International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores
The Global Voice of Business

SURVEY

INTERNATIONAL ORGANISATION OF EMPLOYERS

COLLECTIVE REDUNDANCY PROCEDURES

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Introduction

BUSINESSES OPERATING ON A GLOBAL SCALE FACE INCREASING CHALLENGES IN CONDUCTING THEIR OPERATIONS; THEY MUST COMPLY WITH NATIONAL LAWS, BUT ALSO BE MINDFUL OF OTHER SETS OF REGULATIONS.

Businesses might be obliged to undertake collective dismissals in the event, among others, of the restructuring, relocation, reorganisation, downsizing or shutting down of facilities. In doing so, companies have to respect the necessary procedures, especially if restructuring or downsizing occurs simultaneously in various countries.

Collective redundancy procedures are a possible source of conflict with trade unions and might be particularly challenging when they occur in various countries and within different industrial relations systems.

The role of employers' organisations in collective dismissals, despite not institutionally recognised, is quite important when it comes to the elaboration and adoption of related regulations. It ranges from providing advice in advance of the procedure to assisting companies during the preparation of social plans that constitute alternatives to the collective dismissals.

To better understand the procedures and possible challenges arising from collective dismissals, the IOE launched, in the framework of the Industrial Relations Policy Working Group (IRPWG), a short questionnaire to its members on the following themes:

- Reasons and circumstances: the reasons for collective redundancies, number of employees per company and timeline.
- Procedure: information to and consultation with trade unions and notification to the administrative authorities.
- Role of employers' organisations.

The responses collected from 21 members from different industrial relations systems and regions provide a basis to assess the difficulties businesses have to deal with when implementing collective dismissals.

The three themes mentioned above will be examined in the first three chapters. Within the IRPWG, the IOE has also collected direct information from companies undertaking redundancy plans, which will be included in Chapter 4.

Further responses from IOE members will be inserted in the final publication.

For the scope of this publication only private sector dismissals were considered.

CHAPTER 1 - Reasons and Circumstances

COLLECTIVE DISMISSAL IS A MATTER FOR NATIONAL REGULATION. A BASIC FRAMEWORK IS PROVIDED AT INTERNATIONAL LEVEL WITH CONVENTION NO. 158, BUT IT LEAVES WIDE ROOM FOR MANOEUVRE FOR ILO MEMBER STATES TO DEFINE THE PROCEDURES AND THE BASIC REQUIREMENTS FOR CONSIDERING THE PROCESS A "COLLECTIVE" ONE.

REASONS AND CIRCUMSTANCES AT INTERNATIONAL AND REGIONAL LEVELS

At **international level**, collective dismissals are partially covered by **ILO Convention No. 158, the "Termination of Employment Convention, 1982 (No. 158)"**, which has been ratified by only 36 of 187 ILO Member States. On this basis therefore, we cannot consider C. 158 an internationally recognised labour standard. ILO Convention No. 158 does not refer directly to "collective redundancies"; it mentions "*terminations for reasons of an economic, technological, structural or similar nature*", in which the number of workers whose termination of employment is contemplated in laws and regulations is at least a specified number or percentage of the workforce. Articles 13 and 14 of the Convention, which describe the procedure for the provision of information to and consultation with workers' representatives and the notification to the competent authorities, are analysed in Chapter 2.

At **European level**, the **Council Directive 98/59/EC of 20 July 1998** on **the approximation of the laws of the Member States relating to collective redundancies** has harmonised national legislations on the procedures and practical arrangements. The Directive defines in Article 1 "collective redundancies" as "*dismissals effected by an employer for one or more reasons not related to the individual workers concerned, where, according to the choice of the Member States, the number of redundancies is as specified in the Directive (see below page 6).* Given that the directive does not provide a definitive list of reasons that may be invoked for collective redundancies, European countries have wide room for manoeuvre and this leads to significant differences between EU Member States. The subsequent sections of the Directive deal with information and consultation, as well as notification to the competent authorities. They are, therefore, described in Chapter 2.

