Austria

Obligation to consider alternatives to collective dismissals

Phase	Labour Constitution Act (ArbVG)
Native name	Arbeitsverfassungsgesetz (ArbVG)
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

109

Description

In the case of planned changes in the business operation, including collective dismissals (within 30 days, dismissal of at least 5 employees in companies with 21–99 employees, at least 5% of the workforce in companies with 100-600 employees, at least 30 employees in larger firms or at least 5 employees aged 50+), the employer is obliged to inform the works council and, if demanded by the works council, consult on the implementation of the changes, including measures to avoid or reduce collective dismissals.

If the planned changes bring about negative consequences (understood as reduction of the income, longer commuting obligations and job loss) for all or a considerable number of employees in companies with permanently at least 20 staff members, a social plan can be agreed to avoid, reduce or remove the negative consequences for the employees. If the parties fail to agree on a social plan, the works council may refer the case to a public mediation and arbitration board (local labour and social court) consisting of a professional judge, two representatives of the company to be nominated by the employer and the works council and two other members from a list of people nominated to such boards. The board has to decide as quickly as possible, taking into account the interest of the company as well as of the employees. The decision of the board has to be implemented.

Commentary

The law does not directly include an obligation to consider alternatives to collective dismissals for employers. However, the obligation to inform and consult the works council before planned changes usually leads to negotiations about the number of dismissals and how jobs can be saved e.g. by reducing working-time etc.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Works council Other
Involvement (others)	Mediation and arbitration board
Thresholds	Affected employees: 5 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Austria: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Belgium

Obligation to consider alternatives to collective dismissals

Phase	Act of 13 February 1998 measures to promote employment
Native name	Loi du 13 février 1998 portant des dispositions en faveur de l'emploi/Wet of 13 februari 1998 houdende bepalingen tot bevordering van de tewerkstelling
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

62-70

Description

The information and consultation process refers to the period of time during which the employer has to provide information about collective dismissals (namely, within 60 days, cases of dismissals of at least 10 workers in companies with 20-99 employees, of at least 10% of the workforce in firms with 100-299 employees or of at least 30 dismissals in firms with 300 or more staff) and unions' representatives may ask questions and make suggestions about the social plan.

During the information and consultation process, the employer has the obligation to inform workers on the intention to proceed to collective layoffs. The employer also has to provide information on the economic and social context of the firm, the reasons why he/she wants to proceed to collective dismissals, the timeline and the workers involved in the collective dismissals.

During the information and consultation process, the employer must consult the workers' representatives (works council/union representative/workers) in order to avoid or reduce the collective redundancy and its consequences. The representatives may ask questions,

make suggestions or comments regarding the business transfers and/or collective dismissals, as well as contest the procedure in case of irregularities. The employer has the obligation to provide all information requested (when possible) but is not obliged to take into account the workers' representatives' suggestions.

Commentary

The information and consultation process is not limited in time. This means that the process continues until the union representatives receive the answers to their questions. When this process ends, the negotiation process can start.

Although the employer is not obliged to take into account the workers' representatives' suggestions, these are often discussed and bargained.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Belgium: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Bulgaria

Obligation to consider alternatives to collective dismissals

Phase	Labour Code
Native name	Кодекс на труда
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 130a

Description

In Bulgaria, companies envisage redundancies only as last resort and only after having considered all possible alternative options and/or identifying and implementing supporting measures (such as phasing planned measures over time, extending or reducing working time, seeking replacement activities). The employer is obliged to consult with trade unions about such alternatives. The trade unions may submit a statement to the Employment Agency (not compulsory) related to options for future employment of the dismissed employees.

Commentary

In order to protect the interests and rights of employees, the Labour Code requires that the employer is obliged before the consultations with the social partners, to provide written information to the representatives of the trade unions and the representatives of the employees for the reasons for the dismissals envisaged. Such information needs to include the following information:

- The number of employees to be dismissed and the main economic activities,
- occupational groups and positions to which they relate,

- the number of employees of the main economic activities,
- occupational groups and positions in the enterprise,
- the specific indicators for applying the selection criteria of the workers to be dismissed,
- the period during which the dismissals will take place and the amount of due benefits related to the dismissals.

