the core provisions of Directive 98/59 is, by and large, adequate, and that the Directive makes a significant contribution to the regulation of restructuring processes in Europe. The latter finding, however, has to be somewhat qualified, not least due to the exclusion set out in Article 2 of the Directive (as well as those implicit in Article 1, which de facto permit Member States to exclude small and medium-sized enterprises from its coverage). It should also be pointed out, at the same time, that in recent years several Member States affected by "austerity packages" (such as Spain and Portugal), as well as other systems less directly affected by any such pressures (for instance the United Kingdom), have begun to embrace a deregulatory trend of questioning so-called "gold plating" (i.e. the maintenance of standards above the minimum levels required by the Directive). In consideration of the fact that the Directive is a "minimum harmonization" instrument and explicitly notes in its Article 5 that it does not affect the right of Member States to introduce more worker protective provisions, it is difficult to see why this trend should be encouraged or promoted. In recent years the European Union itself has occasionally encouraged the review of "selected aspects of employment protection legislation including the dismissal rules"¹⁰ on the grounds that "the procedures for dismissal ... entail uncertainties and potentially large costs for employers".¹¹ These de-regulatory recommendations are hard to reconcile, in the view of the authors of this report, with the spirit of the Directive and the letter of its Article 5.

The Greek case: Summary and implications

8. As noted in Section 5.7 of this report, Greek Law 1387/1983 was at the time of its enactment an innovative piece of legislation: it introduced, alongside Law 1264/1982, arrangements for the development of worker voice at the enterprise level. At the same time, Law 1387/1983 retained a number of elements of the pre-existing legislative framework, including the power of the public authorities to prohibit collective dismissals, a power that is not unique to Greek legislation, and that – in light of the analysis carried out in Sections 3 and 4 of this report – is assessed as being compatible with the EU legislative framework. Indeed, some Member States such as Germany see the prohibition of dismissals (if only for a certain period) as a first consequence flowing from the involvement of public authorities, while the Dutch public authorities retain considerable leeway in authorizing (or refusing the authorization of) collective redundancies. However, and in contrast with the national experiences and practices of other EU Member States, Greek legislation has not sought to encourage

10. Council Recommendation of 12 July 2011 on the National Reform Programme 2011 of Italy and delivering a Council opinion on the updated Stability Programme of Italy, 2011–2014 [2011] OJ C 215/7.

11. Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of France and delivering a Council opinion on the Stability Programme of France, 2012–2016 [2012] OJ C 219/31, para. 12.

or develop a role for public authorities to intervene in restructuring processes prior to the stage of approving or prohibiting the redundancy plans. The development of an advisory/supportive role during the process of consultation would arguably provide a basis for management and employee representatives to reach an agreement on restructuring plans, whilst also simultaneously facilitating the role of the public authority at the approval/prohibition stage of the process. It may furthermore be suggested, first, that the words “normally employed persons” (or an equivalent formula) should be incorporated in Greek law in a consistent way; second, that article 3 of Law 1387/1983 should clarify that the provision of information to workers’ representatives should take place in a “timely” fashion; and, third, that workers’ representatives should have a right to access expert advice as soon as the consultation process is triggered. It was also pointed out that Greece is among the countries that do not have any particular process in place to address avoidance practices implemented through the staggering of redundancies: it is important for collective redundancy protection to include such devices, in order to avoid evasive manoeuvring on the part of employers, which could be harmful both to workers and the role of the public authority. Finally, Greek law should give express recognition to the requirement set out in Article 4(1) of the Directive that the employer should notify the public authorities of the projected redundancies and that the latter cannot take place until at least 30 days after the notification.

9. A more specific set of considerations has to be formulated in respect of what is arguably a significant recent development in the Greek regulatory framework on collective dismissals, that is to say the Decision of 22 January 2014 by the Greek Supreme Labour Council (SLC). As noted in Section 5.3 of this report, the Decision puts renewed emphasis on article 5(3) of Law 1387/1983, which stipulates that if the parties fail to agree, and the issue at hand is therefore referred to the relevant Prefect or the Minister, the latter have the right to consult the Labour Ministry Commission (which operates in every prefecture) or to seek the opinion of the Supreme Labour Council, respectively. This Decision, handed down in January 2014, is not a legislative act when viewed from a narrow technical perspective. As such, its provisions cannot amend Law 1387/1983 or alter in any way the domestic legal statutory framework on collective dismissal. This, however, does not diminish the fact that, in the view of the authors of this report, this Decision remains a significant innovation in the context of the regulation of collective dismissal in Greece, and that any assessment of the Greek collective dismissal system which did not take the SLC Decision into account would be partial, and thus inevitably inaccurate.

10. Three key factors lead the authors of the report to arrive to this particular conclusion. First, this Decision was adopted unanimously by all SLC members, including the representatives of the social partners GSEE, SEV, GSEVEE, ESEE, and SETE. As such, when originally adopted, it reflected a tripartite social consensus amongst the social partners involved. Second, the Decision encourages an industrial relations practice that seeks to anticipate, through a sufficiently detailed and motivated opinion, the intervention by the relevant public authority (the relevant Prefect or Minister) in respect of contested restructuring processes involving collective dismissals. It does not go as far as preventing such intervention (the public authorities can always have the last word), but it certainly anticipates it, as exemplified by the recent June 2014 Opinion on the Chalyvourgia redundancies, also discussed in Section 5 of the report. Third, and depending on the consensus surrounding future SLC decisions on projected redundancies, this new industrial relations practice may have the effect of pre-empting (again not legally, but certainly in industrial relations practice) any further intervention on the part of the relevant public authority. To make this last point more explicit, it is suggested that if the SLC were, in future, to adopt unanimous motivated opinions authorizing particular restructuring plans involving collective redundancies, it would be very unlikely (though technically still possible) that the Greek public authorities would want to interfere with the SLC’s determination, as the latter would reflect a tripartite consensus amongst the social partners’ and the government representatives involved in the Council’s decision-making process.

11. The recent decision on the Chalyvourgia redundancies offers a first test case to begin an evaluation in less abstract terms of the concrete application, and thus the real significance, of the industrial relations innovation introduced with the SLC Decision of January 2014. It must be noted that the motivated opinion on Chalyvourgia, dated 10 June 2014, was not reached unanimously, but rather by a majority of votes, opposed by the delegation from the General Confederation of Greek Workers (GSEE) and by the representative of the Ministry of Economic Affairs. At the time of writing (October 2015) it is clear that the Ministry of Labour has decided not to intervene in respect of this particular decision by the SLC. In any case, and regardless of the final outcome of this particular case, the authors of this report are of the view that a proper assessment of the actual functioning and

concrete implications of the practice introduced by the SLC Decision of January 2014 would require the monitoring and assessment of its operation and substantive decisions over a longer period of time. The length of this period would depend on the extent to which the SLC will be asked to operate this particular procedure in the months and years to come.

Conclusions: “Best practices”, good principles, and rights

12. In September 2014, the ILO asked the main authors of this report to consider the extent to which the Greek “collective dismissal system replicates best practices in an effective, credible, and durable way”, echoing the words contained in the Updated Memorandum of Understanding of April 2014. In turning to this specific request, it is important, first, to reiterate an introductory point briefly discussed in Sections 2 and 4.7 of the report. These sections note the potentially significant difficulties, both in analytical and normative terms, of an assessment of industrial relations and labour law systems in terms of “best practice”. In this context, one should bear in mind Joseph Stiglitz’s reminder that “‘Driving on the left’ is a best practice in London, but not in New York”.¹² Best practices, as Stiglitz thus points out, are necessarily highly context-specific – as the very notion of a minimum harmonization instrument at EU level clearly recognizes. Indeed, the idea of “replicating” or transplanting specific labour law solutions across different countries is, in the established view of labour law scholars, everything but straightforward.¹³ What may amount to a specific “good practice” in, say, the German industrial relations context¹⁴ may not be transferable to other realities, such as for instance the Greek one. This may be due to the fact that Greece does not share a similar industrial relations tradition or a similar industrial and economic base, or more crudely to the fact that the institutions or political and social consensus that underpin a particular practice in Germany simply do not exist in Greece. Therefore, the idea of replicating specific best practices of other EU countries in Greece is hardly a straightforward one.

13. Having reiterated this crucial preliminary point, the authors of this report nonetheless feel capable of engaging with the task assigned in two different, and mutually reinforcing, ways. First, while it is argued that the legal transplant of specific “best practices” across different industrial relations contexts is a task marred with difficulties and risks of rejection, it is possible to suggest that it may be practicable, and in fact desirable, for industrial societies and their legal systems to aspire to incorporate within their peculiar domestic frameworks some generally accepted principles of good labour relations and workplace participation. More to the point, there is no doubt that suggestions such as “Active social partner involvement is crucial in many of the schemes available to anticipate and manage restructuring,”¹⁵ can be understood as a “good practice”, even though, given the general and abstract tone in which they are formulated, it would be more accurate to regard them as “good principles” for managing restructuring processes and collective redundancies. In fact, from a legal point of view, “active social partner involvement”, for instance in the form of information and consultation rights, and in the form of active engagement between independent social partners, can be understood equally well, if not better, as the expression of a number of (at times fundamental) labour rights protected by various European and ILO standards, some of which are discussed in Section 3 of this report. It may therefore, and this is the second way in which one could engage with the task at hand, be possible to assess the extent to which a particular national legal framework provides an effective, credible and durable enjoyment of these more specific and tangible rights and principles. So does the Greek collective dismissal system replicate the generally acceptable “good principles” for managing such processes, as recognized by various European and international standards? And if so, does it do so in an “effective, credible, and durable way”?

12. J. E. Stiglitz, *Joseph Stiglitz and the World Bank: The rebel within* (London, Anthem Press, 2001), p. 203. His critique of the concept of “best practice” is further articulated at pp. 203–206.

13. Labour lawyers, and comparative labour lawyers in particular, have been sensitive to these issues no doubt thanks to the important contribution made by O. Kahn-Freund: “On uses and misuses of comparative law”, in *Modern Law Review* (1974, Vol. 37, No. 1), pp. 1–27.

14. For instance, sectoral studies note and praise the important role of “works councils” and “co-determination” in managing and anticipating change. See J.-J. Paris et al.: *Anticipation of change in the automotive industry: Good practices of anticipation and management of change within companies and regions* (Brussels, European Partnership for the Anticipation of Change in the Automotive Sector, 2009), p. 137.

15. European Commission: *Restructuring in Europe 2011*, Commission Staff Working Document, SEC(2012) 59 final, 17 Jan. 2012, p. 10, accompanying the Green Paper *Restructuring and anticipation of change, what lessons from the economic crisis?*, COM(2012) 7 final (Brussels).

14. In light of the significant changes to which the Greek system of industrial relations has been subject in recent years,¹⁶ and the analysis carried out in Sections 3 and 5, and bearing in mind the assessment appearing in paragraphs 8–11 above, the authors of this report are of the view that the current Greek collective dismissal system is the expression of a *sui generis* approach to the management of restructuring processes. This approach encapsulates a series of features that are also present in other legal systems (albeit not necessarily in identical forms due to national specificities and traditions) and do not appear to breach any of the general principles contained in EU/ILO standards that shape the international framework regulating collective dismissals. One of the most important specificities of the Greek system is the role assigned to public authorities, a role that – as noted in Section 4 of this report – is also recognized in some other Member States (albeit in slightly different ways, and more attuned to their particular contexts). This role, in the view of this report, does not contravene any of the general principles or EU/ILO rights analysed in its Section 3. Another key specificity of the Greek system is the renewed role of the Supreme Labour Council, as discussed in Section 6.4 of the report. In the view of the authors of the present work, this type of practice likewise does not contravene any of the general principles or EU/ILO rights analysed in this report. Bearing in mind the considerations expressed in paragraph 11 above, it could be argued that to the extent that (and as long as) it can be seen as the expression of “active social partner involvement” and tripartite consensus, this renewed role of the SLC may actually be understood as being aligned with some of the general principles on good industrial and workplace relations.

15. Turning finally to the question of whether the Greek system of collective dismissal can be seen as “effective, credible, and durable”, and bearing in mind the considerations made in paragraphs 6–7 and 8–11 above, and in particular the significant changes to which the system has been subject since January 2014, it is necessary to reserve judgement and suggest that while the current arrangements have so far proved to be “effective”, they will have to be monitored, and their outcomes evaluated, over a certain period of time in order to come to a more definite conclusion on this particular question.

16. These changes have been the object of observations of the ILO supervisory mechanisms. See for instance ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 103rd Session, Geneva, 2014, pp. 111–112.

Introduction



This report provides an overview of collective dismissal regulation in 13 EU Member States, and examines both national and supranational rules shaping collective redundancy processes in those countries. It was produced by a group of independent experts, all of them labour lawyers and most of them academic labour lawyers,¹⁷ with a view to assisting the International Labour Office in the context of the ongoing technical assistance programme developed with the Greek Government in a number of areas, including “labour legislation to regulate collective dismissals”.¹⁸ As is widely known, since May 2010 the Union’s Euro-area Member States and the International Monetary Fund (IMF) have been providing financial support to Greece through an Economic Adjustment Programme in the context of a sharp deterioration in the country’s financing conditions.¹⁹ This support has been accompanied by a request on the part of the lending institutions’ representatives to implement a number of reforms aimed at improving the competitiveness of the Greek economy. Amongst a series of detailed specifications, Greece has been asked to adopt “reforms [that] will ease interpretation of and foster compliance with labour laws with a view to bring legislation in line with EU best practices, and to this end a review will be carried out [...], comparing Greek regulations on [...] collective dismissal rules and procedures, with those in other EU member states”.²⁰

In this context, between December 2013 and January 2014, the authors of this report set out to conduct a comparative analysis of the law on collective dismissals in a selected number of EU Member States. This review was carried out through the use of country-specific questionnaires and the cooperation of a number of national experts that responded to them;²¹ the resulting comparative findings are presented in Section 4 of the present report. Section 2, providing an overview of the main issues arising from the socio-economic impact of collective dismissals, was produced mostly on the basis of work carried out, between January and July 2014, by a team of independent experts coordinated by the Working Lives Institute of London Metropolitan University,²² with further assistance from a number of ILO officials and experts.²³ The remaining sections were drafted jointly by the authors of this report, who gratefully acknowledge the support of the Labour Rights Institute of University College London, St John’s College, Oxford, the Centre for Business Research at the University of Cambridge, and the School of Law of the University of Manchester. An earlier version of this report was presented during a meeting hosted by the ILO on 30 September 2014, in the presence of the Greek Minister of Labour, Social Security and Welfare, and of the Presidents of the main Greek social partners, GSEE, SEV, ESEE, GSEVEE and SETE. The main authors of the present work were given the opportunity to revise some aspects of that report in light of the comments expressed during and following that meeting. However, unless otherwise indicated, they remain solely responsible for the views expressed in this report. Throughout this process the main authors of the present report have greatly benefited from discussions and exchanges with a number of ILO and Greek experts.²⁴

The report has five main sections. Section 2 provides a number of thematic insights into the more contextual aspects of collective dismissal regulation. It begins by acknowledging that economic transformations and cycles, industrial restructuring processes, and the dynamics of competitive

17. Nicola Countouris (University College London, United Kingdom), Simon Deakin (University of Cambridge, United Kingdom), Mark Freedland (University of Oxford, United Kingdom), Aristea Koukiadaki (University of Manchester, United Kingdom), Jeremias Prassl (University of Oxford, United Kingdom).

18. ILO: *Regional perspectives on technical cooperation: Europe and Central Asia*, Governing Body, 320th Session, Geneva, Mar. 2014, GB.320/POL/7, p. 9, para. 31. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235534.pdf.

19. For latest updates, see http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/

20. European Commission Directorate-General for Economic and Financial Affairs: *The Second Economic Adjustment Programme for Greece, Third Review – July 2013*, European Economy Occasional Papers 159 (Brussels), p. 7.

21. Tamás Gyulavári (Hungary), Frank Hendrix and Aline Van Bever (Belgium), Mijke Houwerzijl (Netherlands), Anu Laas (Estonia), Jose Maria Miranda Boto (Spain and Portugal), Andreja Poje (Slovenia), Jenny Votinius (Sweden). The editors of this report also acted as national experts in respect of the remaining jurisdictions, namely France, Germany, Greece, Italy and the United Kingdom. The editors also gratefully acknowledge the help of Cathleen Rosendahl and Elisabeth Kohlbacher.

22. By Sonia McKay and Steve Jefferys and with the assistance of Nick Clark, Sylvie Contrepois, Leroi Henry, Leena Kumarpappan, Anna Paraskevopoulou and Cilla Ross.

23. This review was guided in particular by Janine Berg and Daniel Vaughan-Whitehead, Senior ILO Economists.

24. The comments and views shared by Corinne Vargha, Kostas Papadakis and Maria Ntotsika are gratefully acknowledged.

market economies all dictate that managers may have to contemplate restructuring businesses in ways that are likely to have an adverse impact on the rights and interests of workers. The law is called upon to regulate this natural facet of capitalist economies, while striking a balance between a number of (often) competing interests, typically those of businesses, workers and society at large. This section also reviews a number of recent studies and statistics that show the significant dimension and volume of restructuring processes in Europe, especially since the economic crisis of 2008. This analysis is followed by a more general assessment of the socio-economic impact of collective redundancies on societies, and some justifications for the involvement of public authorities with these processes. Section 3 offers an analysis of the supranational regulatory framework on collective redundancies in Europe. There are three important sources of supranational norms shaping collective redundancy regulation in Europe: (1) the European Union Directive 1998/59 on collective redundancies; (2) the International Labour Organization's Termination of Employment Convention, 1982 (No. 158) and its accompanying Recommendation No. 166; and (3) the relevant provisions of the European Social Charter. These instruments set out the key issues which need to be addressed in legislation adopted by specific countries. These issues are:

- the scope of application (who is covered, and under which circumstances);
- information and consultation requirements;
- the circumstances in which public authorities should be notified of the planned redundancies, and the type and degree of their involvement;
- the principles for selecting redundant workers and compensation for redundant workers; and
- sanctions for non-compliance.

Section 4 of the report sets out how each of these key issues is addressed in the national legal framework of 12 selected EU Member States (MS). These States have been selected to reflect a range of different regulatory models and approaches within Europe, and they therefore vary, at times considerably, in terms of the size and structure of their economies, their legal and industrial relations systems, their geographic location and the length of their affiliation to the European Union. The countries covered by this part of the report are: Belgium, Estonia, France, Germany, Hungary, Italy, the Netherlands, Slovenia, Spain, Portugal, Sweden and the United Kingdom. Section 4 also considers the role of collective bargaining in the regulation of collective dismissal processes. The analysis carried out in the section is accompanied by a more systematic comparative overview of the 12 legal systems covered

Section 5 offers an analysis of the existing regulatory framework currently sustaining collective redundancy processes in Greece. This section is once more structured so as to provide a detailed assessment of the five key issues listed in the preceding paragraphs, as well as the increasingly important role of collective bargaining and social dialogue in shaping such processes.

The final section, Section 6, draws together a number of considerations on the regulation of collective redundancies in Europe in general, and Greece in particular, based on the comparative findings and subsequent analyses set out in the earlier sections of the report.

Throughout the report, the terms “collective dismissal” and “collective redundancy” are used interchangeably.

The regulatory
context:

2

The incidence
and socio-economic
consequences of
collective dismissals

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This section of the report provides background information relevant to the understanding and contextualization of the social, economic and regulatory challenges arising from collective dismissals processes, and to the involvement of public authorities in these processes. Collective redundancies are in many ways a natural and structural part of capitalist industrial economies. Economic transformations and cycles, industrial restructuring processes, and the dynamics of competitive market economies all dictate that, sooner or later, shareholders and managers may have to contemplate restructuring businesses in ways that are likely to have an adverse impact on either the number of jobs in the company, or on the terms and conditions of employment, or both. Under these circumstances, workers may lose their jobs, sometimes in large numbers, for reasons that are not related to their individual conduct, performance, or skills and capabilities. The law is called upon to regulate this natural facet of capitalist economies, while striking a balance between a number of (often) competing interests, typically those of businesses, workers and society at large.

We begin this section by briefly setting out the main policy considerations that underpin and shape the legal regulation of collective dismissals. This is followed by a series of statistical data on the incidence of collective redundancies in Europe in recent years, with a particular emphasis on the period of economic crisis beginning in 2008. These data are accompanied by an analysis of the main causes forcing companies to embark on collective redundancies processes, as set out in a number of studies and surveys produced by the European Restructuring Monitor of the European Foundation for the Improvement of Living and Working Conditions (Eurofound). Discussion then turns to an analysis of the social and economic implications of collective dismissals, focusing in particular on the effect of these processes on the deterioration in health, poverty and social exclusion of the workers affected. The section concludes by offering an outline of the main policy responses that are typically adopted at supranational and national levels to address the effects of collective redundancy processes. While some of the data presented in this section refer to the European Union as a whole, the majority of the information provided and analysis focuses more specifically on the countries examined in this report.

2.1 Competing interests in the regulation of collective dismissals

According to Collins, Ewing and McColgan, legal regulation in the sphere of economic dismissals “has been shaped by three dominant policy considerations”: (i) “permitting the managers of businesses to improve the profitability of the business or to minimise costs and losses”; (ii) affording “protection [...] to the workers’ contractual entitlements”, though “a broader range of interests may [also] be recognised as deserving protection”, including advance notification to, and involvement with, employees about changes in the business, and the protection of employees’ interests in employment and economic security; and (iii) addressing the “public interest in reducing the social costs of changes in the business. These social costs include the costs to the government of providing economic support to the unemployed, the expense of retaining workers so that they can gain alternative employment, and all kinds of hidden and indirect costs of plant closures such as health care and criminal justice.”²⁵

These competing interests play a considerable role in the regulation of collective dismissals at a national level. Of course national labour law and industrial relations traditions, as well as national social and political preferences, ultimately dictate that different countries settle for different regulatory frameworks for the regulation of restructuring processes involving mass dismissals. That said, most industrialized systems share a number of common traits, institutions and practices in the area of collective redundancy legislation, and it is arguable that the public interests discussed above play an important role in shaping such relative convergence. As the Organisation for Economic Co-operation and Development (OECD) in particular has recently noted, “there seems to be greater

25. H. Collins, K. Ewing and A. McColgan: *Labour law* (Cambridge, Cambridge University Press, 2012), pp. 858–859.

consensus among policy makers that mass dismissals have a particularly negative effect on social well-being and stricter protection is needed, so that the cross-country variation of the stringency of regulation on collective redundancies is smaller than that of individual dismissals”.²⁶

The following subsections provide a more detailed assessment of a number of studies and surveys elaborating on particular aspects of the three sets of competing interests mentioned above. In addition, there is a further type of concern which needs to be addressed – and which could be seen as a particular manifestation of the “public interest” discussed above – as it has played a key role in shaping supranational regulatory intervention in the area of collective dismissals. This type of concern emerges quite vividly from the opening paragraphs of the original Commission proposal for the first EEC (as it then was) Directive on collective redundancies, Directive 75/129.²⁷ In these paragraphs, the Commission argued that the persisting “important differences as regards protection of workers in case of redundancies have a direct effect on the functioning of the Common Market in as far as they create disparities in conditions of competition which are likely to influence the decisions by undertakings [...] on the distribution of the posts they have to be filled”.²⁸ In order to contrast these effects, and the resulting economic and social challenges associated with them, the Commission proposed a draft instrument where it “voluntarily restricted itself to a few essential points prompted by the thought that systematic joint action by management, the authorities and workers representatives is the best method of obtaining community rules on redundancy which will best serve their dual purpose – of providing social protection and acting as an economic regulator”.²⁹

The more detailed analysis of the supranational legal instruments on collective dismissals carried out in Section 3 will highlight that the “few essential points” mentioned by the original Commission proposal, that is to say the promotion of measures for the interaction between management, labour and public authorities in restructuring processes involving redundancies, constitute the common core of the provisions and practices embraced by the relevant EU, ILO and Council of Europe, instruments. This is so, in particular, by reference to mechanisms for the timely information and consultation of workers’ representatives, as well as the information of the relevant national public authorities. The European Union has consistently upheld the principles of information and consultation as key principles in the management of restructuring processes, with the 1974 Social Action Programme explicitly setting as an objective the “[i]ncreased involvement of management and labour in the economic and social decisions of the Community, and of workers in the life of undertakings”.³⁰ Over the years, the European Union has produced a number of instruments encouraging the information and consultation of workers and the interaction, at various levels, between management and labour.³¹ The Charter of Fundamental Rights, an instrument at the very apex of the Union’s hierarchy of legal norms since the Treaty of Lisbon, goes so far as to include amongst its provisions a “[w]orkers’ right to information and consultation within the undertaking” and the right to collective bargaining.³² There are several reasons why this is the case, and why the Commission goes as far as considering “[a]ctive social partner involvement ... in many of the schemes available to anticipate and manage restructuring” as a “good practice”.³³

Section 3 of this report will point out that all EU Member States regulate collective dismissal over and above the minimum requirements contained in EU Directive 98/59: a scenario which is explicitly envisaged in Article 5 of the Directive. For instance, all the countries covered by this report contemplate provisions for the compensation that employers have to pay for dismissals made during restructuring processes, whereas the Directive does not cover this issue.³⁴ Similarly, a number of countries

26. Organisation for Economic Co-operation and Development (OECD): *OECD Employment Outlook 2013* (Paris, 2013), p. 86.

27. Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies [1975] OJ L 48/29.

28. Commission of the European Communities: *Proposal for a Council Directive on the harmonization of the legislation of the Member States relating to redundancies*, COM(72) 1400, 8 Nov. 1972 (Brussels), p. 1.

29. *Ibid.*, p. 3.

30. Council Resolution of 21 January 1974 concerning a social action programme [1974] OJ C 13/01.

31. For a recent review and assessment of the resulting regulatory framework, see European Commission: *“Fitness check” on EU law in the area of information and consultation of workers*, Commission Staff Working Document, SWD(2013) 293 final, 26 July 2013 (Brussels); European Commission: *Restructuring in Europe 2011*, Commission Staff Working Document, SEC(2012) 59 final, 17 Jan. 2012, accompanying the Green Paper *Restructuring and anticipation of change, what lessons from the economic crisis?*, COM(2012) 7 final (Brussels).

32. Articles 27 and 28 respectively. See also Case C-176/12, *Association de médiation sociale v CGT* [2014] ECR I 0000.

33. European Commission, *Restructuring in Europe 2011*, op. cit., p. 10.

34. Other than very tangentially in Article 2(3) (vi).

display a fairly prescriptive and proceduralized set of rules on information, consultation and in some cases co-decisions, and a highly coordinated engagement between management, labour and the State in dealing with collective dismissal cases. Attempts have been and are being made by economists and other social scientists to determine whether this additional kind of legal regulation has an adverse impact on labour markets. Without wanting to provide an exhaustive assessment of the existing literature on the topic, it can be said that laws on codetermination and on information and consultation are typically correlated with a high level of trust in industrial relations,³⁵ which in turn is related to superior economic outcomes in terms of productivity and employment.³⁶ In cross-national studies of developed economies, stronger laws on employee voice at work are not just correlated with higher employment and reduced levels of inequality, but are also shown to have a causal link to these outcomes.³⁷ Requiring firms to internalize some of the effects of redundancies may reduce the social costs of restructuring, including the costs to the State (and thus the taxpayer at large), as well as providing displaced workers with compensation for their inevitable losses in terms of human capital.³⁸ Laws which recognize a role for seniority as a criterion for (non-)selection in dismissal, and for the level of compensation, can be understood as giving firms and workers ex ante incentives to invest in relevant firm-specific skills, thereby having a potentially positive effect on productivity.³⁹ More generally, laws which mandate due process as a precondition for dismissal have been shown to have positive effects on employee motivation, which is reflected in turn in enhanced innovation by firms.⁴⁰ Thus it would seem that there is a certain efficiency case for at least some form of legal regulation of dismissals in general and collective dismissal in particular.⁴¹

2.2 The incidence of collective dismissals

In introducing this particular subsection, which sets out to present a series of statistical data on job losses in Europe, we need to begin by commenting briefly on the main source from which most of this data is derived, the European Restructuring Monitor (ERM). This facility is operated by Eurofound, based in Dublin, and has been recording restructuring announcements in establishments since 2002. Through a network of national correspondents based in each of the EU28 Member States and Norway, the ERM records data on the basis of media reports concerning cases of restructuring involving over 100 announced job losses or job creations or, in the case of larger companies employing more than 250 persons, announced restructurings affecting at least 10 per cent of the workforce. While this dataset is often described as “the best single, publicly available source of EU data on the employment impacts of large-scale organisational restructuring”,⁴² it suffers from a series of equally well-accepted “biases”,⁴³ which result in a rather coarse-grained description of the economic and industrial phenomena it covers: in particular, by missing out on a series of redundancies which fall within the scope of the Directive’s numerical and temporal thresholds, but below the reporting numbers as laid down by Eurofound.

35. See E. P. Lazear: “Job security provisions and employment”, in *Quarterly Journal of Economics* (1990, Vol. 105, No. 3), pp. 699–726; C. F. Büchtemann (ed.): *Employment security and labour market behaviour* (Ithaca, NY, ILR Press, 1993); G. Bertola: *Labour market regulation: Motives, measures, effects*, ILO Conditions of Employment and Work Research Series (ILO, Geneva, 2010).

36. H. Feldmann: “The quality of *industrial relations* and labour market performance”, in *Labour* (2006, Vol. 20, No. 3, Sept.), pp. 559–579.

37. S. Deakin, J. Malmberg and P. Sarkar: “How do labour laws affect unemployment and the labour share of national income? The experience of six OECD countries, 1970–2010”, in *International Labour Review* (2014, Vol. 153, No. 1, Mar.), pp. 1–27.

38. S. Deakin and F. Wilkinson: “The management of redundancies in Europe: The case of Great Britain”, in *Labour* (1999, Vol. 13, No. 1, Mar.), pp. 41–89.

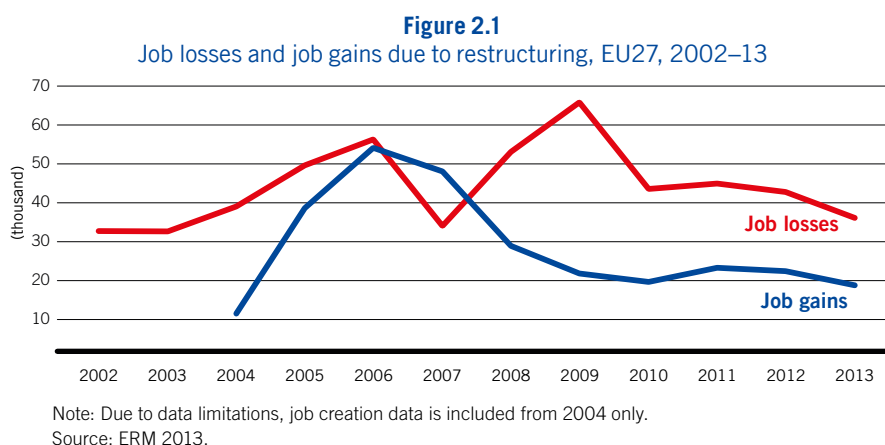
39. S. Deakin and F. Wilkinson: “Labour law and economic theory: A reappraisal”, in G. De Geest, J. Siegers and R. van den Bergh (eds.): *Law and economics and the labour market* (Aldershot, Edward Elgar, 1999).

40. V. Acharya, R. Baghai-Wadji and K. Subramanian: “Labor laws and innovation”, in *Journal of Law and Economics* (2013, Vol. 56, No. 4), pp. 997–1037.

41. D. Baker, A. Glyn, D. Howell and J. Schmitt: “Labour market institutions and unemployment: A critical assessment of cross-country evidence”, in D. Howell (ed.): *Fighting unemployment: The limits of free market orthodoxy* (Oxford, Oxford University Press, 2005); L. Baccaro and Dr. Rei: “Institutional determinants of unemployment in OECD countries: Does the deregulatory view hold water?”, in *International Organization* (2007, Vol. 61, No. 3), pp. 527–569.

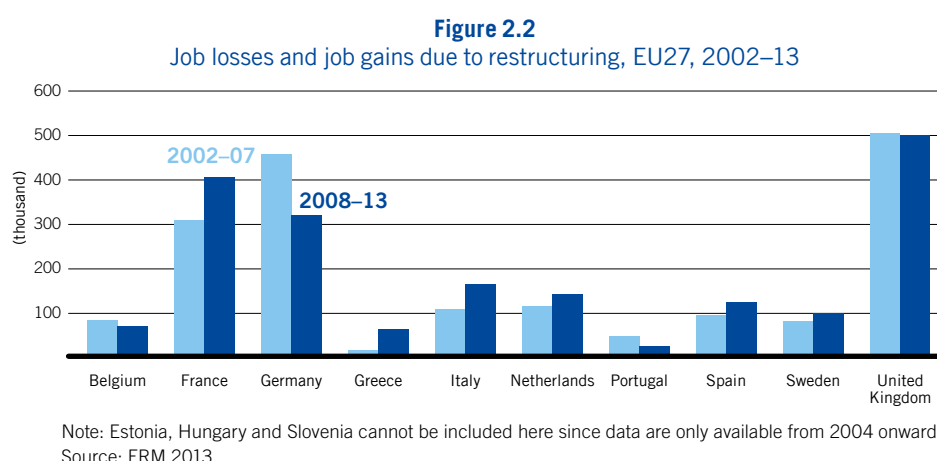
42. European Commission, *Restructuring in Europe 2011*, op. cit., p. 18.

43. Ibid., pp. 20–21. This is also accepted by the ERM itself. See Eurofound: *ERM Annual Report 2013: Monitoring and managing restructuring in the 21st century* (Luxembourg, 2013), pp. 19–20. Available at <http://www.eurofound.europa.eu/publications/htmlfiles/ef1380.htm>.



With this caveat in mind, the *ERM Annual Report 2013* recorded some 16,000 announced cases of large-scale firm restructurings in Europe between 2002 and 2013, with an associated loss of over 4.75 million jobs, as opposed to an announced creation of 2.7 million jobs.⁴⁴ The total announced job destruction was thus almost double the announced job creation (see figure 2.1). In 2006 both job creation and job destruction peaked, which is related to the enlargement of the European Union in 2004.⁴⁵ The second peak reflects the impact of the crisis: since 2008, the number of jobs created has consistently been lower than the number of jobs destroyed. The number of collective dismissals reached its maximum level in 2009 and decreased considerably afterwards with yet another small increase in 2011. Job creation has fallen sharply from its pre-crisis level and has only recovered marginally since 2009.

In most countries studied, the gross number of jobs lost due to collective dismissals was higher between 2008 and 2013 than before the crisis, which is largely attributable to an overall deterioration of macroeconomic conditions. Data suggest that in Germany and Portugal, and to a certain extent also in Belgium and the United Kingdom, the level of job losses during the 2008–13 period has been, overall, lower than in the period 2002–07 (see figure 2.2). The latter group includes a country that was very severely hit by the crisis (Portugal) as well as a country that appears to have weathered the economic crisis and its consequences far more successfully, at least in terms of job losses (Germany). Therefore, it seems that current economic developments may not be the only driver of collective dismissals.⁴⁶

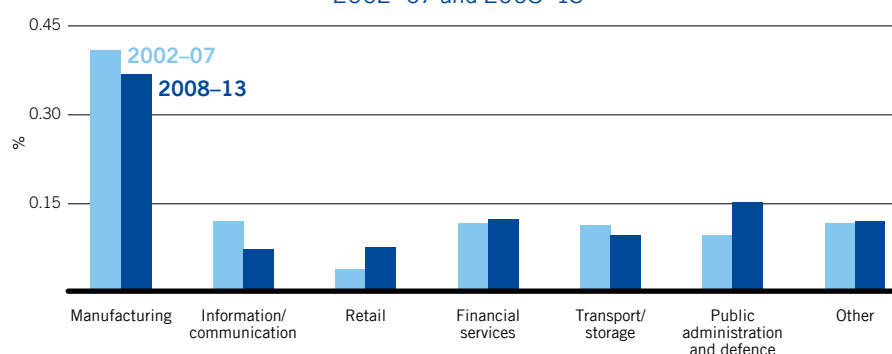


44. Eurofound, *ERM Annual Report 2013*, op. cit., pp. 7, 42.

45. Although this reflects, in part, a statistical effect – more countries entails more observations of restructuring events – there has also been a West–East shift of manufacturing, as a result of corporate strategies to off- (or near-) shore activities; see Eurofound, *ERM Annual Report 2013*, op. cit., p. 50.

46. Comparing the number of job losses across countries is not an easy task. Obviously, in absolute numbers, job loss is higher in large countries than in smaller ones. At the same time, restructuring events including the dismissal of 100 or more workers occur less frequently in smaller countries, such as Belgium and Portugal, but receive more media attention. In very small countries such as Cyprus or Malta, few firms surpass the threshold of the ERM, leading to an under-reporting bias regarding the incidence of collective dismissals. For these reasons, the country size bias is difficult to estimate and can compromise comparisons between countries (Eurofound, *ERM Annual Report 2013*, op. cit.). We therefore do not compare the absolute numbers of collective dismissals, but rather focus on estimations in relative terms.

Figure 2.3
Job losses by sector (in % of total job losses), pre-crisis and post-crisis, 2002–07 and 2008–13



Source: ERM 2013, p. 46.

There are important differences in the extent of job losses by economic sector. Manufacturing is where most jobs have been lost by far, both before and after the onset of the crisis. The *ERM Annual Report 2013* notes that the destruction of employment was “felt most acutely in manufacturing and construction”.⁴⁷ The relative importance of dismissals in the manufacturing sector declined in the period between 2008 and 2013, however, while relatively more dismissals occurred in retail, financial services and public administration (see figure 2.3). The increasing share of financial services in overall restructuring job loss is not surprising given that this is the sector where the 2008 crisis originated. Restructuring cases in public administration tend to be very large. Recent examples include the announced loss of 30,000 jobs in the Greek public sector in order to fulfil the requirements of official austerity commitments, or the dismissal of 54,000 military and civilian defence employees in France.⁴⁸ This explains the increasing importance of this sector in total dismissals.

The January 2014 quarterly issue of ERM⁴⁹ recorded a total of 6,018 cases of restructuring in the period from October 2006 to October 2013. Looking at the most recently announced cases, there were 8,114 cases of job creation, compared to 41,608 cases of job loss, suggesting that it is still the case that restructuring is more likely to result in job loss than in job gain. Internal restructuring accounted for over 70 per cent of the announced job losses, while the incidence of job loss due to bankruptcy (11%) and closures (9%) decreased compared to the previous quarter. In terms of geographical distribution, the countries which recorded the greatest number of announced job losses were the United Kingdom (13,838 jobs) and Germany (13,506 jobs), followed by France (11,705 jobs), Spain (10,142 jobs), Greece (6,537 jobs) and Italy (6,457 jobs). The Czech Republic (9,529 jobs) recorded the highest number of new jobs, followed by France (6,020 jobs), Poland (4,55 jobs), the United Kingdom (3,528 jobs) and Germany (3,370 jobs).