Collective retrenchments with a transnational character fall into the sphere of application of the **EU Directive N. 2009/38/EC on the establishment of the European Works Council (EWC)**. The Directive refers to *"the right to establish EWC in companies or groups of companies with at least 1000 employees in the EU and the other countries of the European Economic Area (Norway, Iceland and Liechtenstein), when there are at least 150 employees in each of two Member States".* Dismissals are transnational when "*they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States*" (Article 1.4). The EWCs are bodies through which central management informs and consults the European employees of the company on progress and significant decisions. Significant means of importance for the EU workforce and that the information and consultation process has an added-value in the decision making process. The Directive leaves the parties free to determine the nature, composition, function, mode of operation, procedures and financial resources of the EWC. In some occasions the EWCs have foreseen and negotiated specific procedures as part of the International Framework Agreement with the company.

a. Reasons for collective dismissals

Regarding the **definition of the reasons for collective dismissals**, some countries have a statutory definition of collective dismissals with specific and prescribed reasons that may be invoked. This is the case of ***Australia, Burkina Faso, Democratic Republic of Congo, France, Panama, Portugal, Serbia, Venezuela.*** The prescribed reasons are usually related to economic, technological or structural changes.

In ***Australia*** and ***Serbia*** one talks of operational reasons, which are related to economic, technological or structural changes to the business. In the ***Democratic Republic of Congo***, apart from economic difficulties or company restructuring, collective redundancies may be undertaken due to *force majeure* (when there is a decision of the Labour Inspectorate and the business is closed or the employment contract is suspended for safety reasons). Similarly, in the ***Portuguese*** labour code, collective dismissals are allowed on closing one or more sections of the business or equivalent component, or for the reduction of the number of workers due to economic, structural or technological reasons. In more detail, the Labour Code refers to: a) *market reasons* such as a slowdown in business activity caused by an unexpected decrease in demand for goods or services; or an intervening legal or practical impediment to placing these goods or services on the market; b) *structural reasons* such as economic and financial imbalances, changing the business, restructuring, or replacement of dominant products; c) *technological reasons* such as changes in technical or manufacturing processes, automation of production, control, or cargo-transportation tools, as well as the computerisation of services or the automation of means of communication.

In ***Venezuela***, a collective reduction of the workforce can occur due to economic circumstances, or technological and organisational changes. However, the legal process of collective redundancies is rarely used in practice due to the fact that the law on the termination of employment is very strict (for every dismissal there should be a fair ground and has to receive the previous authorisation of the Labour Inspectorate – unless the Ministry of Labour decides to halt the process). Besides this, workers and employers can always conclude individual agreements on the termination of employment.

Regulations in ***Panama*** and ***France*** provide different legitimate reasons for collective dismissals. In ***Panama***, the law provides valid economic reasons for the employer to terminate the contract of employment, among which are the employer's bankruptcy or insolvency, the closing down of the undertaking, the exhaustion of raw materials in the case of extractive industries, the final and permanent termination of the activity or the duly proven reduction of the employer's activities due to serious economic crisis. Under ***French*** law, a redundancy is a *dismissal for "reasons not related to the employee" which result from the cessation or variation of a job*. This also applies when the employee refuses a change to their employment contract. Cessation, variations or changes to the employment contract must be linked to economic difficulties or technological changes, or reorganisation needs.

Some other countries do **not provide a legal definition of valid reasons for collective redundancies.** This is the case in ***Algeria, Austria, Canada, Croatia, Denmark, the Netherlands, Norway, Romania, Saint Lucia, Suriname, Swaziland and Switzerland*** where collective dismissals occur simply for *reasons not related to the individual workers concerned.*

However, this does not mean that the process of termination of employment is made easier, as national legislations usually contain other requirements, such as specific quantitative constraints for collective dismissals. In ***Denmark*** for example, at least a fair ground for dismissal is required. Similarly, in ***Norway*** all terminations of employment have to be fair and based on "objectively justified" circumstances. In ***Algeria,*** workforce reductions are not considered as a collective process but a measure of simultaneous individual dismissals for economic reasons. According to the ***Romanian*** Labour Code, collective redundancies can take place where there are real and serious reasons to eliminate the job positions and the whole procedure proves to be efficient for the business. This means in practice that collective dismissals take place in the event of economic difficulties.

On the other hand, in ***Canada*** employers may dismiss employees collectively with no specific restriction.

b. Quantitative criteria

The establishment of **quantitative criteria** in which collective redundancies can take place is common in almost all the countries where the questionnaire was completed. It includes the *minimum number of employees to be dismissed* in relation to the *size of the company*, as well as the *timeframe for dismissal.* These two elements constitute the circumstances in which collective dismissals are possible (see the table below).