All this information could be used by the employee representatives and the employer to reach an agreement, to avoid or limit mass layoffs and mitigate their consequences.

In case of nonfulfillment of this employer's obligation, the representatives of the trade unions and the representatives of the employees have the right to alert the Executive Agency 'Labour Inspectorate' for non-observance of the labour legislation.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Trade union Other
Involvement (others)	Executive Agency "General Labour Inspectorate"
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Bulgaria: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Croatia

Obligation to consider alternatives to collective dismissals

Phase	Labour Act 93/2014, 127/17, 151/22, 64/23
Native name	Zakon o radu 93/2014, 127/17, 151/22, 64/23
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 127, 128 (2)

Description

According to article 127, a collective dismissal must prompt the employer to begin consultations with the works council in a timely fashion and in the manner prescribed by the labour act, with a view to reaching an agreement aimed at avoiding redundancies or reducing the number of affected workers.

The mentioned redundancies concern those employees whose employment contract is to be terminated due to business reasons and where there is an agreement between the employer and the employee, as proposed by the employer. The employer is obliged to provide the works council a written notification with all relevant information (see Selection of employees for (collective) dismissals).

During the consultations with the works council, the employer is obliged to consider ways and means of avoiding the projected collective redundancies. The employer is also obliged to notify the public employment service of the mentioned consultations and provide information on the duration of consultations with the works council, outcomes and conclusions resulting therefrom, with a statement of the works council attached thereto, should he/she receive it.

Article 128 (2) stipulates that for employees who are proclaimed as surplus, the employment relationship may not be terminated within 30 days from the date of delivery of the information to the competent public employment service (PES). The PES may instruct in written form the employer to postpone dismissal to all or individual workers for a period of a maximum 30 days, if the company can ensure continuation of the workers' employment for the extended period.

Commentary

The employer can start with the preparation of the cancellation of employment relations, but cannot implement this decision before the expiry of the mentioned deadlines. Furthermore, in some circumstances the local government may informally seek to put pressure on employers and lobby the central government to find alternative ways to keep the employees in jobs as long as possible.

Rozman (2023) elucidates that according to Labor Act (OG 93/14, 127/17, 151/22, 64/23), Article 127, paragraph 1, an employer with whom, within a period of ninety days, the need for the work of at least twenty workers could cease to exist, of which the business-conditioned notice would terminate the employment contracts of at least five workers, is obliged to consult the works council in a timely manner and in the manner prescribed by this Act. in order to reach an agreement for the purpose of eliminating or reducing the need for the termination of the work of workers. Mentioned redundancy includes workers whose employment relationship will be terminated by the business-conditioned notice and the agreement between the employer and the worker at the proposal of the employer. Paragraph 3 determines that in order to implement the obligation of mentioned consulting, the employer is obliged to provide the works council with appropriate information in written form on the reasons why the need for workers' work could cease, the number of total employed workers, the number, occupation and jobs of workers for whose work the need could cease, the criteria for the selection of such workers, the amount and manner of calculation of severance pay and other benefits to workers and the measures taken by the employer to take care of redundant workers. Paragraph 4 stipulates that during the consult procedure with the works council, the employer shall consider and explain all possibilities and proposals that could eliminate the intentional termination of the need for workers' work. According to paragraph 5, the employer shall inform the competent public employment service of the conducted consult and submit to it the needed data.

Article 128, paragraph 12, defines that the competent public employment service may, no later than the last day of the 30 days period, order the employer in written form to postpone the implementation of the dismissal of all or particular workers determined by redundancy for a maximum of thirty days, if during the extended period he or she can

ensure the continuation of the worker's employment relationship.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Regional/local government Works council
Involvement (others)	None
Thresholds	Affected employees: 20 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Croatia: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Cyprus

Obligation to consider alternatives to collective dismissals

Phase	Collective Dismissals Law of 2001 (Law 28 (I)/2001)
Native name	N. 28(I)/2001 - Ο περί Ομαδικών Απολύσεων Νόμος του 2001
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Articles 4, 6 and 8 of the Collective Dismissals Law of 2001 (Law 28 (I)/2001)