2.3 Reasons for collective dismissals

The most-cited reason for collective dismissals is internal restructuring. This category accounts for just over 70 per cent of all the restructuring cases, pre-crisis and post-crisis. In part, the ERM report explains, this is due to the fact that restructuring is used as a residual category in its classificatory scheme: cases that are not clearly linked to one of the other categories, or those where a mix of different reasons is offered, are simply classified as driven by internal restructuring.⁵⁰

While the number of cases attributable to internal restructuring remains stable in relative terms over time, the share of collective dismissals due to bankruptcy or closure of firms increased from 15 per cent before the crisis to 20 per cent after the crisis, illustrating the economic pressure firms were facing after the onset of the economic crisis. The 2013 ERM report notes that “the majority

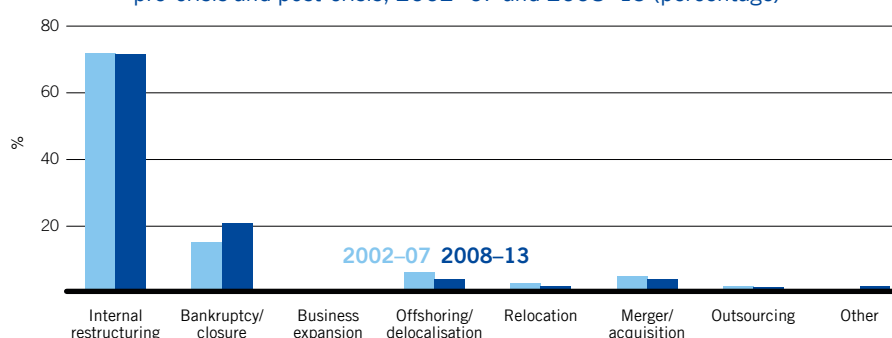
47. Eurofound, *ERM Annual Report 2013*, op. cit., p. 4.

48. Ibid., p. 45.

49. *European Restructuring Monitor Quarterly* (2014, Jan.).

50. Eurofound, *ERM Annual Report 2013*, op. cit., p. 44.

Figure 2.4
Reasons for collective dismissals (in % of total job losses), EU27, pre-crisis and post-crisis, 2002–07 and 2008–13 (percentage)

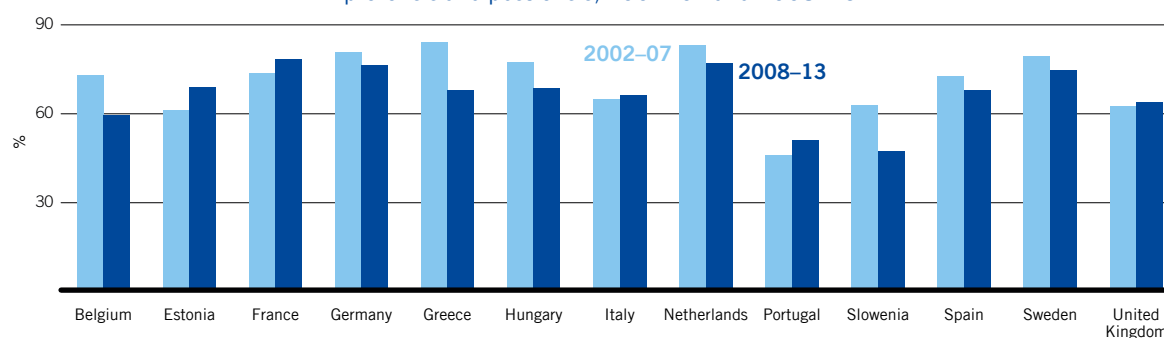


Source: ERM 2013, p. 43.

of bankruptcy/closure cases were in the SME category”, with that category defined by the ERM as “establishments employing up to 250 people”.⁵¹ Cases of outsourcing, offshoring and relocation⁵² represent a relatively modest 4 per cent of all collective dismissals in the post-crisis period.⁵³ Moreover, the share of these activities has been declining compared to the pre-crisis period (see figure 2.4).

Although internal restructuring is the most important reason for restructuring in all countries of the European Union, its importance varies from country to country. Data sourced directly from the ERM Restructuring Events Database,⁵⁴ for instance, reveal that whereas in Greece this category accounted for 84 per cent of collective dismissals during the period before the crisis, in Portugal only 45 per cent of the restructuring events were due to internal restructuring (see figure 2.5). The evolution over time is not the same in all the countries either. In some, such as Belgium, Germany or Greece, the relative loss of importance of the category of internal restructuring in the post-crisis period may reflect the increased share of bankruptcy/closure cases. In others, such as Portugal or the United Kingdom, however, the increased relative importance of bankruptcy cases goes hand in hand with an increased share of internal restructuring, indicating how internal restructuring could be a response to financial pressure.

Figure 2.5
Share of collective dismissals due to internal restructuring, selected EU countries, pre-crisis and post-crisis, 2002–07 and 2008–13



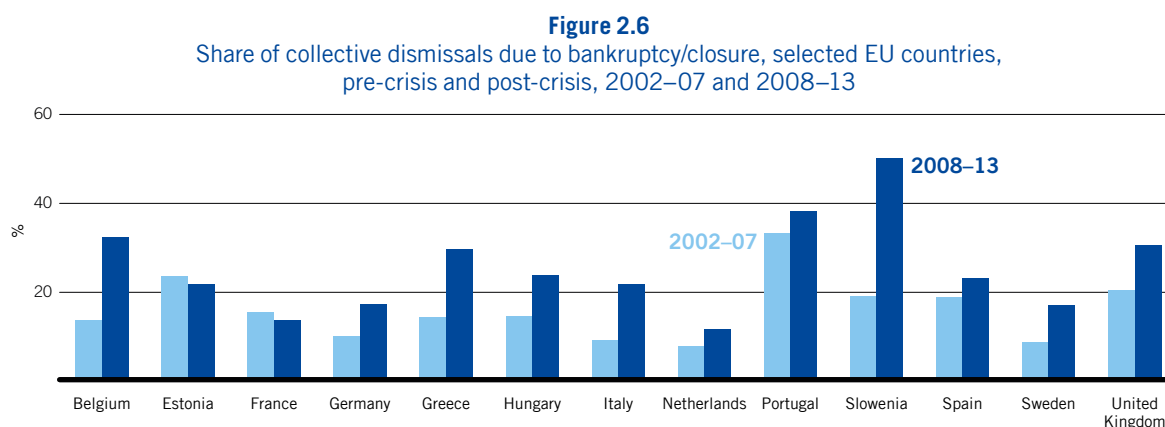
Source: ERM Restructuring Events Database.

51. Ibid.

52. Relocation refers to a situation where production is shifted to another place within the same company and the same country while outsourcing means that a part of the activity is shifted to an external company, but still within the same country. Offshoring refers to a situation where production (or a part of it) is shifted to a foreign country, either within the same company or to an external company.

53. Eurofound, *ERM Annual Report 2013*, op. cit., p. 44.

54. Available at: <http://www.eurofound.europa.eu/emcc/erm/index.php?template=searchfactsheets>.



Source: ERM Restructuring Events Database.

Even though the relative importance of bankruptcy/closure increases in the European Union in the post-crisis period, there are a few exceptions and where the increase occurs, it does not manifest itself in the same measure across all countries. In France and Estonia, for example, we observe a slight decrease in the percentage of cases of collective dismissal attributable to bankruptcy/closure, while in Belgium, Greece and Slovenia, the increase in the share is considerable. It is much smaller in Germany, Portugal or Spain (see figure 2.6).

These examples show that economic conditions are a critical determinant of the number of collective dismissals and a major motivating factor. Overall, job losses increased after the onset of the crisis and restructuring events were replaced by cases of bankruptcy and closure. The variation between countries in terms of numbers of collective dismissals, the relative importance of certain factors and the development over time partly also reflect different countries' economic conditions and coping strategies.

2.4 The socio-economic effects of collective dismissals

This subsection seeks to provide an introductory overview of a number of more general, “public interest” concerns surrounding collective dismissal processes. As noted in the introductory paragraph of the present section, redundancy processes affect, broadly speaking, three main sets of interests: those of companies, those of workers, and those of society at large. In other words, the job losses resulting from these processes are not just a concern for the employers and the employees involved, but also generate a number of externalities that, while not isolated from the individual or collective interests of businesses and workers, fall more squarely within the precinct of interests that societies, and European societies in particular, recognize as “public”. As such, as we will note in the following sections of the report, these concerns justify a regulatory response encouraging or mandating a certain involvement and intervention on the part of public authorities in collective redundancy processes. The key general economic and social consequences of collective redundancies that the following subsections will focus on are: (i) the effects on the health of the population affected; and (ii) the effects in terms of poverty and social exclusion. There are no doubt other interests and effects that one could explore, ranging from the effects in terms of the impact of the criminal justice system to effects in terms of social unrest. Such considerations, however, tend to be slightly more peripheral to the present discussion.

2.4.1 Effects on health

There is an extensive literature on the health, psychological and social effects of job loss due to restructuring. Dismissal and unemployment are associated with an increasing incidence of stress-related health problems and lower life expectancy in the long term. Parental job loss also reduces schooling achievements and long-run wage prospects of children, and increases divorce rates.⁵⁵

More dramatically, an impact on the rate of suicides has also been observed that has increased sharply since 2009 in both older and newer EU Member States. Among the countries studied, only Austria had fewer suicides (down 5 per cent) in 2009 than in 2007. In each of the other countries the increase was at least 5 per cent. Stuckler et al. (2011) report that an increase in unemployment of more than 3 per cent increased suicides in those younger than 65 years.⁵⁶ They note that:

We can already see that the countries facing the most severe financial reversals of fortune, such as Greece and Ireland, had greater rises in suicides (17% and 13%, respectively) than did the other countries, and in Latvia suicides increased by more than 17% between 2007 and 2008.

... formal and informal social protection such as active labour market policies and strong social support networks could mitigate the predicted increase in suicides. In this context, we note that Austria, with a strong social safety net, had a slight decline in suicides despite an increase in unemployment of 0.6 percentage points between 2007 and 2009 ... These findings also reveal the rapidity of the health consequences of financial crises.⁵⁷

Karanikolos et al. (2013) support the contention that the crisis has had a negative impact on health but also suggest that this can be mitigated by strong policies aimed at welfare protection.⁵⁸ Tracing the origins of the economic crisis in Europe and the responses of governments, they found that “whilst immediate rises in suicides and falls in road traffic deaths were anticipated, other consequences, such as HIV outbreaks, were not, and are better understood as products of state retrenchment”. In Greece, Spain, and Portugal the adoption of strict fiscal austerity caused the economies to recede and was thus placing more strain on their health services. They state:

Their economies continue to recede and strain on their health-care systems is growing. Suicides and outbreaks of infectious diseases are becoming more common in these countries, and budget cuts have restricted access to health care. By contrast, Iceland rejected austerity through a popular vote, and the financial crisis seems to have had few or no discernible effects on health. Although there are many potentially confounding differences between countries, our analysis suggests that, although recessions pose risks to health, the interaction of fiscal austerity with economic shocks and weak social protection is what ultimately seems to escalate health and social crises in Europe. Policy decisions about how to respond to economic crises have pronounced and unintended effects on public health, yet public health voices have remained largely silent during the economic crisis.

Health is not only affected by collective dismissals in the whole economy but also by dismissals and restructuring in the health services themselves and by cuts in spending on health. This process has shown to have an impact on the quality of services provided in the health sector.⁵⁹ Research for the RN4CAST consortium finds that nurse cutbacks are directly linked to higher patient death rates in hospitals.⁶⁰ Every extra patient added to a nurse's workload increases the death rate within a month of surgery by seven per cent. The highest risk of death in hospitals occurred in those with lower qualified nurses. Hospitals with lighter workloads and more qualified nurses had 30 per cent lower surgical death rates. Brand et al. similarly conclude that austerity policies have worsened Europe's health, and particularly in Greece, Portugal and Spain.⁶¹ A study by Legido-Quigley et al. cited by Brand et al., which explores the consequences of Spanish austerity on health policy in depth, sug-

55. See for example M. Eliason and J. Storrie: “Does job loss shorten life?”, in *Journal of Human Resources* (2009, Vol. 44, No. 2, Spring), pp. 277–302; D. G. Sullivan and T. von Wachter: ‘Mortality, mass layoffs and career outcomes: an analysis using administrative data’ (2006), Federal Reserve Bank of Chicago, p. 21.

56. D. Stuckler, S. Basu, M. Suhrcke, et al.: “Effects of the 2008 recession on health: A first look at European data”, in *The Lancet* (2011, Vol. 378, No. 9786, 9 Jul.), pp. 124–125.

57. Ibid.

58. M. Karanikolos, P. Mladovsky, J. Cylus, et al.: ‘Financial crisis, austerity, and health in Europe’, in *The Lancet* (2013, Vol. 381, No. 9874, 13 Apr.), pp. 1323–1331.

59. See D. Vaughan-Whitehead (ed): *Public sector shock: The impact of policy retrenchment in Europe* (Geneva, ILO; London, Edward Elgar, 2013).

60. L. H. Aiken, D. M. Sloane, L. Bruyneel et al.: “Nurse staffing and education and hospital mortality in nine European countries: A retrospective observational study”, in *The Lancet* (2014, Vol. 383, No. 9931, 24 May), pp. 1824–1830.

61. H. Brand, N. Rosenkötter, T. Clemens and K. Michelsen: “Austerity policies in Europe – bad for health”, in *British Medical Journal* (2013, Vol. 346, 29 Jun.), p. 7.

gests that there is no evidence that such [austerity] policies work and that the contrary may well be the case: ‘countries burdened by austerity policies have higher rates of poor health, particularly in the unemployed; increased prevalence of mental health problems (such as depression, anxiety) and suicide attempts; and increased incidence of infectious diseases, such as HIV.’⁶²

As mentioned above, these effects do not extend only to workers who lose their job but have a similar impact on individuals who stay at a firm after a restructuring event. A large body of recent European research deals with the health and psychological consequences for the so-called stayers: musculoskeletal and mental disorders, higher rates of absenteeism and increased incidence of bullying and harassment are direct consequences of work intensification and anxiety of future job loss due to restructuring.

2.4.2 A general impact on poverty and exclusion

The increase of collective dismissals during the crisis contributed to the marginalization of a number of workers and was therefore an important factor in the general increase in social exclusion reported throughout the period and, in particular, following the implementation of austerity policies.

Eurostat data on people at risk of poverty or social exclusion show highest numbers in Italy (15,256,000), the United Kingdom (14,193,000) and Spain (10,519,000). Between 2006 and 2012, significant increases in social exclusion were recorded (see table 2.1). Whereas overall in the EU27 social exclusion declined slightly over the period, it rose in those countries affected most by the recession.

Table 2.1
Impact of austerity on those at risk of social exclusion,
selected EU countries and EU27, 2006 and 2012

Country	2006 (000s)	2012 (000s)	% change
Ireland	991	1319	33
Greece	3154	3795	20
Italy	15,256	18,194	19
Slovenia	343	392	14
United Kingdom	14,193	15,078	6
Spain	10,519	13,090	24
EU27	123,051	122,857	-2

Statistics on material deprivation show that 18.5 per cent of the EU28 population were materially deprived in 2011,⁶³ with such deprivation affecting more than 20 per cent of the population in Hungary and Romania. Severe material deprivation increased by 0.5 percentage points, and by one point in countries that were part of the Euro area, between 2010 and 2011. The largest increases were in Italy (4.3), Latvia (4), Greece (3.6) and Hungary (1.5). Around 38.1 per cent of citizens in the EU28 reported difficulties in facing unexpected expenses, an increase of 1.4 compared to 2010; 9.7 per cent reported inability to afford a meal with meat, chicken or fish (or a vegetarian equivalent); an increase of 0.9 on the previous year. The percentage reporting this was above 60 per cent in Croatia, Bulgaria, Hungary and Lithuania, and 80.4 per cent in Latvia, and there were increases in Greece (6.2) Romania (5.7) Italy (5.3) and Ireland (5.2).

In 2011, 121.5 million individuals in the EU28 (24.3 per cent) lived in households facing poverty or social exclusion, an increase of 0.6 per cent compared to 2010. The largest increases were reported in Italy (3.7), Greece (3.3) and Latvia. Seventeen per cent of EU28 citizens are at risk of income poverty; 9.9 per cent are severely materially deprived; 40.2 per cent could not afford unexpected financial expenses. Over 124 million (24.8 per cent) were at risk of poverty or social exclusion, an increase from 24.3 per cent in 2011. Those at highest risk were in Greece (34.6%),

62. Ibid., citing H. Legido-Quigley, E. Urdaneta, A. Gonzalez et al.: “Erosion of universal health coverage in Spain”, in *The Lancet* (2013, Vol. 382, No. 9909, 14 Dec.), p. 1977.

63. Eurostat: *Material deprivation and low work intensity statistics*, available at: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Material_deprivation_and_low_work_intensity_statistics.

Lithuania (32.5%), Hungary and Croatia (around 32%). Children were at greater risk of poverty or social exclusion in 2012 in 20 of the 26 Member States where data was available. The main factors affecting child poverty are the labour market situation of their parents, and the effectiveness of government intervention. Seventeen per cent of the population remains at risk even after social transfers; that rate has remained stable between 2011 and 2012. In 2013, the highest “at risk” rates were recorded in Greece and Romania (23.1 and 22.4 per cent respectively), Spain (20.4) and Bulgaria (21). (The increase was highest in Greece (1.7) and Luxembourg (1.5)).⁶⁴ Six of the 15 countries studied were in the top 14 of the highest at risk across the EU27. In descending order, those countries with the most severe levels of material deprivation are: Bulgaria, Latvia, Romania, Hungary, Lithuania, Greece, Croatia, Poland, Italy, Cyprus, Slovakia, Estonia, Portugal and Ireland.⁶⁵ At the same time, an average amount of just under 2 per cent of GDP was spent on labour market interventions in 2011. The highest spenders in this regard were in Denmark and Belgium (3.7%) and Ireland and Spain (3.6%).⁶⁶

Table 2.2
Percentage at risk of poverty (and % change),
selected EU countries and EU27, 2009 and 2011

Country	2009	2011	% change
Greece	19.7	21.4	9
Spain	19.5	21.8	12
Italy	18.4	19.6	6
Portugal	17.9	18.0	1
EU27	15.9	16.9	1

2.5 Public interests and public intervention in collective dismissals

It is clear from the discussion in section 2.4 that collective dismissals do not just engender costs and drawbacks for the businesses and the workers directly involved, but also generate a number of social and economic externalities affecting an alarming number of public interest indicators. In the immediate aftermath of the financial and economic crisis of 2008, a number of studies elaborated on the role of collective redundancy and employment protection legislation in anticipating and mitigating some of the effects and negative externalities of large-scale job losses. An ILO study in 2011, for example, suggested that employers in countries with higher levels of employment protection legislation were less likely to overreact to the economic downturn and undertake large-scale redundancies which might be harmful in the longer run.⁶⁷ Similarly, in the 2009 edition of its *Employment Outlook* report, the OECD acknowledged that “relaxing” employment protection legislation could encourage “employers to shed workers more quickly when product demand falls and the resulting level of layoffs could be considered excessive because it is above either the efficient level or the politically acceptable level”.⁶⁸

Bearing in mind the public interest challenges associated with large-scale collective dismissals as well as the role that regulation and the intervention of public authorities can play in addressing some of these concerns, it is possible to identify a series of contributions that public authorities can offer. By way of example, it can be suggested that one possibility to mitigate the costs of collective dismissals is to avoid them entirely by fostering cooperation between various actors with a view to anticipating and preparing for those restructuring processes that can produce them in the first place. Research suggests that this is best achieved through the cooperation and early intervention

64. Eurostat: *People at risk of poverty or social exclusion*, available at: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/People_at_risk_of_poverty_or_social_exclusion.

65. Eurostat: *Social inclusion statistics*, available at: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Social_inclusion_statistics

66. Eurostat: *Labour market policy interventions*, available at: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Labour_market_policy_interventions

67. S. Cazes, S. Verick and F. Al Hussami: *Diverging trends in unemployment in the United States and Europe: Evidence from Okun's law and the global financial crisis*, Employment Working Paper No. 106 (Geneva, ILO, 2011).

68. OECD: *Employment Outlook 2009: Tackling the job crisis* (Paris, 2009), p. 90.

of national, regional and local government, the social partners and, crucially, public authorities.⁶⁹ If collective dismissals are inevitable, there are nevertheless measures public authorities can take or assist with to manage and mitigate their consequences. Again, training appears to be a dominant component of this kind of policy,⁷⁰ although some EU Member States have been experimenting with other mechanisms as well, especially in the wake of the 2008 recession. For instance, some of them have sought to combine income support and short-time working or temporary lay-off schemes.⁷¹ Germany is a paradigmatic example, and there has been substantial research supporting the contribution of “short-time work accompanied by short time allowance” in the early years of the current economic crisis, as well as highlighting the key role played by the social partners and tripartism in negotiating and sustaining these arrangements.⁷² In its *Employment Outlook 2009*, the OECD noted that “a temporary subsidy for short term working represents a politically attractive” solution,⁷³ and similar comments have been made by the European institutions, with the Commission noting that “[t]emporary short time working arrangements have been effective in maintaining employment in several Member States, [and] can save considerable firing and (re)hiring costs for firms, prevent the loss of firm-specific human capital, and at the same time enhance workers’ employability. [...] SMEs and workers on non-permanent contracts should also benefit”.⁷⁴

In conclusion, then, discussion in this section has reviewed a series of important indicators painting a broader picture of the socio-economic consequences of collective redundancies, whether as the result of enterprise restructuring or other events such as employer insolvency. On this basis, latter subsections suggested that there are important public policy reasons to minimize collective redundancies, and to ensure that where they occur, they should be well planned and closely involve key stakeholders and the public authorities so as to reduce the negative social and economic consequences that are likely to result. A regulatory framework which responds to the manifold problems raised for workers, employers and the State at large by collective dismissals thus needs to contain elements that provide for timely information to and consultation with workers and their representatives about the proposed restructuring, notification of public authorities, in order that government agencies can respond as early as possible, the application of fair and rational criteria governing the selection of redundant workers and appropriate financial support for those who have lost their jobs. The following two sections examine how elements of these general considerations are incorporated in the specific legal detail contained in the main supranational and national regulatory instruments applicable in the EU Member States surveyed.

69. Eurofound: *ERM Annual Report 2011: Public instruments to support restructuring in Europe* (Luxembourg, 2011), pp. 5, 17–35.

70. *Ibid.*, pp. 36–38.

71. *Ibid.*, pp. 41–44.

72. I. Mandl and L. Salvatore: *Tackling the recession – Employment related public initiatives in EU Member States and Norway* (Luxembourg, Eurofound, 2009); L. Rychly: *Social dialogues in times of crisis: Finding better solutions*, Industrial and Employment Relations Working Paper No. 1 (Geneva, ILO, 2009); M-C. Escande Varniol, S. Laulom and E. Mazuyer (eds): *Quel droit social dans une Europe en crise* (Brussels, Larcier, 2012), particularly pp. 77–78.

73. OECD, *op. cit.*, p. 90.

74. European Commission: *Employment in Europe Report 2009* (Luxembourg, 2010), p. 3.

The supranational regulation of collective dismissals in Europe: Key legal provisions and principles

3

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This section focuses on the supranational regulation of collective dismissals and is composed of three main subsections. The first offers a brief analysis of Directive 1998/59, the key European Union directive dealing with mass redundancies, and related provisions. The second provides a summary overview of ILO Convention No. 158, which pertains to termination and which has been ratified by 10 EU Member States. The third provides a brief assessment of the impact of the Council of Europe's European Social Charter on collective dismissals in Europe. The analysis carried out in this section focuses exclusively on the key supranational instruments on collective dismissals. It is noted that this regulation is also shaped by a number of other EU⁷⁵ and ILO instruments,⁷⁶ but their assessment is beyond the scope of the present report.

3.1 The historical background to the regulation of collective dismissals

By the early 1970s, there was a clear perception in Europe that “the changes (rationalization, co-operation, mergers) which firms undergo directly or indirectly as a result of the functioning of the Common Market [would] have profound repercussions on the security of employment for workers”.⁷⁷ With growth in economic activity there was to come an increase in productivity and wealth – but also an increase in the uncertainty faced by individual workers. Based on the kind of considerations discussed in Section 2, the (then) Community saw a need to provide for the protection of employees' rights and interests in the resulting organizational changes, and enacted a series of relevant Directives – enshrining, for example, “the principle of the retention of employment contracts despite a change in the legal personality of the employer”,⁷⁸ creating wage-protective mechanisms in case of employer insolvency,⁷⁹ and imposing a range of obligations such as information and consultation with employees affected by a reorganization – in particular where such restructuring would lead to collective dismissal.⁸⁰ The explanatory statement accompanying the Commission's first proposal for a directive on collective redundancies encourages the adoption of the instrument by reference to the need of “tackling disparities in conditions of competition” between European companies, and also by fact that it was “less justifiable socially” to treat differently European workers facing similar restructuring process in different European Member States.⁸¹ A similar need to balance economic and social rationales appears to pervade the current instrument regulating collective redundancies in the European Union, Directive 98/59.⁸²

75. Primarily Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community [2002] OJ L 80/29 ; and, to a certain extent, Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast) [2009] OJ L 122/28. Section 6 of this report also notes the role of some country-specific recommendations adopted in the context of what is now Europe 2020. For an overview on the latter see I. Schömann: *Labour law reforms in Europe: Adjusting employment protection legislation for the worse?*, European Trade Union Institute Working Paper 2014.2 (Brussels, ETUI, 2014).

76. In particular the Workers' Representatives Convention, 1971 (No. 135) and the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).

77. Commission of the European Communities, op. cit., COM(72) 1400, p. 1. See also the preamble of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses [2001] OJ L 82/16, Recital 2.

78. Commission Report on Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (Brussels, 18 June 2007) COM(2007) 334 final [6].

79. Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer [2002] OJ L 270/10.

80. Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies [1975] OJ L 48/29. Now Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies [1998] OJ L 225/16.

81. Commission of the European Communities, op. cit., COM(72) 1400, pp. 1–2.

82. [1998] OJ L 225/16, Recital 2.

This area of European social and labour law has only become more topical and politically sensitive since the 2008/09 economic crisis. As noted in the Commission Staff Working Document accompanying the 2012 Green Paper *Restructuring and anticipation of change, what lessons from the economic crisis?*:

The economic crisis of the past two years has had a severe impact on the labour market, as organisations are obliged to make redundancies in significant numbers in order to try to respond to the external environment. Over the period from 2002 to 2010, over 11,000 cases of restructuring were recorded by the European Restructuring Monitor, based at the European Foundation for the Improvement of Living and Working Conditions (Eurofound) in Dublin, with a ratio of 2:1 regarding announced job loss to announced job creation. The level of recorded restructuring announcements has, of course, increased over the past two years, accompanied by higher levels of job loss, although it would seem that both announced job loss and cases of restructuring peaked during the first quarter of 2009.⁸³

In 2013, the European Parliament explicitly intervened in the debate, through the adoption of a Resolution on restructuring that, inter alia, asked the Commission to “submit as soon as possible ... a proposal for a legal act on information and consultation of workers, anticipation and management of restructuring” and “to ensure that dismissals are seen as a last resort after having considered all possible alternatives”.⁸⁴

These EU developments, it is worth noting, have not taken place in the abstract. They have evolved through an interesting, and at times challenging, relationship with other relevant instruments, notably ILO Convention No. 158 and Recommendation No. 166, as well as Article 29 of the European Social Charter, and – at least since the adoption of the Charter of Fundamental Rights of the European Union – of Articles 27 and 30 of the EU Charter.⁸⁵

3.2 The EU regulation of collective redundancies: Directive 1998/59

The regulation of collective redundancies in the European Union goes back to the days of the first Social Action Programme (1974–76).⁸⁶ The central legal measure in force today is Council Directive 59 of 1998 on the approximation of the laws of the Member States relating to collective redundancies (hereinafter “The Directive” or “Directive”).⁸⁷ Its enactment consolidated the original Council Directive 75/129/EEC,⁸⁸ as amended by Directive 92/56/EEC.⁸⁹

Several provisions of the European Union’s Charter of Fundamental Rights are also directly relevant; notably Article 27 (worker information and consultation) and Article 30 (the right to protection against unjustified dismissal). As very recent case law has shown, Charter articles can play a significant role in determining the legality of a Member State’s transposition of a Directive.⁹⁰

As mentioned above, the goals of Directive 1998/59 are evident from successive measures’ preambles: to protect workers in balance with company’s rights,⁹¹ and to ensure a level playing field of protective standards across the European Union.⁹² The provisions are not aimed at restricting the freedom of undertakings to organize their activities, nor intended to lay down rules relating to

83. European Commission: *Restructuring in Europe* 2011, op. cit., SEC(2012) 59 final, p. 17.

84. European Parliament resolution of 15 January 2013 with recommendations to the Commission on information and consultation of workers, anticipation and management of restructuring, 2012/2061(INI).

85. All these EU sources as well as the “good practices identified in the wake of the crisis, in particular by the ILO” are referred to by the European Parliament Resolution referred above.

86. See Council Resolution of 21 January 1974 concerning a social action programme [1974] OJ 013/1.

87. OJ [1998] L 225/16.

88. OJ [1975] L 48/29. For a magisterial case study on the implementation of this Directive, see B. Bercusson: *European labour law* (Cambridge, Cambridge University Press, 2009, 2nd ed.), pp. 114–120.

89. OJ [1992] L 245/3.

90. Case C-426/11 *Alemo-Herron and others v Parkwood Leisure Ltd* ECR I-nyr. See also Case C-176/12 *Association de Médiation Sociale v Union Locale des Syndicats CGT* ECR-I-nyr.

91. OJ [1998] L 225/16, preamble 2.

92. Ibid., preamble 3.

the internal organization of undertakings or the management of their personnel,⁹³ but seek instead to protect workers through strong procedural measures. More specifically, the Directive requires Member States to provide that employers envisaging collective redundancies provide workers' representatives relevant information on the proposed redundancies and consult with them in good time with a view to reaching an agreement. It also provides for the public authorities to be notified of any projected collective redundancies, and requires that these redundancies cannot take effect earlier than 30 days after this notification.⁹⁴

The exposition in subsequent paragraphs is designed around key elements in national implementation,⁹⁵ and will draw on both the Directive as enacted and the Court of Justice of the European Union (CJEU)'s interpretation of its key provisions.⁹⁶ Fuller guidance can be found in relevant specialist works.⁹⁷

3.2.1 Scope of application

The key definitional provision found in Article 1(1)(a) of the Directive notes that “collective redundancies” means “dismissals effected by an employer for one or more reasons not related to the individual workers concerned”. The CJEU has subsequently further defined redundancy as “any termination of a contract of employment against the will of the worker”;⁹⁸ for purposes of calculating redundancy numbers, measures such as compensation-induced voluntary redundancies are also to be counted (Article 1(1), as amended). Member State attempts at narrowing the definition of redundancies in domestic implementation measures have repeatedly been struck down by the Court.⁹⁹

For a redundancy measure to be collective, and thus within the Directive's scope, Member States are offered a choice between different time and scale pairings:

- (i) either, over a period of 30 days:
 - at least 10 in establishments normally employing more than 20 and less than 100 workers;
 - at least 10 per cent of the number of workers in establishments normally employing at least 100 but less than 300 workers;
 - at least 30 in establishments normally employing 300 workers or more;
- (ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question.

In *Rockfon*, a case involving Danish law, the CJEU addressed the definition of “establishment”. Given the Danish transposition option and the size of the enterprise, the claimants had to show that a certain percentage within the establishment had been affected in order to claim under the collective redundancy provisions. It was undisputed that if *Rockfon*, one of the three units, were found to be an establishment, the relevant Member State provisions would apply. An interpretation that would allow companies to make the Directive's application more difficult would allow companies “to escape the obligation to follow certain procedures for the protection of workers and large groups of workers could [thus] be denied the right to be informed and consulted”.¹⁰⁰

The Court thus defined the meaning of the term “establishment” as tightly as possible. On the facts of the case, this purposive interpretation produced a worker-protective result. Given the existence of a different option, however, this might not always be the case. As opposed to Denmark,

93. Case C-449/93 *Rockfon A/S v Specialarbejderforbundet i Danmark*, in *Industrial Relations Law Reports* (IRLR) (1996, Vol. 168), para. 21 (hereinafter '*Rockfon*').

94. Article 3 of the original 1972 draft instrument suggested a more robust role for public authorities that could “refuse to authorise all or part of the dismissals notified if, after investigation, it is found that the reasons [...] invoked by the employer are incorrect”, and to “suspend the dismissals if the consultations with the workers representatives [...] ha[ve] not taken place” or in cases where mediation procedures had been initiated (COM(72) 1400, p. 6).

95. The list is in this regard closely modelled on past implementation reports produced by the European Commission. See e.g. *Commission Report on the Implementation in Austria, Finland and Sweden of Directive 75/129/EEC* (et al.), DG Employment, Unit V/D/2 (Brussels, August 1999).

96. For an overview of some of the extensive case law in this area, see e.g. C. Kilpatrick: “The European Court of Justice and labour law in 2009”, in *Industrial Law Journal* (2010, Vol. 39, No. 3), pp. 287–299.

97. See C. Barnard: *EU employment law*, 4th ed. (Oxford, Oxford University Press, 2012), pp. 629ff; see also A. Davies: *EU labour law* (London, Edward Elgar, 2012), pp. 221ff.

98. Case C-55/02 *Commission v Portugal* [2004] ECR I-9387 [62].

99. *Commission v Portugal* (n 24); Case C-383/92 *Commission v UK* [1994] ECR I-2479.

100. *Rockfon* [30].

for example, the United Kingdom has chosen the trigger requirement in Article 1(1)(a)(ii) of the Directive: the dismissal of at least 20 workers over a period of 90 days, whatever the normal size of the establishment.¹⁰¹ In this context, the Rockfon jurisprudence (as confirmed in subsequent cases)¹⁰² might have the very opposite effect: the narrower the definition of establishment, the easier for an employer to compartmentalize its workforce and “spread” the redundancies to avoid triggering the relevant provisions.

Difficulties in terms of identifying the relevant employer can arise in situations where the redundancy decision is taken by entities other than the immediate undertaking’s management. In *Fujitsu Siemens*,¹⁰³ a Dutch holding company had full de facto control regarding redundancies in a Finnish plant. The trade unions representing the claimants alleged that these steps meant that Fujitsu Siemens had failed to comply with the Directive’s obligations. In rejecting this claim, the Court suggested that the Directive’s obligations were squarely based on the “employer, in other words a natural or legal person who stands in an employment relationship with the workers who may be made redundant”.¹⁰⁴ An undertaking, even if capable of controlling the employer through binding decisions, did not have that status. It was not the Directive’s goal to restrict the commercial freedom of corporate groups to choose their organizations’ management structures, and none of its provisions could be interpreted as imposing direct obligations on the controller.¹⁰⁵

The definition of “workers’ representatives” for purposes of the Directive in Article 1(1)(b) refers to mechanisms as “provided for by the laws or practices of the Member States”. Whilst this appears to be quite broad at first sight, the Court has made it clear that it cannot be used to avoid the Directive’s application, when it struck down the original UK regime where consultation had been limited to recognized trade union representation.¹⁰⁶

Exclusions and limitations. According to Article 1(2) of the Directive, its scope does not extend to the expiry of fixed-term contracts, public sector workers,¹⁰⁷ and crews of seagoing vessels. As Barnard notes, however, “[s]ince these instances are exceptions to the general rule they must be construed narrowly”.¹⁰⁸ An attempt at excluding employees of non-profit undertakings, for example, has been struck down by the CJEU, and infringement proceedings are currently pending against Italy for the exclusion of “the category of managers in Italian law [which is] very broad and even includes workers not entrusted with particular management powers in the context of the undertaking and defined as managers only in that they possesses a high level of professional qualifications”.¹⁰⁹ Similarly, the Court has held that domestic legislation which provides for automatic termination of contracts of employment as a result of a judicial winding-up order in the employer’s insolvency could not stand in the way of the Directive’s application, “until the legal personality of an establishment whose dissolution and winding up have been ordered has ceased to exist, the obligations under Articles 2 and 3 of Directive 98/59 must be fulfilled”.¹¹⁰ The Court further held that “the employer’s obligations pursuant to those provisions must be carried out by the management of the establishment in question, where it is still in place, even with limited powers of management over that establishment, or by its liquidator, where that establishment’s management has been taken over in its entirety by the liquidator”.¹¹¹ Where a business is run by an individual entrepreneur in the absence of an incorporated entity enjoying separate legal personality, on the other hand, the Court of Justice has held that redundancies arising from the employer’s death falls outside the scope of the Directive, given “not only [...] the lack of an intention to effect collective redundancies, but also [...] the inexistence of an employer capable of being the party on whom are imposed the obligations” laid down in the Directive.¹¹²

101. Trade Union and Labour Relations (Consolidation) Act 1992, section 188.

102. For example, Case C-270/05 *Athinaiki Chartopoiia AE v Panagiotidis* [2007] ECR I-1499.

103. Case C-44/2008 *Akavan Erityisalojen Keskusliitto AEK ry and Others v Fujitsu Siemens Computers Oy* [2009] ECR I-8163.

104. *Ibid.*, [57]–[58].

105. *Ibid.*, [59], [68].

106. *Commission v UK* (n 19), [19]ff. See P. Davies and C. Kilpatrick: “UK worker representation after single channel”, in *Industrial Law Journal* (2004, Vol. 33, No. 2), pp. 121–151.

107. This is an unusual exclusion. The Acquired Rights Directive 2001/23/EC [2001] OJ L 82/16, for example, does ‘apply to public and private undertaking’, see Article 1(1)(c). s

108. Barnard, *op. cit.*, p. 634.

109. Case C-32/02 *Commission v Italy* [2003] ECR I-12063; Case C-596/12 *Commission v Italy* (pending).

110. Joined Cases C-235/10 to C-239/10 *Claes and Rémy v Landsbanki Luxembourg SA, in liquidation* [2011] I-01113 [58].

111. *Ibid.*, [58].