Country	Number of dismissals required in relation to the size of the company and timeframe for dismissal
Algeria	Not specified
Australia	15 employees
Austria	Within 30 days - 5 employees in undertakings employing 20 to 100 employees - 5% of employees in establishments employing 100 to 600 employees - 30 employees in establishments employing more than 600 employees - 5 employees older than 50 years
Burkina Faso	Not specified
Canada	Under Federal law it is a dismissal of at least 50 employees in an industrial establishment within a period not exceeding 4 weeks. Each province has specific regulations.
Democratic Republic of Congo	Within 30 days - 3 employees for companies employing 10 employees - 4 employees for companies employing 11 to 20 employees - 10 employees for companies employing 21 to 100 employees - 30 employees for companies employing 101 to 500 employees - 50 employees for companies employing 501 to 1000 employees - 100 employees for companies employing 1001 to 2000 employees - 200 employees for companies employing 2001 to 4000 employees - 250 employees for companies employing 4001 to 6000 employees - 300 employees for companies employing more than 6000 employees
Croatia	20 employees within 90 days (with at least 5 employees dismissed on economic grounds)
Denmark	Within 30 days - 10 employees for companies with 20 to 99 employees - 10% of the workforce for companies with 100 to 299 employees - 30 employees for companies with 300 employees or more
France	Minimum of 2 employees within 30 days. Procedures depend on the number of employees (more or fewer than 10).
Norway	10 employees, irrespective of the size of the company, within 30 days
Panama	No minimum required
Portugal	Within 90 days - At least 2 employees in companies employing fewer than 50 employees (micro enterprises and small companies) - At least 5 employees in companies employing at least 50 employees (medium-size and large companies)
Romania	Within 30 days - At least 10 employees for companies employing 20 to 100 employees - At least 10% of the employees for companies employing 100 to 300 employees - At least 30 employees for companies employing 300 employees

Netherlands	Within 90 days at least 20 employees within one geographical work area
Saint Lucia	No minimum required
Serbia	Within 30 days - 10 employees for companies employing 20 to 100 employees for an indefinite term - 10% employees for companies employing 100 to 300 employees for an indefinite term - 30 employees for companies employing more than 300 employees for an indefinite term - 20 employees to be made redundant in a period of 90 days, irrespective of the number of employees
Suriname	No minimum required
Swaziland	5 employees
Switzerland	Within 30 days - At least 10 employees in undertakings employing 20 to 100 employees - At least 10% of employees in undertakings employing 100 to 300 employees - At least 30 employees in undertakings employing more than 300 employees
Venezuela	Within 90 days (or longer in critical circumstances), - 10% of employees in companies employing fewer than 50 - 20% of employees in companies employing more than 50 - 10% of employees in companies employing more than 100

These quantitative requirements can relate to the *number of employees* or the *percentage of an enterprise workforce*. This is the case in all the countries in the ***European Union and in Australia, Burkina Faso, Canada, Democratic Republic of Congo, Norway, Serbia, Switzerland and Venezuela***. Besides ***Australia, Canada, Norway and Swaziland***, in which the threshold is absolute and irrespective of the size of the company, all other countries have legal criteria specifying graduated thresholds according to the number of employees and/or the size of the company. Usually, a three-level distinction is made between small, medium and large companies and there are often no regulations for companies with fewer than 20 employees.

Countries of the European Union follow Directive No. 59 of 1998, which consider the redundancies

(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 % 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."*

It should be noted that based on the flexibility granted by the Directive, differences between the thresholds remain vast and numerical thresholds differ significantly: the lowest value is in ***Portugal*** and ***France***, where two dismissed employees, respectively within 90 and 30 days, allow the launch of a collective redundancy procedure. In ***the Netherlands***, the process includes a geographical dimension (the dismissals must take place within one of the country's six regions).

The time period within which collective dismissals have to take place also differs significantly: a 30-day period applies in most countries (***Austria, Democratic Republic of Congo, Denmark, France, Norway, Romania, Serbia and Switzerland***) but the period is up to 90 days in ***Croatia, the Netherlands, Portugal and Venezuela.***

Other countries such as ***Panama, Saint Lucia and Suriname*** have no quantitative definition of collective dismissals or a specified timeframe.