Description

If an employer intends to proceed with collective dismissals (within 30 days, at least 10 dismissals in companies with 21-99 employees, at least 10% of workforce in companies with 100-299 employees or at least 30 dismissals in larger firms), he/she is obliged by Article 4 of the Collective Dismissals Law to enter in good time into consultations with the employees' representatives. The employer must have completed the consultations with the employees' representatives before he/she notifies the relevant authority on the intention to proceed to collective dismissals, since he/she has to provide information to the relevant authority also on the outcome of these consultations (Article 6). Collective dismissals can take effect at the earliest 30 days after the relevant authority has been notified (Article 8). These consultations should cover at least following issues:

- Possible ways and means for avoiding collective dismissals or the reduction of number of employees affected, and
- ways and means for lessening the impact of collective dismissals, by designing social measures, which should, among others, have the target of reemployment or retraining of dismissed employees.

Commentary

The legislation is rarely activated in Cyprus, since the definition of collective dismissals requires the dismissal of at least 10 employees. However, during the economic and financial crisis, particularly in 2012 and 2013, an increased number of collective dismissals cases was observed. The Labour Relations Department reviewed more than 140 cases during these years.

According to trade unions' evaluation this particular provision is more likely to be applied in organised companies, i.e. in companies where trade unions are present, demand and ensure that the legislation is respected.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Cyprus: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Czechia

Obligation to consider alternatives to collective dismissals

Phase	Labour Code (Law No. 262/2006 Coll.); Employment Act (Law No. 435/2004 Coll.)
Native name	Zákoník práce, zákon č. 262/2006 Sb.; Zákon o zaměstnanosti, zákon č. 435/2004 Sb.
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

62 Labour Code, 110 Employment Act

Description

The purpose of consultations with the trade union organisation or the works council is to reach an agreement on the measures aimed at preventing or reducing collective dismissals (within 30 days, dismissals of at least 10 workers in companies with 20-100 employees, at least 10% in companies with 101-300 employees, or at least 30 workers in companies with more than 300 workers), the mitigation of their adverse effects for employees, and the possibility of placing workers in suitable jobs at another employer’s place of work.

The Labour Office may conclude an agreement with the employer concerning the acquisition, upgrading or extension of a worker’s qualifications. If employee's retraining is carried out on the basis of an agreement with the Labour Office, it can fully or partially cover the associated expenses.

If a training facility supplies the employee's retraining for an employer, an agreement is concluded among the employer, the retraining facility and the Labour Office.

Retraining of employees involving the acquisition, upgrade or extension of a qualification that takes place during working hours may be regarded as an obstacle to work on the part of the employee. For this period, the employee is entitled to an average earnings refund of wages. Retraining outside working hours takes place only if necessary.

Commentary

The number of workers shown in the table were enrolled into retraining (in terms of active employment policy). Such provided retraining activities also include cases where an agreement has been concluded with the employer, concerning the acquisition, upgrade or extension of a worker's qualifications. However, the share of people who have been retrained due to collective dismissals is not registered.

2016 / 22,548 2017 / 18,174 2018 / 13,241 2019 / 9,561 2020 / 7,411 2021 / 10,674 2022 / 14,307

Source: Expenditure on state employment policy, summary overview 1991 - 2022, https://www.mpsv.cz/web/cz/vydaje-na-statni-politiku-zamestnanosti, Ministry of Labour and Social Affairs

Additional metadata

Cost covered by	Employer National government
Involved actors other than national government	Public employment service Trade union Works council Other
Involvement (others)	Training facility
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Czechia: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Denmark

Obligation to consider alternatives to collective dismissals

Phase	The Danish Act on Collective Redundancies (Consolidation Act no. 291 of 22 March 2010); The Danish Act on Information and Consultation of Employees (Act no. 303 of 2 May 2005)
Native name	Bekendtgørelse af lov om varsling m.v. i forbindelse med afskedigelser af større omfang (LBK nr 291 af 22/03/2010); Lov om information og høring af lønmodtagere (LOV nr 303 af 02/05/2005)
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Section 5 Danish Act on Collective Redundancies, Section 4 Danish Act on Information and Consultation of Employees

Description

If the restructuring exercise is expected to involve redundancies on a scale falling within the scope of the Danish Act on Collective Redundancies (within 30 days, at least 10 dismissals in companies with 21-99 employees, at least 10% in companies with 100-299 employees or at least 30 dismissals in larger companies), the employer must, as soon as possible, initiate negotiations with the employees or employee representatives. The employer must explain the main reason for the expected restructuring in a letter addressed to the employees representative, as well as to the Regional Employment Council.