112. Case C-323/08 *Ovido Rodríguez Mayor v Herencia yacente de Rafael de las Heras Dávila* [2009] ECR I-11621, [42].

3.2.2 Information and consultation duties

Once a potential measure falls within the scope of the Collective Redundancy Directive, the employer's first duty is to inform and consult with workers, as set out in Article 2.¹¹³ Any domestic provision which "reduces the information and consultation obligations of an employer who intends to proceed with collective redundancies" will be invalid as a matter of EU law.¹¹⁴

Timing. Consultation and information is to begin when the employer is contemplating the redundancies. The CJEU has made it clear that this means "prior to any decision [having been taken] by the employer".¹¹⁵ As regards the timing of the final decision to dismiss workers, the Court held in *Fujitsu Siemens* that, "in the context of a group of undertakings [...] the decision by the parent company which has the direct effect of compelling one of its subsidiaries to terminate the contracts of employees [...] could] be taken only on the conclusion of the consultation procedure within that subsidiary".¹¹⁶ These answers express unease in dealing with the issue at stake: while the Court was mindful of not rendering the duties fictional, it nonetheless refused to give the information and consultation obligations full effect by including in their scope the party best placed to discharge them. When presented with a subsequent opportunity to clarify matters in *USA v Nolan*, March 2012, AG Mengozzi suggested that consultation was to begin as soon as a strategic decision compelled the contemplation of collective redundancies;¹¹⁷ the Court of Justice, on the other hand, refused to address the point; it declared itself not to have jurisdiction as Article 1(2)(b) of the Directive "provides an exclusion from the scope of Directive 98/59 [which therefore] does not apply to workers employed by public administrative bodies or by establishments governed by public law [...] including] the civilian staff of a military base".¹¹⁸

Information. The employer's provision of materials to workers' representatives covers a broad range of items under Article 2(3)(b) of the Directive: (i) the reasons for the projected redundancies; (ii) the number of categories of workers to be made redundant; (iii) the number and categories of workers normally employed; (iv) the period over which the projected redundancies are to be effected; (v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer; [and] (vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice; as well as "all relevant information" more broadly (Article 2(3)(a)).

Objective. Workers' representatives and the employer are to engage in the process of information and consultation "with a view to reaching agreement". While the textual basis thus appears to be a rather strong version of collective bargaining, the Court has made it clear that the obligations are primarily procedural.¹¹⁹

Consultation content. Under Article 2(2) of the Directive, the "consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant".

3.2.3 Notification of public authorities, the role of public authorities and social plans

The employer's second key duty under the Directive is to provide information of the impending collective redundancy to a "competent public authority" (Article 3(1)). The timing of this obligation is as per the observations in section 3.2.2 above. The content of the notification is wide-ranging: Article 3(1) stipulates that it shall contain "all relevant information concerning the projected collective redundancies and the consultations with workers' representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be

113. This has drawn significant amounts of litigation. For a full overview, see Barnard, op cit., pp. 635–640.

114. Case C-12/08 *Mono Car v Odemis* [2009] I-6653 [56].

115. Case C-188/03 *Junk v Kühnel* [2005] ECR I-885 [37].

116. *Fujitsu Siemens* (n) [71].

117. Case C-583/10 *United States of America v Christine Nolan* ECR-I 00000, AG Opinion of 22 March 2012. The "compelling force" of individual decisions is to be determined by the Member State courts: AG[49].

118. Case C-583/10 *United States of America v Christine Nolan* ECR-I 00000, Decision of 18 October 2012 [33]–[34].

119. See e.g. *Junk* (n 35) [44].

effected”. A copy of the notification is to be provided to the workers’ representatives, who may engage in direct dialogue with the relevant public authority (Article 3(2)).

Further involvement of public authorities. Under Article 4(2) of the Directive, the competent public authority may stipulate a time bar of 30 days (modifiable) in order to “to seek solutions to the problems raised by the projected collective redundancies”.

3.2.4 Redundancy selection, re-employment and compensation

The Directive does not explicitly address these issues. However, Article 5 makes it clear that Member States are free “to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers”.

3.2.5 Sanctions and remedies

Article 6 stipulates that “Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to the workers’ representatives and/or workers”. This leaves the remedial dimension in Member States’ hands, subject only to the usual guidelines of equivalence and effectiveness. The Court has however held that functionally equivalent protection is not enough to meet Directive’s requirements: the specific information and consultation provisions must be transposed.¹²⁰

A limitation of standing to workers’ representatives, rather than each individual affected by the collective redundancy, has been sanctioned by the Court, as the Directive was said to be “intended to benefit workers as a collective group”,¹²¹ even though “Article 6 of Directive 98/59 permits the Member States to establish procedures in favour of workers individually”.¹²² As regards the specific nature of sanctions available in domestic law (for example a choice between mere financial compensation or the availability of injunctive relief) the Directive itself is silent. The Court’s judgment in *Junk*, however, suggests that Member States may not permit dismissals to take place until consultation has been completed.¹²³

3.3 The ILO Termination of Employment Convention, 1982 (No. 158)

As noted by Brian Bercusson, “the International Labour Organisation (ILO) has played a major role in the development of legal protection against dismissal in many of the Member States of the European Union”¹²⁴ – not least by informing the provisions of the Revised European Social Charter (ESC), which in turn have a direct impact on the shaping of the Charter of Fundamental Rights. This significant interlinkage has been confirmed by ILO experts’ discussions.¹²⁵

ILO Convention No. 158 deals with termination of employment in general,¹²⁶ and includes specific supplementary provisions for collective redundancies.¹²⁷ Its key terms are fleshed out by the Termination of Employment Recommendation, 1982 (No. 166). Part III of the Convention specifically

120. Case C-215/83 *Commission v Belgium* [1985] ECR 1039.

121. Case C-12/08 *Mono Car v Odemis* [2009] I-6653 [42].

122. *Ibid.*, [50].

123. *Junk* (n 35) [44].

124. Bercusson, *op. cit.*, p. 382, fn. 174.

125. See e.g. ILO: *Final Report: Tripartite Meeting of Experts to examine the Termination of Employment Convention, 1982 (No. 158), and the Termination of Employment Recommendation, 1982 (No. 166)* (Geneva, 2011), pp. 95–111.

126. For a full overview, see notably ILO: *Note on Convention No 158 and Recommendation No. 166 concerning termination of employment* (Geneva, 2009), pp. 11 ff. See also ILO: *Protection against unjustified dismissal*, Report of the Committee of Experts on the Application of Conventions and Recommendations, General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982, Report III (Part 4B), International Labour Conference, 82nd Session, Geneva, 1995.

127. Which are to be read jointly with the general provisions (such as a right of appeal, justification, and clear procedures): *ibid.*, para. 276.

addresses employment termination “for economic, technological, structural or similar reasons” (Article 14). Its provisions revolve, first, around the need to inform and consult with workers’ representatives; and second, a notification duty to public authorities.¹²⁸ Both sets of provisions are generally accorded a high degree of legislative respect in ratifying States.

3.3.1 Scope of application

These ILO standards are notably silent as regards how applicable thresholds should be set as such, though Article 2(2) of the Convention provides for signatories to do so. The emphasis in Article 2 on a broad overall scope of coverage as regards relevant workers must also be borne in mind.

3.3.2 Information and consultation duties

In setting out the duty to inform and consult with workers, Article 13(1)(a) specifies information to be provided, with Article 13(1)(b) then focusing on the creation of opportunities to consult “as early as possible” on averting, minimizing and mitigating the effects of the collective redundancies. Detailed examples of such measures are provided in the Recommendation (para. 21), including for example, “restriction of hiring, spreading the workforce reduction over a certain period of time [...] internal transfers, training and retraining, [...] or restriction of overtime and reduction of normal hours of work”.

3.3.3 Notification of public authorities, the role of public authorities and social plans

Article 14 of the Convention lays down an obligation on the employer to notify a competent national authority, and for there to be a minimum period of time before actual terminations take place. Whilst the ILO Committee of Experts has made it clear that each ratifying State can independently determine the purpose of this obligation,¹²⁹ the Recommendation (paras. 25 and 26) provides several examples, from promoting worker training to ensure successful alternative placements to providing minimum levels of subsistence protection. The Committee of Experts has explained that the purpose of notification is to:

inform the authority of the terminations contemplated which might cause economic problems and place a burden on public expenditure and to enable them to help the parties concerned to find solutions to the problems raised by the contemplated terminations.¹³⁰

The Committee has also noted that in some countries the authorization of a government authority is required before a collective dismissal can proceed.¹³¹

3.3.4 Redundancy selection and compensation

Pursuant to Recommendation No. 166, there are to be clear criteria for selecting employees whose work is to be terminated (para. 23), and a certain degree of priority in rehiring workers terminated during a collective redundancy process (para. 24). The ILO Committee of Experts has explained that:

it is important for the choice of the workers to be affected by this measure to be made as objectively as possible in order to avoid any risk of reaching arbitrary decisions. If these criteria are established in advance, as advocated in the Recommendation, the risk of arbitrary measures is reduced. In particular, it is important to ensure that certain protected workers, such as workers’ representatives, are not dismissed in an arbitrary manner on the pretext of a collective termination of employment.¹³²

128. And the Committee of Experts clearly sees them as of equal value: see e.g. their observation in 2007 (Cameroon).

129. ILO: *Protection against unjustified dismissal*, para. 290.

130. *Ibid.*, para. 311.

131. *Ibid.*

132. *Ibid.*, para. 335.

Recommendation No. 166 provides further clarification, indicating that the selection process should balance the interests of the workers with the needs of the enterprise (para. 23).

In relation to compensation for termination of employment, including as a result of collective dismissal, Convention No. 158 presents a range of legislative options. These can include the stipulation of a severance payment and/or an unemployment benefit provided by a country's social security system (Article 12). The ILO Committee of Experts has noted that, while many countries impose a minimum qualifying period for severance, this is not consistent with the Convention obligation.¹³³ On the other hand, length of service, together with the wage level, is a matter to be taken into account in legislation providing for severance.¹³⁴

3.3.5 Sanctions and remedies

The ILO Committee of Experts has observed that various jurisdictions have adopted a diverse range of sanctions to address failures to comply with the Convention requirements on collective dismissals. These include fines, compensation orders, reinstatement orders, and refusals by government bodies to authorize a collective dismissal (which may have the effect the relevant workers have not been terminated).¹³⁵

A recent report of the fate of collective redundancy regulation during the economic crisis notes various changes in the implementation of these ILO standards, from changes to the definition of collective redundancies (such as in Greece) to a reduction in the involvement of third parties (in Estonia).¹³⁶

Less than half of EU Member States have ratified the Convention,¹³⁷ though as noted above, this does not necessarily limit its impact in the remaining Member States. Furthermore, in a landmark 2006 ruling, the French Cour de Cassation found that Convention No. 158 had direct force in French law.¹³⁸

3.4 The European Social Charter and collective redundancies

Article 29 of the 1996 European Social Charter stipulates that:

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

The case law Digest produced in 2008 provides an authoritative interpretation of Article 29, and the paragraphs below reproduce part of its contents.¹³⁹

133. Ibid., para. 270.

134. Ibid., para. 259.

135. Ibid., para. 314.

136. A. Muller: *Employment protection legislation tested by the economic crisis*, Dialogue in Brief, No. 3 (Geneva, ILO, 2011).

137. The ILO lists the following ten EU Member States as of January 2014: Cyprus, Finland, France, Latvia, Luxembourg, Portugal, Slovakia, Slovenia, Spain, Sweden. See https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312303.

138. *Euromédia v Christophe X*, C Cass – Soc, 29 III 2006.

139. Council of Europe: *Digest of the case law of the European Committee of Social Rights* (Strasbourg, 2008), pp. 165–166. Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf. Since 2008, according to the Committee's online database, there have been 18 further Conclusions referring to Article 29, with only one of them resulting in a finding of non-conformity, against Moldova (see 2010/def/MDA/).

3.4.1 Scope of application

Article 29 does not define “collective redundancy”, but the Committee has explained that the collective redundancies referred to are “redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm’s activity”.¹⁴⁰

3.4.2 Information and consultation duties

The appendix to the Revised European Social Charter defines workers’ representatives as persons who are recognized as such under national legislation or practice, which according to the Committee’s Digest means “in accordance with ILO Convention No. 135 on workers’ representatives”. The Digest also notes: “This wording means that states are free to decide how the workers’ representatives who have to be informed and consulted are to be appointed (general or ad hoc system).”¹⁴¹

According to the Digest, “consultation procedures must take place in good time, before the redundancies, in other words as soon as the employer contemplates making collective redundancies”.¹⁴² As for the purpose of the consultation, the Committee requires that it must cover at least:

- the redundancies themselves, the “ways and means of avoiding collective redundancies or limiting their occurrence”; and
- support measures and ways and means of mitigating their consequences, for example by recourse to accompanying social measures designed, in particular, to facilitate the redeployment or retraining of the workers concerned, in other words a redundancy package.

Article 29 provides for the employer’s duty to consult with workers’ representatives and the purpose of such consultation. The Committee has stated that “this obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers’ representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached.

... the Committee has stipulated that all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, planned social measures, the criteria for being made redundant and information on the order of the redundancies.¹⁴³

3.4.3 Notification of public authorities, the role of public authorities and social plans

The Digest notes that:

Article 29 lays down no specific obligations in this respect. The form for submitting reports refers to “possibilities of intervention by the public authorities” “in case of default by the employer” implying that the authorities are expected to play a secondary, a posteriori role at some point in the redundancy procedure in the event of default by the employer. However, there is not as yet any case-law on this subject.¹⁴⁴

3.4.4 Redundancy selection and compensation

Article 29 does not address these issues.

140. Ibid., p. 165, citing Conclusions 2003, Statement of Interpretation on Article 29.

141. Ibid.

142. Ibid.

143. Ibid., citing Conclusions 2003, Statement of Interpretation on Article 29; Conclusions 2005, Lithuania, p. 404; Conclusions 2003, Romania, p. 429.

144. Ibid.

3.4.5 Sanctions and remedies

The Committee's Digest provides that: "Consultation rights must be accompanied by guarantees that they can be exercised in practice," and that:

Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter.¹⁴⁵

The three instruments discussed in Section 3 thus provide a supranational legal framework addressing key issues with respect to collective redundancies. Depending on their legal nature and domestic approaches to ratification (in the case of ILO Convention No. 158) and implementation (in the case of the European law-based obligations), they leave scope for individual Member States to apply the relevant legal principles in distinctive ways. The next section considers twelve national examples from a diverse range of jurisdictions in the European Union.

145. Ibid., citing Conclusions 2003, Statement of Interpretation on Article 29.

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This section turns to an overview of selected issues in the EU Member States surveyed, with the exception of Greece, whose legal regulation of collective dismissals is analysed in Section 5. The main aim of the present section is to explore more systematically the key themes identified in the preceding discussion of European and international regulatory frameworks, and illustrate the different approaches to compliance in each country, clustered around six key issues: (i) the scope of collective dismissal regulation, including the definition of collective dismissals, legal thresholds and reference periods; (ii) rights to information and consultation (and, where available, codetermination); (iii) redundancy notification obligations to competent authorities and social plans; (iv) redundancy selection, re-employment, and redundancy compensation; (v) sanctions and enforcement; and (vi) the role of collective bargaining.

For each of these areas, a brief introduction in the main text highlights the results of an in-depth comparative investigation carried out between December 2013 and January 2014, through the use of country-specific questionnaires and the cooperation of a number of national experts.¹⁴⁶ Each brief introduction is then followed by a series of comparative tables, which largely reproduce the responses received by our national experts. The use of comparative tables was requested to facilitate a synoptic presentation of the key issues explored by this section of the report. This mainly descriptive part of this section is then followed by a more analytical section (4.7), which draws a number of provisional conclusions in respect of the various national approaches to the regulation of collective redundancies.

4.1 Scope of application

The first set of comparative tables sets out the scope of collective redundancy protection in each Member State surveyed, detailing the circumstances under which the relevant provisions are triggered. The key comparative issues to highlight include:

- (i) the temporal and quantitative thresholds triggering the application of national rules on collective dismissal;
- (ii) the prevalence of “staggering” practices to avoid triggering the thresholds as set out in (i), and any preventive measures designed to avoid such abuse; and
- (iii) the categories of workers which are included or excluded from the scope of protection (ranging from senior-grade workers, such as those in managerial positions, to individuals in precarious relationships, such as those supplied by temporary work agencies), and whether specific groups of employees are subject to specific rules (for example in the case of trade union representatives, or pregnant women).

146. Tamás Gyulavári (Hungary), Frank Hendrix and Aline Van Bever (Belgium), Mijke Houwerzijl (Netherlands), Anu Laas (Estonia), Jose Maria Miranda Boto (Spain and Portugal), Andreja Poje (Slovenia), Jenny Votinius (Sweden). The editors of this report also acted as national experts in respect of the remaining jurisdictions, namely France, Germany, Greece, Italy and the United Kingdom. The editor also gratefully acknowledges the help of Cathleen Rosendahl and Elisabeth Kohlbacher.

Collective redundancy protection: Scope of application

Member State	Information provided by national experts																																				
Belgium	<p>Definition of collective redundancies and thresholds</p> <p>Article 2 of the Collective Bargaining Agreement (CBA) defines this as unilateral dismissals, on grounds not related to personal reasons, effected over an interrupted period 60 days, of</p> <ul style="list-style-type: none">• at least ten workers in companies that employed an average number of between 20 and 100 workers during the preceding calendar year• at least 10 per cent of the number of workers in companies that employed an average number of between 100 and 300 workers on average during the preceding calendar year• at least 30 workers in companies that employed an average number of at least 300 workers on average during the preceding calendar year <p>Other definitions apply with regard to the collective dismissal compensation (CBA No. 10)¹⁴⁷ and with regard to the recognition as an undertaking in the process of restructuring¹⁴⁸ and the establishment of a re-employment committee.¹⁴⁹ A comprehensive overview is set out in the table immediately below:</p> <table><tr><th>Number of employees employed</th><th>CBA No. 10</th><th>CBA No. 24, Royal Decree 1976 and Renault Act</th><th>Re-employment/ Undertaking in process of restructuring</th></tr><tr><td>≥ 300</td><td>≥ 10%</td><td>≥ 30</td><td>10%</td></tr><tr><td>100 ≤ x < 300</td><td>≥ 10%</td><td>≥ 10%</td><td>10%</td></tr><tr><td>60 ≤ x < 100</td><td>≥ 10%</td><td>≥ 10</td><td>10</td></tr><tr><td>21 < x < 59</td><td>6</td><td>10</td><td>10</td></tr><tr><td>20 < x < 21</td><td>6</td><td>10</td><td>6</td></tr><tr><td>20</td><td>6</td><td>NA</td><td>6</td></tr><tr><td>11 < x < 20</td><td>NA</td><td>NA</td><td>6</td></tr><tr><td>< 12</td><td>NA</td><td>NA</td><td>50%</td></tr></table> <p>Practice of ‘staggering’ redundancies and replacing redundant workers with outsourced staff</p> <p>These practices are sometimes used and the legal system does not deal with them in any specific way.</p> <p>Categories of workers covered by the legislation</p> <p>The sole criterion for the application of the legislation is that the persons affected are “being employed by the employer”. As a result, temporary workers employed through an agency are excluded. To determine the aforementioned threshold, the total number of workers that has been declared to the social security authorities for each quarter of that year must be divided by the number of quarters for which a social security declaration has been made.¹⁵⁰</p>	Number of employees employed	CBA No. 10	CBA No. 24, Royal Decree 1976 and Renault Act	Re-employment/ Undertaking in process of restructuring	≥ 300	≥ 10%	≥ 30	10%	100 ≤ x < 300	≥ 10%	≥ 10%	10%	60 ≤ x < 100	≥ 10%	≥ 10	10	21 < x < 59	6	10	10	20 < x < 21	6	10	6	20	6	NA	6	11 < x < 20	NA	NA	6	< 12	NA	NA	50%
Number of employees employed	CBA No. 10	CBA No. 24, Royal Decree 1976 and Renault Act	Re-employment/ Undertaking in process of restructuring																																		
≥ 300	≥ 10%	≥ 30	10%																																		
100 ≤ x < 300	≥ 10%	≥ 10%	10%																																		
60 ≤ x < 100	≥ 10%	≥ 10	10																																		
21 < x < 59	6	10	10																																		
20 < x < 21	6	10	6																																		
20	6	NA	6																																		
11 < x < 20	NA	NA	6																																		
< 12	NA	NA	50%																																		
Estonia	<p>Definition of collective redundancies and thresholds</p> <p>Estonian law defines redundancy as an extraordinary termination of an employment contract by the employer when the continuation of the employment relationship on the agreed conditions becomes impossible due to economic reasons (decrease in work volume, re-organization of work or other cessation of work, employer’s bankruptcy).</p>																																				

147. Employees who are dismissed in the framework of a collective dismissal are entitled to a special compensation of up to approximately €400 gross per month for up to four months following the termination of their employment contracts. This compensation is due in addition to unemployment benefits, provided the employee is entitled to receive such benefits.

148. If the social plan provides for early retirement at an age below the age for early retirement within the company, the employer must obtain recognition as an undertaking in the process of restructuring.

149. The employer must set up a re-employment committee (at the latest on the date of the first dismissal). The re-employment committee implements outsourcing and training measures with a view to helping the dismissed employees finding a new job.

150. Article 4 of the Royal Decree of 24 May 1976; article 3, 2 of CBA No. 24, which refers to the Royal Decree of 5 December 1969 on the statement of collective redundancies and the notification of vacancies; Royal Decree of 20 February 1968.

Collective redundancy protection: Scope of application (contd.)

Member State	Information provided by national experts
	<p>According to article 90(1) of the Employment Contracts Act (ECA), collective termination of employment contracts means termination, within 30 calendar days due to redundancy, of the employment contract of no less than:</p> <ol style="list-style-type: none"> 1) five employees in an enterprise where the average number of employees is up to 19; 2) ten employees in an enterprise where the average number of employees is 20–99; 3) 10 per cent of the employees in an enterprise where the average number of employees is 100–299; 4) 30 employees in an enterprise where the average number of employees is at least 300. <p>The average number of employees is based on the previous six months.</p> <p>Categories of workers</p> <p>Article 1(5) states that the legislation is not applicable to managers: “The provisions concerning the employment contract shall not be applied to the contract of a member of the directing body of a legal person or a director of a branch of a foreign company.” Temporary workers are usually on fixed-term contracts for services, regulated by the Law of Obligations Act (LOA). However, the employer should inform temporary agency workers about vacant positions (on the basis of contracts of indefinite duration) in the user undertaking corresponding to their knowledge and skills (art. 28(9.1) of the ECA).</p> <p>Article 1(4) of the ECA stipulates that the provisions concerning the employment contract shall not be applied to a contract where the person that is to perform the work is to a significant extent independent (service contract) in choosing the manner, time and place of performance of the work.</p>
France	<p>Definition of collective redundancies and thresholds</p> <p>The regulation of collective redundancies in France is elaborate and has recently been the object of significant legislative changes with the adoption of <i>Loi 2013-504 du 14 juin 2013 relative à la sécurisation de l'emploi</i>.¹⁵¹ It is predominantly regulated by arts. L1233-1 to L1233-91 of the French Labour Code.</p> <p>The Code contemplates three main sets of rules depending on the scale of the redundancies and size of the company.</p> <ol style="list-style-type: none"> 1) The least elaborate set of requirements applies to redundancies affecting fewer than ten employees (i.e. 2–9) in a period of 30 days. The bulk of the requirements applying to this scenario can be found in arts. L1233-8 to L1233-20. 2) If in the same period of 30 days ten or more redundancies are contemplated, then different and more demanding requirements are imposed by articles L1233-21 to L1233-57-8. 3) Finally, when ten or more employees are affected by the redundancies, further (and at times different) requirements will apply in companies with more than 50 workers, and in particular the obligation to produce a “<i>plan de sauvegarde de l'emploi</i>” (art. L1233-61). <p>There are special rules applying to the termination of employment of “protected workers” (especially workers’ representatives) contained in arts. L2411-1 to L2411-22 of the Labour Code (by and large amounting to a special permission to be obtained from the public authorities prior to the redundancy). Pregnant mothers and mothers on maternity leave are also protected against selection for redundancy.</p>
Germany	<p>Definition of collective redundancies and thresholds</p> <p>Collective redundancies are not regulated through specific legislation; the relevant provisions can instead be found within the general framework of the Protection Against Dismissal Law or <i>Kündigungsschutzgesetz</i> (KSchG), Part III of which sets out the provisions for “Dismissals where notification is compulsory” (<i>Anzeigepflichtige Entlassungen</i>). According to §17, the relevant provisions are triggered by the dismissal in an undertaking employing at least 21 workers, over a period of 30 days, of either:</p>

151. See <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000027548680&dateTexte=20130703>.

Collective redundancy protection: Scope of application (contd.)

Member State	Information provided by national experts
	<p>1) more than five in establishments normally employing more than 20 and less than 60 employees; or</p> <p>2) at least 10 per cent of the number of employees or more than 25 in total in establishments normally employing at least 60 but less than 500 employees; or</p> <p>3) at least 30 in establishments normally employing 500 workers or more employees.</p> <p>Dismissal in that sense refers to the actual notice of termination (<i>Ausspruch der Kündigung</i>): BAG decision of 23.06.2006, 2 AZR 343/05.</p> <p>In calculating these numbers, legislative design and purposive judicial interpretation have cast the net relatively widely: the reasons for the dismissal (such as for example capacity, misconduct, etc.) are irrelevant, and every form of contractual termination (including voluntary redundancy and termination by mutual agreement) is covered: §17 Abs. 1 S. 2 KSchG and BAG decision of 28.6.2012, 6 AZR 780/10, Rn 48). In the same decision, the German Federal Labour Court (<i>Bundesarbeitsgericht</i>, BAG) held that workers who might be transferred to a different undertaking are nonetheless to be counted, if that transfer has not yet been finalized. The mere expiry of a fixed-term contract cannot be counted.</p> <p>Categories of workers</p> <p>Certain categories of workers are excluded from the calculation, including managerial staff, company directors, and other staff entitled to employ and dismiss employees (§17 Abs. 5). Automatically fair dismissals (“dismissals without notice”) are also excluded from these calculations (§17 Abs. 4 S.2).</p> <p>There are on-going judicial discussions regarding the definition of establishment (according to a BAG decision of 15.12.2011, 8 AZR 692/10, Rn 73 the definition of establishment is to be read according to the BetrVG).</p> <p>One major exception to the overall scope of Part III KSchG can be found in §22, which stipulates that the collective redundancy provisions do not affect seasonal undertakings, as genuinely required by the nature of the undertaking’s business. Pursuant to §22 Abs. 2 S. 2, the Federal Ministry of Labour has the (hitherto unexercised) power to designate certain business as seasonal undertakings within the meaning of §22 by executive order (<i>Rechtsverordnung</i>).</p>
Hungary	<p>Definition of collective redundancies and thresholds</p> <p>Collective redundancies are defined in Article 71(1) of the Labour Code as situations where an employer intends to terminate the employment relationship:</p> <ol style="list-style-type: none"> 1) of at least 10 employees, when employing more than 20 and fewer than 100 employees; 2) of 10% of the employees, when employing 100 or more, but fewer than 300 employees; 3) of at least 30 employees, when employing 300 or more employees, inside a period of 30 days, for reasons in connection with its operations. <p>Employer size is determined on the basis of average workforce numbers in the preceding six-month period.</p> <p>The following are considered to be reasons in connection with the employer’s operations:</p> <ol style="list-style-type: none"> 1) A legal act for the termination of employment shall mean a notice for reasons in connection with the employer’s operations (art. 66 of the Labour Code). 2) Agreement for the termination of employment shall be construed as a mutual agreement initiated by the employer. 3) Termination for reasons in connection with the employer’s operations shall also cover the employer actions specified in Paragraph b) of Subsection (1) of Article 79.¹⁵² 4) Notice of dismissal, if no reasoning is required under this Act (managers, pensioners), until proven otherwise.

152. 79(1): The right of termination without notice may be exercised, without giving reasons:

a) by either party during the probationary period;
b) by the employer in connection with fixed-term employment relationships.

(2) In the case of termination under Paragraph b) of Subsection (1), the employee shall be entitled to absentee pay due for twelve months, or if the time remaining from the fixed period is less than one year, for the remaining time period.

Collective redundancy protection: Scope of application (contd.)

Member State	Information provided by national experts
	<p>Staggering redundancies and replacement of redundant employees with outsourced staff</p> <p>The number of workers shall be calculated on the aggregate, if within 30 days from the date of disclosure of the legal act for the termination of the last employment relationship or from the date of reaching an agreement the employer communicates another statement or concludes an agreement for the termination of employment in a given period (art. 73(2-3) of the Labour Code). Beyond the 30-day period there is no special statutory provision on staggering redundancies. However, the prohibition of wrongful exercise of rights, which is a general principle of labour law expressed by article 7 of the Labour Code, may be applied (no court decision has been issued yet in the area of collective redundancies on the basis of art. 7). The replacement of employees who were made redundant with outsourced staff may be a lawful termination of indefinite employment¹⁵³ in accordance with the case law of the labour courts.¹⁵⁴</p> <p>Categories of workers</p> <p>The provisions on collective redundancies shall not apply to the crews of seagoing vessels.¹⁵⁵ Managers and pensioners are excluded from the scope of collective redundancy provisions of the Labour Code, if the employer proves that the employment relationship (manager or pensioner) was terminated either for reasons in connection with his/her behaviour in relation to the employment relationship, or with his/her ability (art. 66(2)). Temporary workers are not excluded.</p>
Italy	<p>Definition of collective redundancies and thresholds</p> <p>Ever since the transposition of EC Directive 75/129 into Law 223/91,¹⁵⁶ collective redundancies are defined as redundancies envisaged by companies with more than 15 workers that, for reasons connected with a reduction or change in activity or work, intend to dismiss at least five workers over a period of 120 days (art. 24).</p> <p>The “15 workers” threshold is met when the enterprise employed an average of 15 workers in the six months prior to the beginning of the procedure (Cassazione n. 13796 of 1999).</p> <p>The concept of establishment adopted by the Italian law is quite broad. In order to reduce the risk of circumventing the law by “spreading” the redundancies across larger companies, the combined application of articles 24 and 5 of Law 223/91 has been interpreted as meaning that redundancies carried out by companies with multiple locations in a close geographical area (usually the province, but ultimately this is ascertained judicially if necessary) will have to be considered jointly for the purpose of the definition of collective redundancy.</p> <p>Staggering of redundancies</p> <p>Italian courts have sought to address the risks associated with avoidance practices circumventing the 120 timeframe (including “staggering”) in a number of ways. If an individual worker is made redundant within 120 days from the opening of a collective redundancy procedure, for reasons that are connected to that procedure, then the workers is considered as collectively dismissed (Trib. Milano 29/9/1999). Similarly, an individual dismissal for economic reasons is held to be invalid if justified by the same reasons sustaining a collective redundancy in the reference period (Pret. Milano 30/1/99). Finally, and in relation to the so-called staggering practices, the dismissal of a worker taking place after 120 days of a collective redundancy procedure, but causally connected to the same reasons, is held to be null and void (Pret. Monza, sez. Desio, 7/11/94).</p>

153. Based on article 66(2) of the Labour Code: An employee may be dismissed only for reasons in connection with his/her behaviour in relation to the employment relationship, with his/her ability or *in connection with the employer's operations*.

154. M. Kulisity: A munkaviszony megszűnése és megszüntetése”, in T. Breznay (ed.): *A munkajog nagy kézikönyve* (Budapest, Complex, 2006), p. 997.

155. See article 71(3) of the Labour Code. However, presently there is no seagoing vessel operating under the scope of the Hungarian Labour Code.

156. Italy had previously sought to implement the Directive by means of collective agreements, but had been condemned by the European Court of Justice for failing to do so appropriately, given the insufficient coverage of Italian agreements.

Collective redundancy protection: Scope of application (contd.)

Member State	Information provided by national experts
	<p>Categories of workers</p> <p>Article 4 of the Law effectively excludes managers from the collective redundancy definition (five workers in 120 days), but it is worth noting that, in a move that could have important ramifications for other Member States as well, the European Commission has recently commenced infringement proceedings against Italy before the CJEU, claiming that such broad exclusion constitutes breach of A 1(1) and 2 of Dir. 98/59 (Case C-596/12).</p> <p>Article 4(14) also excludes from the scope of Law 223/91 redundancies linked to the conclusion of works performed by construction companies; those connected with seasonal or occasional occupations; and the expiry of fixed-term contracts. These exclusions tend to be tightly controlled by Italian courts. Homeworkers are normally covered and included in the calculus.</p>
Netherlands	<p>Definition of collective redundancies and thresholds</p> <p>If an employer intends to terminate the employment agreement of 20 employees or more in one business establishment (<i>bedrijfsvestiging</i>) within a period of three months, located within the jurisdiction of one of the so-called <i>UWV</i> districts, this is defined as collective dismissal according to the Dutch Collective Redundancy Notification Act (CRNA: <i>Wet Melding Collectief Ontslag, WMCO</i> – in English publications on Dutch law also often referred to as (Notification of) Collective Dismissal Act). The CRNA is based on Council Directive 98/59/EC.</p> <p>Staggering redundancies</p> <p>This was possible until recently. The CRNA (in force since 1 March 2012) provides that terminations by mutual consent (in the form of a settlement agreement) are now also included in the calculation. Moreover, all requests for rescission (dissolution) to the cantonal judge (pursuant to article 7:685 of the Civil Code) should likewise be counted. Before 1 March 2012, terminations by mutual consent were not taken into account and requests for rescission only counted if there were more than five. The amended Act further provides that the cantonal judge, when assessing a request for rescission on economic grounds (e.g. redundancy), has to ascertain whether the CRNA applies. If it does, the employer will have to prove that it has fulfilled its obligations under the CRNA. If the employer has not fulfilled these obligations, the Court will not dissolve the employment agreement.¹⁵⁷</p> <p>With respect to replacing workers being made redundant with outsourced staff, the employer should carefully check whether it complies with the strict conditions of the Institute for Employee Benefit Schemes (<i>UWV</i>) Policy Rules published on www.werk.nl (<i>Beleidsregels ontslagtaak</i>). In a recent case the <i>UWV</i> refused to grant dismissal permits to an employer, among other reasons because it considered the trade-off of the permanent staff for temporary workers through the third party to be a “sham construction”, but the employer subsequently (and successfully) requested the cantonal judge at the subdistrict court to rescind the employees’ contracts. The judgement of the subdistrict court seems to impose a duty to investigate on the employer, in order to find out whether the third party complies with the relevant rules. Future case law will have to tell whether this view will be followed by other cantonal judges.</p> <p>Categories of workers</p> <p>Pursuant to article 2 CRNA and article 2 of the Extraordinary Labour Relations Decree (ELRD: <i>Buitengewoon Besluit Arbeidsverhoudingen 1945, BBA</i>) some categories of workers are excluded from the protection of these laws. The following workers – whether or not with an employment agreement – are excluded: (i) public employees and others working in the service of a public agency; (ii) teachers in the broadest sense; (iii) priests, whether performing ecclesiastical services or, in effect, performing as welfare workers; and (iv) cleaning personnel in service of private persons, working for periods shorter than three days per week. Academic literature is critical about the rationale behind the exemption of these workers. In brief, it is suggested that when there is a special dismissal regime that applies to these workers, the exemption is understandable. Article 2, however, also excludes those who are not subject to a special dismissal regime. Also, in Parliament serious</p>

157. See J. H. Even and B. Filippo: “Collectief ontslag niet meer omzeild” (Collective redundancies not circumvented), in *Arbeidsrechtelijke Annotaties* (2011, Vol. 10, No 2), pp. 3–33.

Collective redundancy protection: Scope of application (contd.)

Member State	Information provided by national experts
	<p>doubts were raised to these exemptions under article 2 of the ELRD. To the extent the legislature wishes to respect constitutional rights as the freedom of education (see under ii) or the freedom of religion (see under iii), they argue that these exempted workers also include sports teachers, driving instructors and teachers of dancing and music; hence, one can doubt the rationale to exclude these workers based on the freedom of education and religion, respectively. Finally, managing directors (<i>statutair directeuren</i>) are exempted from the scope of the ELRD and the CRNA. They are subject to Book 2 of the Dutch Civil Code, being appointed and dismissed by the general meeting of shareholders (<i>algemene vergadering van aandeelhouders: besloten vennootschap</i>) or the board of supervisory directors (<i>raad van commissarissen: naamloze vennootschap</i>).</p> <p>Workers on fixed-term employment contracts are usually excluded from the protection by the CRNA and other dismissal law protection because their employment contracts terminate automatically. Only if the employer in a situation of collective redundancies decides to end a (long-term) fixed employment contract prior to expiry may a temporary worker come under the CRNA. Temporary agency workers are covered by the CRNA as far as they would have an open-ended employment contract with the agency (their “formal” employer). They have no rights under the CRNA as against the user company.</p>
Portugal	<p>Definition of collective redundancies and thresholds</p> <p>Collective redundancies occur as a result of termination of employment by the employer, simultaneously or successively within a three-month period of either:</p> <ol style="list-style-type: none"> 1) at least two employees if the employer has less than 50 employees; or 2) at least five employees if the employer has 50 or more employees. <p>The grounds for collective redundancies, which must be demonstrated by the employer, are as follows:</p> <ol style="list-style-type: none"> 1) the closure of one or more sections of, or equivalent structures of, the company/employer; or 2) the reduction of the number of employees on market, structural or technological grounds. <p>The procedural requirements vary in accordance with the type of dismissal procedure.</p> <p>In order to determine the size of the workforce, the average number at the end of each month in the previous year is used.</p>
Slovenia	<p>Definition of collective redundancies and thresholds</p> <p>Collective redundancies are defined as the termination of employment due to business reasons within a period of 30 days of:</p> <ol style="list-style-type: none"> 1) at least 10 workers with the employer employing more than 20 and fewer than 100 workers; 2) at least 10% of workers with the employer employing at least 100 workers, and less than 300 workers; 3) at least 30 workers with the employer employing 300 or more workers. <p>Categories of workers</p> <p>All employees who have a contract of employment with the employer are to be taken into account.</p>
Spain	<p>Definition of collective redundancies and thresholds</p> <p>Article 51 of the Workers’ Statute (ET) defines collective redundancies as the extinction of work contracts based on economic, technical, organizational or production reasons where, in a period of ninety days, the extinction affects at least: (i) ten workers in companies that employ fewer than one hundred workers; (ii) 10 per cent of the number of workers in the company in those employing between 100 and 300 workers; and (iii) 30 workers in companies that employ 300 or more workers. Account shall likewise be taken of any others occurring during the period of reference by the initiative of the employer, by virtue of other reasons not inherent to the person of the worker, different from the expiration of temporary contracts, provided that their number is at least five.</p>

Collective redundancy protection: Scope of application (contd.)