Once companies have met quantitative requirements, such as the minimum number of employees and the time period, the collective redundancy procedure can start and usually an information and consultation phase with workers' representatives and/or the notification to the administrative authorities begins.

CHAPTER 2 - Procedure

SPECIFIC PROCEDURAL REQUIREMENTS EXIST IN ALL THE COUNTRIES SURVEYED AND MAINLY CONSIST OF INFORMATION AND CONSULTATION WITH WORKERS' REPRESENTATIVE AND THE NOTIFICATION TO THE ADMINISTRATIVE AUTHORITIES, WHICH MIGHT BE A REQUEST FOR PRIOR APPROVAL OR MERELY AN INFORMATION-SHARING REQUIREMENT. AS ANTICIPATED ABOVE, A BASIS FOR PROCEDURAL REQUIREMENTS IS CONTAINED IN ILO CONVENTION NO. 158, AS WELL AS IN EUROPEAN DIRECTIVE NO. 59/98 AND, FOR TRANSNATIONAL REDUNDANCY PROCEDURES IN THE EUROPEAN DIRECTIVE NO. 38/2009.

Procedural requirements in ILO Convention No. 158 (Articles 13 and 14)

ARTICLE 13

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

*a) provide the workers' representatives concerned in good time with **relevant information** including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;*

*b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for **consultation** on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment. [...]*

ARTICLE 14

*1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the **competent authority** thereof as early as possible, giving relevant information, including a **written statement of the reasons for the terminations**, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.*

2. *National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.*

3. *The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a* ***minimum period of time before carrying out the terminations****, such period to be specified by national laws or regulations.*

According to the perspective expressed by the employer constituency in international forums, obligations regarding information, consultation and notification should be limited to terminations involving a significant number of workers or percentage of the workforce ("mass dismissals"). Information and consultation obligations should be restricted to the essentials. Notification details and procedures should be simple and clear, making full use of the flexibility contained in Art. 14, in order to avoid undue bureaucratic burden.

The purpose of notification to the administrative authorities should be restricted to enabling the authorities to help workers find alternative employment but it should not give the competent authorities the power to review and question the appropriateness and the extent of the terminations[1].

[1] Further specification about the procedure of dismissal for economic, technological, structural or similar reasons is contained in ILO recommendation No. 166 that has no binding force. It reads as follows:
"19. (1) All parties concerned should seek to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned.
(2) Where appropriate, the **competent authority should assist** the parties in seeking solutions to the problems raised by the terminations contemplated.
MEASURES TO AVERT OR MINIMISE TERMINATION
21. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, **restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.**
22. Where it is considered that a **temporary reduction of normal hours** of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, financed by methods appropriate under national law and practice.
PRIORITY OF REHIRING
24. (1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given a certain **priority of rehiring** if the employer again hires workers with comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.
(2) Such priority of rehiring may be limited to a specified period of time.
(3) [...]
MITIGATING THE EFFECTS OF TERMINATION
25. (1) In the event of termination of employment for reasons of an economic, technological, structural or similar nature, the placement of the workers affected in **suitable alternative employment** as soon as possible, with training or retraining where appropriate, should be promoted by measures suitable to national circumstances, to be taken by the competent authority, where possible with the collaboration of the employer and the workers' representatives concerned.
(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.
(3) [...]
26. (1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.
(2) The **competent authority should consider providing financial resources** to support in full or in part the measures referred to in subparagraph (1) of this Paragraph, in accordance with national law and practice.

Information and consultation in EU Directive No. 98/59/EC

Under the EU Directive No. 59, an employer contemplating collective redundancies should begin consultations with the workers' representatives in good time with a view to reaching an agreement. The consultation must 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.

Information and consultation in case of transnational collective redundancy procedures: EU Directive 2009/38/EC

Information and consultation are the main function of an EWC, in line with the definition provided in detail in Article 2 of the Directive[2]. Deviations from the binding definitions are legally void. Information and consultation have to be done in a timely manner, to allow employees' representatives to undertake an in-depth assessment of potential impacts, prepare themselves, start a dialogue with the management and finally express an opinion on the basis of the information provided. Given the potential difficulties of these processes, it is important that the EWC provides an opinion within a reasonable time frame. In any case the management is free to decide whether the opinion of the EWC has to be taken into account.