The negotiations must aim at preventing or reducing the expected redundancies or, if this is not possible, alleviate the consequences of the redundancies.

This means that the preparation of the restructuring has to take place in a timely manner in order for the information, consultation and negotiation to be carried out in accordance with the Danish Act on Collective Redundancies and/or the Danish Act on Employees' Rights in the event of Transfers of Undertakings and/or the Danish Act on Information and Consultation of Employees.

It is important to stress that the restructuring exercise is not subject to the 'approval' of the employees or employee representatives.

Commentary

No information available.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Regional/local government Works council Court Other
Involvement (others)	Regional Employment Council
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Denmark: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Estonia

Obligation to consider alternatives to collective dismissals

Phase	Employment Contracts Act
Native name	Töölepingu seadus
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Employment Contracts Act § 89, § 101

Description

Before termination of an employment contract due to lay-off (in case of individual as well as collective dismissal), an employer shall, where possible, offer other work to the employee. Also, where necessary, the employer shall organise the employee's on the job training or change the employee’s working conditions, unless the changes cause disproportionately high costs for the employer.

Prevention of the planned termination or reduction of the number thereof and mitigation of the consequences of the terminations, including contribution to the seeking of employment by or retraining of the employees to be laid off, have to be included in consultation upon collective redundancies (within 30 days, dismissals of at least 5 employees in companies with up to 19 staff, of at least 10 in firms with 20-99 staff, of at least 10% in companies with 100-299 staff or of at least 30 in larger companies).

Commentary

According to the Employment Contract Act Survey, 14-16% of employees were offered other work before termination of an employment contract due to lay-off (Masso et al, 2013).

Additional metadata

Cost covered by	Employer National government
Involved actors other than national government	Public employment service Works council
Involvement (others)	None
Thresholds	Affected employees: 5 Company size: 19 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Estonia: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

France

Obligation to consider alternatives to collective dismissals

Phase	Labour code
Native name	Code du travail
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

L.1233-4, D.1233-2-1, R.1233-15, L. 1233-19, L. 1233-33 to L. 1233-35, L. 1233-46, L. 1233-57, L. 1233-57-1, L1233-57-14 to L1233-57-22, L. 1233-61 to L. 1233-64, L. 2254-2

Description

The labour code provides for several alternative solutions that an employer needs to consider before implementing a redundancy plan

Obligation to offer training prior to redundancies

According to article L. 1233-4, before a redundancy plan can be implemented, an employer is obliged to offer either individual or collective training to affected employees to ensure redeployment within the company or the group which it belongs to. If the employer fails to provide training, the employee may ask for compensation in court.

Redeployment obligation

If redeployment within the company or the group which it belongs to cannot be accomplished, the employer can resolve to redundancies. If the employer fails to provide redeployment where possible, the employee may ask for compensation in court.

The obligation to provide redeployment opportunities is limited to establishments located in France within the company or other undertakings of the groups which the company

belongs to.

The employer can choose to transmit individual and personalised redeployment offers to single employees or a list of available positions within the company (or the group which it belongs to) to all affected employees

Regardless of the modality, the redeployment offer must be written and specific. According to article D. 1233-2-1, it must indicate the following:

- the job position and description;
- the name of the new employer;
- the nature of the employment contract;
- the work location;
- the level of compensation;
- the classification of the job.

Each offer must specify the time limit for the employee to apply for the job. The limit cannot be less than 15 days from the publication of the offer. In case the employee does not apply for the job offers proposed within the planned time limit, she is deemed to reject the offers.

These rules are applicable to dismissal procedures on economic grounds initiated since 23 December 2017. Non-compliance with these rules makes the redundancy unfair, meaning that the employee can claim compensation for damages.

Collective performance agreements

The collective performance agreements are an internal instrument of flexibility. It allows employers to negotiate working time arrangements, wages, terms and conditions for internal professional and geographical mobility of employees directly with trade unions (or other employee representatives at the company level), in order to meet the operational needs of the company or to safeguard and develop employment.