Member State	Information provided by national experts
	<p>Grounds covered under collective redundancies (article 51 of the Workers' Statute) include economic grounds (a negative situation can be perceived in the undertaking's results, implying actual or foreseen losses, or a permanent diminution of the income level during, at least, three consecutive trimesters); technical grounds (changes, among others, in the area of production means and tools); organizational grounds (changes, among others, in the area of working systems and methods, or in the way of organizing production); production (changes concerning, among others, the demand for products or services that the undertaking is trying to put into the market). There is a possibility of collective redundancies for reasons of force majeure, regardless of the number of workers affected (art. 51(7)).</p> <p>Staggering redundancies</p> <p>Should the company implement dismissals on economic grounds in a number lower than these thresholds, without any new reasons justifying such action, in successive periods of 90 days for the purpose of circumventing the provisions contained in art. 51 ET, such new terminations shall be considered as implemented by way of legal fraud and shall be declared null and void.</p> <p>Categories of workers</p> <p>No difference must be made when considering the affected workers, with two exceptions: managers and workers provided by a temporary work agency (STSJ Cataluña 19/07/1995). Fixed-term workers are included in the thresholds if the termination of their contracts would take place at a date later than the proposed redundancy.</p>
Sweden	<p>Definition of redundancy</p> <p>The concept of redundancy covers all different reasons of economic and business-related character, including reasons that concern the organization and planning of production.</p> <p>Categories of workers excluded</p> <p>Employees whose duties and conditions of employment are such that they may be deemed to occupy a managerial or comparable position; employees who are members of the employer's family; employees employed for work in the employer's household; employees who are employed for work with special employment support or in sheltered employment or in development employment (Section 1 of the Employment Protection Act SFS 1982:80).</p> <p>Practice of staggering redundancies and replacing redundant workers with outsourced staff</p> <p>The practice of staggering redundancies is not known in Sweden, as redundancy does not have to be collective but can also refer to the dismissal of a single person.</p> <p>The Labour Court has accepted the practice of replacing permanently employed persons with temporary agency workers provided this is not done in a way that constitutes an improper circumvention of the priority right to re-employment (Section 25 of the Employment Protection Act 1982:80). In the collective bargaining round of 2010 several unions raised the issue of restricting the use of outsourced staff in such cases and the issue was resolved in different ways by different collective agreements. For instance, the collective agreement in the industrial sector now restricts the employer's possibilities to use temporary agency workers during the first 6 months after the end of the notice period. The Swedish Staffing Agencies (the employer federation in the sector) have filed a complaints with the European Commission; no answer has as yet been received.</p>

Collective redundancy protection: Scope of application (contd.)

Member State	Information provided by national experts
United Kingdom	<p>Definition of collective redundancies and thresholds</p> <p>The provisions of the Collective Redundancies Directive are transposed in English Law in the Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992, part IV, ch II: Procedure for Handling Redundancies (sections 188-198). The UK Government showed particular reticence in the transposition of various employee consultation Directives;¹⁵⁸ and the European Commission first instituted infringement proceedings in 1992,¹⁵⁹ focused primarily on the consultative mechanism and the remedial regime. A second set of judicial discussions, this time primarily on the temporal element of the consultative requirement, followed a decade later.¹⁶⁰</p> <p>Redundancy is defined in section 195(1), as dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related; with the relevant threshold set out in section 188(1): the dismissal as redundant of 20 or more employees at one establishment within a period of 90 days or less.</p> <p>Categories of workers</p> <p>Large number of workers are excluded from the provisions due to their limitations to employees (as defined in section 230(1) ERA 1996). This means, for example, that most temporary agency workers would not be included in workforce redundancy calculations.</p>

4.2 Information and consultation duties

As discussed in Section 3 of this report, once proposed employer action falls within the scope of the EU Collective Redundancy Directive, it becomes subject to several obligations – including, most significantly, the obligation to provide information to, and to consult with, employees’ representatives. The position in each of the twelve countries examined is set out in the comparative table below. Given the wide diversity in national collective representation practices, a high degree of variance in Member States’ implementation can be observed. For each Member State, we explore three crucial issues: (i) how the relevant representatives are designated in national law; (ii) what information has to be provided by the employer; and (iii) the extent, timing and aims of the consultative obligation.

It will be noted that provisions concerning provision of information are relatively consistent across countries, and commonly cover the reasons for the redundancies, the number of workers affected, the criteria for selecting workers for redundancies and the conditions for benefits. These clearly track the Directive requirements. In terms of the consultation process, while the requirements in each country are all directed at mitigating the adverse effects of redundancies, some countries (for example France, where the information and consultation obligations vary greatly depending on the size of the company and the size of the redundancies) are more prescriptive in specifying the content of discussions. Finally some countries (most notably Sweden but also to some extent Germany) with more coordinated industrial relations systems, provide for rules pertaining to the actual negotiation and co-decision of some of the matters attending to collective redundancy processes.

158. P. Davies and M. Freedland: *Labour legislation and public policy* (Oxford, Oxford University Press, 1993), pp. 576 ff.

159. Case C-383/92 *EC Commission v United Kingdom (collective redundancy infringement)* [1994] ECR I-2479.

160. See for example *MSF v Refuge Assurance plc* [2002] 2 CMLR 27 (EAT).

Informing and consulting workers' representatives

Member State	Information provided by national experts
Belgium	<p>Designation of workers' representatives</p> <p>The employer shall inform and consult on the intention to proceed with collective dismissals with the representatives of the workers in the works council or the trade union delegation. If no such works council or trade union delegation exists, the information and consultation must take place with the personnel or their representatives.</p> <p>These are selected through formal procedures e.g. social elections every four years (works council/ committee for prevention and protection at work) or procedures determined at sector level by joint labour committees (JLCs) (trade union delegation).</p> <p>Timeframe of process</p> <p>The following steps are to take place: (i) prior information and consultation; (ii) notification of the decision to proceed to with dismissals and determination of the restructuring period; (iii) cooling-off period for dismissals (30 days with the possibility for extension to 60 days); (iv) establishment of a re-employment committee (if applicable); (v) request for recognition as an undertaking in the process of restructuring (if applicable); and (vi) redundancies.</p> <p>Provision of information</p> <p>The employer shall provide in writing information on the reasons for the collective redundancy; the number of workers qualifying for redundancy as well as their categories; the number of workers usually on the payroll and their categories; the period during which the redundancies will be carried out; the relevant criteria for selecting the workers qualifying for redundancy; and the rules for calculating of additional redundancy payments.</p> <p>Conduct of consultation</p> <p>Consultation should include possibilities to prevent or decrease the collective redundancy, as well as to alleviate the consequences by adopting social accompanying measures, in particular to contribute to the relocation or retraining of dismissed workers (cf. art. 6 of CBA No. 24)</p> <p>The employer must be able to submit proof of the fact that it has held several meetings with the workers' representatives to consult about general employment issues in connection with the intention to dismiss them collectively. It must allow the workers' representatives to ask questions with regard to the intended collective redundancy, and allow them to put forward arguments in that respect or to present counter-proposals. Finally, the employer must have examined and answered these questions, arguments and counter-proposals (cf. art. 66, part 1 of the Act of 13 February 1998). There is however no veto right on the part of the employees.</p>
Estonia	<p>Designation of workers' representatives</p> <p>Before deciding on the collective redundancies, employers are to consult in good time the workers' representative (trustee) or, in his or her absence, the employees directly.</p> <p>Provision of information</p> <p>Employers must provide the workers' representatives with written information on the reasons for the projected redundancies; the number and categories of workers to be made redundant; the number and categories of workers normally employed; the period over which the projected redundancies are to be effected; the selection criteria proposed; and the method for calculating any extra redundancy payments.</p> <p>Conduct of consultation</p> <p>The objective is to reach an agreement preventing the planned redundancies or reduction of the number thereof and mitigating the consequences of the redundancies, including contribution to the seeking of employment by or retraining of the employees to be made redundant.</p> <p>In practice, information and consultation must be carried out at a stage when, in good faith, the redundancies are still reversible and the views of employees' representatives, or employees directly can be taken into account. During the consultation, the employees' representatives or, in their absence, the employees, have the right to meet with the employer's representatives and make proposals no later than 15 days after the submission of the notice.</p>

Informing and consulting workers' representatives (contd.)

Member State	Information provided by national experts
France	<p>Designation of workers' representatives</p> <p>Regardless of the number of redundancies and of the size of the company, all procedures provide for rights of information and consultation with the workers affected and their representatives. However, the relevant information and consultation procedures, the subjects involved, and their timing, differ depending on the number of redundancies and the size of the company.</p> <p>1) For businesses planning <i>small-scale redundancies</i> (2–9):</p> <ol style="list-style-type: none"> <i>Representative bodies.</i> Informing and consulting, in a special meeting, with workers' representatives (art. L1233-8 to L1233-10). The addressees of this duty depend on the size of the company. In larger companies (>50 workers), works councils have to be informed and consulted with. In smaller companies (or in the absence of a works council), the employer must inform and consult with employees' representatives. It should be noted that failing the involvement of the workers' representatives, the redundancies are considered invalid. In companies with a central works council, the latter body has to be involved if the scale of the redundancies is beyond a single establishment (L1233-9). <i>Workers affected.</i> Informing and consulting with the workers affected (art. L1233-11 to L1233-14): The employer must notify in writing the workers affected by the redundancies and, within five days, hold a meeting (called <i>entretien préalable</i>) with the worker (who can be accompanied by a union delegate or other designated person) to discuss how the decision to make the redundancy was reached (L1233-12) and (in large companies with more than 1,000 employees) inform the worker of the operation of the "<i>congé de reclassement</i>" and, where applicable, of the "<i>contrat de sécurisation professionnelle</i>". <p>2) For businesses planning <i>larger-scale redundancies</i> (ten or more):</p> <p>The addressees of the information and consultation obligations mainly depend on the size of the company (> or < than 50 employees), and on collective agreements that, at various levels, tend to play an important role in defining (and adding to) the exact duties imposed by the Labour Code (see art. L1233-21 to L1233-24-3). But by and large there are two sets of obligations imposed, <i>de minimis</i>, by the Labour Code in respect of representative bodies and in respect of the workers affected (a third set of being the notification to public authorities, discussed in section 4.3).</p> <ol style="list-style-type: none"> <i>Representative bodies.</i> In companies with <i>fewer than 50 employees</i> (art. L1233-28 to L1233-37) workers' representatives must be informed and (within 14 days) consulted (L1233-29). In companies with <i>more than 50 employees</i> the consultation process is more laborious, requiring at least two separate meetings with the works council to be held with at least 15 days between them. <i>Workers affected.</i> Article L1233-38 provides that if the employer complies with the collective information and consultation procedures outlined above, it is dispensed from the obligation to hold individual meetings with the workers affected. The employer however still has to comply with the stringent notification requirements contained in art. L1233-39 to L1233-43. These provisions also require, for larger companies with 50+ employees, the duty to inform the workers after the public authorities have validated or approved the redundancies under the procedure described by art. L1233-57-2 to L1233-57-4. <p>Provision of information and conduct of consultation</p> <p>1) For businesses planning <i>small-scale redundancies</i> (2–9):</p> <ol style="list-style-type: none"> The information to be provided to the representative bodies discussed above is detailed in art. L1233-10 and must include the reasons behind the planned redundancies; their number; the professional categories of workers to be affected; the size of the company's workforce; the timing of the redundancies; and any economic measures envisaged. The meeting with the workers affected must cover measures aimed at preventing the redundancies under art. L1233-4 of the Labour Code. Within seven days from the meeting, the employer seeking to dismiss a worker on grounds of redundancy must inform the worker in writing under art. L1233-15 ff, which upon the worker's request must also specify the criteria used to reach the decision to fire him or her.

Informing and consulting workers' representatives (contd.)

Member State	Information provided by national experts
	<p>2) For businesses planning <i>larger-scale redundancies</i> (ten or more):</p> <ol style="list-style-type: none"> <i>Companies with fewer than 50 employees.</i> The workers' representatives must be informed and consulted in respect of the reasons behind the planned redundancies; their number; the professional categories of workers to be affected; the size of the company's workforce; the timing of the redundancies; and any economic measures envisaged. Two meetings must be held, with at least 14 days in between them (art. L1233-29). <i>Companies with more than 50 employees.</i> The works council must deliberate on the matters discussed within a certain timeframe that depends on the number of anticipated redundancies (if 10–99 redundancies: 2 months; if 100 to 249: 3 months; if 250+: 4 months). If the redundancies affect the prerogatives of a central works council, the latter is to be involved under L.1233-36. <p>In preparation, and during, these meetings, the employer is under a series of detailed obligations pertaining to the form and content of the information and consultation requirements. Under art. L1233-33 it must assess and respond to the works council's suggestion in terms of alternative measures (produced by the works council under L2323-15).</p> <p>If the works council decides that it needs to avail itself of an expert accountant, then a third meeting may also be held (L1233-34).</p>
Germany	<p>Designation of workers' representatives</p> <p>The relevant representatives will be those in the company's works council (see §§7–41 Betriebsverfassungsgesetz, BetrVG).</p> <p>Provision of information</p> <p>According to §17 Abs. 2 S.1, if the employer plans a collective redundancy the works council has the right to be informed in writing and in good time (<i>rechtzeitig</i>). The notice must include:</p> <ol style="list-style-type: none"> 1) the reasons for the projected redundancies; 2) the number and categories of employees concerned; 3) the number of employees normally employed; 4) the period over which the projected redundancies are to be effected; 5) the criteria proposed for the selection of the workers to be made redundant; and 6) the method for calculating any redundancy payments. <p>The precise formal requirements for this notification remain unclear, but have been held to become irrelevant in any case following the works council's written notice of position (BAG decision of 20.09.2012 – 6 AZR 155/11).</p> <p>Conduct of consultation</p> <p>§17 Abs. 2 specifies that consultations between the employer and the works council are to cover the ways and means of avoiding collective redundancies, reducing the number of workers affected, and mitigating the consequences. The works council must provide the employer with a written notice of its position, which must be included in the employer's notification of the collective redundancy to the public authority (§17 Abs. 3), unless the employer can prove that the works council had been informed at least two weeks prior to the notification, and the employer sets out the current status of consultations with the works council.</p> <p>The works council's written notice of position must specifically refer to the proposed collective redundancies, and set out a conclusive opinion; the latter however includes an explicit statement that the works council refuses to take a specific position (BAG decision of 28.06.2012 – 6 AZR 780/10). If the works council's statement falls short of the required substance, the provisions of §17 Abs. 3 apply.</p> <p>In addition to these specific collective redundancy rights, the works council retains all rights generally granted to it by the Works Constitution Law (<i>Betriebsverfassungsgesetz</i>) and potentially useful in a collective redundancy scenario:</p> <ol style="list-style-type: none"> 1) right to information concerning the personnel planning (§92 Abs. 1 BetrVG);

Informing and consulting workers' representatives (contd.)

Member State	Information provided by national experts
	<p>2) right to be informed of the redundancy (§106 Abs. 3 Nr. 6 BetrVG);</p> <p>3) consultation rights in case of dismissal (§102 Abs. 1 BetrVG); and</p> <p>4) participation rights in case of a change of business operation (§§ 111, 112, 112a BetrVG).</p> <p>These general rights can be exercised simultaneously with the specific collective redundancy consultation; the employer must however ensure clarity as to precisely which procedures are applicable (BAG decision of 18.01.2012 – 6 AZR 407/10).</p>
Hungary	<p>Designation of workers' representatives</p> <p>The employer has a duty to inform and consult with the works council (art. 72(1) of the Labour Code). There is no obligation of information and consultation in the absence of such a body.</p> <p>Employees shall be represented by their shop steward, the works council, central works council, or the corporate-level works council (art. 235(2)). A shop steward or a works council shall be elected if the average number of employees at the employer or at the employer's independent establishment or division is higher than 15 or 50, respectively. Works councils are elected for terms of five years (art. 236). Their powers and responsibilities are regulated by art. 262–266 of the Labour Code.</p> <p>Provision of information</p> <p>At least seven days before the discussions, the employer shall inform the works council in writing regarding:</p> <ol style="list-style-type: none"> 1) the reasons for the projected collective redundancies; 2) the number of workers to be made redundant broken down by categories; or 3) the number of workers employed during the period specified under Subsection (1) of Article 71; 4) the period over which the projected redundancies are to be effected, and the timetable for their implementation; 5) the criteria proposed for the selection of the workers to be made redundant; and 6) the conditions for and the extent of benefits provided in connection with the termination of employment relationships, other than what is prescribed in employment regulations (art. 72(2)). <p>Conduct of consultation</p> <p>There is no duty to reach an agreement. If an agreement is reached under art. 72.5 of Labour Code, it may lay down the guidelines for the employer to select the workers affected by the termination of employment (art. 76(1)). Since it is a works agreement concluded by the employer and the works council, the agreement is considered an employment regulation.¹⁶¹ But even if there is no agreement, the redundancy may be lawfully managed.</p> <p>The discussions shall, at least, cover:</p> <ol style="list-style-type: none"> 1) possible ways and means of avoiding collective redundancies; 2) principles of redundancies; 3) means of mitigating the consequences; and 4) a reduction in the number of employees affected (art. 72(4)). <p>There is no veto right if the employer fails to consult properly. If the parties cannot conclude an agreement, the employer's obligation of consultation ends 15 days after beginning the consultation.</p>
Italy	<p>Designation of workers' representatives</p> <p>The company's worker representatives are elected on the basis of article 19 of the Italian Workers' Statute (<i>rappresentanze sindacali aziendali</i>, RSA) or through the unitary structures formed on the basis of collective agreements (<i>rappresentanze sindacali unitarie</i>, RSU; this has been a historically sore point for Italian industrial relations, as on occasion some representative trade unions, including large ones, have been sidelined and excluded by the agreements on the creation of RSUs). In the absence of any such body, the company must also inform the national sector unions federated to the most representative organizations at a national level.</p>

161. Article 13: For the purposes of this Act, "employment regulations" shall mean legislation, collective agreements and works agreements, and the binding decisions of the conciliation committee adopted according to article 293.

Informing and consulting workers' representatives (contd.)

Member State	Information provided by national experts
	<p>Provision of information</p> <p>Article 4(2) of Law 223/91 imposes an obligation on the employer to inform in writing both the company's workers' representatives and their relevant sectoral unions. Under art. 4(4) a copy of the materials supplied to the unions must be communicated to the provincial labour office.</p> <p>The content of the information to be supplied is regulated by art. 4(3) and refers to a list of matters such as reasons, numbers and job classification levels of the surplus employees; the timing of the planned redundancies; and the details of any measures contemplated to address the social consequences of the redundancy plan.</p> <p>The recent coming into force of Law 92/2012 has introduced the possibility for any error or failure in these information requirements to be cured ex post by a collective agreement concluded in the context of the collective redundancy procedure (meaning that individual workers can no longer challenge the validity of the procedure for a vitiating factor "cured" by such an agreement).</p> <p>Conduct of consultation</p> <p>Pursuant to art. 4(5) of Law 223/91, within seven days of the receipt of the communication by the company, the workers' representatives and sectoral trade unions can proceed with management to a "joint assessment" of the proposals with a view to examining the causes behind the planned redundancies and discussing the possibility of re-absorbing the workforce (or part of it) in different ways, including by means of job-security agreements, the introduction of flexible working time arrangement and, (under art. 4(11)), the variation of the terms and conditions of employment of the surplus workers to different and lower job classifications. This consultation stage must be concluded within 45 days from the day the information from the company was received (art. 4(6)).</p> <p>After this deadline, the company is under a duty to inform the provincial labour office (or, under art. 4(15) the regional or national authorities if the redundancies are on such a scale as to justify their involvement) about the outcome of the consultation process, and if no agreement was reached with the unions, of the reasons for the failure to agree. This point is further discussed in section 4.3 below.</p>
Netherlands	<p>Designation of workers' representatives</p> <p>In principle, negotiations on the social plan fall within the scope of action of the relevant (representative) trade unions. A social plan will only have to be discussed with the works council if the company does not have any ties with one or more trade unions. Moreover, an involvement of works councils in addition to trade unions in social plan discussions may be prescribed in collective or "enterprise" agreements.</p> <p>Role of the works council</p> <p>If a works council is established in a company/enterprise/plant,¹⁶² the employer must also ask the works council in writing for advice on the intended collective redundancy (art. 25 of the Works Council Act (<i>Wet op de Ondernemingsraden</i>, <i>WOR</i>)). This request must include, as a minimum, information on (i) the background to the proposed reorganization; (ii) the proposed implementation method; and (iii) the anticipated consequences for the employees.</p> <p>Under art. 25 of the Act, the employer must give the works council the opportunity to advise it on any proposed decision regarding a reorganization or discontinuation of all or a major part of the enterprise's activities. The advice must be requested in good time to enable the works council to have a real impact on the proposals for reorganization or shutdown. The works council is entitled by the Act to at least one consultation meeting with the employer before giving its advice. If the works council advises fully in favour of the proposed decision, the reorganization can go ahead. If the works council advises negatively on the employer's proposals, all further steps to implement the decision must be suspended for at least one month. During this period, the works council must deliberate further on its position. If the works council agrees to the employer's decision before the</p>

162. The law obliges all types of "work organizations" with at least 50 employees to set up a works council. Special arrangements apply for the organization of workers' representation in firms with fewer than 50 employees.

Informing and consulting workers' representatives (contd.)

Member State

Information provided by national experts

end of the one-month period, it can choose to waive the rest of the period. If it still disagrees, the works council may lodge an appeal with the Commercial Chamber of the Amsterdam Court of Appeal. In such a case, the Commercial Chamber will apply a strict test: whether, in weighing the interests involved, the employer could reasonably have arrived at the decision in question. This means that the Commercial Chamber mainly examines whether the employer has complied with the rules; it does not place itself in the employer's shoes or challenge the economic rationale of managerial decisions. At the end of the day, management in the Netherlands is thus free to take economic decisions as it pleases, provided these decisions are taken according to the procedures for information and consultation as laid down by statute, and that the social consequences are duly taken into account. In the event that the Commercial Chamber decides that the works council's complaint is well-founded, the employer is back to square one and must submit another request for the works council's advice.

Provision of information

By virtue of the Collective Redundancy Notification Act (CRNA), the employer is obliged to notify the relevant trade unions on the intention to terminate the employment agreements of 20 employees or more.

Conduct of consultation

The employer must invite the trade unions to participate in consultation. In cases of bankruptcy, the one-month waiting period and the obligation to consult with the unions are waived. The obligation to consult and the waiting period of one month also does not apply in case the unions expressly waive these rights in writing. Moreover, the employer is deemed to have fulfilled its obligation to consult the trade unions if the trade unions do not accept a written invitation for consultation, provided that this invitation was received by the trade unions at least two weeks before the proposed date of consultation. Usually, trade unions will only waive their rights under the CRNA if there has already been contact and negotiations with the employer at an earlier stage. Especially large organizations have standard "social plans" (redundancy plans) laid down in a collective labour agreement. In such a case, the trade unions will usually wave their rights under the CRNA.

The Act requires that the notification and invitation to consultation must take place at such a time that "timely" consultation with the unions may take place. This consultation will focus on the necessity of the proposed measures, as well as the terms and conditions to be applied when implementing the intended collective dismissal. Hence the consultation may be regarded as a "duty to consult" trade unions (if the unions seize the opportunity) over the decision to make workers redundant and the consequences thereof. During the consultations, a social plan may be agreed upon, including for future reorganizations; this may qualify as a collective agreement. In such a situation, it may be said that the CRNA rights intersect with collective bargaining.

Although the company is under the obligation (either by virtue of the CRNA and/or by virtue of an applicable collective employment agreement) to consult with the relevant trade unions, the company is not under an obligation to reach agreement with the trade unions. If no agreement with the trade unions can be reached the company may – in principle – proceed with its plans. In other words, there is no such thing as a "veto right" for the union if the employer fails to consult adequately. However, in general the company may then face difficulties in obtaining positive advice from the works council and also in obtaining the required permits for termination from the Institute for Employee Benefit Schemes (*Uitvoeringsinstituut werknemersverzekeringen*, UWV).

Portugal

Designation of workers' representatives

The right to information and consultation is given to the works council, or in its absence, to the trade union in the undertaking. If there are no representation structures present at all, the communication must be made to each one of the workers potentially affected. They can then nominate a special commission of three or five people, depending on the number of workers affected (art. 360 of the Labour Code).

Informing and consulting workers' representatives (contd.)

Member State	Information provided by national experts
	<p>Provision of information</p> <p>The following information should be provided by the employer on the basis of art. 360(2): grounds for the redundancy; the total workforce; the criteria used for redundancy selection; number of affected workers and professional categories; calculation of indemnities.</p> <p>Conduct of consultation</p> <p>Article 361 of the Labour Code stipulates that the consultation period starts within five days of the communication to the employees. Its aim is an agreement on the extent and the effects of the redundancies, as well as bargaining over other measures that can reduce the number of workers made redundant. The consultation period lasts for at least 15 days from the day of the communication. If an early agreement is reached, the consultation period ends automatically. There is no veto right, as the employer has the power to start the redundancy once the period's expiry is verified.</p>
Slovenia	<p>Designation of workers' representatives</p> <p>Information and consultation takes place with the representative trade unions (pursuant to art. 205 of the Employment Relationship Act (ERA-1) as well as the works council (Law on Worker Participation).</p> <p>Provision of information</p> <p>In writing "as soon as possible" about the reasons for the redundancies, the employer must provide information about the number and the categories of all workers employed, the envisaged categories of redundant workers, the envisaged term in which the need for the workers is expected to cease, and the proposed criteria for the selection of redundant workers (art. 99(1) ERA-1). There is an additional duty of the employer to inform the works council (art. 89 of the Law on Worker Participation).</p> <p>Conduct of consultation</p> <p>Consultation should take place with the intention of concluding an agreement. The employer must consult with the trade unions about the proposed criteria for the selection of redundant workers, and the preparation of the dismissal programme for redundant workers (social plan) including possible ways of avoiding and limiting the number of dismissed workers and possible measures for the prevention and mitigation of harmful consequences. There is however no legal duty on the employer to reach an agreement with the trade union. There is an additional duty of the employer for joint consultation with the works council (art. 91–94 of the Law on Worker Participation). Additional provisions on timing and subject matter of the consultations are stipulated in sectoral collective agreements.</p> <p>In certain circumstances, there is a duty on the employer to obtain the consent of the works council if decisions (which are defined by law)¹⁶³ result in an increase or reduction in a large number of workers in accordance with art. 98 of ERA-1 (2013). The works council may only deny its consent if the proposal to reduce the size of the workforce does not include a draft programme for the solution of the problem of redundancies in accordance with employment regulations, or if the reasons for the decision to reduce the size of the workforce are not well founded.</p>
Spain	<p>Designation of workers' representatives</p> <p>A maximum of 13 worker representatives are selected according to the rules in art. 41.4 ET, depending on the collective redundancy taking place in one establishment or more than one. As a rule, the works council (<i>comité de empresa</i>) or the shop steward (<i>delegado de personal</i>) in smaller establishments will act as the representative. In establishments where these cannot be found, workers may give their representation to a special commission of three members, chosen amongst the workers or designated by the main trade unions in the branch.</p>

163. Decisions on: changes of activity, any decline in economic activity, changes in the organization of production and technological changes, status changes and the sale of the company or of essential parts of the company.

Informing and consulting workers' representatives (contd.)

Member State	Information provided by national experts
	<p>Provision of information</p> <p>Article 2 RD 1483/2012 and article 51 of the Workers' Statute stipulate that the undertaking must communicate to the representatives at the start of the consultation period in writing as regards the following matters: the grounds for redundancy; the period foreseen for its implementation; the professional classification of the workers affected; and the criteria used to select the workers to be made redundant. A detailed memorandum concerning the grounds for the redundancy, as well as the undertaking's accountability and technical reports, must also be included; there is developing case law on the nature of information required following the last legislative reforms. At the start of the procedure, the employer is to communicate in writing to the workers' representatives to mark the beginning of the consultation period. Three full days must pass after this notification before the first meeting with the representatives can take place (art. 7.3 RD 1483/2012).</p> <p>Conduct of consultation</p> <p>Consultations must last for at least 30 days, or 15 if the undertaking has fewer than 50 employees. Their content is regulated in art. 51.2 ET and RD 1483/2012. At least the following subjects must be dealt with: the possibility of avoiding or reducing the redundancies and lessening its consequences, including through "social accompanying measures" such as workers' outplacement, occupational training and recycling or other measures aimed at increasing their employability. There is a duty to bargain, but no duty to reach an agreement.</p>
Sweden	<p>Designation of workers' representatives</p> <p>The right to negotiate in matters where the employer has the exclusive power of decision, such as in the case of redundancies, belongs primarily to established unions. In two situations, however, the employer is obliged to initiate a negotiation with a union other than the established one. In cases where a matter specifically relates to the working or employment conditions of an employee who belongs to an employees' organization, in relation to which the employer is not bound by a collective agreement, the employer has the same obligations to negotiate with that organization. In addition, in cases where the employer is not bound by any collective agreement, it is obliged to negotiate with every union that has a member in the workplace, before making decisions relating to the redundancy.</p> <p>Provision of information</p> <p>The Co-determination at Work Act provides both a general provision on the employer's duty to inform the union, and a specific provision on the duty to inform in the case of redundancies. In the latter case, the employer shall notify the other party in writing in a timely manner regarding details about the situation and about those employees whose employment will be terminated. The information provided must include the following: the reasons for the planned redundancies; the number of employees who will be affected and the employment categories to which they belong; the number of employees who are normally employed and their employment categories; the time period during which the redundancies are to be carried out; and the method of calculation of any compensation to be paid in conjunction with the dismissals in addition to that required by law or collective agreements. Where applicable, the employer must furthermore provide the union with a copy of information which has been sent to the Public Employment Service.</p> <p>Conduct of negotiations</p> <p>It is essential that the employer initiate negotiations in due time (and before the decision to proceed to collective redundancies). Negotiations with the union should be requested at a very early stage in the employer's decision-making process. In considering how early in the process the employer shall initiate a negotiation, a balance must be struck between the union's interest in being involved in early decision-making and the employer's interest in studying the matter thoroughly before the discussion with the union takes place. Nevertheless, the crucial factor in such a balance is always that the negotiations must begin while there is still a genuine possibility for the unions to affect the employer's decision.</p>

Informing and consulting workers' representatives (contd.)

Member State	Information provided by national experts
United Kingdom	<p data-bbox="280 295 1300 546">The Co-determination Act specifies that the parties' obligation to negotiate includes a duty to do their best to reach an agreement. Still, the final decision lies with the employer. Thus, no legal obligation exists for employers to take adequate account of the union's view. That said, the union may have significant influence on the actual outcome of the redundancies. This is because in such cases the parties may, and often do, establish a special collective agreement, whereby the employees in question for dismissal are arranged in order of priority. By entering into such a collective agreement, the employer is released from the obligation to comply with the rules of the Employment Protection Act on seniority and qualifications in the case of redundancies.</p> <p data-bbox="280 573 703 600">Designation of workers' representatives</p> <p data-bbox="280 618 1300 770">The identification of the relevant representatives has led to successful infringement proceedings against the United Kingdom: in the original implementation, it was limited to recognized trade union representatives ("single channel"), thus leaving employees in non-organized workplaces without protection. Section 188(1B) has since introduced a system where in the absence of a recognized union, representatives may be appointed or elected by the affected employees.</p> <p data-bbox="280 797 536 824">Provision of information</p> <p data-bbox="280 842 930 869">The information to be provided must include (section 188(4)):</p> <p data-bbox="280 887 1300 1137">(a) the reasons for the employer's proposals; (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant; (c) the total number of employees of any such description employed by the employer at the establishment in question; (d) the proposed method of selecting the employees who may be dismissed; (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect; and (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.</p> <p data-bbox="280 1155 531 1182">Conduct of consultation</p> <p data-bbox="280 1200 1300 1711">Where more than 20 employees are to be made redundant at an establishment within a period of 90 days, the employer has to commence negotiations "with a view to reaching agreement" on ways of avoiding the dismissals, reducing the numbers of employees to be dismissed, and mitigating the consequences of the dismissals (TULRCA 1992, s 188(2)). In so doing, relevant information needs to be provided to the employees' representatives, including details about the reasons for redundancies and the proposed method of selecting those to be dismissed (ss 188(4)(a) and (d) respectively); these requirements have increasingly been interpreted as encompassing broader economic reasons for the employer's decision.¹⁶⁴ The timing of the obligation has led to protracted litigation, as the duty in UK law is said to arise only once the employer "proposes" to dismiss workers as redundant; a word which could be seen as identifying a later point in the timeline that the Directives "contemplate".¹⁶⁵ Even though the matter was referred to the CJEU by the UK Court of Appeal in <i>USA v Nolan</i>,¹⁶⁶ however, no clear solution has been found to date. Domestic proceedings subsequent to the CJEU's refusal of jurisdiction¹⁶⁷ have not yet addressed the timing issue.¹⁶⁸ Section 188(1B) notes: "The consultation shall begin in good time and in any event (a) where the employer is proposing to dismiss 100 or more employees [...] at least 90 days, and (b) otherwise, at least 30 days before the first of the dismissals takes effect."</p>

164. *UK Coal Ltd v NUM* [2008] IRLR 4 (EAT) [84, 87] (Elias J).

165. *Ibid.*, [86].

166. [2010] EWCA Civ 1223.

167. Case C-583/10 *United States of America v Christine Nolan* ECR-I 00000, Decision of 18 October 2012 [33]–[34].

168. *The United States of America v Nolan (No 2)* [2014] EWCA Civ 71, [2014] ICR 685 [33].

4.3 Notification of public authorities, the redundancy process and social plans

In addition to information and consultation duties, the second strand of regulatory responses envisaged in both European and international frameworks is the notification of a designated public authority. In addition to setting out such notification duties, the material in the comparative table below also explores the timing of relevant obligations, as well as the role and content of social plans to mitigate the ex post facto impact (where applicable).

It will become apparent that there are two main matters on which there is significant variation between Member States. The first concerns the role and nature of the public authority. In some countries, such as the United Kingdom, the role reserved to the relevant public authority has historically been limited to what may be characterized as a monitoring function (though we will discuss notable exceptions to this approach). In most Member States surveyed, the authority may, on the other hand, intervene in the proposed collective redundancy processes, albeit to varying degrees. The form of this intervention may extend to assisting the parties in finding solutions (as for example in Estonia and Portugal) or to indicating approval for the process and/or outcomes the firm has followed in relation to collective dismissals (as is the case in France, the Netherlands and Spain – in the latter case applicable only to redundancies linked to force majeure). The nature of the public authority involved also varies from country to country. Some Member States (for instance Belgium, France, Germany and Italy) require companies to notify projected redundancies to bodies that are essentially labour offices, while others request the involvement of, essentially, public benefit services (for instance Estonia and the Netherlands), while a third set may require the involvement of bodies that are more closely associated with the central administration and the Ministries of Labour or Employment (for instance France, Italy, Portugal and to a certain extent the United Kingdom). In a number of countries (for instance France, Italy and Spain) the relevant governmental authority is determined by the geographical extent of the collective dismissals, with, typically, local government's labour departments and the Ministry of Employment and Social Security in charge of single-region and multi-region redundancies, respectively.

The second point of difference concerns whether the consultation process must result in a social plan, which deals with matters such as alternatives to redundancy, including redeployment/retraining. Social plans are produced, whether by law or by widespread practice, in Belgium, France, Germany, the Netherlands, Slovenia and Spain (particularly in relation to other enterprises). They are not required in, for example, Estonia, Hungary and the United Kingdom.

Notification of public authorities, timeframe of redundancies and social plan

Member State	Information provided by national experts
Belgium	<p>Notification to the public authorities</p> <p>As soon as the first phase is completed (see above), and if the employer persists in its intention to collectively dismiss, it must notify by registered mail the Director of the subregional employment office of the place where the company is located.¹⁶⁹ This notification must contain information about: (i) the name and address of the company; (ii) the nature of the activity of the company; (iii) the Joint Committee under which the company falls; (iv) the number of workers on the payroll; (v) the reasons for the redundancy; (vi) the number of workers who qualify for redundancy, classified by expertise, age bracket, professional category and department; (vii) the period during which the redundancies will take place; and (viii) proof that the employer has satisfied the conditions as set forth in art. 66, para. 1, of the Act of 13 February 1998.</p> <p>The employer sends to the workers' representatives a copy of the notification of the intention to dismiss them collectively.¹⁷⁰ A copy must be posted at the company workplace and a copy must be sent by registered mail to those workers envisaged by the collective redundancy and whose employment contracts have already been terminated at the time of the posting.</p>

169. Article 7 of the Royal Decree of 24 May 1976, in *Belgian State Gazette* (17 Sept. 1976); and art. 66 of the Act of 19 March 1991, in *Belgian State Gazette* (29 Mar. 1991).

170. Article 8 of the Royal Decree of 24 May 1976, in *Belgian State Gazette* (17 Sept. 1976).

Notification of public authorities, timeframe of redundancies and social plan (contd.)

Member State	Information provided by national experts
	<p>A copy must also be sent to the chairperson of the executive committee of the Federal Public Service for Employment, Labour and Social Dialogue, together with certain information. Further to this notification, the Minister for Employment shall take a decision as to the length of the restructuring period.</p> <p>It should be emphasized that, if the collective redundancy is accompanied by the closure of the company or a division thereof, additional formalities must be complied with. Additional conditions may be imposed at the sectoral level.</p> <p>Timeframe of redundancies</p> <p>The employer may not dismiss the workers envisaged by the collective redundancy until after the expiry of a term of 30 days, starting on the date of the notification of the intention. The Director of the subregional employment office may extend the term from 30 days to a maximum of 60 days after the notification.</p> <p>Obligation to consider alternatives to redundancy</p> <p>During the framework of the information and consultation phase, the employer must consider alternatives to redundancies if this question has been raised by the workers' representatives.</p> <p>Social plan</p> <p>The employer is not obliged to produce a social plan, but it is a common practice in order to mitigate the consequences of any restructuring. A social plan usually includes measures such as longer notice periods or more compensation in lieu of notice, special departure premiums, additional unemployment benefits, or early retirement.</p> <p>If the social plan provides for early retirement, a restructuring plan must be drafted and submitted to the employee representatives or, in the absence thereof, to the external union representatives. The restructuring plan is then submitted to the regional minister for employment. After the minister has given an opinion, a request for recognition as an undertaking in the process of restructuring must be sent to the federal Minister for Employment.</p>
Estonia	<p>Notification to the public authorities</p> <p>The employer has a duty to submit simultaneously to the Unemployment Insurance Fund (UIF) the information that is provided to the workers' representatives. The UIF should be informed 30 days previous to the redundancies; this period can be shortened or extended to 60 days by the UIF if a specific explanation is provided. Such an extension may be made in connection with the process of consultation. The UIF can intervene and attempt to find solutions. In addition, state supervision should be exercised by the Labour Inspectorate.</p> <p>Obligation to consider alternatives to redundancy</p> <p>Prior to making an employee redundant, the employer must offer him or her other work (except in the case of bankruptcy); and enable the employee to undertake in-service training, if required, or amend their working conditions.</p> <p>Social plan</p> <p>There is no obligation on the employer to prepare a social plan.</p>
France	<p>Notification to the public authorities</p> <p>Between 1975 and 1986, French <i>Directeurs Départementaux du Travail</i> had the power to authorize or deny an authorization to projected (individual or) collective redundancies. The Laws of 3 July 1986 and 30 December 1986 suppressed this power, although public authorities are to be informed “<i>en cours de procédure</i>” for all collective dismissals involving at least 10 workers. Under arts. L1233-46 to L1233-51 of the French Labour Code, the company is to inform in writing the <i>Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi</i> (DIRECCTE) – or the Ministry of Labour if the redundancies involve more regional jurisdictions – of the planned redundancies, by providing, in effect, the same materials provided to</p>

Notification of public authorities, timeframe of redundancies and social plan (contd.)