Information and consultation in the EWC do not replace any information and consultation rights at local or national level. In certain cases, European-level and national-level information & consultation processes have to be started in a coordinated manner, each according to its own rules (the EWC agreement for the European-level and the national law and practice for the local level).

a. Information and consultation requirements

Almost ***all surveyed countries*** have specific provisions regarding the procedures of notification to and consultation with workers' representatives. *Information* usually includes the reasons for the projected redundancies, the total number and categories of employees who are most likely to be made redundant, an explanation of the criteria used to select the redundant employees, the amount of, and the methods for calculating, severance payments and any other sort of payment due to the employee. *Consultations* can cover discussions on alternatives to the redundancies, the selection criteria and the payments to be made to the dismissed employees.

In ***Portugal***, an employer who intends to proceed with collective redundancies has to provide the information mentioned above in writing to the Works Councils or to the union committees or any other representative employee body. In the absence of workers' representatives, the employer has to communicate the intention of dismissal to each of the workers who might be made redundant, who can appoint a representative committee among themselves. In the five days following the communication, the employer starts negotiations with the workers' representatives (or representation body) with a view to reaching an agreement on the size and effect of the measures to be applied, and discuss possible alternatives. Once the agreement is concluded, or in the absence of an agreement, 15 days after the communication has been sent, the employer notifies each worker of the decision regarding dismissal and the compensations due.

In ***Swaziland***, consultation covers, among other issues, the definition of possible alternatives to retrenchments, the selection criteria and the conditions under which the dismissals are to take place, such as payment of severance pay, and timing.

[2] Article 2.1 reads as follows:
"f) 'information' means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;
(g) 'consultation' means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings".

Information and consultations have to take place before the dismissals are undertaken in ***Australia, Norway and Switzerland*** at the earliest opportunity. In the ***Netherlands***, the employer must ask the Works Council in writing for an opinion on the proposed redundancies. Consultations here include the reasons behind the proposal, the consequences on employees and the alternatives to avoid or reduce the dismissals. If the Works Council gives negative opinion, the procedure is suspended for at least one month, during which the Works Council may present a complaint against the employer before the Commercial Court.

Only in ***Panama*** and ***Suriname*** are employers not required to notify or consult the workers' representatives in the event of collective redundancies (unless a collective agreement disposes otherwise).

b. Social Plan

Whether the employer needs to provide a social plan depends largely on the country. A social plan might contain alternative measures to assist redundant employees, such as internal transfer, proposal for external employment and measures for early retirement, and compensation packages. Social plans must be developed in ***Algeria, France, Canada, Croatia and Venezuela*** (as a result of the complex procedure, basically the employer has to provide the Labour Inspectorate with a possible range of alternative measures).

In ***France,*** companies planning to dismiss at least ten employees and employing more than 50, have to establish a "Job Preservation Plan" ("*Plan de Sauvegarde de l'Emploi – PSE")* providing concrete and detailed measures to avoid or reduce the impact of the redundancies. The social plan is not compulsory for companies with fewer than 50 employees or dismissing fewer than ten employees. This plan may be elaborated in conjunction with the workers' representatives and result in the signature of a collective agreement, which needs to be validated by the administrative authority (the so called "Portail Direccte"). Alternatively, the employer may unilaterally present their plan and request the validation by the administrative authority. In the absence of validation or agreement with the workers' representatives, the dismissals are void. Similarly, in ***Croatia***, an employer who intends to carry out a collective redundancy after consultations with the Works Council is obliged to develop a "Redundancy Social Security Plan". This plan is elaborated in consultation with the public employment service and the Works Council and includes the possibilities of introducing changes in technology and the organisation of work, as well as alternatives to dismissal such as additional training or re-employment with another employer. The Works Council may submit objections and proposals concerning the proposed redundancy social security plan. The competent public employment service is entitled to state its position concerning the plan within a period of eight days from the receipt of such plan. The employer is compelled to start dismissals after 30 days from the submission of the plan to the public employment service. This can delay the process for a period of three months.

In ***Austria***, a social plan might be developed upon the request of the Works Council (in companies with at least 20 employees).