Even if not compulsory, this instrument is in force since 1 January 2018. It covers all private companies independently of their size and it replaces the former internal mobility agreements and agreements to maintain employment.

Employment protection plan

According to article L. 1233-61 through L. 1233-64, an employer needs to first inform and consult with employee representatives and to then draft a Employment protection plan (Plan de sauvegarde de l'emploi). The latter can be either negotiated as a

company-level agreement with trade unions or unilaterally drafted with the information and consultation of employee representatives throughout the restructuring process.

The plan aims at avoiding forced dismissals and/or at reducing their numbers to a minimum. It has to include measures like internal mobility, creation of new activities by the company, external redeployment with a support scheme to help employees for business start-ups or business acquisitions, training, validation of professional experience, implementation of redeployment leave (congé de reclassement), access to the publicly-funded professional employability agreement (Contract de Sécurisation Professionnelle) that combines unemployment benefits with training and individual coaching, and measures aiming at working time reduction.

In both cases, where deemed necessary, the works council may call in an outside expert of its choice, at the employer's expense, to gather advise on collective redundancies involving 10 employees or more. The law defines the role of the expert with some details in articles L. 1233-34 and L. 1233-35.

According to article L. 1233-46, the employer needs to inform the labour inspectorate of its Job-saving plan at most the day following the first information meeting with employee representatives. Pursuant to article L. 1233-57, the labour inspectorate assesses the compliance with the information and consultation requirements and suggests improvements to the employment security plan, where needed. The labour inspectorate needs to approve the Job-saving plan for the latter to be considered valid.

The works council may propose alternative measures to the restructuring process. In this case, the employer is obliged to provide the works council with a detailed reply on the reasons to choose their restructuring plan over the one suggested by employee representatives.

Obligations of employers seeking external redeployment in case of redundancies

In companies that are not insolvent, not under judicial redress and with a workforce of more than 1,000 employees, the employer is obliged to attempt to find an investor before closing an establishment that would result in collective redundancies. This obligation does not apply in case of bankruptcy. According to article L. 1233-57-14, The employer is obliged to inform potential buyers of the intention to sell the establishment by any appropriate means. If the employer fails to seek a buyer, the labour inspectorate may refuse to approve the employment security plan. The works council is informed about the business transfer offers received by the employer. Additionally, the works council might issue an opinion, participate in the search for a buyer and make proposals.

Commentary

Redeployment obligation

In case redeployment is possible with the employee benefitting from training, the state may financially support the training and adaptation initiatives of employees in order to ensure they remain in employment.

Prior to the labour code reform in 2017, alternative working arrangements needed to be assessed not only within the company but also throughout the entire corporate group. As the obligation was not restricted to vacancies in France or in the EU, the affected employee could ask the employer to look for options globally within the group. Employees could as well define their restrictions on the potential job offers in terms of wage and geographical location. The employer then needed to provide a corresponding job offer. The amended labour code aims at simplifying the regulation formerly in place, as the latter was a source of legal litigation and uncertainty for employers.

Collective performance agreements

According to a qualitative analysis carried out by consultancy firm Sextant Expertise, around 18 agreements were concluded in companies with more than 300 employees and 33% of the agreements analysed aim at developing geographical and professional mobility with a view to adapting the company with flexibility to its environment.

DARES (2021) has published a study on the use of collective performance agreements (APC) during a pandemic as these agreements may have been used as a crisis management tool. DARES found that 429 APCs or amendments to a APC were concluded between 1 July 2019 and 31 December 2020, including 380 agreements in the strict sense, i.e. signed between management and one or more trade union organisations. The health crisis has led to a significant increase in the number of agreements: 247 APCs were signed in the last 3 quarters of 2020, compared with 133 in the previous 3 quarters. This 86% increase is all the more remarkable given that the total number of agreements rose only slightly over the same period (+8%) and even fell over the whole of 2020.

Employment protection plan

According to DARES (2023), in 2021, against an economic backdrop still marked by the health crisis, 610 Employment protection plan (plans de sauvegarde de l'emploi - PSE) have been implemented. These involve 63,300 people in 3,233 establishments. The metallurgy, transport and hotel-restaurant-tourism industries accounted for half of the planned contract terminations. 450 PSE were initiated in 2021, down 48% on 2020. In addition to these plans, 116 collective redundancy agreements (RCC) have been validated in 2021, mainly in the services sector (introduced on 1 January 2018, RCC is a method of terminating employment contracts that combines a collective agreement between the

employer and the trade unions, and an individual agreement, enabling the employment contract to be terminated).