Member State	Information provided by national experts
	<p>the workers' representatives (as discussed above in section 4.2) together with the minutes and the suggestions made by the workers' representatives. When the company has workers representatives, the notification shall be made no sooner than the day after the scheduled date for the first meeting under arts. L1233-1229 and L1233-30. Under L1223-49, in the absence of works councils or workers' representatives, the employer, if subject to an obligation to produce a social plan, must communicate the plan at the same time as the proposed redundancies.</p> <p>French academic commentators are of the view that "while the juridical power of the labour administration is rather limited, the effective role it plays is far from negligible".¹⁷¹</p> <p>Timeframe of redundancies</p> <p>In addition to the information prerogatives discussed above, the DIRECCTE (or the Ministry of Labour, where relevant) is entrusted with a number of prerogatives of intervention which can affect the timeframe of the redundancies envisaged. These prerogatives vary and depend on the existence of a social plan (and therefore on the size of the company and scale of redundancies).</p> <p>If the company is not under an obligation to produce a social plan, the relevant public authority has a duty to verify within 21 days from the notification of the proposed redundancies that workers' representatives were duly informed, that the requirements to produce the social measures detailed under L1233-32 or collective agreements were met, and that they are actually being implemented (L1233-53). The public authority can produce written observations on the social measures ex L1233-32 to which the company must respond in writing before any redundancy can be finalized (and if redundancy notifications are sent before that, they are held to be invalid). Under art. L1233-56, when the public authority finds a procedural irregularity during its audits, it must inform the employer and the workers' representatives.</p> <p>If the company is subject to a social plan, then the public authorities are given stronger powers by arts. L1233-57 to L1233-57-8. To begin with, the public authority can make any comments or proposal on the social plan proposed, bearing in mind the economic situation of the company, and these comments or proposals must reach the workers' representatives before their final meeting with the employer. If the company has no worker representation structures, the proposals and the response provided by the employer are to be posted in the workplace.</p> <p>It must be noted that, under art. L1233-24-1, in companies with 50+ employees a collective agreement (concluded by one of the unions that received at least 50 per cent of the votes in the last works council or employee representative elections) may determine the contents of the social plan referred to in arts. L1233-1261 to L1233-1263, as well as the modalities of consultation of the works council and implementing layoffs. In the presence of such agreement, the public authority will have to be notified of its contents, and (if satisfied that it meet all representation and statutory requirements referred to in L1233-57-2) validate it within 15 days. If there is no such agreement, then the authority will have to consider and, eventually, approve (within 21 days) the social plan produced by the employer subject to the plan meeting all the statutory requirements and the information and consultation procedures detailed by the Code, and relevant collective agreements being respected.</p> <p>If the public authority remains unresponsive and silent, there is a presumption that the agreements or plans have been approved, and the employer must communicate this "presumption" to the workers' representatives.</p> <p>Crucially, under art. L1233-57-7, if the public authority refuses to approve the social plan or collective agreement, the employer must submit a new application after making the necessary changes and consulting the works council.</p> <p>Social plan</p> <p>A key obligation applying to companies with 50+ workers envisaging larger-scale redundancies is the preparation of a social plan (<i>Plan de sauvegarde de l'emploi</i>, PSE) under arts. L1233-61 to L1233-64, that exceed the lesser set of social measures detailed under L1233-32 (and applicable</p>

171. J. Pélissier, A. Supiot and A. Jeammaud : *Droit du travail* (Paris, Dalloz, 2008, 24th ed.), p. 627.

Notification of public authorities, timeframe of redundancies and social plan (contd.)

Member State	Information provided by national experts
	<p>to smaller companies and redundancies). As mentioned above, this plan is to be discussed with workers' representatives and must be communicated to the relevant public authorities. The plan must include a professional reclassification plan aimed at facilitating the redeployment of employees whose dismissal could not be avoided, especially in respect of older workers or workers whose personal and professional characteristics would make them hard to employ. In particular, the PSE must contain references to all the matters and measure contemplated in art. L1233-62 (such as redeployment, training, promotion of business ventures related but external to the company, measures aimed at reducing the working time or overtime arrangements).</p>
Germany	<p>Notification to the public authorities</p> <p>The primary obligation under §17 KSchG is for employers to notify the Federal Agency for Employment (<i>Bundesagentur für Arbeit</i>) in writing of any projected collective redundancy and attach a copy of the notification given to the works council and the written statement of the works council. The Federal Agency for Employment is a federal entity of public law character, operating independently (<i>Selbstverwaltung</i>) under the legal supervision (<i>Rechtsaufsicht</i>) of the Federal Ministry for Labour and Social Affairs. The Federal Ministry does not, however, enjoy the right directly to give instructions to the Federal Agency for Employment (<i>Weisungsrecht</i>).</p> <p>As regards timing, the notification is to take place after consultation with the works council but before any termination has taken place (BAG, 23.03.2006 – 2 AZR 343/05 following the CJEU decision <i>Junk</i>).</p> <p>Timeframe of redundancies</p> <p>The main purpose of the Federal Agency's involvement in collective redundancies is for the agency to enjoy the possibility to commence measures aimed at the reduction or delay of the dismissals' negative impact on the labour market, and thus to minimize their socio-economic impact (BAG decisions of 18.01.2012 – 6 AZR 407/10 and 21.03.2012 – 6 AZR 596/10).</p> <p>Valid notification of collective redundancies triggers a month-long ban on redundancies, a so-called "<i>Sperrfrist</i>" (time limitation): §18 Abs. 1 KSchG. This de facto minimum notice period (BAG decision of 06.11.2008 – 2 AZR 935/07) may however be shortened by the agency for employment's approval of the redundancy before the expiration of that period; alternatively it may be extended to two months by the authority (§18 Abs 2 KSchG).</p> <p>Social plan</p> <p>In line with the overall regulatory design of collective redundancy protection in German law (i.e. its close connection with the general norms of dismissal protection), a social plan is not mandatory in every collective redundancy situation; the relevant thresholds are laid down in §112 a BetrVG (for example in companies with more than 500 employees, there must be at least 10 dismissals per hundred employees, with a minimum of 60 employment terminations).</p>
Hungary	<p>Notification to the public authorities</p> <p>There are three kinds of information obligations towards the government employment agency:</p> <ol style="list-style-type: none"> 1) On the intentions regarding collective redundancy: The employer shall notify the government employment agency of its intention regarding collective redundancies, and of the information defined in Subsection (2) of Section 72,¹⁷² and shall supply a copy thereof to the works council (art. 74(1) of the Labour Code).

172. Article 72(2): At least seven days before the discussions, the employer shall inform the works council in writing regarding:

- a) the reasons for the projected collective redundancies;
- b) the number of workers to be made redundant broken down by categories; or
- c) the number of workers employed during the period specified under Subsection (1) of Section 71;
- d) the period over which the projected redundancies are to be effected, and the timetable for their implementation;
- e) the criteria proposed for the selection of workers to be made redundant; and
- f) the conditions for and the extent of benefits provided in connection with the termination of employment relationships, other than what is prescribed in employment regulations.

Notification of public authorities, timeframe of redundancies and social plan (contd.)

Member State	Information provided by national experts
	<p>2) On the agreement: The agreement concluded in the course of negotiations (if at all) shall be made in writing, a copy of which shall be sent to the government employment agency (art. 72(5)).</p> <p>3) On the decision regarding collective redundancies:</p> <ol style="list-style-type: none"> The employer shall notify in writing the workers affected of its decision regarding collective redundancies. This notification shall also be sent to the works council and the government employment agency (art. 75(2)). The employer shall notify in writing the government employment agency of its decision regarding collective redundancies at least 30 days prior to delivering the notice of dismissal or the legal act defined in paragraph b) of Subsection (1) of Section 79. This aforementioned notification shall contain (i) the identification data; (ii) the position; and (iii) the qualification of the employees to be made redundant (art. 74(2)). <p>Timeframe of redundancies</p> <p>The employer shall notify in writing the employees affected by its decision regarding collective redundancies at least:</p> <ol style="list-style-type: none"> 30 days prior to delivering the notice of dismissal; or 30 days prior to the dismissal without notice defined in paragraph b) of Subsection (1) of Section 79. <p>The notice of dismissal or the dismissal without notice may be delivered after 30 days following notification (art. 75(1)).</p> <p>Social plan</p> <p>There is no legal obligation on the employer to produce a social plan and/or to consider alternatives to redundancies.</p>
Italy	<p>Notification to public authorities</p> <p>Pursuant to art. 4(3) of Law 223/91 the company must inform the provincial labour office of its intended collective redundancy at the same time as informing the workers and unions. The labour office is also to be informed of the outcome of the consultation process. If the consultation process was inconclusive, or if the unions do not seek to trigger it in the first place, the administrative authorities can reconvene the parties for a further joint examination and can formulate proposals aimed at reaching an agreement. This is in effect a conciliation phase that can last up to 30 days.</p> <p>Timeframe of redundancies</p> <p>Once all procedural requirements have been complied with, the employer can communicate the redundancies to individual workers, even in the absence of an agreement with the relevant unions.</p> <p>Once the employer has performed the redundancies there is a further obligation, imposed by art. 4(9), to provide, within 7 days, the relevant administrative authorities (and the sectoral unions) with a list of the workers made redundant, including detailed and specific information on the selection criteria adopted to identify the actual workers subjected to the redundancy process.</p> <p>At this point there is a further involvement of the administrative authorities in the context of collective redundancies, that is to say the oversight of the “mobility lists” in which redundant workers are registered upon their dismissal (art. 6).</p>
Netherlands	<p>Notification to the public authorities</p> <p>The employers are obliged to include in the notification to UWV and the trade unions: (i) the grounds for dismissal; (ii) the number of dismissals including position, age and gender of relevant employees; (iii) the expected termination date; (iv) whether the works council was consulted and, if not, when the works council will be consulted; (v) the applied selection criteria; and (vi) any other arrangements for employees, such as a possible redundancy payment and the method of its calculation.</p> <p>The UWV applies the following criteria when assessing requests for collective dismissals for financial reasons. In practice, the relevant information is often provided by the employer prior to the formal request for permission to implement the dismissals.</p>

Notification of public authorities, timeframe of redundancies and social plan (contd.)

Member State	Information provided by national experts
	<p>1) Have the financial reasons for the elimination of the redundant position(s) been sufficiently substantiated? The UWV applies strict requirements concerning the financial information to be provided by employers. An employer must in any event submit its annual accounts for the preceding three years, as well as a substantiated projection for the next six months. For an assessment of the dismissal requests not only information on the intended reduction of personnel costs, but also on other cost-saving measures (whether anticipated or already implemented) is used. The abovementioned financial information must also be included in the request for advice from the works council.</p> <p>2) Have the right employees been selected for dismissal? It is useful to add here that the outcome of the consultation between the employer and the trade unions, for example whether or not severance (redundancy) payments have been arranged, may influence the UWV in their decision to grant authorization for the dismissals.</p> <p>Timeframe of redundancies</p> <p>After notification to the UWV and the trade unions involved, the UWV must allow one month to elapse before processing the employer's requests for permission to terminate employment in respect of the individual employees concerned.</p> <p>Social plan</p> <p>The rules on the notification of collective dismissal act as a stimulus for management to negotiate with trade unions in order to arrive at a "social plan". Such a plan usually deals with all kinds of support for employees made redundant so that they can find another suitable job by means of retraining, secondment and (re-) placement for a specific period. It usually also contains provisions on redundancy pay.</p>
Portugal	<p>Notification to the public authorities</p> <p>Following an agreement or the lapse of 15 days, the employer must send to the labour authority a document containing a protocol of the consultation period, the grounds for the failure to reach an agreement and the final positions of the bargaining parties, and a copy of all communications supplied to the individual workers affected. Another copy of all these documents must be sent to the workers' representatives. A copy of the document outlining the information provided to workers' representatives at the start of the process must also be sent to the Labour Ministry.</p> <p>According to art. 362 CT, the labour authority must monitor the entire procedure, attending the bargaining to guarantee its regularity both substantive and procedural, and must ease the conciliation of both parties' interests. If any irregularity is detected, the authority must notify the employer, and if it persists, it must be registered in the protocol of the procedure. The labour authority has also a role in providing counselling, in particular as regards the legal consequences of the negotiations.</p> <p>Under art. 362 CT, the relevant labour authority is the <i>Serviço competente do ministério responsável pela área laboral</i> (competent service of the ministry responsible for the labour area). Its name in Portuguese is the <i>Ministério da Solidariedade, Emprego e Segurança Social</i>.</p> <p>Timeframe of redundancies</p> <p>In the same period as in the case of the notification to the public authorities, art. 363 of the Labour Code provides that the employer will communicate to each affected worker its redundancy decision, including the grounds and the date of the termination of the employment contract. The amount of compensation, the method and time of its disbursement will also be communicated. This communication must be made in writing according to the following deadlines:</p> <ul style="list-style-type: none"> • 15 days, for workers with a tenure of less than a year • 30 days, for workers with a tenure of 1 to 5 years • 60 days, for workers with a tenure of 5 to 10 years • 75 days, for workers with a tenure exceeding 10 years <p>If in the case of a married couple or domestic partnership where both persons are made redundant, the notice must be made at least 75 days in advance of the termination.</p>

Notification of public authorities, timeframe of redundancies and social plan (contd.)

Member State	Information provided by national experts
Slovenia	<p>Notification to the public authorities</p> <p>The employer has a duty to inform the Employment Service in writing about the collective dismissals. The Employment Service must be informed concerning the consultation procedure with trade unions; the reasons for redundancies; the number and categories of all employed workers; the envisaged categories of redundant workers; and the envisaged term in which the need for the workers is expected to cease (art. 100(1), ERA-1).</p> <p>It is the duty of the employer (art. 103, ERA-1) to consider and to take into account the potential proposals made by the Employment Service regarding the possible measures for preventing or limiting to the highest possible degree the termination of the employment relationship of workers and the measures for the mitigation of harmful consequences due to the termination of employment.</p> <p>Timeframe of redundancies</p> <p>The employer may not proceed to dismissals prior to the expiration of 30 days from the provision of information to the trade unions and the Employment Service (art. 100 (3), ERA-1). In exceptional cases this period of time may be prolonged to 60 days, upon the request of the Employment Service (art. 103 (2), ERA-1).</p> <p>Social plan</p> <p>Article 101, ERA-1 stipulates that the employer must prepare a social plan which has to comprise the following: the reasons for the redundancies; measures for preventing or limiting to the highest possible degree the termination of the workers' employment relationship, whereby the employer must check the possibility of continuing the employment under modified conditions; the list of redundant workers; the measures and criteria for the selection of measures to mitigate harmful consequences of the termination of employment relationship (such as an offer for employment with another employer, the assurance of financial aid, assistance for starting a business, purchase of insurance).</p>
Spain	<p>Notification to the public authorities</p> <p>The employer has a duty to notify the public authority at the opening of the consultation period. Which authority is to be notified depends on the geographic distribution of the redundancies. If only a single region is affected, the relevant authority will be the Labour Department of whichever one of 17 regional governments is in control of that area. For redundancies affecting more than one region, the relevant authority is the national executive, i.e. the <i>Ministerio de Empleo y Seguridad Social</i> (Ministry for Employment and Social Security).</p> <p>Following the latest reforms, public authorities have the power to authorize the redundancies only in cases linked to force majeure. In other cases, they have a role of supervision, advising and counselling. They can act as mediators, and challenge the agreements resulting from the consultation period before the courts if fraud or abuse of law are detected, or the employer's decision has as its true aim the undue procurement of unemployment benefits.</p> <p>Timeframe of redundancies</p> <p>Once the consultation period has elapsed, and whether an agreement has been reached or not, the employer must notify individually the redundancies to each of the affected workers. Article 51.4 ET establishes a minimum delay of 30 days between the opening of the consultation period and the actual date of redundancy. The communication to each worker must be complete, in order to provide full information, as the worker has not been present during the consultation period. This is very important, as when the representatives do not try to refute the redundancy in the labour courts, the worker must do so by him- or herself (STSJ Castilla La Mancha 10/07/2013).</p> <p>Social plan</p> <p>If the redundancy affects more than 50 workers, the employer must offer them an "external out-placement plan" through replacement companies. It must include professional training and guidance, and active jobseeking. This plan is not necessary in bankruptcy scenarios (art. 51.10 ET). If the redundancy includes workers aged 50 or above, the employer must make a contribution to</p>

Notification of public authorities, timeframe of redundancies and social plan (contd.)

Member State	Information provided by national experts
	<p>the Public Treasury (art. 51.11 ET). If the undertaking is not in bankruptcy and the redundancy includes workers older than 55, art. 51.9 ET imposes the obligation to pay the contributions to the social security system, in order to finance a “special agreement” (a possibility in Spanish law to pay social security contributions without working).</p>
Sweden	<p>Notification to the public authorities</p> <p>At an early stage of the process, the employer must notify the Public Employment Service if at least five employees are made redundant at one time, or if the employer anticipates that more than 20 employees will be made redundant over a period of 90 days. The more employees are concerned, the earlier the notification must take place. If the employer refers the Public Employment Service to upcoming redundancy negotiations with the union, the obligation to notify is substituted by a duty to inform the authority.</p> <p>The information must state that negotiations will be held with the union, and in addition it must include the following: the reasons for the planned redundancies; the number of employees who will be affected and the employment categories to which they belong; the number of employees who are normally employed and their employment categories; and the time period during which it is planned to carry out the redundancies. If the anticipated redundancies are realized at some time later, the Public Employment Service is to be informed once more, at least one month before the termination of the employment. The information must include details about the completed negotiations and specify employees who have been made redundant.</p> <p>Timeframe of redundancies</p> <p>A notice of dismissal must always be in writing. The minimum period of notice is one month but the longer the employee has worked with the employer, the longer period of notice. Thus, an aggregate length of employment with the employer of two years gives two months’ notice; an aggregate length of employment of four years gives three months’ notice; an aggregate length of employment of six years gives four months’ notice; eight years’ employment gives five months’ notice and ten years of employment gives the maximum of six months’ notice. The period of notice can be longer if so negotiated in collective agreements.</p> <p>Duty of the employer to consider alternative employment</p> <p>In order for the dismissal to be objectively justified, the employer must have made an effort to transfer the employee to alternative work, i.e. an available position for which the employee has the sufficient qualifications. The employer is only obliged to offer alternative work once but the offer must be reasonable.</p>
United Kingdom	<p>Notification to the public authorities</p> <p>Section 193 of TULRCA 1992 imposes a duty on employers to notify the Secretary of State for Business, Innovation and Skills (BIS, the equivalent of the Ministry of Labour in some continental European countries) in writing, at least 30 days in the case of 20 or more employees or 45 days (reduced from 90 by the Coalition Government in 2013, in a bid to avoid “gold-plating” the Directive), in the case of 100 or more employees to be made redundant at an establishment. The Secretary of State may then respond with a request for further information (section 193(5)), although the main purpose of this notification is that of alerting the Jobcentre Plus Rapid Response Service (PACE in Scotland and ReAct in Wales) to help the employees involved to retrain or find alternative work.</p> <p>This is not to say that the Secretary of State will not, on occasion, intervene more directly in a restructuring process leading to large-scale redundancies, though such interventions tend to be rare. For an example of a more direct involvement on the part of BIS (then the Department of Trade and Industry) see the National Audit Office Report on ‘The Closure of MG Rover’ of March 2006. Failure to submit a relevant notification to the Secretary of State is a criminal offence under section 194 of TULRCA 1992, although there is no record of any prosecution for this particular offence; proceedings may however only be instituted with the consent of the Secretary of State or a relevant authorized officer (section 194(2)).</p>

4.4 Redundancy selection, re-employment and compensation

Member States' provisions relating to redundancy selection, re-employment and compensation are set out below. There is again considerable variation between Member States as to the degree of legal prescription in the regulation of employers' selection of workers to be made redundant. In some countries such as Sweden and the Netherlands seniority must usually be taken into account, but this is not the case in several other jurisdictions. Two principles of widespread application are that selection must be non-discriminatory (see for example the position in the United Kingdom) and that certain groups of workers must be protected from dismissal (such as pregnant women and workers' representatives).

The compensation systems for collective dismissals vary significantly between Member States and are not readily comparable.¹⁷³ This is explained by the fact that none of the supranational instruments discussed in Section 3 contain prescriptive content about the nature of severance schemes or similar compensatory mechanisms.

Redundancy selection, re-employment and compensation

Member State	Information provided by national experts
Belgium	<p>Redundancy selection criteria</p> <p>There are no compulsory redundancy criteria. The law provides that selection criteria should be established by the works council, often on the basis of suggestions by the employer.¹⁷⁴ A major issue is that the criteria used by the employer may not interfere with anti-discrimination law. Selection criteria based on unjustified absences, sanctions in the past and repeated absences due to illness have all been challenged under Belgian anti-discrimination law. The Labour Court of Appeal in Antwerp, however, held in the <i>Ford Werke</i> case, that selections on the basis of unjustified absences, sanctions in the past and repeated absences due to illness are permitted. Furthermore, the Court held that selection based on illness is not forbidden by law, since Belgian law only prohibits discrimination based on present or future illnesses (chronic illnesses were excluded in the case at hand) and not past illnesses. Finally, the Court held that the criteria used to make the selection were objective and reasonably justified. To limit the impact of a collective dismissal on older employees (for these are often envisaged given that early retirement schemes are subject to reduced employer's social security contributions), an age pyramid must be applied to collective dismissals:¹⁷⁵ the impact of a collective dismissal will be proportionally allocated amongst the various age categories of employees (below 30, 30 to 49 and above 50). This legislation is however not yet in force. The date of entry into force will be determined by royal decree. Employers who do not comply with this legislation may face financial sanctions.</p> <p>Protected workers</p> <p>Workers' representatives in the company's consultative bodies (works council and health and safety committee) and non-elected candidates for these mandates at previous social elections as well as union delegates enjoy a special protection against redundancy. As a result, they are jointly referred to as "protected employees".¹⁷⁶</p> <p>Protected employees can only be dismissed for serious cause or technical and economic reasons. A restructuring involving a collective redundancy or closure of a company or company division is regarded as a sufficient economic reason. The joint labour committee (JLC) at sector level must recognize the invoked economic reason prior to the redundancy.</p> <p>If the company does not comply with the prescribed procedure, the Labour Tribunal can order it to pay to the employee concerned an additional lump sum "protection indemnity" on top of pay in lieu of notice. This additional indemnity usually amounts to one year's pay for trade union delegates¹⁷⁷ and a maximum of eight years years for workers' representatives in the works council or health and safety committee and non-elected candidates for these mandates at previous social elections.¹⁷⁸</p>

173. The data here is informed by the ILO's employment protection legislation (or 'EPLex') database.

174. Art. 11 of CBA No. 9 of 9 March 1972 on Works Councils.

175. Omnibus Act of 29 March 2012, in *Belgian State Gazette* (6 Apr. 2012).

176. Art. 2 of the Act of 19 March 1991, in *Belgian State Gazette* (29 Mar. 1991).

177. This indemnity is subject to social security contributions and tax withholdings.

178. Art. 16 and 17 of the Act of 19 March 1991, in *Belgian State Gazette* (29 Mar. 1991).

Redundancy selection, re-employment and compensation (contd.)

Member State	Information provided by national experts
	<p>Re-employment</p> <p>There is no real priority of rehiring for workers previously made redundant. Nevertheless, some workers have a legal right to outplacement guidance, paid for by the employer.</p> <p>Outplacement is understood to be a whole set of accompanying services and advice, granted individually or in groups by a third party, a “service provider” (or outplacement agency) by order of the employer. The purpose of this guidance is to enable the worker to find a new job with a new employer as soon as possible, or to develop activities as a self-employed person (art. 4 of CBA No. 22).</p> <p>Redundancy compensation</p> <p>Until recently, Belgium operated a dual system of severance based on whether a worker was categorized as a blue-collar or white-collar worker. This system has been ruled unconstitutional. A unified system of notice is set out in the <i>Loi concernant l'introduction d'un statut unique entre ouvriers et employés en ce qui concerne les délais de préavis et le jour de carence ainsi que de mesures d'accompagnement</i> (C2013/12289) which took effect on 1 January 2014. This provides for notice periods applicable to collective dismissal (and some other forms of dismissal). Certain general categories of workers can elect instead to choose severance payments specific to redundancy set out in articles 6 to 13 of Collective Agreement No. 10 of 1973.</p> <p>Further, redundancy payments are often negotiated on the basis of a social plan. In practice, most employers conclude specific collective bargaining agreements with trade unions; these agreements provide workers with additional benefits.</p>
Estonia	<p>Redundancy selection criteria</p> <p>The new labour law in 2009 replaced the detailed list of criteria of selection with a general principle of non-discrimination.</p> <p>Protected workers</p> <p>Special protection should be given to workers' representatives, pregnant women and/or women on maternity leave, and to workers with a child under three years old.</p> <p>Re-employment</p> <p>There are no legislative provisions stipulating priority of redundant employees for re-employment.</p> <p>Redundancy compensation</p> <p>Redundancy payments are paid by the employer and the Unemployment Insurance Fund (UIF). The employer applies for the insurance benefit from the UIF as part of the redundancy procedure. In the case of a contract entered into for an unspecified period, an employer must pay an employee who is being made redundant compensation equivalent to one month's average wages (art. 100(1) of the Employment Contracts Act).</p> <p>In the case of a contract entered into for a specified period, an employer must pay an employee who is being made redundant compensation equivalent to the remaining wages that would otherwise have been paid up to the end date of the contract. In addition to the redundancy payment made by the employer, the employee is also entitled under ECA and UIF regulations to an unemployment insurance benefit as part of the redundancy procedure. The amount of the redundancy benefit depends on the number of years of service, and on the previous wages for which contributions had been paid (assessed by the data available in the unemployment insurance database). A higher compensation can be due on the basis of the individual employment or service contract. The payment due to an employee who has worked for more than five, but less than ten, years amounts on average to one monthly wage. If the employment has been for longer than ten years, the benefit is two average monthly wages. In some cases, more is paid for longer careers.</p>

Redundancy selection, re-employment and compensation (contd.)

Member State	Information provided by national experts
France	<p>Redundancy selection criteria</p> <p>Arts. L1233-5 to L1233-7 of the Labour Code provides four main statutorily defined criteria. These cover family obligations (of single parents in particular), seniority, the personal conditions of particular workers that may make their reabsorption into the labour market more difficult (age and disability in particular), and the professional qualifications of workers by category. Employers may prioritize one of these criteria as long as they also take into account the others. They can also use other criteria as long as they are objective and non-discriminatory.</p> <p>Art. L1233-6 provides that the presence of pension entitlements applicable to some workers cannot be used as the sole criterion to prioritize redundancies. Collective agreements can, and in practice do, add other criteria.</p> <p>Protected workers</p> <p>There are special rules applying to the termination of employment of “protected workers” (especially workers’ representatives) contained in arts. L2411-1 to L2411-22 of the Labour Code (by and large amounting to a special permission to be obtained from the public authorities prior to the redundancy). Pregnant women and mothers on maternity leave are also protected against selection for redundancy.</p> <p>Redundancy compensation</p> <p>There are three main sets of redundancy payments applicable to redundant workers. The first set depends on the contents of the social plan, which will depend on the economic situation and circumstances of the company (but there is a practice of giving a year’s salary as part of the redundancy package contained in the plan). Under arts. L1234-1 to L1234-8 they are also entitled to notice and payment in lieu and under arts. L1234-9 to L1234-11 to dismissal compensation as determined by regulations and collective agreements. The relevant regulations provide for a minimum entitlement of 1/5 of monthly wages per year of service, with a minimum service period of one year. For employees with more than ten years of service the multiplier rises to 2/5.</p>
Germany	<p>Redundancy selection criteria</p> <p>As noted, above, the standard German model of dismissal protection as laid down in the KSchG applies irrespective of the individual or collective character of a dismissal as far as possible – and a redundancy selection process based on social criteria is therefore mandatory in both scenarios (KSchG §1 Abs 3 and Abs 4). The criteria laid down there include seniority, age, marital or parental obligations, disability (especially in cases of severe disability (<i>Schwerbehinderung</i>), where a disability representative body in the establishment has specific information and consultation rights). The dismissal of severely disabled employees as well as of female employees on maternity leave have to be approved by an administrative authority.</p> <p>Redundancy compensation</p> <p>Redundancy payments are generally regulated as part of the social plan or other collective agreements. KSchG §1a Abs 1 and Abs 2 provide for severance pay in respect of dismissals on the basis of urgent operational requirements at half a month’s pay for each year of service, with a period of service of at least six months rounded up to a year. This payment is conditional on the employee’s not challenging the dismissal.</p>
Hungary	<p>Redundancy selection criteria</p> <p>An agreement under art. 72(5) of the Labour Code may lay down the guidelines for the employer to select the employees to be affected by termination of the employment relationship. Any worker who has failed to supply the information necessary for the employer to discharge this obligation may not allege a breach of the agreement (art. 76(1)–(2)).</p> <p>Protected workers</p> <p>The following are protected: employees during pregnancy and on maternity leave or leave of absence taken without pay for caring for a child; employees during military service; and in the case of women, those receiving treatment related to a human reproduction procedure, for up to</p>

Redundancy selection, re-employment and compensation (contd.)

Member State	Information provided by national experts
	<p>six months from the beginning of such treatment. The date of giving notice of the dismissal, and in the case of collective redundancies the date of notification referred to in Subsection (1) of Section 75,¹⁷⁹ shall be taken into account.</p> <p>In addition, there are temporal restrictions on the termination of employment on the basis of article 68 of the Labour Code: where employment is terminated by the employer, the notice period shall begin at the earliest on the day after the last day of the following periods:</p> <ol style="list-style-type: none"> 1) duration of incapacity to work due to illness, not to exceed one year following expiration of the sick leave period; 2) absence from work for the purpose of caring for a sick child; or 3) leave of absence without pay for providing home care for a close relative. <p>In addition, there is special protection for employees within five years of reaching pensionable age and of parents (art. 66(4)–(6) of the Labour Code): the employment relationship of the former may be terminated in connection with workers' ability or for reasons in connection with the employer's operations only if the employer has no vacant position available at the workplace suitable for the worker affected in terms of skills, education and/or experience required for his/her previous job, or if the worker refuses the offer made for his/her employment in that job. Where the employment relationship of a mother or a single father is terminated by notice, the rules in the paragraph above shall apply until the child reaches the age of three, if the employee is not taking up maternity leave or leave of absence without pay for the purpose of caring for the child.</p> <p>Re-employment</p> <p>There is no such a priority, since this issue has never been regulated. Collective agreements may however contain such clauses.</p> <p>Redundancy payment</p> <p>This is regulated by the chapter of the Labour Code covering termination of employment. The amount of redundancy payment depends on three factors:</p> <ol style="list-style-type: none"> 1) the manner of termination – these rules are rather complex (see Chapter X of the Labour Code, articles 63–85); 2) the provisions of the collective agreement (if one is in place); and 3) the provisions of the employment contract. <p>Upon termination of the employment relationship by notice, the employee shall be paid his or her wages and other remuneration from the last day of work, in any case on the fifth working day after the termination of employment relationship (art. 80(2) of the Labour Code). The Hungarian Labour Code was amended in 2012 by Law 1-2012 to provide for a rising level of severance payment depending on seniority (one month for up to three years employment; two months for up to five years; three months for up to ten years; four months for up to fifteen years; five months for up to twenty years; and six months for up to twenty-five years. Additional sums are payable if the employment is terminated within five years from the date of pension eligibility.</p>
Italy	<p>Redundancy selection criteria</p> <p>Art. 5 of Law 223/91 provides a list of criteria to be adopted when selecting workers for redundancy. These criteria operate concurrently (i.e. have to be considered jointly and weighed against each other) and include “family obligations”, “seniority” and “technical-organizational and productive needs”. The operation of these criteria must not be used in a way that leads to discriminatory results (Cass. 22/6/2012 n. 10424).</p> <p>Art. 5 explicitly refers to collective agreements as a source of selection criteria. The law and jurisprudence however also provide a number of limits to the powers of the social partners in this domain: collective agreements must respect constitutional principles, inderogable norms,</p>

179. Art. 75(1): (1) The employer shall notify in writing the workers affected of its decision regarding collective redundancies at least thirty days prior to delivering the notice of dismissal or the dismissal without notice defined in paragraph b) of Subsection (1) of Section 79.

Redundancy selection, re-employment and compensation (contd.)

Member State	Information provided by national experts
	<p>the principle of non-discrimination, and the general principle of rationality (meaning that any new criterion must be sufficiently clear, objective, and general, Cass. 24/4/99, n. 4097).</p> <p>Protected workers</p> <p>Pregnant workers and mothers in the first year of maternity cannot be made redundant other than in cases of total closure of the company. Worker and union delegates are equally and similarly protected. The overall number of female and disabled workers selected for redundancy must not exceed the relevant share of the female/disabled workforce (art. 5(2) as modified by art. 6(5) of Law 236/1993). Italian courts have produced a wealth of case law on the actual application of these criteria.</p> <p>Redundancy compensation</p> <p>Workers made redundant are entitled, subject to a qualifying period of 12 months (with at least six of effective service) to a redundancy payment (<i>disponibilità di mobilità</i>) that is paid over a number of months and whose value and duration depends on a number of criteria contained in art. 7 of Law 223/91 and other provisions) and to the various benefits associated with being registered in the “<i>liste di mobilità</i>” (including precedence in recruitment should the company seek to recruit again within a year from the redundancy (art. 8)). All workers whose contracts are terminated for objective reasons (whether individual or collective) are entitled to a “<i>trattamento di fine rapporto</i>” paid by the company and guaranteed by the State. This is calculated by reference to a year’s salary divided by 13.5, plus 1.5 per cent for each year’s service (see art. 2120 of the Civil Code).</p>
Netherlands	<p>Redundancy selection criteria</p> <p>In case of collective redundancies, dismissals are requested for economic reasons, similar to the case of reorganization. In (all) requests for economic reasons (i.e. not only in case of collective dismissal involving 20 or more employees), the Institute for Employee Benefit Schemes (UWV) will use the principle of “reflection” (<i>afspiegelingsprincipe</i>), sometimes also referred to as the principle of proportionality. Art. 4:2 of the Dismissal Decree (<i>Ontslagbesluit</i>) explains that this means that the employer will be required to divide all employees in comparable positions (according to their job description) into age groups and work out how many need to be made redundant in each category. To determine the group of employees to which the principle of reflection must be applied, it is important first to decide which company or companies the UWV considers to be the business establishment (<i>bedrijfsvestiging</i>).</p> <p>UWV’s assessment is based on its own policy rules (<i>Beleidsregels ontslagtaak</i>) which are regularly amended and published on the website www.werk.nl. A recent change (as of September 2012) is that if certain criteria are satisfied, several legal entities can together form a single business establishment. After the employer has established how many employees need to be made redundant in each separate age group, the seniority principle (<i>anciënniteitsbeginnel</i>) will then be applied within each group to the effect that those with the fewest years of service will be dismissed first (last in, first out). In the event that two employees in the same age category entered employment on the same date, the employer may choose which employee to put forward for dismissal.</p> <p>Under the UWV policy rules, it is not deemed appropriate to dismiss an employee whose position has been made redundant if a solution can be found through staff turnover or transfer. The UWV will ascertain whether the employer has made any effort in this regard. Permission to dismiss will not be granted if an employee takes the position that there are relocation possibilities and an (internal) objections committee appointed by the employer agrees with the employee. The employer is also obliged to favour internal candidates over external ones. Although this provision was not mandatory, it was a frequent feature of social plans before 1 September 2012.</p> <p>Protected workers</p> <p>Employees who are ill, pregnant or a member of the works council pursuant to art. 7:670 DCC are protected. In addition, art. 7:670 of the Dutch Civil Code (DCC) provides that an employer may not give notice of termination of an employment agreement to an employee who is a member of a works council, a central or group works council, a standing committee of such councils or of</p>

Redundancy selection, re-employment and compensation (contd.)

Member State

Information provided by national experts

an employee representative body. However, art. 7:670a DCC does allow employers to give such notice, provided that they have obtained the prior consent of the subdistrict section of the court (cantonal judge). The cantonal judge may only grant such consent if the employer has shown *prima facie* that his notice of termination does not relate to the employee's membership of an employee participation body.

Moreover, according to art. 4:2 of the Dismissal Decree (DD), paragraphs 4 and 5, employees with special skills or who may be in a vulnerable position in the labour market can be exempted from the dismissal procedure in art. 4:2.

Re-employment

Pursuant to art. 4:5 DD, when approving the dismissal the UWV can add to its consent the condition that the employer does not hire another employee for the performance of duties of the same nature of the employee in question within 26 weeks after the UWV's permit, without first having approached the former employee about whether he or she wishes to be rehired. The reference to "duties of the same nature" is to prevent the employer from renaming the position or changing it to avoid the application of art. 4:5 DD. When an employer hires a new employee – including part-time or temporary workers – within 26 weeks for duties of the same nature, the condition is fulfilled; hence, the termination of the employment agreement of the employee in question is invalid. This means that the employee is still in the employer's service.

Redundancy compensation

Statutory law in the Netherlands does not require the employer to pay redundancy or severance payments. Such payments are only due if individually or collectively agreed upon, or if they are imposed by the courts by way of the procedures of art. 7:681 and 7:685 DCC (dissolution procedure).

After the employer has validly terminated an employment agreement with prior authorization of the UWV, the employee can address the cantonal judge to ask for damages, based on a "manifestly unfair dismissal" under art. 7:681 DCC. In assessing the amount of compensation to be paid by the employer, the courts take into account, among other things, the age of the worker, the length of service and the worker's chances of finding another job. The very existence of the judicial control on manifestly unfair dismissal supports the employee and also, in the event of collective dismissals, the trade unions, in negotiating some sort of severance or redundancy pay.