In other countries, the employer starts consultations and, without being required by law, normally develops a social plan. In ***the Netherlands***, trade unions are involved in these negotiations (and Works Councils may be involved too) which focus on the financial compensation package and measures to assist the affected employees, such as internal transfers, arrangements with older employees and assistance to find new employment. In some countries, as part of the consultation process, the employer elaborates a programme to manage redundancy. This basically constitutes a social plan, but there is no legal requirement to follow this programme. This is the case in ***Portugal and Serbia.***

In other countries such as ***Romania,*** there is no legal obligation or practice to produce a social plan.

c. Notification to and/or prior approval of the competent authorities

In most cases employers have to notify the competent administrative authority or the public employment service that they are starting a collective redundancy process. In ***Algeria, Australia, Austria, Burkina Faso, Canada, Croatia, Democratic Republic of Congo, Denmark, Norway, Portugal, Romania, Saint Lucia, Serbia, Swaziland, Switzerland***, the notification to the administrative authority or the public employment service is mandatory but prior approval is not required before dismissing workers.

In ***Australia,*** the employer must formally notify the "Centrelink" which is the federal government agency providing income support and job and training assistance. Administrative approval is not required, but if the notification process is not respected, the Fair Work Commission (the Australian National Workplace Relations Tribunal) can consider the dismissal unfair and order the reinstatement of the employee.

In ***Denmark***, the employer must notify the relevant Regional Employment Council of their intention to start

consultations with the workers' representatives and provide a copy of the information given to the workers. After ten days, it must follow up with information and the names of the affected employees. At the same time, individual employees have to be informed of their dismissal.

In **Romania**, the Regional Labour Inspectorate must be informed at least 30 days before the effective application of the procedure. The Inspectorate might delay the date of the dismissals for a maximum period of ten days upon the request of any party, but it is not able to block the process.

However, the *prior approval by the national authority is mandatory* in ***France*** (for companies with at least 50 employees and dismissal of at least 10 employees)***, the Netherlands, Panama and Venezuela.***

In ***the Netherlands***, the employer must obtain the prior approval of the Social Security Institution, which may refuse to grant permission when the procedure is not respected (lack of notification in writing or consultation with workers' representatives, misuse of the selection criteria, timeframe not respected). In ***Panama***, the administrative authority (the General or Regional Directorate of the Ministry of Labour) has to respond to the employer's request for authorisation within a maximum of 60 days. The Labour Directorate informs workers' representatives and a negotiation phase is opened. If no response is given by the Labour Directorate within the 60-day period, the employer can proceed with the dismissals.

In ***Venezuela***, the Labour Inspectorate has to authorise the collective redundancy and the procedure is complex and burdensome: the employer who intends to carry out a collective redundancy procedure must notify the trade union, the Labour Inspectorate and the affected employees of the planned changes to the production process, in addition to an analysis of the financial situation of the company. The Labour Inspectorate has the possibility to request the information it deems appropriate, effect inspections and supervisions and order expert opinions. Once the information has been provided, the Labour Inspectorate has to evaluate whether there are alternatives to the dismissal such as workers' participation in the company management or other forms of workers' participation, such as cooperatives. The procedure continues with the appointment of a conciliation board, which aims at reaching agreements on the employees to be made redundant, the timing of the redundancy, and the foreseen compensation. As an alternative to the dismissal, the conciliation board may reach an agreement on the modification of employment conditions, collective suspension of work for no more than 60 days in order to overcome the economic crisis, a recapitalisation of the company in view of the workers' participation in its management. In this last option, the State offers special protection and aid to the employee-managed company.

d. Overall length of the process

The *overall length of the process* differs significantly across the countries surveyed, mainly due to the minimum period of consultation prescribed in the legislations. The ***French*** consultation process is the most time-consuming: a collective redundancy procedure can be extended to four months, whereas employers in ***Austria, Denmark, the Netherlands, Norway, Suriname and Switzerland*** can carry out a collective dismissal procedure in 30 days.

In ***Romania,*** the minimum duration of the process is approximately 60 days, but it can be extended. In ***Portugal*** it is about 90 days***.***

In ***Venezuela***, due to the complexity of the documentation to be presented to the Labour Inspectorate, authorisation is rarely obtained and can be delayed for several years. Therefore, the public administration can suspend a collective dismissal for an indeterminate period while conducting the investigations it deems appropriate.