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Works council Other
Involvement (others)	Labour inspectorate
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), France: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Germany

Obligation to consider alternatives to collective dismissals

Phase	Works Constitution Act
Native name	Betriebsverfassungsgesetz
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Works Constituion Act, §79, 80 (4), 111-113

Description

In establishments with a works council and at least 20 workers with voting rights, the employer has to comprehensively inform the works council of any planned alterations that may entail substantial disadvantages for the workers and consult the works council members on the planned alterations.

The consultations should address whether the planned alterations have to take place, when they shall be implemented and how negative impacts for affected workers can be avoided. These consultations typically discuss the number of dismissals/redundancies, options of avoiding job cuts via short-time working or company-based job transfer agencies and alternative forms of work organisation and production. Works councils in establishments with more than 300 workers may hire professional consultants for support.

If management and the works council can reconcile their interests in connection with the planned alterations, they lay down their interests in an agreed, binding interest agreement.

In case the planned dismissals cannot be avoided, the management and the works council go on negotiating a social compensation plan proving financial compensation for the

affected workers. Any agreements have to be made in written form.

In case an agreement cannot be reached, both parties may refer to the chair of the Federal Employment Agency for mediation. The mediator, however, is not allowed to take decision.

Commentary

A lengthy description on the procedures ('Interessenausgleich') is provided by an online information service for works council members. The Works Constitution is available in English too.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Works council Other
Involvement (others)	Consultants
Thresholds	Affected employees: 6 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Germany: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Greece

Obligation to consider alternatives to collective dismissals

Phase	PD 178/2002: Measures for safeguarding employees' rights in the event of transfers of undertakings, businesses or parts of businesses, transposing Directive 98/50/EC; Law 3846/2010: Guarantees for job security and other provisions
Native name	ΠΔ 178/2002: Μέτρα προστασίας των εργαζομένων σε περίπτωση μεταβίβασης επιχειρήσεων, εγκαταστάσεων ή τμημάτων εγκαταστάσεων ή επιχειρήσεων, σε συμμόρφωση προς την οδηγία 98/50/ΕΚ του Συμβουλίου; Ν. 3846/2010: Εγγυήσεις για την εργασιακή ασφάλεια και άλλες διατάξεις.
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

PD 178/2002, Article 3, para. 1; Law 3846/2010, Article 4

Description

A dismissal is defined as 'collective dismissal' when affecting:

- more than 6 employees in companies with 20 to 150 employees; or
- 5% of the workforce or 30 employees in companies with more than 150 employees.

Although there is no explicit legal obligation to consider alternatives to collective dismissals, the legislation discusses the possibility of alternatives, foreseeing that undertakings and undertakings with restricted economic activity may, instead of terminating an employment agreement, serve written notice temporarily laying-off salaried employees after they have first consulted with the employees' legal representatives. The notification may be via a single notice posted in a conspicuous and

accessible place at the undertaking. Consultation occurs at a place and time set by the employer. The relevant departments of the labour inspectorate (SEPE), the social insurance foundation (IKA) and the labour force employment organisation (OAED) must be notified by the employer in any manner of the declaration of temporary layoffs of all or part of the workforce.

The employees' representatives are considered to be the legal representatives of the union that has at least 70% of the company's employees as members, and the majority of those being dismissed. If there is more than one union in an undertaking or establishment, without any union covering 70% of the employees and the majority of those being dismissed, the persons nominated by the boards of the unions in a joint statement to the employer shall be considered the employees' representatives. These representatives shall be designated in proportion to the strength of the unions, provided that they cover, overall, 70% of the employees and the majority of those being dismissed. If there is no union or unions meeting the conditions exposed in the preceding paragraphs, the employees shall be represented by a committee comprising of three members in the case of undertakings with between 20 and 50 employees, and five members for undertakings or establishments with more than 50 workers. If there are no employees' representatives in the undertaking, information and consultation take place with all the employees.