If an employer applies to the cantonal judge with the request to rescind the employment agreement of an employee for economic reasons under art. 7:685 DCC, and a social plan has been agreed, the question arises to what extent the cantonal judge should follow the social plan with respect to the determination of the amount of compensation. The explanation to the Recommendations of the Circle of Cantonal Judges ("the Recommendations") stipulates that when answering this question the nature of the social plan must be examined. If a social plan has been agreed by the employer in writing with sufficient (representative) trade unions and/or, if required, (also) with the works council, Recommendation 3.7 stipulates that, in principle, the compensation for each employee to be made redundant must be determined on the basis of the social plan, even if the outcome deviates from the compensation calculated according to the Cantonal Judges' Formula (which is applied in individual rescission cases under 7:685 DCC). This does not apply if it appears that the full application of the social plan will lead to a manifestly unfair outcome for the employee involved. According to the explanation to this Recommendation, the starting point appears to be that a trade union is in any case representative if it represents more than 20 per cent of the personnel. However, a social plan that has been agreed with a trade union that has a minimum representation among the employees may also be of sufficient weight, as was recently ruled by the cantonal judge at the Subdistrict Court of Utrecht.¹⁸⁰

180. Cited from <http://www.kvdl.nl/en/news/representativeness-of-trade-unions-in-social-plan/>. See this weblink also for more details on the judgement of the Subdistrict Court of Utrecht, 3 January 2012 (LJN: BU9919).

Redundancy selection, re-employment and compensation (contd.)

Member State	Information provided by national experts
Portugal	<p>Redundancy selection criteria</p> <p>There is no legal regulation of redundancy selection. Following amendments made in response to the Troika's requests in the Memorandum, art. 368 of the Labour Code however now reads: "Individual dismissals linked to the extinction of employment posts should not necessarily follow a pre-defined seniority order if more than one worker is assigned to identical functions."</p> <p>Re-employment</p> <p>There is no such legal duty on the employer.</p> <p>Redundancy payment</p> <p>The severance provisions in the Labour Code have undergone a series of changes in the wake of the global financial crisis. Law 69/2013 prescribes 12 days' base and seniority pay per year of service. Compensation is capped at 12 times the individual's base salary plus seniority pay or 240 times the statutory minimum wage. These standards override collective bargaining agreements that provide for higher amounts or more favourable definitions of covered pay under the new law. Compensation will generally be based on three different formulae for periods of service before, during and after the following dates:</p> <ul style="list-style-type: none"> • employment prior to 1 November 2011 • employment between 1 November 2011 and 30 September 2013 • employment from 1 October 2013
Slovenia	<p>Redundancy selection criteria</p> <p>Art. 102 (1) ERA-1 stipulates that the employer formulates the proposal regarding criteria for determining redundant workers. Criteria to be taken in account in particular include: the worker's professional education and/or qualification for work and the necessary additional skills and capacities; work experience; job performance; years of service; health condition; social condition; and parenthood of three or more minor children or sole breadwinner status in a family with minor children. With the approval of trade unions, the employer may define its own criteria for determining redundant workers, instead of the criteria from the collective agreement.</p> <p>Protected workers</p> <p>The following categories of workers enjoy enhanced protection: workers' representatives, workers shortly due to retire, parents (women in time of pregnancy, breastfeeding workers until the child is one year old, parents who are using parental leave) and in some cases workers with disabilities.</p> <p>Many sectoral collective agreements and company collective agreements regulate more precisely the criteria for determining redundant employees and provide special protection against dismissal for certain categories of workers.</p> <p>Re-employment</p> <p>There is no provision that gives priority to previously redundant workers.</p> <p>Redundancy compensation</p> <p>The basis for the calculation of severance pay is the average monthly wage which was received by the worker, or which would have been received by the worker if working in the last three months before the termination. According to art. 109 of the Employment Relationships Act (ERA), the amount differs according to the years of service at the employer (for example: 1/5 of basic pay for each year of employment with the employer, if the worker has been employed with that employer for more than one and up to ten years; 1/4 for each year of employment with the employer, if the worker has been employed with that employer for more than ten years; and 1/3 for each year of employment with the employer, if the worker has been employed with that employer for more than twenty years). Unless specified to the contrary in a sectoral collective agreement, the employer must pay severance pay when the employment contract is terminated (art. 108 of ERA-1).</p>

Redundancy selection, re-employment and compensation (contd.)

Member State	Information provided by national experts
Spain	<p>Redundancy selection criteria</p> <p>These are not determined by legislation but there is a possibility for determination by agreement between the employer and workers' representatives.</p> <p>Protected workers</p> <p>Workers' representatives have a permanent priority (art. 51(4) of the Workers' Statute). On the other hand, collective agreements or agreements reached during the consultation period may include other groups of workers with this reinforced protection (such as people with family responsibilities, older workers or workers with disabilities).</p> <p>Re-employment</p> <p>No priority is given to previously redundant workers.</p> <p>Redundancy compensation</p> <p>Art. 51 and 53(1)(a) of the Workers' Statute specify 20 days of salary per year of service, with a maximum eligibility period of 12 months. Collective agreements and, more usually, negotiations during the consultation period can offer higher indemnities (up to 45 days, in some recorded cases, with 24 months as the upper limit).</p>
Sweden	<p>Redundancy selection</p> <p>The Employment Protection Act includes provisions on seniority and qualifications. These provisions are semi-compulsory. The employer and the recognized union may enter into a collective agreement specifically regarding redundancy selection, and in this case the collective agreement will apply instead of the statutory rules. The union and the employer may freely decide the order of priority subject to mandatory legislation on non-discrimination and freedom of association along with good labour market practice.</p> <p>If no collective agreement is concluded, the priority and selection of the employees must be made according to rules in the Employment Protection Act on seniority and qualifications. The seniority rule is expressed in the "last in, first out" principle, with certain exceptions.</p> <p>Re-employment</p> <p>An employee who has been made redundant may be entitled to a right to priority for re-employment in the company where the employee was previously employed. To be entitled to this, the employee must have been employed by the employer for more than 12 months during the past three years and possess sufficient qualifications for the new employment. The right to priority for re-employment becomes effective on the date of the notice and is valid for nine months from the date the employment ceased.</p> <p>Redundancy payment</p> <p>There is no statutory redundancy payment. But it is not unusual that the collective agreements at local level that regulate the redundancy selection criteria also regulate the redundancy payment. Almost all employees in the Swedish labour market are covered by particular collective agreements on employment security, the so-called "employment security" or "transition" agreements. All agreements have provisions on severance pay, mutually administered by the parties in so-called security Foundations. Normally, the payments compensate the employee who has been made redundant for the difference between the unemployment benefits and a certain percentage of the previous wage. In the transition agreement of the Swedish Trade Union Confederation, the payment is instead paid as a lump sum upon termination of the employment.</p>

Redundancy selection, re-employment and compensation (contd.)

Member State	Information provided by national experts
United Kingdom	<p>Redundancy selection criteria</p> <p>Fair reasons for selecting employees for redundancy include:</p> <ul style="list-style-type: none"> • skills, qualifications and aptitude • standard of work and/or performance • attendance • disciplinary record <p>It is possible to select employees based on their length of service (last in, first out), on condition that the employer can justify it – otherwise this could be indirect discrimination if it affects one group of people more than another. The employer cannot rely solely on length of service as the only selection criteria – this is likely to be age discrimination.</p> <p>Protected workers</p> <p>Some selection criteria are automatically unfair. Employers cannot select an employee for redundancy based on any of the following reasons:</p> <ul style="list-style-type: none"> • pregnancy, including all reasons relating to maternity • family, including parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants • acting as an employee representative • acting as a trade union representative • joining or not joining a trade union • being a part-time or fixed-term employee • their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation • pay and working hours, including the Working Time Regulations, annual leave and the National Minimum Wage <p>Redundancy payment</p> <p>A statutory redundancy payment is due where an employee is made redundant with at least two years' service. This includes an employee working under a fixed-term contract agreed, renewed or extended since 1 October 2002. Office-holders such as directors qualify if they work under a contract of employment. The Employment Equality (Age) Regulations 2006 removed the upper age limit of 65 but not the age-banded method of calculating payments (see below). Members of the armed forces, Parliamentary staff, Crown servants and some others cannot qualify.</p> <p>A statutory redundancy payment pursuant to the Employment Rights Act 1996 is due only where the employee is dismissed (as compared with resignation). For this purpose, an employee volunteering for redundancy is dismissed. If the employee leaves before the redundancy date by agreement, payment remains due.</p> <p>Statutory redundancy pay is calculated as the total of:</p> <ul style="list-style-type: none"> • for each complete year of service where age during year less than 22, ½ a week's pay • for each complete year of service where age during year is between 22 and 40, 1 week's pay • for each complete year of service where age during year is 41+, 1 ½ week's pay <p>Service longer than 20 years does not count. A "week's pay" is the amount due under the employment contract on the date that the minimum notice of termination was or should have been given. The minimum is 1 week per year of service up to a maximum of 12 weeks. The total payment is capped at £464 per week of service as of July 2014.</p> <p>Collective agreements between management and workers' representatives at company level may provide for additional redundancy compensation.</p>

4.5 Sanctions and remedies

In order to be fully effective, legal regulation needs to be backed up by appropriate sanctions and a credible enforcement regime. The regimes for the Member States studied in this report are set out in the following table. Given the lack of clear stipulations in supranational instruments as to the specific form (or even juridical nature) of sanctions for non-compliance with collective redundancy procedures, a wide range of sanctions and enforcement models can be observed. Additional interesting questions arise as regards the right holders who might bring actions in case of a violation of collective redundancy procedures, with models ranging from recognized representatives to individual workers.

It can be seen that in most countries (with Sweden and the United Kingdom as notable exceptions), the failure to follow the statutory consultation and information procedures will invalidate dismissals (although as noted above, some failures could result in criminal prosecutions instigated by the Secretary of State), with the affected workers having a right to be reinstated and/or to receive financial compensation. In all cases, fines can be levied against employers who fail to observe the law; in Belgium, France (and theoretically also in the United Kingdom), non-compliance may furthermore constitute a breach attracting criminal sanctions. In some countries, such as France and the Netherlands, a public authority can refuse to approve the dismissals if consultation procedures have not been followed by the employer.

Enforcement and sanctions

Member State	Information provided by national experts
Belgium	<p>Enforcement</p> <p>The lack of compliance with prescribed processes can be contested by the employee or his representatives.¹⁸¹ The notice period will be suspended for 60 days following receipt by the sub-regional employment office of a new notification which does comply with the legal requirements. Meanwhile, the employer must provide work and pay workers' salaries. If an individual has been dismissed without notice, he or she can demand reinstatement.</p> <p>Sanctions</p> <p>The employer must reinstate the worker and pay the salary from the date of redundancy. If the dismissed worker cannot be reinstated, the employer must pay the salary for a period of up to 60 days after notification to the director of the subregional employment office. The criminal sanctions for lack of compliance with the obligation to inform and consult can consist of imprisonment of eight days to one month and/or fines between €143 and 2,750 per worker, with a maximum of €275,000.</p> <p>Although criminal sanctions are quite exceptional in case of non-compliance with the information and consultation process, they are not merely theoretical (e.g. such penalties have already been applied in the famous Renault case).¹⁸²</p>
Estonia	<p>Enforcement</p> <p>Any failure by the employer to consult, notify or follow the correct procedure results in the nullity of the dismissals. Employees can file a labour dispute application. According to art. 105(1) of the Employment Contracts Act (ECA), an action before the court or an application before a labour dispute committee shall be submitted within 30 calendar days as of the receipt of the declaration of the termination. Art. 107(1) stipulates that if a court or labour dispute committee establishes that the termination is void due to the absence of a legal basis or non-conformity with the law, or nullified due to a conflict with the principle of good faith, it shall be deemed that the contract has not been terminated.</p>

181. Arts. 67 and 68 of the Act of 13 February 1998, in *Belgian State Gazette* (19 Feb. 1998).

182. Criminal Court of Brussels, 20 March 1998, in *JTT* (1998), p. 281.

Enforcement and sanctions (contd.)

Member State	Information provided by national experts
	<p>Sanctions</p> <p>Failure by an employer to conform to the notification and consultation obligations is punishable by a fine of up to €1,278. In addition to the fine, in case the employee contests the redundancy and the court declares the redundancy unlawful, employee compensation comprised of three months' average salary may be ordered by the court.</p> <p>Upon the unlawful termination of an employment contract, if the employment relationship continues, an employee has the right to demand compensation for damages, in particular with respect to wages that have not been received.</p>
France	<p>Enforcement</p> <p>Mostly contained in arts. L1235-10 to L1235-16, sanctions vary depending on the type and severity of the infringement. For the most part the failure to comply with procedural requirements of <i>ordre public</i> result in the invalidity of the redundancy, though in lesser cases they might only entitle workers to extra compensation.</p> <p>Sanctions</p> <p>In addition, specific provisions such as arts. L1238-2 to L1238-8 provide that fines up to a maximum of €3,750 per breach can be applied in case of violation of some of the information and consultation requirements discussed above. The breach of L.1232-8 to L.1232-12 and L.1232-14 can be punished by a prison sentence of up to one year.</p>
Germany	<p>Enforcement and sanctions</p> <p>If the employer does not fulfil his duty to notify the Agency for Employment under §17 KSchG, the termination of the employment contract is void. This also covers staggered collective redundancies, where the initial dismissals do not exceed the relevant thresholds, but subsequent terminations within 30 calendars do. Employees must bring a claim before the Labour Court within three weeks of receiving the redundancy notice (BAG decision of 22.11.2012 – 2 AZR 371/11).</p> <p>If the employer has failed to state the accurate number of employees in its notice to the public authority, only the dismissals of those workers <i>not</i> identified in the original notification will be void, if the form of that notification allows them to be identified (BAG decision of 28.06.2012 – 6 AZR 780/ 10). If the original notification is invalid, dismissals will be void even if the public authority has already handed down a decision pursuant to §18 and 20 KSchG.</p> <p>According to the Federal Labour Court (BAG), the redundancy procedure may take place before an agreement has been reached regarding the conditions of a social plan (BAG decision of 21.5.2008 – 8 AZR 84/07; it is however questionable whether this is in accordance with the Directive, particularly in the light of <i>Junk</i>).</p>
Hungary	<p>Enforcement</p> <p>Employees and employers may pursue their claims arising from the employment relationship or the relevant Act, and trade unions and works councils may pursue their claims arising from this Act or a collective agreement or a works agreement by judicial process (labour courts) (art. 285(1) of the Labour Code). In the case of a violation of the obligation to inform the employee on time, any notice of dismissal shall be considered unlawful (art. 75(3)).</p> <p>Sanctions</p> <p>In the case of violation of an agreement with the works council, any termination of employment will be deemed unlawful with all its legal consequences (art. 82 and 83).</p> <p>In case of termination by notice, employers are required to justify their dismissals (art. 66(1)), but the provisions on collective redundancy will only apply if the employee is dismissed for reasons in connection with the employer's operations. The reasoning shall clearly specify the grounds for termination. The burden of proof to verify the authenticity and substantiality of the grounds of the act of termination shall lie with the party taking the legal act (art. 64(2)). If there is a lack or insufficiency of economic grounds, the termination of employment will be unlawful.</p>

Enforcement and sanctions (contd.)

Member State	Information provided by national experts
	<p>In such cases, the employer shall be liable to provide compensation for damages resulting from the wrongful termination of an employment relationship. Compensation for loss of income from employment payable to the employee may not exceed twelve months' absentee pay. In lieu of compensation for damages, the employee may demand payment equal to the sum of absentee pay due for the notice period.</p> <p>The sanctions for violation of the obligation to notify the government employment agency do not include the unlawfulness of the termination of employment, but the employer may be fined.¹⁸³</p>
Italy	<p>Enforcement</p> <p>The majority of the procedural and substantive provisions discussed in the previous subsections are required as a matter of public order and their violation typically leads to the invalidity/illegitimacy of the redundancy and the re-employment of the workers affected. The recent Law 92/2012 has eased the consequences deriving from some types of procedural infringements while partly strengthening the consequences and sanctions attached to discriminatory practices. As a general rule a company that has failed to meet the collective redundancies procedure requirements cannot make affected workers individually redundant.</p>
Netherlands	<p>Sanctions for non-compliance with the Collective Redundancy Notification Act (CRNA)</p> <p>The sanctions for non-compliance with the obligations in the CRNA have recently been intensified. Before 1 March 2012 the only sanction was that the UWV would not consider the requests for dismissal permits until the employer had fulfilled its obligations under the CRNA. This sanction mechanism was not effective if the non-fulfilment of obligations under the CRNA was only discovered after the permission for dismissal had already been given. Since 1 March 2012, a retroactive sanction for affected employees also applies: pursuant to the new Act, the employee is entitled to nullify the termination of the employment agreement if the employer has not complied with obligations under the CRNA. Within six months of the notice or conclusion of a termination agreement, the employee may invoke this ground for nullification. If successful, the employee remains employed with retroactive effect, and may bring an action against the employer before the court for back-payment of wages including statutory interest and increases.</p> <p>Sanctions for non-compliance with the co-determination legislation</p> <p>If the employer does not accept the negative advice provided by the works council, it must inform the works council in writing of its reasons. If the employer's final decision is not in accordance with the works council's advice, implementation must be suspended for one month. The works council may lodge an appeal against the decision with the Commercial Chamber of the Amsterdam Court of Appeal.</p>
Portugal	<p>Enforcement</p> <p>There is a right to ask for a judicial declaration of unfairness of collective redundancies within six months from the termination of the employment relationship.</p> <p>Sanctions</p> <p>Collective redundancies will be deemed unfair if no information has been provided or no consultation took place; in case of lack of respect of the deadlines; and in cases where no compensation was provided. Compensation including damages must be paid to the worker and the latter has the right to re-employment. If the worker does not wish re-employment, compensation must be paid (art. 391 and 392 of the Labour Code).</p>

183. Act 4 of 1991 on the promotion of employment and unemployed services, art. 56/A: "(1)a. Disciplinary fines shall be levied: a) on employers, employees, other organs and persons who fail to meet the reporting obligations prescribed in the Labour Code or who fulfil such obligations in ways other than prescribed, as well as on those providing false information. (2) The amount of disciplinary fines may be between 1,000 (circa 3 euros) and 100,000 forints (circa 3000 euros). (3) Sixty per cent of the paid fines shall be credited to the employment allotment account of the Labour Market Fund, while the remaining 40 per cent shall be retained by the body levying it; however, they may not be used for personal disbursement."

Enforcement and sanctions (contd.)

Member State	Information provided by national experts
Slovenia	<p>Enforcement</p> <p>In cases where workers' rights according to the law and collective agreements have been violated, judicial protection is available.</p> <p>Sanctions</p> <p>A fine is imposed on the employer if it has carried out the procedure of giving notice to a large number of workers contrary to the provisions of art. 98, 99, 100, 101, 102, and 103 of ERA-1; and if it has not offered severance pay to the worker whose employment contract has been terminated, in accordance with the provision of art. 108.</p>
Spain	<p>Enforcement</p> <p>Workers' representatives (art. 124.2 LRJS) can challenge a collective redundancy in the labour courts, through the "special procedure for collective redundancies" in the cases of non-existence of the alleged ground or infringement of procedure (such as the omission of a consultation period, or a violation of information rights). In cases of fraud, serious offences, coactions or abuse of law, the Labour Authority can challenge the redundancy, through the "special ex-officio procedure" (art. 148 LRJS). It is also possible to challenge the non-compliance of the permanence priorities agreed for workers. In this case, it is the individual worker who must bring the question to the courts. The ruling of the court will have individual effects, having investigated only the particular termination before it.</p> <p>Sanctions</p> <p>If the employer cannot prove the economical, technical, organization or production ground, the redundancy will be declared "not according to the law" (<i>no ajustada a Derecho</i>). In such cases, the employer must re-employ the workers (paying the "procedural salaries" (<i>salarios de tramitación</i>, the salaries workers should have earned during the time of the procedure, had they not been made redundant) or provide higher compensation (33 days instead of 20, and limited to 24 months instead of 12).</p>
Sweden	<p>Enforcement</p> <p>Labour-related disputes are decided by the Swedish Labour Court, normally composed of seven members, including two neutral experts on labour law, one neutral expert on the labour market, and two members representing the interests of the employer and the employee interests, respectively. Disputes filed by labour market parties and by employers' organizations that have a collective agreement shall be brought directly before the Court, whereas disputes filed by individual employees must first be brought before the county court. In cases where the trade union represents a member in litigation against the employer, the union bears all costs associated with the dispute. Before the Labour Court can rule on a dispute, the parties must have sought to resolve the matter through negotiations according to the Co-determination Act. Where the employer has infringed labour law provisions, a settlement can often be reached through negotiations, thus avoiding a Labour Court trial.</p> <p>Sanctions</p> <p>Because redundancy is a just cause for dismissal, a dismissal grounded on redundancy normally cannot be declared invalid. The main consequence arising from the employer's infringements of the provisions on redundancy is liability for damages (Sections 38 of the Employment Protection Act SFS 1982:80). Thus, in cases where the employer fails to inform and/or to negotiate with the union (including where the negotiations take place too late), the sanction is liability for damages to the union. The employee may claim damages if the employer violates the procedural provisions regarding dismissal. The same applies if an employer who has not concluded a collective agreement on redundancy selection deviates from the statutory rules on redundancy selection.</p> <p>There is a possibility, albeit limited, for an employee to successfully claim that a redundancy dismissal should be declared invalid; this can happen when the redundancy is deemed to be a cover-up for dismissal on grounds that are actually related to a specific employee personally –</p>

Enforcement and sanctions (contd.)

Member State	Information provided by national experts
	<p>a so-called “fictitious” or “mock” redundancy. Other than this, a claim for invalidity is possible only if the redundancy dismissal infringes the provisions on non-discrimination or the provisions on freedom of association.</p> <p>Lastly, and outside the field of labour law, if the employer fails to inform or notify the Swedish public employment services in due time, a special administrative fee is charged. This so-called notification fee is calculated based on a combination of the number of employees concerned and the number of weeks the notice was delayed. For more serious violations, such as if the employer intentionally or through gross negligence provides inaccurate information of importance, the sanctions include fines or imprisonment.</p>
United Kingdom	<p>Enforcement</p> <p>If an undertaking is found to have breached the obligations imposed on it by section 188 TULRCA 1992, the employees can apply for a protective award (essentially, the payment of wages for a protected period not exceeding 90 days) under section 189 thereof, which is of penal rather than compensatory nature.¹⁸⁴ Due to the wording of section 189, it has been held that in situations where collective representatives are present, an individual claim before an employment tribunal cannot be brought.¹⁸⁵</p> <p>Sanctions</p> <p>Employers failing to notify the Secretary of State risk criminal prosecution and a fine of up to level 5 on the standard scale. Under s. 194 TULRCA, where the employer is a limited company specified officers may incur personal liability. However there are no recorded cases of such sanctions being applied, and in 2006 the Department of Trade and Industry report <i>Collective redundancies: Employer’s duty to notify the Secretary of State</i> noted that there was no evidence to suggest non-compliance with such requirements (paragraph 52).</p>

4.6 The role of collective bargaining

The scope, purpose and operation of collective bargaining differ widely in the Member States surveyed. It is therefore not surprising that when it comes to the role of collective bargaining in the context of collective redundancies, no consistent pattern emerges. The following table sets out significant differences as regards the level at which bargaining takes place, its use at different stages of the process, and the interaction between social partner agreements and legislative or judicial norms.

184. *Susie Radin Ltd v GMB* [2004] IRLR 400 (CA).

185. *Northgate v Mercer* [2007] EWCA Civ 1304.

Collective bargaining on collective redundancies

Member State	Information provided by national experts
Belgium	In the context of collective redundancies, a number of rules are stipulated in national collective bargaining agreements (CBAs) (cf. CBA No. 24 ¹⁸⁶ and CBA No. 9 ¹⁸⁷). At sectoral level, a number of CBAs have been concluded in relation to job security. Examples include, but are not limited to, JLC Nos. 109/215 (clothing), 116/207 (chemical industry), 110/214 (textile industry), 310 (banks) and 309 (listed companies).
Estonia	There is a highly limited role for trade unions and employee protection, primarily through the unemployment insurance system.
France	<p>The influence of collective bargaining is considerable. To begin with, several statutory provisions are often based on intersectoral agreements concluded by the social partners. For instance, L2013-504 of 14 June 2013, as mentioned above, was partly adopted on the basis of the January 2013 agreement between MEDEF, UPA, CGPME and CFE-CGC, CFDT, CFTC (and critically received by other non-signatory unions such as FO).¹⁸⁸ The whole system is geared towards encouraging enterprise-level agreements on redundancies, even if the 2013 law introduced the alternative option of having an employer-driven unilateral social pact being validated by the public authority (thus arguably reducing the incentives for reaching an agreement with workers' representatives). Various branch or sectoral agreements also contribute to setting the rules regulating collective redundancies (especially in respect of selection criteria and alternative measures),¹⁸⁹ and provisions are also present in company agreements (see for instance the Michelin agreement of 2009).¹⁹⁰</p> <p>As in some other continental European systems, collective agreements can only deviate from statutory minima if their provisions are more favourable to workers, and lower-level collective bargaining can only improve on higher-level agreements.</p>
Germany	<p>It is not possible to deviate on the basis of collective agreements from the frameworks set out in the statutory regulation, as §17 KSchG and subsequent provisions constitute so-called mandatory law (<i>Zwingendes Recht</i>). As regards the invalidity of collective redundancies which have not been adequately notified to the public authority, any attempt at relinquishing that right on the part of the employee, for example, would fall foul of the general impossibility of waiving dismissal protection <i>ex ante</i>; any agreements to the contrary, whether concluded on an individual or a collective level, are void (BAG decision of 11.3.1999 – 2 AZR 461/98; § 134 BGB).</p> <p>In cases of mass redundancies in larger companies, several collective agreements may set up an <i>Auffanggesellschaft/Transfargesellschaft</i> (a company created to continue the activities of a former company in liquidation); recent examples of which include the insolvencies of Schlecker (a drug-store chain) and Praktiker (a DIY warehouse).</p> <p>With the exception of minor changes in the short-time work (<i>Kurzarbeit</i>) regulations, there have been no significant changes in German law during the economic crisis.</p>
Hungary	<p>Derogations from art. 71 to 76 of the Labour Code on collective redundancy in a collective agreement are allowed only to the benefit of employees (art. 85(2)). A few collective agreements (concluded in the past, but still in force by renewal) mention collective redundancy; however, these agreements usually only repeat the statutory provisions.</p> <p>Collective agreements may include legally binding employment provisions (under art. 13) on selection of employees or other matters related to collective redundancies. There are no job security pacts or similar arrangements.</p>

186. CBA No. 24 of 2 October 1975 on the procedure of information and consultation of the workers' representatives related to the collective redundancy, N.L.C., declared generally binding by Royal Decree of 21 January 1976, in *Belgian State Gazette* (17 Feb. 1976).

187. Art. 11 of CBA No. 9 of 9 March 1972 on works councils.

188. See: http://www.fo-metiaux.org/content/cms_medias/pdf/GRAND%20CHAMBOULEMENT%20SUR%20LES%20LICENCIEMENTS%20ECONOMIQUES%20COLLECTIFS%20-%20maj%20juillet%202013.pdf

189. See for instance *Cessation anticipée d'activité des salariés, Avenant du 21 juin 2001*; *Avenant à l'accord du 21 juin 2001 relatif à la cessation anticipée d'activité*; and *Avenant n° 2 du 26 avril 2006* for the rubber sector.

190. Available at: http://cfdtmichelin.fr/IMG/pdf/2008_07_08_accord_de_methode_MFPM.pdf.

Collective bargaining on collective redundancies (contd.)

Member State	Information provided by national experts
Italy	Between 1947 and the late 1980s collective redundancies were predominantly regulated by national sectoral or intersectoral collective agreement. But the adoption of Law 223/91 signalled the progressive decline of the role of social partners in this domain. At a sectoral level their activity is usually focused on agreeing measures to be considered as an alternative to collective redundancies, such as solidarity contracts and working-time reduction arrangements. ¹⁹¹ These framework agreements are then reflected in the company-level agreements typically resulting from the information and consultation process. So at a company level the unions' tasks are mostly confined to agreeing with the company upon the selection criteria and measures that ought to be used to add to or substantiate those contained in Law 223/91. ¹⁹²
Netherlands	There is no tradition of national collective bargaining in this domain. Occasionally, job security pact arrangements are made in collective negotiations at the company level.
Portugal	There is no relevant collective bargaining activity to report.
Slovenia	<p>National collective bargaining is very important. Many sectoral collective agreements comprise provisions on dismissals for economic reasons, especially on collective redundancies. Usually, they regulate more precisely the criteria for determining redundant workers; the procedure to be followed by the employer in this case, including the obligations in connection with informing the trade unions; the content of a social plan in case of redundancy; severance payments; periods of notice; and also a preferential right to employment and similar issues. Some collective agreements provide for special protection against dismissal for certain categories of workers additionally to the legislation (for example employees with small children where both spouses are to be made redundant at the same employer).</p> <p>Job security pacts are also present at the company level. In 2009 the Government adopted two Acts which were mainly aimed at preserving existing jobs. The Partially Subsidizing of Full-time Work Act regulated subsidies for shorter working hours, while the Partial Reimbursement of Payment Compensation Act regulated co-financing of reimbursement of wage compensation for workers on temporary layoff ("waiting" at home). The social partners played an important role in the creation and operation of these laws, especially due to negotiations at the company level regarding shorter working hours and other measures with the aim of job protection.</p>
Spain	There is no relevant collective bargaining activity at the national level. Some clauses related to collective redundancies may (very occasionally) be found in collective agreements at the enterprise level, but not at branch level.
Sweden	<p>Almost all employees in the Swedish labour market are covered by particular collective agreements on employment security, the so-called "employment security" or "transition" agreements. These agreements are fundamental for the protection of employees being made redundant. There are several transition agreements for workers and for professionals in the private and public sectors, and they are similar in structure and content. The main idea is that the transition agreements shall supply individual and immediate guidance to employees who have been given notice due to redundancy to ensure that the employee does not become unemployed. Thus, in addition to severance pay, the agreements stipulate a number of other rights that are realized through the security Foundations. Because the objective is to ensure that an employee finds a new job as quickly as possible, different forms of individual support are offered, such as training or retraining as well as coaching and jobseeking activities.</p> <p>To a great extent, the labour market effects of the recession have been handled within these transition agreements. In 2011, the parties in the transition agreement covering white-collar workers in the private sector jointly decided to renegotiate their transition agreement. The trade union side (PKT) wanted the new agreement to provide continuous training for persons still in employment, and also more support for fixed-term employees who do not receive renewed employment due to</p>

191. See for instance the 2012 Framework Agreement between CGIL/CILS/UIL and Assolavoro, available at: <http://old.bollettinoadapt.it/site/home/bollettino-adapt/ordinario/10-aprile-2012-n-13/documento17194.html>.

192. See for instance the 2013 Ericsson agreement, available at: <http://www.uilcom.it/allegatocomunicati.php?id=8703>.

Collective bargaining on collective redundancies (contd.)

Member State	Information provided by national experts
	<p>shortage of work. The employers (Svenskt Näringsliv) required changes in the seniority rules and the rules on order of priority for reemployment. Originally, the plan was that the negotiations should be completed before Christmas 2013.</p> <p>Besides these developments, special “crisis agreements” on short-time work should be mentioned here. Initially, the economic crisis was not perceived as having a direct impact on the Swedish economy. However, from 2008 to 2009, unemployment rates increased dramatically from 6.5 to almost 9 per cent. In the midst of this development, in the spring of 2009 several specific collective agreements, called crisis agreements, were concluded between labour market parties in the industrial sector. These collective agreements allowed for temporary reductions of both working time and wages: so-called short-time work. For workers, collective agreements were concluded on this matter at the industry level, opening up for crisis agreements at the local level. No corresponding industry agreements were reached for professionals, but crisis agreements were nevertheless concluded at the local level for this group of employees. The validity of these local agreements has been questioned, because it is unclear whether the local parties really are competent to enter into such agreements without authorization from the industry level.</p>
United Kingdom	Collective bargaining usually takes place at the company level (with the exception of certain sectors). Company-level agreements may include provisions on redundancy selection criteria and redundancy payments.

4.7 The law on collective dismissal in the EU Member States surveyed: A comparative assessment

The review of the national legal systems covered in this section reveals a number of common traits in the domestic regulation of collective dismissals, but also a series of important differences. The following subsections will present a series of specific comments in respect of each of the key issues analysed in the previous paragraphs and comparative tables. These opening paragraphs seek to offer a more general set of considerations in respect of the overall picture of the national regulation of collective redundancies in the European Union.

It is, first, obvious from the analysis carried out in Section 3 of this report, that all Member States covered by the present study have bound themselves to implement a series of supranational requirements arising mainly from EU Directive 98/59, the European Social Charter and, to a certain extent, ILO Convention 158 and the accompanying Recommendation 166. As discussed in section 3.2, Directive 98/59 is a minimum harmonization instrument, introducing a basic “floor of rights” across the European Union in respect of information and consultation rights during collective redundancy processes. Its very nature thus suggests that while some national norms and institutions attending to the regulation of collective dismissals will inevitably share some commonalities across the Union, Member States retain a considerable degree of autonomy in implementing the obligations laid down in the Directive. Indeed, the Directive explicitly envisages Member States regulating collective redundancies in ways that, as noted in its Article 5, “are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers”. Individual countries also retain the same autonomy when it comes to regulating aspects of collective redundancies legislation that are not covered by the Directive, for instance the issue of redundancy payments.

Second, and intimately connected to the point just made, the ways in which Member States regulate their domestic rules on collective redundancies (and information, consultation and participation at large) vary, at times considerably, depending on a number of factors that range from different industrial relations traditions and the relative social power of the social partners to broader political

preferences that, while well documented in a number of important academic studies,¹⁹³ are beyond the scope of the present report. These structural differences underpinning the variety of domestic approaches to regulating information and consultation rights in particular, and collective dismissals as a whole more generally, make it very hard, if not implausible, to generalize in respect of “best practices” from a prescriptive point of view. This point of principle is widely accepted, including amongst EU policy-makers.¹⁹⁴ Good practices do of course exist, but they are typically the ones that fit the needs of a specific national system, and caution must be exercised before suggesting them as suitable for legal transplants in other regulatory regimes. Even those reports and surveys that specifically seek to isolate good practices in restructuring processes with a view of “transposing initiatives or parts of initiatives across borders, adapting them to different national contexts”,¹⁹⁵ typically suggest no more than the dissemination of broad, and thus generic, principles such as the involvement of social partners, the importance of training, the need for anticipating restructuring and its effects on workers. This point will be further developed in the section containing the more general conclusions to this report, Section 6.

4.7.1 Scope of application

As mentioned in section 4.1, Member States have adopted different approaches to determining when the Directive’s obligations apply in domestic law. As discussed in section 3.2, the Directive defines a redundancy as a dismissal effected by an employer for one or more reasons not related to the individual workers concerned. As shown in the table appended to section 4.1, some Member States more or less repeat this definition (for example, Belgium and the United Kingdom), while others (including Estonia, Portugal, Spain and Sweden) specify that a redundancy is a reason related to economic considerations, defined in various ways but implicitly excluding “personal” dismissals such as those based on misconduct. Germany’s definition of a collective dismissal is possibly the widest in not referring to the grounds of dismissal; the employer’s obligations arise once a minimum number of dismissals is reached in respect of the relevant period and establishment size, regardless of their cause, unless the termination was for an automatically fair reason justifying summary dismissal, or the expiry of a fixed-term contract which would have come to an end under any circumstance. Although the Directive states that certain non-consensual terminations such as voluntary redundancies should count towards the thresholds, not all Member States have an explicit provision to this effect. Those which do include Germany and Hungary.

As documented above, most Member States have taken advantage of the provisions of the Directive which permit the dismissals of certain workers, including managers, to be discounted when determining if the thresholds have been reached. Some Member States explicitly exclude temporary workers employed by an agency and independent contractors, categories which are implicitly excluded in most others by the operation of the normal criteria for determining the personal scope of labour legislation. Some Member States exclude certain categories of public sector workers (for example, the Netherlands, where this is nevertheless regarded as controversial). Fixed-term employees are mostly within the scope of national laws, but in some Member States they may be excluded on the grounds that they are independent contractors (Estonia) while in others specific provision is made to exclude the normal expiry of a fixed-term contract from the definition of a relevant dismissal (Italy).

As discussed in section 3.1, the Directive furthermore gives Member States an option when determining the initial thresholds which together trigger the obligation to inform and consult, namely, the number of redundancies, the time over which they are intended to take effect, and the size of the establishment. A Member State can either operate a sliding scale according to which the duty arises if, over a 30-day period, a certain minimum number of redundancies is contemplated (ten or more individuals for establishments with between 21 and 99 workers, 10 per cent of the workforce in establishments of between 100 and 299 workers, and 30 more individuals in establishments of 300 or more), or apply a more straightforward rule according to which the obligation arises if 20 or more

193. P.A. Hall and D. Soskice (eds.): *Varieties of capitalism: The institutional foundations of comparative advantage* (Oxford, Oxford University Press, 2001); C. Crouch: *Capitalist diversity and change: Recombinant governance and institutional entrepreneurs* (Oxford, Oxford University Press, 2005); B. Hancké, M. Rhodes and M. Thatcher (eds.): *Beyond varieties of capitalism: Conflict, contradictions, and complementarities in the European economy* (Oxford, Oxford University Press, 2007).

194. See European Commission, *Restructuring in Europe* 2011, op. cit., SEC(2012) 59 final, p. 9.

195. Ibid.

workers are to be made redundant over 90 days, whatever the size of the establishment. There is a large degree of variation in practice across the Member States on the issue of these thresholds. Some implement the Directive more or less as it stands (Hungary and Slovenia in the case of the sliding scale approach, the United Kingdom in the case of the more straightforward 20 workers over 90 days rule). Most Member States, however, set stricter standards, building on the floor of rights laid down by the Directive: either by reducing the numerical threshold, shortening the period over which the redundancies are intended to take effect, or reducing the enterprise size threshold. There is no overall pattern to the observable variations in Member States' laws on this issue; they represent local practices which in some cases predate the passage of the Directive and can only be evaluated fully in the larger context of domestic labour law, both as regards individual matters (such as general dismissal protection) and the collective dimension (in particular, collective bargaining, employee involvement in management, and information and consultation of employees more generally). Swedish law departs furthest from the minimum standard set in the Directive by triggering the employer's obligation even in the event of a single redundancy, thus incorporating its provisions in the general law of employment protection.