A summary of the procedural requirements, including the information, consultation period, prior approval of the administrative authority and obligation to develop a social plan are set out in the following table:

Country	Information and consultation with workers' representatives	Notification to the admin. authority or public employment service	Prior approval of the admin-istrative authority	Minimum period of time for dismissal after notification	Obligation to develop a Social Plan
Algeria	✓	✓ Labour Administration	No	Not specified	✓
Australia	✓ As soon as practicable and before there have been any terminations	✓ Obligation to inform the employment public service "Centrelink"	No	Not specified	No
Austria	✓	✓ Obligation to inform the Employment Service – AMS	No	30 days after notification to the Employment Service	Upon request of the Works' Council
Burkina Faso	✓	✓	No	Not specified	Not specified
Canada	✓	✓ Obligation to inform the Ministry of Labour	No	16 weeks after notification to the Ministry of Labour	✓
Croatia	✓	✓	No	Not specified	✓
Democratic Republic of Congo	✓	✓ For redundancies but not required in cases of *force majeure*	No	Not specified	No
Denmark	✓	✓ Obligation to inform the regional Employment Council (at least 21 days after consultations, and again 10 days later with the names of the affected employees)	No	30 days after notification to the Regional Employment Council (up to 8 weeks for mass dismissals – i.e. more than 50% of the employees)	No
France	✓	✓ Local Labour Administration	✓ Indirectly through the validation of the social plan	3 months or more	✓
Netherlands	✓	✓	✓ Social Security Institution	1 month after notification to the workers' representatives	Not compulsory

Norway	✓ At the earliest opportunity	✓ Obligation to inform the Norwegian Labour and Welfare Service – NAV	No	30 days after the authority has been notified	No
Panama	No	✓	✓	After approval has been received and otherwise 60 days after notification to the administra-tive authority	No
Portugal	✓	✓ Relevant departments of the Ministry responsible for labour matters – DGERT	No	Overall duration of the process: approx. 90 days	Not compulsory
Romania	✓	✓ Obligation to inform the local labour inspectorate and the territorial workforce agency	No	30 days after the notification to the labour inspectorate Overall duration of the process: minimum of 60 days	No
Saint Lucia	✓	✓	No	Not specified	Not specified
Serbia	✓	✓ Public Employment Service	No	Not specified	Not compulsory
Suriname	No	✓ Ministry of Labour	No	30 days after notification to the Ministry of Labour	Not specified
Swaziland	✓ Compulsory	✓ Office of the Commissioner of Labour	No	Not specified	Not specified
Switzerland	✓	✓ Office Cantonal de l'Emploi	No	2 to 4 weeks after consult-ation with the workers has started and the administrative authority has been notified	Not compulsory
Venezuela	✓	✓	✓ Labour Inspectorate	The public administration can suspend a collective dis-missal for an indeterminate period of time	✓

CHAPTER 3 - Employers' Organisations' Role

AS A LAST QUESTION, IOE MEMBERS WERE ASKED ABOUT THE ROLE OF EMPLOYERS' ORGANISATIONS IN COLLECTIVE REDUNDANCIES.

In general terms, employers' organisations play a limited institutional role. This is the case in ***Australia, Canada, France, Portugal, Romania, Suriname and in Switzerland***.

However, this takes place under the broad scope of *lobbying activities* of employers' organisations, which influence the content and adoption of regulation on collective redundancies.

In ***Algeria, Burkina Faso, Croatia, Democratic Republic of Congo, Denmark, Norway, Panama, Saint Lucia, Serbia, Swaziland and in Venezuela***, employers' organisations provide *advice* to their members on the legal requirements and the procedures.

An increasingly relevant role is being played by employers' organisations in ***Austria***, where the Chamber of Commerce plays a crucial role in assisting companies in the development of the so-called *redundancy socials plans*, with a view to mitigating the consequences of collective redundancies and to proposing alternative restructuring measures. It also provides assistance on the administrative aspects of the procedure. The outcome of the social plan negotiation might take the form of a collective agreement or a corporate agreement.