Commentary

Under law 3846/2010, in the case of the temporary layoff measure being implemented, 'notification may be via a single notice posted in a conspicuous and accessible place at the undertaking. Consultation takes place at a place and time set by the employer' in derogation from the general provisions on information and consultation, as laid down in Presidential Decree 240/2006, which transposes Council Directive 2002/14/EC into the Greek law and provides that information and consultation take place at the 'appropriate time and place and in the appropriate fashion.' This measure was on the one hand criticised by the unions as restricting the employee's right to information and consultation, but on the other hand it was considered by the government and employers' associations to be important in promoting alternative measures to avoid dismissals.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Works council Other

Involvement (others)	Labour inspectorate (SEPE), social insurance foundation (IKA), labour force employment organisation (OAED)
Thresholds	Affected employees: 7 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Greece: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Hungary

Obligation to consider alternatives to collective dismissals

Phase	Act I of 2012 on the Labour Code
Native name	2012. évi I. törvény a Munka Törvénykönyvéről
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 72

Description

The employer, if planning to carry out collective dismissals, shall initiate consultations with the works council. Collective dismissals are defined as those affecting at least 10 workers in companies with 21-99 employees, affecting 10% of workers in companies with 100-299 employees, and at least 30 workers in companies with 300 or more employees.

The employer's obligation to consult the works council shall apply until the conclusion of an agreement, or failing this 15 days after the beginning of negotiations.

In order to reach an agreement between the employer and works council, the negotiations shall, at least, cover:

- the possible ways and means of avoiding collective redundancies;
- the principles of redundancies;
- the means of mitigating the consequences; and
- the reduction of the number of employees affected.

Commentary

The use of this part of the legislation is not a common practice. This legislation can be employed similarly to mediation. Employers usually use solely what is compulsory according to the law.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Works council
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Hungary: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Ireland

Obligation to consider alternatives to collective dismissals

Phase	Protection of Employment Act, 1977 as amended by S.I. No. 370/1996 Protection of Employment Order 1996 and S.I. No. 488/2000 European Communities (Protection of Employment) Regulations 2000
Native name	Protection of Employment Act, 1977 as amended by S.I. No. 370/1996 Protection of Employment Order 1996 and S.I. No. 488/2000 European Communities (Protection of Employment) Regulations 2000
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

1977 Act: 9(2); SI No 370/1996; SI No 488/2000: 4

Description

Section 9(2) of Protection of Employment Act, as amended, imposes an obligation on an employer proposing collective redundancies to initiate consultations with employees' representatives representing the employees affected by the proposed redundancies. These consultations include:

- the possibility of avoiding the proposed redundancies, reducing the number of employees affected by them or otherwise mitigating their consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining employees made redundant;
- the basis on which it will be decided which particular employees will be made redundant.

Alternatives to redundancy can sometimes involve states agencies, such as IDA (Industrial Development Authority) Ireland, particularly if the proposed job losses are in a locality where the job reductions have a more severe effect on the local employment levels.

Collective redundancies, for the purpose of the act, are defined as: at least 5 in an establishment normally employing more than 20 and less than 50 employees, at least 10 in an establishment normally employing at least 50 but less than 100 employees, at least 10% of the number of employees in an establishment normally employing at least 100 but less than 300 employees, and at least 30 in an establishment normally employing 300 or more employees.

The obligation to consider alternatives to collective dismissal/redundancies will not be changed by forthcoming legislation, dubbed the 'Plan of Action on Collective Redundancies following Insolvency Bill 2023', which will improve rights and redress on information and consultation, but the enhanced features on employee rights will bring alternatives to collective redundancies into more focus.

Commentary

Obligations under this section of the act apply for situations of collective redundancies, irrespective of whether the establishment is subject to a court-approved wind up.