Some Member States have dealt explicitly with the problem of cases of "staggered" redundancies falling outside the scope of the employer's duty. In Italy, for example, a dismissal effected after the relevant consultation period has expired, but for a reason connected to an earlier collective redundancy falling within the scope of the law, will be regarded as a nullity. Swedish law avoids the problem altogether by stipulating that even a single redundancy triggers the employer's obligations, and the problem is mitigated, by analytically identical means, in Member States with very low numerical thresholds.

Several Member States address the issue of the replacement of regular or permanent employees by outsourced or agency labour. In Sweden, the replacement of regular employees by temporary agency workers may not be used to circumvent rules concerning previously laid-off workers' priority rights to re-engagement, and in some sectors, collective agreements restrict employers' rights to make use of agency labour for a six-month period following a redundancy. In the Netherlands, dismissals consequent upon outsourcing may be nullified if the (end-user) employer fails to ensure that the third party (agency) employer complies with certain minimum standards concerning employee benefit schemes.

4.7.2 Information and consultation duties

The specification of the body to be informed and consulted varies across Member States in accordance with differences in established structures of employee representation and related industrial relations institutions. In Germany, for example, the right to be informed and consulted is vested in the works council, which has extensive co-determination rights under legislation which largely predates the passage of the Directive. In France, Italy and Spain bodies broadly similar to works councils (enterprise committees or workers' representative committees constituted along a number of lines) must be consulted. Several Member States with a national tradition of so-called dual-channel representative structures provide for consultation to be carried out with either a works council or a recognized trade union. There is a wide variety of practices: sometimes, the union has priority, sometimes the works council; in some cases both play a significant role. Sweden and the United Kingdom give priority to an established or recognized union, with fall-back provisions in place if no recognized union is present in the workplace.

In certain Member States, the content of the core information and consultation obligations go beyond the minimum standards set out in the Directive. Thus in Germany, works councils have extensive co-determination rights which can include the right to be informed on matters of personnel planning and the right to be consulted on a change of the business operation, and the employer's notification must be accompanied by the works council's written opinion on the proposed redundancies. In the Netherlands, the works council can significantly delay reorganization if it does not accept the employer's proposals and can even refer the matter to the courts, which then review the employer's decision, even though in the final analysis the economic rationale offered by the employer is unlikely to be challenged. More or less all Member States explicitly state that consultation shall include the question of avoiding or minimizing dismissals and not simply deal with issues of dismissal selection and compensation, in line with the developing case law of the Court of Justice. Some Member States specify in detail the matters which should be discussed with a view to avoiding dismissals, such as retraining, in Spain, or flexibilization of working time, in Italy.

4.7.3 Notification to and the role of public authorities and social plans

Most Member States have sought to comply with the administrative obligation in the Directive to notify the competent public authorities. This will usually involve notification at the start of the collective redundancy process, as well as further communication when the consultation between the employer and the workers' representatives has been concluded. However, the level and nature of involvement of public authorities vary considerably across different Member States. In many cases public authorities have a proactive involvement in the redundancy process, working with employers and unions to explore alternatives to redundancies or drawing up plans to help find alternative employment. France remains the epitome of this approach.

The power of public authorities to authorize collective redundancies is recognized in several Member States (Netherlands and Spain, albeit in the latter this is only possible in the case of redundancies linked to force majeure). In Germany, only a decision by the Federal Labour Office can lift the automatic 30-day ban on dismissal following an employer's notification. The drawing up of social plans or employment programmes aimed at alleviating the effects of redundancies and facilitating the transition into new employment is common in many Member States. French public authorities have the power to refuse the social plan contained in a collective agreement or unilaterally drafted by the employer. In terms of the application of the notice periods, Member States have therefore generally complied with the requirement of the Directive for the collective redundancies not to take place until at least 30 days after the Article 3(1) notification, "without prejudice to any provisions governing individual rights with regard to notice of dismissal".

4.7.4 Redundancy selection, re-employment and compensation

With respect to the redundancy selection criteria, some Member States have detailed lists included in legislation (e.g. France, Germany and Italy). As documented above, in some other Member States, such lists have been replaced with the general criterion of non-discrimination (e.g. Estonia, United Kingdom). With respect to protected workers, all Member States include various types of protection against collective dismissals for a number of specific categories of workers, including among others, workers' representatives, pregnant women or women on maternity leave, workers with children of young age, disabled employees and employees with special skills.

In most Member States, there is no real priority in rehiring for workers once made redundant. There are however exceptions, for instance in French and Italian legislation. In some countries collective agreements may contain such a clause (e.g. Hungary). In many Member States the provision of compensation in the form of severance payments is graduated by length of employment, although as we have seen there is very considerable variation in terms of absolute entitlement. As a result of recent reforms in light of the crisis, the cap on the amount of redundancy compensation has been reduced considerably in Spain.

Elsewhere, compensatory payments may be included in the social plans drawn up following consultations between the employer and workers' representatives (e.g. Belgium, Germany, and Sweden), whether as an alternative to, in addition to or in the absence of statutory compensation. In some Member States, the cost of redundancy compensation is shared between the individual employer and a state-backed unemployment insurance scheme (e.g. Estonia).

4.7.5 Sanctions and remedies

In terms of remedies, Article 6 of the Directive specifies judicial and/or administrative procedures for the enforcement of the rights but does not lay down specifics as regards the legal consequences of compliance failures. As indicated in Section 2, the Court has held, however, that functionally equivalent protection is not enough to meet the Directive's requirements: the specific information and consultation provisions must be transposed into each Member State's domestic legal system.¹⁹⁶ The sanctions provided by the Member States have a wide variety of legal bases: labour law, general

196. Case C-215/83 *Commission v Belgium* [1985] ECR 1039.

civil law, administrative law and even criminal law. They can be found in relevant specific legislation, in separate laws on sanctions available under labour law, ordinary law, customary law and the decisions of the competent courts. Depending on the type of the sanction, the national system of sanctions may derive from more than one of the above-mentioned regulatory frameworks. The collective nature of the remedies, as recognized by the CJEU in *Mono Car Styling*,¹⁹⁷ is reflected in the legislation of several Member States concerning lack of compliance with the information and consultation procedures, since in many Member States workers' representatives have unrestricted rights of challenge to any procedural impropriety perpetrated by the employer. Collective redundancies carried out in contravention of the Directive are null and void in several Member States. The most common remedies in such cases are re-employment and compensation.

4.7.6 The role of collective bargaining

Significant differences exist, finally, in terms of the role of collective bargaining in the process of collective redundancies. These range from Member States where collective agreements at higher levels regulate a number of provisions related to the process (such as Belgium and France) to countries where there is a complete absence of any agreements to that effect (e.g. Estonia). While in some cases these reflect the differences in the collective bargaining systems of the Member States, there is evidence to suggest that even in countries with a long tradition of sectoral and intersectoral collective bargaining (e.g. Italy and Spain), the trend is now for collective agreements at lower (company) levels to regulate aspects of the process, including most notably redundancy selection criteria and dismissal compensation. At the same time, there is evidence to suggest that a number of collective agreements were concluded in response to the economic crisis incorporating opening clauses allowing temporary reductions in working time and wages so as to avoid collective redundancies (e.g. Germany and Sweden). Such agreements were in some cases complemented by state subsidies and co-financing schemes (Germany and Slovenia).

*

It is apt to conclude the broad comparative section of this report by observing that the national regulation of collective dismissals in EU Member States is an archetypal example of the “unity in diversity” often associated with the process of European integration. There is no doubt that EU regulation in this area has greatly contributed to the development of a level playing field of rules on the information and consultation of workers during industrial processes involving collective redundancies. This is well documented by a number of implementation reports produced by various EU institutions.¹⁹⁸ There is also enough evidence to suggest that, “generally speaking, [Directive 98/59 seems] to have been properly transposed into the legal systems of the Member States”,¹⁹⁹ though of course the analysis in Sections 3 and 4 has highlighted that occasional violations are still identified by the CJEU. A recent “fitness check” carried out by the Commission also noted that, by and large, the key provisions of Directive 98/59 (and of the other key “information and consultation” Directives) are generally recognized at a national level and by a number of stakeholders and studies, as “relevant” and “effective”.²⁰⁰ Some questions remain open, on the other hand, in particular in respect of gaps affecting the scope and detail of this minimum harmonization instrument.²⁰¹

Beyond this reasonably well-established and recognized “unity” at a procedural and formal level, the analysis carried out in this chapter has also revealed a considerable degree of diversity in terms of implementation provisions and national practices, which often reflects the equally important “rich diversity of national industrial relations systems shaped long ago”, as the European Commission has put it.²⁰²

197. Case C-12/08, *Mono Car Styling* [2009] ECR I-6653.

198. European Commission: Implementation of the Directive on the approximation of the laws of the Member States relating to collective redundancies, Commission Report SEC(91) 1639; European Commission: Implementation of the Directive concerning the approximation of the laws of the Member States relating to collective redundancies, Commission Report (Brussels, 1999).

199. European Commission, “Fitness check” on EU law in the area of information and consultation of workers, op. cit., p. 13.

200. Ibid., pp. 15–28.

201. Ibid., in particular pp. 36–37.

202. Ibid., p. 14.

Collective dismissals in Greece

5

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The first attempt to regulate collective dismissals in Greek law was through Law 2222/1952.²⁰³ Article 1 stipulated that the legislation was applicable to all undertakings or establishments with more than 50 workers. Legislative Decree 2511/1963 introduced a quantitative criterion for the definition of collective redundancies, although the legislator abstained from introducing a qualitative criterion. This law was replaced by the Compulsory Law 99/1967, further amended by Legislative Decree 206/1974 which restated the quantitative criterion and maintained the duty of the employer to apply to the Minister of Labour for authorization of collective dismissals, in the absence of which the dismissals would be void and the employer liable to pay wages. The authorization requirement was applicable until the adoption of Law 1387/1983, which radically transformed the process of collective redundancies. Entitled “Control of collective redundancies and other provisions”, Law 1387/1983 transposed Council Directive 75/129 into Greek law, and was later amended by art. 15 and 16 of Law 2736/1999, art. 9 of 2874/2000 as well as Law 3488/2006 and the Act of Legislative Content of 16.09.09, and finally by art. 74 of Law 3863/2010. Some of these amendments were introduced to accommodate the changes introduced by Council Directive 92/56.²⁰⁴ It is useful to add here that Greece has not ratified the ILO Termination of Employment Convention, 1982 (No. 158). The sections below provide an overview of the current regulation of collective dismissals in Greece, focusing in particular of those areas of regulation that were explored in the comparative Section 4 above, in respect of the other EU Member States covered by this report.

5.1 Scope of application

In line with the EU Directive, Law 1387/1983 defines collective redundancies as “dismissals effected by an employer for one or more reasons not related to the individual workers concerned” (art. 1). The legislation does not refer specifically to economic and technical reasons, as is the case with some other legal systems (e.g. France) and, of course, with Directive 98/59. Reasons that have been accepted by the courts as being related to the individual worker concern those related to the behaviour or ability of the worker or those related to the personal situation of the worker (e.g. illness or retirement).²⁰⁵ Reasons that are not related to the individual worker concerned include any other reason for dismissal. It is irrelevant if the reason concerns personally the employer as a natural person (e.g. death or illness), as a legal person (e.g. dissolution) or the economic situation of the enterprise (e.g. reduction of production) or the technical situation of the enterprise (e.g. need for modernization).²⁰⁶ The source or means by which the reason for the collective redundancies have arisen is also irrelevant; thus, reasons related to the initiative of the employer as well as reasons related to external factors (e.g. fire) or legislation (e.g. abolition of employment position) are also included.²⁰⁷

In contrast to the preamble to the Directive,²⁰⁸ Law 1387/1983 does not provide any clarification with respect to dismissals that take place at the initiative of the employer but are accepted by the

203. Law 6299/1934 regulated collective redundancies in enterprises of general interest that employed more than 50 persons.

204. Especially Law 2736/1999, art. 16, para. 6. For the need to interpret domestic legislation in line with the Council Directive, see Court of Appeal of Thessaloniki 2198/2000, in *Revue de Droit du Travail* (2000, Vol. 60), p. 416 (in Greek); see also Supreme Court 1067/2010 (available at the NOMOS database) and Supreme Court 1068/2010 (*ibid.*). Further changes have been since introduced in 2010 as a result of the reforms associated with the loan agreement by Law 3863/2010, art. 74, para. 1 amending the quantitative criteria for collective dismissals. These are discussed in the relevant sections.

205. Court of Appeal of Thessaloniki 2840/1987, in *Revue de Droit du Travail* (1987, Vol. 44), p. 88 (in Greek).

206. I. Koukiadis: *Labour law: Individual employment relationships and the law of labour flexibility* (Athens-Thessaloniki, Sakkoulas, 2009, 4th ed.) p. 851 (in Greek).

207. See Supreme Court (Areios Pagos) 690/2001, in *Revue de Droit du Travail* (2001, Vol. 61), p. 1494 (in Greek).

208. Recital 8 states that in order to calculate the number of dismissals provided for in the definition of collective dismissals within the meaning of the Directive, other forms of termination of employment contracts on the initiative of the employer should be equated to dismissals, provided that there are at least five dismissals.

Table 5.1
Greece: Quantitative criteria for collective dismissals in a period of a calendar month

Law 1387/1983 art. 1 para. 2 as amended by art. 8 of Law 2874/2000 2 and by art. 21(3) of Law 3488/2006 3		Law 1387/1983 art. 1 para. 2 as amended by art. 74(1) of Law 3863/2010	
Size of enterprise by number of employees	Employees to be dismissed	Size of enterprise by number of employees	Employees to be dismissed
20 to 200	53	20 to 150	6
50 or more	2-3% and up to 304	more than 150	5% and up to 30

The exact percentage and maximum number of workers to be dismissed in order to trigger the procedure for collective dismissals is set every six months, on the basis of authorization by the law, by a ministerial decision. Traditionally, this has been set at 2% per month.

Notes:

- The initial thresholds of Law 1387/1983 were:
 - for enterprises employing up to 50 employees, five employees
 - for enterprises employing more than 50 employees 2-3%
- Law 2874/2000 amended Law 1387/1983 and stipulated new thresholds:
 - for enterprises employing 20 to 200 employees, four employees
 - for enterprises employing more than 50 employees 2-3%
- Law 3488/2006 preserved the minimum threshold percentage of Law 2874/2000 related to the size of the enterprises but stated that in cases where five workers were to be dismissed these should be considered collective dismissals, as was stated originally in Law 1387/1983.
- The reference to a maximum of 30 workers does not mean that collective dismissals are prohibited above this, but that in such cases Law 1287/1983 applies irrespective of the fact that the percentage of dismissals may be lower than 2%.

worker. It has been disputed in academic studies²⁰⁹ whether “restructuring plans” involving voluntary dismissals in return for enhanced compensation should be calculated in the number of collective redundancies. The position of the courts is that resignation is not a dismissal and as a result the so-called “dismissals with consensus” are not collective dismissals regulated by Law 1387/1983.²¹⁰

For the dismissals to be collective, the legislation adds a quantitative and temporal threshold.²¹¹ These thresholds have been modified over the years by successive amendments (see table 5.1). The latest amendments of May 2010 were introduced in the context of the reforms associated with the first economic adjustment programme that was agreed between the Greek Government and the European Commission, the European Central Bank and the International Monetary Fund.²¹²

The application of the quantitative thresholds has created some controversy with regard specifically to the interpretation of the terms “enterprise or establishment” (επιχείρηση ή εκμετάλλευση) of art. 1(1) and art. 5(5) of Law 1387/1983. The controversy, as illustrated by the Rockfon²¹³ and Panagiotidis cases,²¹⁴ concerns the unit that should form the basis for calculating the thresholds triggering the dismissals whenever the undertaking has two or more establishments or operating production units. In the Panagiotidis case, the European Court of Justice found that the term “enterprise” (επιχείρηση) in art. 1(1a) of Law 1387/1983 was to be interpreted as including the production unit to which the workers made redundant were assigned, even where the unit had some degree of organizational and technical autonomy. Following this interpretation, Greek courts have considered that dismissals in an establishment without autonomous legal personality functions, but with organizational and productive autonomy, fall within the Directive.²¹⁵ Another problematic aspect of the legislation concerning these quantitative thresholds relates to cases where the percentage of employees to be dismissed is a decimal number. Based on the general principle that labour law regulations must be interpreted in favour of the employees, it is now accepted in theory and by the courts that decimal numbers should not be rounded up.²¹⁶

209. See G. Leventis and C. Papadimitriou: *Individual labour law* (Athens, Sakkoulas, 2011) (in Greek), pp. 953–990; D. Zerdelis: *The Law of dismissal of the employment relationship* (Athens, Sakkoulas, 2002), p. 763 (in Greek).

210. Supreme Court (Areios Pagos) 168/2007, available at the NOMOS database.

211. In the case of dismissals that do not satisfy these criteria, the scope for challenging management decisions related to restructuring and collective dismissals is very limited and can take place only on the basis of article 281 of the Civil Code, which prohibits abuse of rights (Koukiadis, *Labour law*, op. cit., p. 840).

212. For details, see A. Koukiadaki and L. Kretsos: “Opening Pandora’s Box: The sovereign debt crisis and labour regulation in Greece”, in *Industrial Law Journal* (2012, Vol. 41, No. 3), pp. 276–304.

213. Case C-449/93 [1995] ECR I-4291.

214. Case C- 270/05, *Athinaiki Chartopoiia AE v Panagiotidis* [2007] ECT I-1499..

215. Supreme Court (Areios Pagos) 3/2008, available at the NOMOS database

216. Leventis and Papadimitriou, *Individual labour law*, op. cit., pp. 964–965.

The basis for calculating the number of workers in the undertaking or establishment is the start of the calendar month and not the more abstract notion of “normally employed persons” used in the Directive. For this purpose, the number of persons employed in the undertaking or establishment includes all workers irrespective of the location of their work, their work expertise or specialization, or the duration of their contract of employment. In addition, there is no distinction in terms of the validity of the employment contract or between different professional categories of workers²¹⁷ or part-time and full-time workers.²¹⁸

In line with Article 1(2)(b) of Directive 98/59, Law 1387/1983, art. 2(2) established exemptions from the application of the collective dismissals procedure where the dismissals affect the following categories of employees:

- 1) employees under a fixed-term contract of employment, unless the dismissal takes place during the employment contract;
- 2) workers employed under a private contract of employment by public services and local authorities;
- 3) employees in enterprises whose operation ceases following a court decision (this exemption was repealed by Law 2736/1999, art. 16 in line with Directive 98/59); and
- 4) crews of seagoing vessels.

It is worth noting that employees working in undertakings or establishments “of public services and local authorities operating under rules of the private economy” are covered by the law under art. 2(1) of Law 1387/1983. These enterprises are the “state owned enterprises” belonging to the so-called “public sector enterprises”. Public sector enterprises are legal entities financed by the State for at least 50 per cent of their annual budget or, if they are established as anonymous private companies, where the State owns at least 50 per cent of the shares. The core business of these enterprises is typically the provision of public interest services such as public transportation, telecommunications, postal services, mass media services (radio, television) and banking. Public sector enterprises operate under the supervision of the State according to the law establishing the particular enterprise and Law 3429/2005 on public enterprises, which replaced Law 2414/1996 and the general private law on public limited companies (*société anonyme*) (Law 2190/1920 as amended and codified).

Initially, Greek legislation excluded from its application collective dismissals that took place in private undertakings as a result of the cessation or postponement of contracted work, for reasons attributed to the client, when the latter was a state agency or legal entity of public law. This exclusion was abolished by art. 38 of Law 1568/1985. However, the inclusion of such cases in the statutory framework is still partly incomplete, as the procedure on the involvement of the public authority (art. 5(4)) and the procedure on the sanctions applicable in the case of lack of compliance (art. 2(2) (c)) are not applicable. Further, as outlined above, the legislator had initially excluded the application of the collective dismissals procedure (art. 3, 4 and 5 of Law 1387/1983) in the case of workers who are dismissed following the termination of business activities where the latter was the result of a judicial decision. The exclusion was (mis)interpreted by case law and legal theory to apply in all cases where there was liquidation or business stoppage, irrespective of whether this was on the basis of a decision by the employer or following an administrative act by the State.²¹⁹ Amendments that were made later by art. 9(3) of Law 2874/2000 clarified that this exception is only applicable in the case of interruption of business activities following a judicial decision and does not affect the obligation of the employer to notify the workers’ representatives and the public authority of the planned dismissals, to consult with the workers’ representatives within the relevant time period, and to submit to the public authority the minutes of the consultation.

217. Court of Appeal of Thessaloniki 17/186, *Revue de Droit du Travail* (1986, Vol. 45), p. 211 (in Greek). The previous legislation (art. 2(4) of Legislative Decree 2511/1953 and art. 2(4) of Compulsory Law 99/1967) excluded managerial workers from being considered in the calculations when determining the number of workers in the undertaking/establishment. Law 1387/1983 did not include a similar provision. In addition, workers on probationary periods are also included in the calculation for the application of the thresholds.

218. Temporary agency workers are considered to be employees of the agency for the purpose of the thresholds applicable in the case of collective dismissals; see C. Sevastidis: *Collective redundancies in the Greek and European Union law* (Athens-Thessaloniki: Sakkoulas, 2008), p. 47.

219. The controversy was rooted in academic analysis and the interpretation of the provisions of Compulsory Law 99/1967 (arts. 2(b) and (g)), as amended by Law 173/1967, providing for the exclusion of the application of the regulations on collective dismissals in case of interruption of business activities due to fire, acts of violence and liquidation, or bankruptcy. It was accepted that the “obvious business interruption” legitimized the exclusion of the procedure required by the law on collective dismissals. This position influenced Law 1387/1983 and it has been argued that the requirement for a judicial decision is “ineffective” since the Greek legal system does not provide judicial proceedings in all cases of liquidation, as well as in case of withdrawal of the operation licence which results in the cessation of business. For an overview on the legal controversies on “interruption of business”, see Leventis and Papadimitriou, *Individual employment law*, op. cit., pp. 976–990.

5.2 Information and consultation duties

Article 3 of Law 1387/1983 lays down a number of provisions regarding the process of collective dismissals.²²⁰ First, when the employer is contemplating collective dismissals, it is obliged, before taking any action, to inform the workers' representatives about its intentions and discuss/consult with them in order to investigate the possibility of avoiding or reducing the planned dismissals and mitigating their consequences (art.3(1)). Second, the employer must disclose to the workers' representatives in writing the reasons for the collective dismissals, the number of persons normally employed and the number of workers that may face redundancy, the time period over which the dismissals will take place and the criteria for the selection of the workers that will be made redundant (art.3(2)).²²¹ These duties apply irrespective of whether the decision is taken by the employer or by an undertaking that controls the employer (*ibid.*). Third, the employer must submit a copy of these documents to the prefecture and the labour inspectorate. If there are establishments in different prefectures, these copies are to be submitted to the Minister of Labour and the labour inspectorate of the place of business where the collective dismissals, or most of them, are due to take place (art. 3(3)).

According to art. 5(1) of Law 1387/1983, the consultation period should last 20 days from the date the employer invites the workers' representatives to consult.²²² Since that the consultation process presupposes the provision of information, the invitation should take place following or at least concurrently with the provision of written information to the workers' representatives. Law 1387/1983 does not use the term used in the Directive, i.e. "timely", when stipulating the duty of the employer to provide information to the workers' representatives. During the consultation, workers' representatives have the right to request the provision of additional information concerning alternative measures being considered by the employer. However, while Directive 98/59 provides the right of workers' representatives to have access to experts during the conduct of consultations, Law 1387/1983 provides this only at the stage of authorization of the collective dismissals by the public authority, when the consultation process has been completed (art. 5(3)(b) and (c)).²²³

The substance of the consultations should cover ways and means of avoiding collective dismissals or reducing the number of workers affected, and ways of mitigating the consequences of the dismissals (art.3(1)). The consultation should be meaningful; where there is evidence to suggest that this has not been the case, the dismissals may be declared null and void.²²⁴ The employer has a duty to develop a first draft of a plan for the dismissals, which should be then finalized in consultation with the workers' representatives. According to Sevastidis, this duty of the employer under Greek law does not equate to the "social plan" required in other legal systems, as in the cases of France and Germany, for instance. This is because the plan, under Greek legislation, is not intended to resolve issues that may emerge from the already formulated management plans and impacts on employees.²²⁵

At the start of the consultation process, the employer is not bound by the plan originally submitted to the workers' representatives and the public authority. As such, the agreement that may be reached with the workers' representatives may be completely different with respect to the number and categories of the workers that will be made redundant, the time period for the dismissals, and the criteria for the redundancy selection. The subject matter of the consultation is usually the terms under which the dismissals should take place. These include measures for the avoidance of the dismissals or reducing the number of workers affected, by, for instance, arranging for the transfer of workers to different posts in the same or different establishment or even in a different undertaking of the group of undertakings, terminating overtime, introducing part-time work or subsidized short-time work, reorganizing working time and staging the dismissals over a longer period of time. They

220. It may be useful to add here that the ILO Workers' Representatives Convention, 1971 (No. 135) was ratified by Greece in 1988. In addition, art. 4 of Presidential Decree 240/2006 obliges the employer to inform and consult with representatives of the workers concerning matters arising in dismissals due to technical and economic reasons.

221. The domestic legislation does not stipulate a duty for the employer to provide information on the calculation method for the dismissal compensation, a duty that is included in the Directive.

222. The consultation period can be extended via an agreement between the parties with a maximum duration of 60 days.

223. C. Tsimpoukis: "Case note on Areios Pagos 1541/2011: Collective dismissals in the case of termination of an establishment's activities following a decision by the employer", in *Revue de Droit du Travail* (2012, Vol. 71), pp. 252–257 (in Greek). According to Tsimpoukis (p. 257), this illustrates the significant difference between the Directive and Greek legislation with respect to the objectives of the regulatory framework for collective dismissals. See below section 5.3 for an analysis of the role of the public authorities in the regulation of collective dismissals;

224. "Case note on Single-judge Court of First Instance of Drama 112/1990", in *Revue de Droit du Travail* (1990, Vol. 50), p. 792 (in Greek).

225. Sevastidis, *Collective redundancies in the Greek and European Union law*, op. cit., p. 259.

may also include terms designed to alleviate the negative effect of the dismissals, such as increased compensation and retraining. Finally, the terms may concern redundancy selection criteria, which may be decided jointly by the parties. The employer then selects the workers to be made redundant on this basis, or the parties may identify jointly the workers that will be made redundant.

The results of the consultation procedure are recorded in minutes that are signed by both parties. If one party declines to sign, then the minutes are signed only by the other party and reference is made to the refusal by the other party to sign the document.²²⁶ Article 5(2) provides that if there is an agreement between the parties, the collective dismissals take effect, on the basis of the agreement, ten days from the date the minutes of the consultation process are submitted to the prefecture or the Minister of Labour, depending on the case. The ten-day period is considered obligatory and no dismissals are permitted before its expiry. The agreement produces legal effects for both parties, including a set of rights and obligations of a legally binding nature for the workers.²²⁷ The agreement does not have a stricto sensu regulatory function, as Law 1387/1983 does not include any such provision, but its function equates to quasi-regulatory, as it produces rights and obligations for the workers that emanate directly from the legislation, and lack of compliance with the agreement renders the dismissals null and void.²²⁸ Despite the quasi-regulatory function of the agreement, its nature is accepted as being different from collective agreements in that it is the result of defensive and not assertive collective bargaining on the part of the workers.²²⁹ However, the legislation does not prohibit the regulation of the issues related to collective dismissals through collective bargaining. The only limitations in such cases are that the workers' representatives comply with the criteria for representation, as stipulated in Law 1387/1983, and that there may be no recourse to mediation, as the legislation requires a direct agreement between the parties.

Regarding the method for designating the workers' representatives who have the right to be informed and consulted in the context of collective dismissals, it is useful to note first that Law 1387/1983 was introduced in the absence of any general mechanisms for workers' representation at the level of the enterprise.²³⁰ This meant that the legislation on collective dismissals operated for a number of years without the availability of other forms of workers' information and consultation rights that could influence management decision-making on technical, economic and production issues on a more regular basis.²³¹ The absence of a general framework for workers' representation prior to the introduction of the collective dismissals legislation partially explains the development of a complex framework concerning the choice of workers' representatives for information and consultation in the case of collective dismissals.²³² According to art. 4(1) and (2) of Law 1387/1983, the workers' representatives for this procedure are considered to be the legally constituted representatives of the enterprise's trade union that has a membership of at least 70 per cent of the total workforce and the majority of the affected/dismissed workers.²³³ If more than one trade union is in place and none of them fulfils independently the criteria set out in art. 4(1), the workers' representatives are to be appointed by joint declaration of trade unions representing 70 per cent of the total workforce and the majority of the affected/dismissed workers (art. 4(2)).²³⁴ The declaration is communicated to the employer within three days of the notification made by the employer of the redundancy plans. Article 14 of Law 1767/1988 later introduced an alternative to this process by providing that works councils can assume the right to be informed and consulted, but only in the absence of a trade union. Finally, if there is no works council, the addressee of the right to information and consultation is a three-member committee for undertakings or establishments that employ between 20 and 50 persons. and a five-member committee for those employing more than 50 persons (art. 4(3)). The committee is elected directly by the workforce through an assembly and secret ballot; if this is

226. See also Council of State 2355/1989, in *Revue de Droit du Travail* (1990, Vol. 50), p. 60 (in Greek).

227. See, for instance, I. D. Lixouriotis: *Labour law: Individual employment relations* (Athens-Thessaloniki: Sakkoulas, 2011), p. 190; C. Apostolidou: "Consultations and collective agreements in the context of collective dismissals", in *Revue de Droit du Travail* (2003), p. 895 (in Greek).

228. G. Leventis: "Collective dismissals in the context of the economic crisis", in *Revue de Droit du Travail* (2010), p. 87 (in Greek).

229. Lixouriotis, *Labour law*, op. cit., p. 199.

230. For an analysis of the significance of this, see Lixouriotis, *Labour law*, op. cit., pp. 105–112. In this respect, the situation in Greece was similar to that of the United Kingdom.

231. This changed when Law 1767/1988 concerning works councils was adopted and ILO Convention No. 135 was ratified.

232. In contrast, Law 1767/1988 is based on a model of universal worker representation.

233. The legislation does not define the number of the workers' representatives.

234. The legislation again does not define here the number of the workers' representatives, nor does it provide any solution in case of disagreement between the trade unions.

Table 5.2
Greece: Legislation pertaining to information to and consultation of workers

Law on information and consultation	Information addressed to:	Purpose of information and or consultation
1982 Law 1264/1882 on trade union rights, art. 16(4)	The trade union , including the enterprise trade union	Information on all issues concerning workers' interests
1983 Law 1387/1983 on collective dismissals	The workers' representatives and the enterprise trade union according to art. 4 of the Law	Information and consultation on the issues mentioned in art. 4 of the Law related to the consultation pertaining to the collective dismissals
1985 Law 1569/1985 on health and safety at work	The workers' committee of health and safety at work and the trade union including the enterprise trade union	Information and consultation on the health and safety matters mentioned in the Law
1988 Law 1767/1988 implementing ILO Convention No. 135 on workers' representatives	The works councils and the trade union	Information and consultation on issues related to workers' interests as mentioned in art. 13, to facilitate consultation and conclude agreements on issues mentioned in art. 12 of the Law
1988 Presidential Decree 572/1988 adjusting Greek law to EU Directive 77/187, amended by Presidential Decree 178/2002 adjusting Greek law to EU Directive 98/50	The workers' representatives and the enterprise trade union	Information and consultation on issues related to industrial relations due to transfers of undertakings, businesses or parts of businesses
1990 Law 1876/1990 on free collective bargaining, especially art. 4, para. 4 in the framework of "dialogue in good faith" of para. 3 of the same article.	The trade union which is competent to conclude a collective agreement as stipulated in art. 3 of the Law	Information and consultation/ collective bargaining on all issues related to the content of a collective agreement as described in art. 2 of the Law
2006 Presidential Decree 240/2006 adjusting the Greek law to EU Directive 2002/14 on the general framework of information and consultation of employees	The workers' representatives (work councils and trade unions)	Information and consultation on all issues related to industrial relations.

not possible, the committee members are appointed by the Labour Centre. Finally, if no committee is elected, then the workforce is represented by a three- or five-member committee that comprises those workers with the longest service in the undertaking/establishment (art.4(4)).

It should be added that the right to information of the workers' representatives, and especially trade unions, in cases of collective dismissals, is complemented by other statutory provisions related to general or ad hoc issues of information and consultation as well as respective trade union rights including the right to collective bargaining. Table 5.2 provides a synopsis of the existing regulatory framework concerning information and consultation rights. Non-observance of these duties by the employer may result in administrative sanctions according to Law 2638/1998, art. 16, as amended by Law 3996/2001.

5.3 Notification to public authorities, the redundancy process and social plans

In line with the EU Directive on collective dismissals, art. 2(3), Greek legislation imposes an administrative obligation on employers to notify the competent public authority in writing of any projected collective dismissals.²³⁵ Law 1387/1983, art. 3(1) imposes an obligation on the employer to submit to the prefecture and the competent labour inspectorate copies of the documents stipulated in art. 3(2), i.e. the documents addressed to the workers' representatives, which contain information concerning the reasons for dismissals, the number and categories of workers that may be subject to redundancy,

²³⁵. There is no reference to the timing of the provision of this information in Law 1938/1983.

the number and categories of persons normally employed at the undertaking or establishment during the time of the dismissals, and so on. Art. 3(3) also provides that if the undertaking or establishment has subsidiaries in different administrative regions, the relevant documentation should be submitted to the Minister of Labour and the labour inspectorate that is located where all or most of the dismissals are due to take place. The notification of the documents to the public authority aims at the provision of all necessary information concerning the dismissals. According to Article 4(2) of Directive 98/59, the role of the public authority is to use the information and the time provided for the conduct of the consultation in order to find solutions to, or mitigate, the problems arising out of the collective dismissals. Importantly, Law 1387/1983 does not stipulate that the public authority has the right to intervene during the actual consultation between management and the workers' representatives, or to identify solutions for the avoidance or reduction of dismissals. This lacuna has meant in practice that the public authorities remain uninvolved in what is arguably the most crucial stage of the consultation process, a fact that has attracted criticism by some academic labour lawyers in Greece.²³⁶

When the consultation process between management and the workers' representatives is concluded, the minutes are submitted by the employer to the Prefect or to the Minister of Labour, in line with art. 3(3) of Law 1387/1983 (see art. 5(1)). If an agreement has been concluded between the parties, the ten-day period for the implementation of the dismissals commences once the minutes are submitted to the relevant public authority. In this case, the public authority has no power to assess the substance of the agreement or to provide authorization for the dismissals. If no agreement has been concluded between the parties, the Prefect or the Minister of Labour has the following options: to extend the consultations for an additional 20-day period; to prohibit all or part of the dismissals; or to abstain from issuing a decision. The first option, i.e. extension of the consultation period, can only take place following a request by one of the parties. The second option, which can be exercised within ten days from the submission by the employer, means that the public authorities have maintained the power, ascribed to them under previous legislation (Compulsory Law 99/1967, art. 1), to prohibit collective dismissals. The decision by the public authority should be motivated and issued following consideration of the documents submitted by the employer and the conditions of the labour market as well as the situation of the company, and in the interest of the national economy. In this context, Greek legislation provides that the Minister or Prefect may consult the Supreme Labour Council (SLC) or the Committee of the Ministry of Labour respectively (art.5(3) of Law 1387/1983).²³⁷ Finally, if the public authority fails or abstains from issuing a decision, the employer can proceed to the collective dismissals and the latter take place subject to any limitations that the employer conceded during the consultations and which are recorded as such in the minutes.

In January 2014, the SLC unanimously decided that in order for it to formulate a "motivated opinion" on the employer's decision on planned collective dismissals, it should proceed to examine the dossier containing the information on the enterprise, the collective dismissal plan and the consultation minutes as well as any other accompanying elements.²³⁸ The January 2014 Decision also outlines the elements of these documents in greater detail. The dossier on the enterprise includes its financial and economic situation during the last three years, information on the workforce and the reasons for the necessity to proceed to collective dismissals. The collective dismissal plan must contain references to the number of employees to be dismissed, the criteria for the selection of the employees under the plan, the timeline for the implementation of the dismissals and proposed measures to mitigate the consequences of the dismissals. Finally, the consultation minutes must make reference to the location and time of the meetings, the participants, the information provided by the employer, the information on any proposals submitted by the workers' representatives, and the outcome of the consultation. As the SLC is not a legislative body, the content of Law 1387/1983 has not been amended by the SLC Decision. As such, the Minister or Prefect retains the power to prohibit or authorize the dismissals in cases where the parties fail to reach an agreement. However, the Decision has put renewed emphasis on the role of the SLC under art. 5(3) of Law 1387/1983 and, as further noted in Section 6 below, it represents a significant development in Greek industrial relations and the regulation of collective redundancies.

236. See, for instance, Lixouriotis, *Labour law, op. cit.*, and Sevastidis, *Collective redundancies in the Greek and European Union law*, op. cit.

237. The decision by the Prefect or the Minister of Labour is considered an administrative act that may be rescinded by the Council of State for lack of legitimacy or absence of adequate justification.

238. Supreme Labour Council Plenary Decision 22 January 2014 regarding the Determination of the content of the dossiers, submitted to the SLC by employers, in order for a safe and documented opinion to be defined based on that content, during the examination procedure and collective dismissals requests (Law 1387/1983, as in force, and Directive 98/59/EC).