CHAPTER 4 - The direct experience of business

IN THE FRAMEWORK OF THE IRPWG, A MULTINATIONAL COMPANY HAS SHARED ITS EXPERIENCE ON THE PROCEDURES AND ADMINISTRATIVE REQUIREMENTS THAT HAVE TO BE RESPECTED WHEN UNDERTAKING RESTRUCTURING PLANS.

Michelin

Bertrand Ballarin, *Head of industrial relations, Michelin, France,* referred to the recent company strategy of balancing production shares throughout the world. As a consequence, collective retrenchments have taken place in Europe in the truck and bus market, and new factories have been opened in China and India.

He listed the main steps of the procedure:

a. The restructuring needs to have a strong industrial and economic rationale that is communicated in clear terms. An early dialogue with workers' representatives allows internal discussion within the union and with the employer, so as to avoid the surprise effect, even if this is not always possible. b. Each factory works under a specific context and needs a differentiated restructuring plan. c. The involvement of the unions is key for elaborating alternative solutions (recent development). d. It is important to keep the public authorities informed throughout all stages, both at the national and at the local levels. e. The company invests locally after or during the redundancy procedure, in order to facilitate the employment of the redundant workforce and to encourage the creation of new jobs. The takeover of the company facilities is the most difficult achievement. f. The involvement of technical experts linked to the union may facilitate the dialogue between the union and the management. g. Dismissed employees are always offered two to three

jobs within Michelin. However, a low number of employees accepts the new employment positions (usually two third of the employees refuse to accept). In case of refusal, the company offers trainings in view of a new employment with another employer and actively assists people in finding new jobs.

Conclusions

THE DIFFERENCES IN PROCEDURES, AND THE NUMBER OF EMPLOYEES AFFECTED ACCORDING TO THE COMPANY SIZE AND WITHIN A CERTAIN TIMEFRAME, DEMONSTRATE HOW COLLECTIVE REDUNDANCIES MIGHT BE CHALLENGING FOR COMPANIES OPERATING IN VARIOUS REGIONS OF THE WORLD.

The main challenges certainly arise from the relationship with the unions or workers' representatives. However, consultation and information requirements are the natural avenue for agreements and negotiations of alternative restructuring plans. In practical terms, the early involvement of and constant dialogue with trade unions facilitate the smooth rolling out of the process.

Other challenges arise from procedural requirements, which might result in too many obligations for the employers over a long period of time, and from the need to receive the prior approval from the administrative authority. This results in procedures that are never finalised (as in ***Venezuela***) or very long consultations with workers' representatives to develop a social plan (as in ***France***). Other procedures might be extremely quick, if properly followed, as in ***Switzerland and Norway.***

Employers' organisations play a limited role and are only rarely directly involved in collective dismissals. However, they play an essential role in representing business interests in national fora where redundancy regulations are drafted and discussed. This activity is of fundamental importance for employers in easing the doing of business and should not be underestimated. Finally, employers' organisations play an important advisory and guidance role during the drafting of social plans.

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Australia	Australian Chamber of Commerce and Industry	Australian Chamber of Commerce & Industry
Austria	iv INDUSTRIELLEN VEREINIGUNG	Federation of Austrian Industry
Burkina Faso	CNPB CONSEIL NATIONAL DU PATRONAT BURKINABÉ	Conseil national du Patronat Burkinabé
Canada	CEC CCE CANADIAN EMPLOYERS COUNCIL CONSEIL CANADIEN DES EMPLOYEURS	Canadian Employers' Council
Democratic Republic of Congo		Fédération des Entreprises du Congo
Croatia	CEA Croatian Employers' Associatic	Croatian Employers' Association

Denmark		Confederation of Danish Employers
France		Mouvement des Entreprises de France
Netherlands		Confederation of Netherlands Industry and Employers
Norway		Confederation of Norwegian Enterprise
Panama		Consejo Nacional de la Empresa Privada
Portugal		Confederação Empresarial de Portugal
Romania		Confederation of Swedish Enterprise
Saint Lucia		St. Lucia Employers' Federation

Serbia		Serbian Association of Employers
Suriname		Suriname Trade and Industry Associations
Swaziland		Federation of Swaziland Employers and Chamber of Commerce
Switzerland		Union Patronale Suisse
Venezuela		Federación de Cámaras y Asociaciones de Comercio y Producción de Venezuela

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