Following these developments, a management decision to proceed to collective dismissals in Chalyvourgia (a company in the metallurgic sector) was the first to be subjected to the amended review process by the SLC. In this case, the SLC approved by a majority the decision of management to proceed to 45 collective dismissals (out of a total of 74 employees) in June 2014. In its submissions to the SLC, management cited the lack of demand and export activity, due to high energy prices and the economic crisis, as reasons for the implementation of a restructuring plan involving dismissals. From the management plan submitted to the SLC, it transpires that the employees to be made redundant would receive full redundancy compensation and that the company committed itself to provide possibilities for re-employment in case the operation on site restarted, as well as to additional compensation for employees who would otherwise receive low levels due to their lack of seniority.²³⁹

On the basis that the domestic legislation still provides powers to the competent authorities to prohibit dismissals, the compatibility of the domestic legislation with the EU Directive has been questioned in some academic analyses.²⁴⁰ The public authority, according to this interpretation of the Directive, has not been given any power to prohibit or limit the extent of collective dismissals. In this context, it is suggested that the incompatibility with the Directive of the authorization powers provided to public authorities was confirmed in Nielsen, where the Court of Justice pointed out “that the Directive does not affect the employer’s freedom to effect or refrain from effecting collective dismissals and that its sole object is to provide for consultation with the trade unions and for notification of the competent public authority prior to such dismissal”.²⁴¹ Relying on this, it has been argued that the provisions of Law 1387/1983, which provide the public authority with the power to prohibit the dismissals, should be inapplicable not only in cases where the cessation of business activities is based on judicial decision, but also when the termination is attributed to the employer.²⁴² However, it may be argued that the authorization power provided to the public authority does not contravene EU law, since under Article 5 of the Directive, Member States have a right to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers.²⁴³ Indeed, as illustrated in the comparative analysis of the legal systems in the present report, a number of Member States (such as the Netherlands and Spain) have recognized the power of public authorities to authorize collective dismissals.²⁴⁴

Following the consultation process, Law 1387/1983 requires the submission of the minutes from the consultation to the public authority, but the authority does not have any substantive power to intervene or participate except in accepting or prohibiting the dismissals. However, an express requirement to notify the public authorities (or to the workers’ representatives) is absent from Law 1387/1983. In contrast, the Directive stipulates in Article 3(1) that the employer has a duty to notify “the competent authority” in writing of “any projected collective dismissals”. According to the Directive, the notification must contain all information relevant to the projected dismissals, the consultations with the workers’ representatives provided for in Article 2, and particularly the reasons for the dismissals, the number of workers to be made redundant, the number of workers normally employed, and the period over which the dismissals are to be affected.²⁴⁵ The notification is intended

239. Supreme Labour Council, Minutes of the Plenary Meeting of 10-06-2014.

240. For a review, see Tsimpoukis, “Case note on Areios Pagos 1541/2011”, op. cit.

241. Case C-284/83 *Dansk Metalarbejderforbund and Specialarbejderforbundet i Danmark v H. Nielsen & Søn, Maskinfabrik A/S* [1985] ECR 553, para. 10.

242. Tsimpoukis, “Case note on Areios Pagos 1541/2011”, op. cit., p. 259. In this recent case, Areios Pagos declined to submit a preliminary reference concerning the compatibility of art. 5(3) of Law 1387/1983 with the EU Directive. It should be added that the European Court of Justice (ECJ) had noted in *Athinaiki Chartopoiia AE v L. Panagiotidis and Others*, C-270/05 ([2007] IRLR 284 (ECJ)) that “in the context of proceedings before the Court, the issue of the compatibility of the intervention by the national public authorities, namely the prefect or the Minister for Labour, as provided for in Article 5(3) of Law 1387/1983, with Directive 98/59 and Article 43 EC has been raised with some insistence. That question was not, however, the subject of the present reference for a preliminary ruling” (para. 37).

243. See, among others, D. Travlos-Tzanetakos: “The cessation of the operation of an undertaking or establishment: Current issues”, in *Revue de Droit du Travail* (2002), p. 152 (in Greek); and F. Dermizaki, The Cessation of the Operation of an Undertaking as Basis for Individual and Collective Dismissals (2002) *Revue du Droit de Travail*, 1353 (in Greek). Contra Sevastidis (*Collective Redundancies in the Greek and European Union Law*) argues that Article 5 is applicable only with respect to the issues regulated by the Directive and as such cannot provide the basis for introducing new requirements such as the authorisation by the public authority.

244. See also France, where public authorities have the power to reject the social plan with effects functionally analogous to a refusal to authorize collective dismissals.

245. Article 3(1), para. 2. In addition, Article 3(2) of the Directive provides that employers shall forward to the workers’ representatives a copy of the notification provided. The workers’ representatives may send any comments they may have to the competent public authority.

Table 5.3
Collective dismissals in Greece notified to the public authorities under Law 1387/1983, 2008–14

Year	Number of collective dismissals cases	Consensus between management and workers' representatives	Opinion issued by the Supreme Labour Council (SLC)	Authorization of the collective dismissals by the public authority
2008	2 (2*)	–	–	(2 **)
2009	3 (3*)	–	–	(3**)-
2010	3 (1*)	–	1	1 (2**)
2011	1 (1*)	1	–	–
2012	5 (-*)	5	–	–
2013	4 (2*)	1	2	3 ...
2014	3 (-*)	2	1	... (1**)
Total number	21 (9*)	9	5	4 (8**)

Source : Ministry of Labour, Social Security and Welfare (August 2014).

Notes: In all cases the employer has fulfilled the obligation to inform workers' representatives and to conduct consultations according to Law 1387/1983. The number of cases marked by (*) refers to the number of cases where the enterprise had ceased its business activities, while the number of cases marked by (**) refers to the number of cases where no authorization by the public authority was issued.

to provide the public authorities with the scope to respond to the planned dismissals by finding ways to avoid them or mitigate their impact by suggesting alternative employment. This obligation under Article 3(1) of the Directive should not be confused with the obligation of the employer, in line with art. 3(3) of Law 1387/1983, to submit copies of documents including information on the dismissals to the prefecture and the labour inspectorate, since this obligation is independent – as stipulated by Article 2(3) of the Directive – and precedes the conduct of consultation between the employer and the workers' representatives.²⁴⁶ Nor does Law 1387/1983 contain a provision similar to Article 4 of the Directive requiring that the proposed dismissals cannot take place until at least 30 days after the Article 3(1) notification “without prejudice to any provisions governing individual rights with regard to ‘notice of dismissal’”.²⁴⁷

Table 5.3 shows data produced by the Greek Ministry of Labour concerning collective dismissal cases in the period 2008–14 that were submitted for notification to the public authorities.

5.4 Redundancy selection, re-employment and compensation

Law 1387/1983 does not provide a specific framework for the determination of selection criteria. Selection criteria are only referred to in art. 3(2) of Act 1387/1983 as part of the information to be transmitted to workers' representatives within the framework of the notification and consultation process. However, the criteria that have been developed in the case of dismissals for economic and technical reasons still apply in the present context. Thus, the employer has a duty to use objective criteria so that the workers to be made redundant suffer the least as a result of the dismissal.²⁴⁸

The process for the selection of workers to be made redundant takes place in two stages. First, it is necessary to define the pool of workers within which the selection will take place. This includes in principle all workers who occupy comparable posts and are employed in the same establishment, irrespective of its size and structure.²⁴⁹ There are certain categories of workers who are excluded from the redundancy pool and as such enjoy special protection. First, trade union representatives are protected

246. It is implicit from the requirement of Article 3(1) of the Directive that this “notification shall contain all relevant information concerning ... the consultations with workers' representatives” and that such consultation should precede notification to the public authority. The Directive is quite clear and consistent, throughout its provisions, in distinguishing between the duty to initiate consultation when the employer is “contemplating” collective redundancies and the duty of notification when these redundancies are “projected”. For further information, see S. Deakin and G. Morris: *Labour law* (Oxford, Hart, 2012, 6th ed.), p. 940.

247. Under Law 1387/1983, the collective dismissals may take effect at the expiry of the ten-day period from notification to the public authority.

248. Sevastidis, *Collective redundancies in the Greek and European Union law*, op. cit., p. 221.

249. Zerdelis, *The Law of dismissal of the employment relationship*, op. cit., p. 439. Established case law provides that the selection should be between workers who belong to the same occupational category and specialism.

on the basis of Law 1264/1982, art. 14. Workers who have been hired on the basis of so-called “compulsory contracts” are also protected against collective dismissals, except in cases where there is cessation of business activities.²⁵⁰ Workers performing their military service (Law 3514/1938, art. 1),²⁵¹ pregnant women and women on maternity leave are also excluded from the redundancy pool (Law 1483/1984, art. 15). Finally, those workers considered necessary for the safeguarding of the normal operation of the business, e.g. workers with specialist skills, may be excluded from the pool.²⁵²

Until recently, provisions on tenure provided increased employment protection against dismissal in cases where the employment contract could not be terminated before retirement without justification.²⁵³ On the basis that economic and technical reasons (such as the abolition or merger of establishments, reductions in output or restructurings) do not constitute relevant reasons for dismissal, it was accepted that in enterprises where tenure provisions were in existence, the employer did not have the right to proceed to restructuring or other forms of reorganization that included collective dismissals of workers with tenure. This form of quasi-permanence was available in a number of state-owned enterprises and (previously state-owned) banks and was introduced via collective agreements, internal work regulations, legislation, or administrative decisions with legal effect. However, art. 6 of Act 28.2.2012 by the Ministerial Council, which was introduced in the context of the second economic adjustment programme for Greece, removed this type of “tenure” from all existing legacy contracts. Consequently, contracts with definite duration, defined as those expiring upon age limit or retirement, automatically converted to indefinite duration contracts for which standard dismissal procedures apply, that is, the residual private law on abuse of rights (Civil Code, art. 281). The removal applies irrespective of the source of the tenure, i.e. whether the latter is based on collective agreements, work regulations or unilateral acts by the administration. It is also applicable not only in respect of state-owned enterprises but also in respect of private sector companies, where such provisions were in place.²⁵⁴

The second stage of the process involves defining the criteria for the selection of workers and ordering them on the basis of their importance. The criteria are divided into qualitative and social ones.²⁵⁵ The former refer mostly to the performance of the worker, while the latter include those that concern the worker as an individual, without taking into account the interests of the employer. According to Sevastidis, there is no clear case law regarding the evaluation of the criteria used for redundancy selection.²⁵⁶ A line of decisions attributes a general and absolute prerogative to work performance, leading to the non-applicability of article 281 of the Civil Code (on abuse of rights) when the worker made redundant has demonstrated decreased performance.²⁵⁷ A different approach involves evaluating equally all the criteria used for the selection of workers to be made redundant. In this context, the courts consider issues including not only performance but also

250. Law 2643/1998 (Care for the employment of special categories of persons and other provisions) stipulates that an obligation for compulsory recruitment of certain categories of protected persons in every undertaking or establishment, foreign-owned or Greek, that employs more than 50 workers. The categories of workers that are the beneficiaries of these rights are: parents of large families with four or more children; one of the children of a large family; the surviving or unmarried parent of three minor children; people with a disability of at least 50 per cent, who have limited opportunities for gainful employment because of a chronic physical or mental illness or condition provided they are registered in the Manpower Employment Organization (OAED) as unemployed disabled persons; those who have a child or sibling or spouse with a disability of over 67 per cent due to serious mental and physical problems; fighters from the Resistance under Law 1285/1982 and their children; the disabled and war wounded; those who have become incapable because of the rigours of military service provided they served in any capacity with the Armed Forces and their children; war victims and war wounded from the civilian population and their children; and disabled civilians and their children. Also protected are the children and the surviving spouse of persons killed or who have disappeared in the war events in Cyprus. The obligation applies to up to 8 per cent (art. 2 of Law 2643/1998) of the workers of the private undertaking/establishment and up to 10 per cent (art. 8(2)) of the workers in public organisations.

251. The protection starts when the worker is called up and ends one year after the completion of military service.

252. Sevastidis, *Collective redundancies in the Greek and European Union law*, op. cit., p. 228.

253. On the basis that such “tenure” provisions are stipulated in collective agreements, the abolition of these rights may constitute a violation of Article 22(1) of the Greek Constitution and the EU Charter of Fundamental Rights (Article 30). See Advisory Committee to the Greek Parliament on Law-making: *Report on the Legislative Proposal of the Approval of the Plans of the Financial Facility Agreements between the European Financial Stability Facility (EFSF), the Hellenic Republic and the Bank of Greece, of the Plan of the Memorandum of Understanding between the Hellenic Republic, the European Commission and the Bank of Greece and other Urgent Provisions for the Reduction of Public Debt and the Rescue of the Greek Economy* (Greek Parliament, 2012), p. 8 (in Greek).

254. For an analysis, see K. Mpakopoulos: “The agreements with age limit and the tenure provisions in light of Law 4046/2012 and the Act of the Ministerial Council 6/2012”, in *Revue de Droit du Travail* (2012, Vol. 71), p. 691 (in Greek).

255. This approach is considered dominant by a number of academic lawyers (see, for instance, Zerdelis, *The Law of dismissal of the employment relationship*, op. cit.).

256. Sevastidis, *Collective redundancies in the Greek and European Union law*, op. cit., pp. 230–238.

257. See, for instance, Supreme Court 203/2004 and Supreme Court 597/2002.

seniority, age, family status, economic situation, possibility for finding alternative employment, and so on. There is also evidence to suggest that some courts strongly emphasize social criteria and thus exclude issues of performance when assessing the fairness of dismissal under art. 281. Collective agreements may regulate the redundancy selection differently, but it has been accepted that any redundancy selection criteria agreed between the employer and the workers' representatives during the consultation process cannot diverge substantially from those laid down in established case law. But they may, for instance, establish a different order for the application of the criteria, or recognize some criteria as being of particular significance.²⁵⁸

With respect to the question of re-employment, there is no general right for individuals that can be enforced against the employer.²⁵⁹ In such cases, it is considered that the employer does not accept the work offered by the worker and is in default on the basis of article 656 of the Civil Code. The consequence for the employer of being in default is the obligation to pay the worker remuneration for the period during which work was not performed, without having the right to demand that the work should be done at some other time. However, on the basis of art. 23(2) of Law 1264/1982, which imposes criminal sanctions on the employer and his agents for failing to accept the performance of work of a worker when the dismissal has been deemed void by a judicial decision, and provided the specific requirements of this provision have been complied with, an obligation exists for the employer to reinstate the worker whose dismissal was found void.²⁶⁰ In addition, the lawful, in principle, refusal of the employer to accept the performance of work by the individual may be considered unlawful when it constitutes an abuse of right, under article 281 of the Civil Code, and may be considered excessive when it affects material or moral interests of the worker, thus providing a basis for pecuniary compensation for the moral damage sustained by the worker.²⁶¹ The existence of an obligation on the part of the employer to reinstate the worker is considered on a case-by-case basis.

With respect to dismissal compensation, the regulations regarding this are the same in collective and individual dismissals. It is important here to stress first that, contrary to the legal regulation of dismissals in other Member States, termination of employment under Greek labour law has been permitted without the employer having to justify the action or invoke a potentially fair reason.²⁶² The amount of dismissal compensation traditionally varied according to the manner of calculation and whether those dismissed are white-collar or blue-collar workers. By and large, the amount of compensation due to white-collar workers was traditionally higher than the amount due to blue-collar workers; for white-collar workers compensation amounts ranged from a monthly wage that increased progressively depending on service time (e.g. six months' wages after ten years of service, to 24 months' wages for those with over 28 years of service). For blue-collar workers, compensation ranged from five daily rates to 160 days for those with 30 years of service. Furthermore, only white-collar staff were to be notified of dismissals in advance.²⁶³ Compensation was doubled when the appropriate notice period had not been observed.

Under Laws 3863/2010, art. 74(2) and 3899/2010, art. 17(5)(a), introduced in the context of the first economic adjustment programme for Greece, the notification period for dismissals was significantly reduced and as a result of this the compensation for dismissal was reduced significantly as well, by up to 50 per cent. In addition, these reforms provided the right to the employer to pay the compensation in two bi-monthly instalments. Further, under previous legislation, workers with less than one year of service were entitled to severance pay equal to one month's salary (art. 75(3)). Under the current legislation, Law 3899/2010, these workers no longer receive any severance pay. Similarly, no notice of termination is now required in the event of a breach of the employment contract of these workers. Following the second economic adjustment programme in 2011, Law 4093/2012 reduced further the maximum period for notice of dismissal to four months.²⁶⁴ It also

258. See Sevastidis, *Collective Redundancies in the Greek and European Union Law*, op. cit.

259. Lixouriotis, *Labour law*, p. 686.

260. This is a case of reinstatement and not rehiring, as it does not concern a new employment relationship. However, it is not necessary for the terms and conditions of employment to be the same as those before the dismissal.

261. Areios Pagos 171/2009, in *Bulletin of Labour Legislation* (2009, Vol. 65) p. 768 (in Greek).

262. Art. 281 of the Civil Code (abuse of rights) has been the basis for the examination of dismissal by the courts.

263. An employer is obliged to pay compensation only when a worker has been working for the company for a period of over two months from the date of recruitment.

264. Notice periods are as follows: employees who have been employed for more than a year have the right to a one-month notice; employees employed between two and five years have the right to a two months' notice; those employed between five and ten years have the right to a three months' notice period and those employed above ten years have the right to a four-month notice period.

reduced further the amount of compensation to workers in case of dismissal without notice.²⁶⁵ With respect to this, the new legislation sets a maximum amount of severance pay that equals 12 months salary where no notice has been served. Law 4093/2012 finally stipulated some transitional rules concerning compensation amounts. Failure on the part of the employer to provide the adequate level of dismissal compensation results in the nullity of the dismissal.

5.5 Sanctions and remedies

The consequence arising from infringement of the legislation is that the dismissals shall be deemed null and void under Law 1387/1983, art. 6(1). The nullity concerns all dismissals and not only those that exceed the limits set by the legislation.²⁶⁶ The nullity of the dismissals is irrespective of whether the conditions concerning the validity of termination have been respected, i.e. termination in written form and provision of compensation according to Laws 2112/1920 and 3198/1955.²⁶⁷

There are three distinct sets of provisions where infringement may lead to the nullity of the dismissals. The first includes those provisions that stipulate specific duties of the employer: the duty to provide to the workers' representatives the information that is useful for the conduct of the consultations in a timely manner; the duty to submit to the public authorities a copy of the plan for the dismissals (Law 1387/1983, art. 3(3)); and the duty to consult with the workers' representatives, which is not exhausted in mere discussion but includes the obligation to find solutions jointly with them.²⁶⁸ The second set of provisions, whose infringement may lead to the nullity of the dismissals, includes cases where the employer does not comply with the terms of the agreement concluded with the workers' representatives (art. 5(2) in conjunction with art. 6). This concerns all the regulatory provisions affecting those that will be made redundant²⁶⁹ but does not include those provisions that concern workers who will remain employed.²⁷⁰ The final set of provisions that may lead to the nullity of the dismissals concern those related to the decisions by the public authorities, including most notably the case where the employer does not comply with a decision which prohibits part or all the planned dismissals (art.5(4)(a)). Lack of compliance with the commitments made by the employer during the consultation may also provide a basis for the nullity of the collective dismissals in the case where the public authority does not issue a decision within the ten-day deadline.²⁷¹

Each worker affected may individually challenge the validity of the notice of dismissal within three months. This may be through an action for a declaratory judgement of nullity of the redundancy or through an action for performance requesting wages due from the employer. In the latter case, nullity on the basis of Law 1387/1983 is advanced against the claim by the employer that the employment relationship has ended.²⁷² The worker, though, has the right to accept the dismissal as valid and to consider that the employment relationship has ended on the proviso that compensation is provided. The acceptance of dismissal by the worker and the renunciation of the right to request annulment of the dismissal are considered valid.

265. Dismissal compensation for white-collar workers is now according the following schedule: 0 <1 year, 2 months <4 years, 3 months <6 years, 4 months <8 years, 5 months <10 years, plus 1 month per additional year of service up to 12 months for tenure duration of 16 years and more. More generous dismissal compensation is available for those who had at least 17 years of job tenure on 12 November 2012. Dismissal compensation for blue-collar workers is according to the following schedule: 0 <1 year, 7 days <2 years, 15 days <5 years, 30 days <10 years, 60 days <15 years, 100 days <20 years, 120 days <25 years, 145 days <30 years, 165 days ≥ 30 years.

266. But this has been questioned by a number of academic lawyers on the basis that it may contravene the principle of proportionality (see, among others, N. K. Gavalas, "Law 1387/1983 for the control of collective dismissals again before the Supreme Court", in *Revue de Droit du Travail* (2011, Vol. 70), p. 137 (in Greek); Sevastidis, *Collective redundancies in the Greek and European Union law*, op. cit., pp. 303–304).

267. Compliance with these provisions does not have any effect on the duty of the employer to comply with Law 1387/1983. But non-compliance with the terms of the agreement concerning those workers whose contract will not be terminated does not have an impact on the validity of the dismissals.

268. This includes the case where the employer enters the negotiations in bad faith.

269. This includes the case where the employer refuses to comply with contractually agreed redundancy compensation (Sevastidis, *Collective redundancies in the Greek and European Union law*, op. cit., p. 310).

270. Koukiadis, *Labour law*, p. 870.

271. Lixouriotis, *Labour law*, pp. 204 and 217.

272. L. Ntasios: *Procedural labour law I* (Athens-Thessaloniki, Sakkoulas, 1999), p. 569.

5.6 The role of collective bargaining

There is limited evidence of attempts to promote specific measures through collective bargaining for the avoidance or reduction of collective dismissals, or the mitigation of their impact. A detailed empirical legal study of the regulatory framework of collective dismissals conducted in 1999 reported that employers tended to avoid becoming involved in the legal procedure for collective dismissals, as this involved significant interference from the public authorities. In order to avoid implementing the relevant procedure, it was found that employers usually resorted to practices of voluntary redundancy and early retirement, or to the method of phasing dismissals so as to fall outside the scope of the legislation. Another important issue highlighted by the study was the low degree of availability and effectiveness of intervention by workers' representatives in the collective dismissals procedure, and in particular the trade unions' restricted "cooperativeness" on implementation of the relevant legislative framework. The unions usually preferred to take labour disputes involving reduction of staff to the conciliation procedure carried out through the efforts of an agency of the Ministry of Labour, at which the Minister or Deputy Minister of Labour was sometimes present.

These findings arguably highlight the deficiencies of the regulatory framework with respect in particular to the power of the public authorities to intervene only when the consultation process has taken place, and the lack of an adequate framework for the promotion of an exchange of views and establishment of dialogue with a view to reaching an agreement between management and labour, as described above in section 5.3. In this context, cases where the process of consultation has been questioned have been referred to in the press. One example is the cessation of operations at Schiesser-Pallas, a Greek subsidiary of the Germany-based clothing multinational Schiesser AG, which was not accompanied by a full plan for redeployment of those workers who were made redundant.²⁷³ More recently, the closure of the national public broadcaster (ERT) in the summer of 2013 took place in the absence of provision of information by management and the absence of any form of consultation with the workers' representatives.²⁷⁴

5.7 A provisional assessment of the Greek regulatory framework for collective dismissals

Law 1387/1983 was in its time an innovative piece of legislation; it introduced, alongside Law 1264/1982, arrangements for the development of worker voice at the enterprise level. At the same time, Law 1387/1983 retained a number of elements of the pre-existing legislative framework, including the power of the public authorities to prohibit the dismissals, a power that is not unique to Greek legislation, and that – in our view – is compatible with the EU legislative framework. However, and in contrast with the national experiences and practices of other EU Member States, Greek legislation has not sought to encourage or develop a role for public authorities to intervene in restructuring processes prior to the stage of approving or prohibiting the redundancy plans. The development of such an early involvement during the process of consultation would arguably provide a basis for management and workers' representatives to reach an agreement on the restructuring plans, simultaneously facilitating the role of the public authority at the approval/prohibition stage of the process.

This important point aside, it may be suggested that the words "normally employed persons" (or an equivalent formula) should be incorporated into Greek law in a consistent way; that article 3 of Law 1387/1983 should clarify that the provision of information to the workers' representatives should take place in a "timely" fashion; and that workers' representatives should have the right of access to experts as soon as the consultation process is triggered. Finally, consideration should be given to the requirement Articles 3(1) and 4(1) of the EU Directive that the employer should notify the public authorities of the projected dismissals and that the latter cannot take place until at least 30 days after the notification.

273. See Eurofound: "Dismissals at Schiesser Pallas", online article, 29 June 2003. Available at: <http://www.eurofound.europa.eu/eiro/2003/06/feature/gr0306105f.htm>.

274. The case fell within the scope of the Directive and Law 1387/1983, as the broadcaster cannot be considered a public administration body for the purpose of being excluded from the legislation. Moreover, as seen earlier, the provisions on information and consultation apply even in cases where the collective dismissals take place as a result of the cessation of business activity.

6

Concluding comments: Summary and implications for Greece

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This report has sought to offer an assessment of Greek regulation of collective dismissals in a comparative and supranational context. The following paragraphs conclude the report, seeking to recapitulate the main findings emerging from each of its five previous sections and to offer a more rounded assessment of Greece's regulation of collective dismissals in a European and comparative context.

6.1 The economic and social aspect of collective dismissal regulation

As acknowledged in the opening paragraphs of Section 2, collective redundancies are in many ways a natural and structural facet of capitalist industrial economies. Economic transformations and cycles, industrial restructuring processes, and the dynamics of competitive market economies all dictate that managers may have to contemplate business restructuring in ways that are likely to have an adverse impact on either the number of jobs in the company or the terms and conditions of employment, or both. The law is called upon to regulate this natural facet of capitalist economies, while striking a balance between a number of (often) competing interests, typically those of businesses, workers and society at large. Section 2.2 reviewed a number of recent studies and statistics that show the significant dimension and volume of these restructuring processes in Europe, especially since the economic crisis of 2008. This analysis was followed by a more general assessment of the socio-economic impact of collective redundancies on societies, and some justifications for the involvement of public authorities in these processes.

6.2 The supranational regulation of collective dismissals in Europe: Minimum harmonization, but rights to information and consultation

The analysis of the main supranational sources shaping or influencing the regulation of collective redundancies in Europe has highlighted that, although of disparate institutional origins, all measures' key contributions align in a strong emphasis placed on the information and consultation rights of the representatives of those workers affected by proposed collective dismissals. Of the three key instruments analysed in Section 3 (EU Directive 98/59, ILO Convention No. 158 and the European Social Charter), the Directive is arguably the most influential and relevant, both in terms of the relative detail of its provisions and in terms of its coverage and legal effects within the European Union: all Member States are, by virtue of their membership in the Union, bound to transpose the Directive's provisions into their national legal order. In addition to attributing a number of information and consultation rights to workers' representatives, the Directive also prescribes a duty on the part of employers to notify projected collective redundancies to the relevant domestic public authorities.

It was noted that the provisions of Directive 98/59 are relatively flexible: it is a minimum harmonization instrument that does not set out in great detail most of the provisions and rights contained within it (though the role of the CJEU in fleshing out some of these provisions and rights was also acknowledged). Crucially, its provisions are expressly not to be understood as a limitation on Member States' right to apply or introduce rules that are more favourable to workers (Article 5). To the extent that Directive 98/59 can be seen as an instrument on the rights to information and consultation of European workers, it must be considered alongside other EU instruments and provisions on "information and consultation", including notably Article 27 of the EU Charter of Fundamental Rights, which since the Treaty of Lisbon has been elevated to primary status within the Union's hierarchy of norms.

6.3 Regulating collective dismissals in Europe: Unity in diversity

The comparative analysis carried out in Section 4 of this report concludes that all EU Member States surveyed share a number of fundamental similarities in the ways in which they regulate collective dismissals, but also suggests that a number of very significant differences persist. It should be noted that this part of the study has not analysed possible implementation challenges which may exist across EU Member States, as this particular point was seen as going beyond the scope of the present study. The key similarities, unsurprisingly, tend to reflect the core provisions and principles contained in Directive 98/59; in particular the idea that the restructuring processes resulting in collective redundancies ought to be accompanied by a series of information and consultation procedures involving workers' representatives and public authorities. Beyond this minimal common core, however, this section registered a number of important differences in respect of the definition of collective redundancies (over and above the minimum requirements prescribed by Article 1 of the Directive), the detail, timing, and intensity of the information and consultation obligations, the extent to which such duties may be accompanied by more coordinated co-decision or bargaining practices, the nature and relative power of the workers' representatives involved, the type of social measures that must accompany and/or follow the adoption of collective redundancies, the nature and powers of the Public Authorities involved, and in particular the extent to which collective agreements cover and regulate specific or more general aspects of collective redundancy processes.

The concluding paragraphs of Section 4 also note that the EU institutions appear to consider that the degree of compliance with the core provisions of Directive 98/59 is, by and large, adequate; and that the Directive makes a relevant contribution to the regulation of restructuring processes in Europe. The latter finding, however, has to be somewhat qualified – not least due to the exclusion set out in Article 2 of the Directive (as well as those implicit in Article 1, which de facto permit Member States to exclude small and medium-sized enterprises from its coverage). It should also be pointed out that in recent years several Member States affected by “austerity packages” (such as Portugal and Spain), as well as in other systems less directly affected by any such pressures (for instance the United Kingdom), have begun to embrace a deregulatory trend of questioning so-called “gold plating” (i.e. the maintenance of standards above the minimum levels required by the Directive). In consideration of the fact that the Directive is a “minimum harmonization” instrument and explicitly notes in its Article 5 that it does not affect the right of Member States to introduce more worker protective provisions, it is difficult to see why this trend should be encouraged or promoted. In recent years the Union itself has occasionally encouraged the review of “selected aspects of employment protection legislation including the dismissal rules”²⁷⁵ on the grounds that “the procedures for dismissal ... entail uncertainties and potentially large costs for employers”.²⁷⁶ These deregulatory recommendations are hard to reconcile, in our view, with the spirit of the Directive in general and the letter of its Article 5.

6.4 The Greek case: Summary and implications

As noted in section 5.7, Greek Law 1387/1983 was at the time of its enactment an innovative piece of legislation: it introduced, alongside Law 1264/1882, arrangements for the development of worker voice at the enterprise level. At the same time, Law 1387/1983 retained a number of elements of the pre-existing legislative framework, including the power of the public authorities to prohibit collective dismissals, a power that is not unique to Greek legislation, and that – as discussed in Sections 3 and 4 of this report – is assessed as being compatible with the EU legislative framework. Indeed, some Member States such as Germany see the prohibition of dismissals (if only for a certain period) as a first consequence flowing from the involvement of public authorities. However, and in contrast with the national experiences and practices of other EU Member States, Greek legislation has not sought to encourage or develop a role for public authorities to intervene in restructuring processes prior to the stage of approving or prohibiting the redundancy plans. The development of an advisory/

275. Council Recommendation of 12 July 2011 on the National Reform Programme 2011 of Italy and delivering a Council opinion on the updated Stability Programme of Italy, 2011-2014 [2011] OJ C 215/7.

276. Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of France and delivering a Council opinion on the Stability Programme of France, 2012-2016 [2012] OJ C 219/31, para. 12.

supportive role during the process of consultation would arguably provide a basis for management and employee representatives to reach an agreement on restructuring plans, whilst also simultaneously facilitating the role of the public authority at the approval/prohibition stage of the process. It may furthermore be suggested, first, that the words “normally employed persons” (or an equivalent formula) should be incorporated into Greek law in a consistent way; second, that article 3 of Law 1387/1983 should clarify that the provision of information to workers’ representatives should take place in a “timely” fashion; and, third, that workers’ representatives should have a right to access expert advice as soon as the consultation process is triggered. It was also pointed out that Greece is among the countries that do not have any particular process in place to address avoidance practices implemented through the staggering of redundancies: it is important for collective redundancy protection to include such devices, in order to avoid evasive manoeuvring on the part of employers, which could be harmful both to workers and the role of the public authority. Finally, Greek law should give express recognition to the requirement set out in Articles 3(1) and 4(1) of the Directive, viz. that the employer should notify the public authorities of the projected redundancies and that the latter cannot take place until at least 30 days after the notification.

A more specific set of considerations is relevant to what is arguably a significant recent change in the Greek regulatory framework on collective dismissals, that is to say the Decision of 22 January 2014 by the Greek Supreme Labour Council (SLC). As noted in section 5.3 of this report, the Decision puts renewed emphasis on art. 5(3) of Law 1387/1983, which stipulates that if the parties fail to agree, and the issue at hand is therefore referred to the relevant Prefect or the Minister, the latter have the right to consult the Labour Ministry Commission (which operates in every prefecture) or to seek the opinion of the Supreme Labour Council, respectively. This Decision, handed down in January 2014, is not a legislative act when viewed from a narrow technical perspective. As such, it cannot amend Law 1387/1983 or alter in any way the domestic legal statutory framework on collective dismissal. This, however, does not diminish the fact that, in our view, this Decision remains a significant innovation in the context of the regulation of collective dismissal in Greece, and that any assessment of the Greek collective dismissal system which did not take the SLC’s decision into account would be partial, and thus inevitably inaccurate.

Three key factors lead us to arrive to this particular conclusion. First, this Decision was adopted unanimously by all SLC members, including the representatives of the social partners GSEE, SEV, GSEVEE, ESEE and SETE. As such, when originally adopted it reflected a tripartite social consensus amongst the social partners involved. Second, the Decision encourages an industrial relations practice that seeks to anticipate, through a motivated opinion, the intervention by the relevant public authority (the relevant Prefect or Minister) in respect of contested restructuring processes involving collective dismissals. It does not go so far as to prevent such intervention (the public authorities can always have the last word), but it certainly anticipates it, as exemplified by the recent June 2014 Opinion on the Chalyvourgia redundancies, also discussed in Section 5 above. Third, and depending on the consensus surrounding future SLC decisions on projected redundancies, this new industrial relations practice may have the effect of pre-empting (again not legally, but certainly in industrial relations practice) any further intervention on the part of the relevant public authority. To make this last point more explicit, it is suggested that if the SLC were, in future, to adopt unanimous motivated opinions authorizing particular restructuring plans involving collective redundancies, it would be very unlikely (though technically still possible) that the Greek public authorities would want to interfere with the SLC’s determination, as the latter would reflect a tripartite consensus amongst the social partners and the government representatives involved in the Council’s decision-making process.

The recent decision on the Chalyvourgia redundancies offers a first test case to begin an evaluation in less abstract terms of the concrete application, and thus the real significance, of the industrial relations innovation introduced with the SLC Decision of January 2014. It must be noted that the motivated opinion on Chalyvourgia, dated 10 June 2014, was not reached unanimously, but rather by a majority of votes, opposed by the delegation from the General Confederation of Greek Workers (GSEE) and the representative of the Ministry of Economic Affairs. At the time of writing (October 2015) it is clear that the Ministry of Labour has decided not to intervene in respect of this particular decision by the SLC. In any case, and regardless of the final outcome of this particular case, the authors of this report are of the view that a proper assessment of the actual functioning and concrete implications of the practice introduced by the SLC Opinion of January 2014 would require the monitoring and assessment of its operation and substantive decisions over a longer period of time. The length of this period would depend on the extent to which the SLC will be asked to operate this particular procedure in the months and years to come.

6.5 Conclusions: ‘Best practices’, good principles, and rights

In September 2014, the ILO asked us to consider the extent to which the Greek “collective dismissal system replicates best practices in an effective, credible, and durable way”, echoing the words contained in the updated Memorandum of Understanding of April 2014. In turning to this specific request, it is important, first, to reiterate an introductory point briefly discussed in Section 2 and in section 4.7, above. These sections noted the potentially significant difficulties, in both analytical and normative terms, of analysing industrial relations and labour law systems in terms of best practice. In this context, one should bear in mind Joseph Stiglitz’s reminder that driving on the left “is a best practice in London, but not in New York”.²⁷⁷ “Best practices”, as Stiglitz thus points out, are necessarily highly context-specific – as the very notion of a minimum harmonization instrument at EU level clearly recognizes. Indeed, the idea of “replicating” or transplanting specific labour law solutions across different countries is, in the established view of labour law scholars, anything but straightforward. What may amount to a specific good practice in, say, the German industrial relations context²⁷⁸ may not be transferable to other realities, such as for instance the Greek one. This may be due to the fact that Greece does not share a similar industrial relations tradition or a similar industrial and economic base, or more crudely to the fact that the institutions or political and social consensus that underpin a particular practice in Germany simply do not exist in Greece. Therefore, the idea of replicating specific best practices of other EU countries in Greece is hardly a straightforward one.

Having reiterated this crucial preliminary point, the authors of this report have nonetheless felt capable of engaging with the task assigned in two different, and mutually reinforcing, ways. First, while it is argued that the legal transplant of specific best practices across different industrial relations contexts is a task marred with difficulties and risks of rejection, it can be suggested that it is possible, and in fact desirable, for industrial societies and their legal systems to aspire to incorporate within their peculiar domestic frameworks some generally accepted principles of good labour relations and workplace participation. More to the point, there is no doubt that suggestions such as “[a]ctive social partner involvement is crucial in many of the schemes available to anticipate and manage restructuring”,²⁷⁹ can be understood as a good practice, even though, given the general and abstract tone in which they are formulated, it would be more accurate to regard them as “good principles” for managing restructuring processes and collective redundancies. In fact, from a legal point of view, “active social partner involvement”, for instance in the form of information and consultation rights, and in the form of active engagement between independent social partners, can be understood equally well, if not better, as the expression of a number of (at times fundamental) labour rights protected by various European and ILO standards, some of which have been discussed in Section 3 above. It may therefore, and this is the second way in which one could engage with the task at hand, be possible to assess the extent to which a particular national legal framework provides an effective, credible and durable enjoyment of these more specific and tangible rights and principles. So does the Greek collective dismissal system replicate the generally acceptable “good principles” for managing such processes, as recognized by various European and international standards? And if so, does it do so in an “effective, credible, and durable way”?

In light of the significant changes to which the Greek system of industrial relations has been subject in recent years,²⁸⁰ and the analysis carried out in Sections 3 and 5 above, and bearing in mind the assessment appearing in section 6.4, the authors of this report are of the view that the current Greek collective dismissal system is the expression of a *sui generis* approach to the management of restructuring processes. This approach encapsulates a series of features that are also present in other legal systems (albeit not necessarily in identical forms due to national specificities and traditions) and do not appear to breach any of the general principles contained in EU/ILO standards that shape the international framework regulating collective dismissals. One of the most important specificities of the Greek system is the role assigned to public authorities; a role that – as noted in

277. Stiglitz, *Joseph Stiglitz and the World Bank*, op. cit., p. 203. His critique of the concept of “best practice” is further articulated at pp. 203–206.

278. For instance, sectoral studies note and praise the important role of “works councils” and “co-determination” in managing and anticipating change. See J.-J. Paris et al., *Anticipation of change in the automotive industry*, op. cit., p. 137.

279. European Commission: *Restructuring in Europe* 2011, op. cit., SEC(2012) 59 final, p. 10.

280. These changes have been the object of observations of the ILO supervisory mechanisms. See for instance ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 103rd Session, Geneva, 2014, pp. 111–112.

Section 4 of this report – is also recognized in some other Member States (albeit in slightly different ways, and more attuned to their particular contexts). This role, in our view, does not contravene any of the general principles or EU/ILO rights analysed in this report. Another key specificity of the Greek system is the renewed role of the Supreme Labour Council, as discussed above in section 6.4. In our view, this type of practice likewise does not contravene any of the general principles or EU/ILO rights analysed in this report. Bearing in mind the considerations expressed in the last paragraph of section 6.4, it could be argued that to the extent that (and as long as) it can be seen as the expression of “active social partner involvement” and tripartite consensus, this renewed role of the SLC may actually be understood as being aligned with some of these general principles.

Turning finally to the question of whether the Greek system of collective dismissal can be seen as “effective, credible, and durable”, and bearing in mind the considerations made above in sections 5 and 6.4, and in particular the significant changes to which the system has been subject since January 2014, it is necessary to reserve judgement and suggest that while the current arrangements have so far proved to be “effective”, they will have to be monitored, and their outcomes evaluated, over a certain period of time in order to come to a more definite conclusion on this particular question.

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