The penalty for a breach of section 9 is presently €5,000. This is considered ineffective in dissuading contravention of the obligation on employers. Following the Clerys store closure of June 2015, the government commissioned an expert review of the 1977 Act and its relations to Company Law. The Duffy-Cahill report was published in 2016. While the Government did not accept all of the Duffy-Cahill proposals, it is incorporating some changes suggested by Duffy-Cahill, in legislative plans due to be enacted in 2024.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Regional/local government Trade union Works council Other
Involvement (others)	IDA Ireland

Thresholds	Affected employees: 5 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Ireland: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Italy

Obligation to consider alternatives to collective dismissals

Phase	Law 23 July 1991, no. 223, Rules on the Wage Guarantee Fund, redundancies, unemployment benefits, enforcement of European directives, job placement, and other labour market provisions; Law of 28 June 2012, n. 92, Provisions on labor market reform with a view to growth
Native name	Legge 23 luglio 1991, n. 223, Norme in materia di cassa integrazione, mobilità, trattamenti di disoccupazione, attuazione di direttive della Comunità europea, avviamento al lavoro ed altre disposizioni in materia di mercato del lavoro; Legge 28 giugno 2012, n. 92, Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Law n. 223/1991, article 4; law n. 92/2012, article 44

Description

Italian law does not foresee an obligation on behalf of employers to consider alternatives to collective dismissals. However, the mandatory procedure foreseen by law no. 223/1991 aims at fostering dialogue between employers, employee representatives, and public authorities.

According to this procedure, companies with more than 15 employees willing to carry out a collective dismissal (i.e. at least 5 dismissals within 120 days) as a result of the termination of the activity, or the reduction or transformation of the activity or work, need to give prior notice, in writing, to the company employee representatives (Rappresentanze sindacali

aziendali, RSA) and to the respective employer associations.

At the request of the company employee representatives and the respective trade unions, within seven days from the receipt of the communication, a joint examination is carried out between the parties, in order to examine the causes that have contributed to determining the surplus of personnel and the possibility of a (even partial) reduction in the number of dismissals, also through solidarity contracts and flexible forms of working time management. Hence, the obligation to preventive communication aims at allowing employee representatives to verify the total or partial inevitability of the dismissals planned by the company.

The joint examination can be concluded with an agreement, through which the parties can provide:

- the assignment of workers to different tasks, also in derogation from the prohibition to modify in a worse way the duties of the worker envisaged by the art. 2103 of the civil code;
- the temporary posting or command of workers to other companies.

The phase dedicated to the joint examination between the parties must be completed within 45 days from the date of receipt of the communication from the company. After this deadline, the company communicates the results of the consultation and the reasons for any negative outcome to the territory labour Iispectorates (Ispettorati Territoriali del Lavoro).

When the joint examination has given a negative outcome or has not taken place because it was not requested by the trade unions, the territory labour inspectorate has the power to convene the parties for further examination and can formulate proposals for reaching an agreement. This further examination must be completed within 30 days, a term starting from the date of receipt of the communication from the company.

After these two phases, lasting 75 days in total, the employer can proceed with the dismissals even without having reached an agreement.

Commentary

No information available.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Works council Other
Involvement (others)	Territory and interregional labour inspectorates
Thresholds	Affected employees: 5 Company size: 16 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Italy: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Latvia

Obligation to consider alternatives to collective dismissals

Phase	Labour law
Native name	Darba likums
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

106

Description

During consultations regarding collective redundancies (within 30 days, dismissals of at least five employees in companies with 21-49 employees, at least 10 employees in companies with 50-99 employees, at least 10% in companies with 100-299 employees or at least 30 employees in larger firms) the employer and the employee representatives shall examine all the possibilities of avoiding the collective redundancy or of reducing the number of employees to be made redundant and how to alleviate the effects of such redundancy by taking social measures that create the possibility to further employ or retrain the employees made redundant.

Commentary

No information available.

Additional metadata

Cost covered by	Not available

Involved actors other than national government	Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: 21 Company size: 5 Additional information: Collective redundancies is (within 30 days) dismissals of at least five employees in companies with 21-49 employees, at least 10 employees in companies with 50-99 employees, at least 10% in companies with 100-299 employees or at least 30 employees in larger firms.

Sources

Citation

Eurofound (2015), Latvia: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Lithuania

Obligation to consider alternatives to collective dismissals

Phase	Labour code No XII-2603, Law on unemployment social insurance No IX-1904
Native name	Darbo kodeksas Nr. XII-2603, LR nedarbo socialinio draudimo įstatymas Nr. IX-1904
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Labour code (48, 207), Law on unemployment social insurance No IX-1904 (18)

Description

According to the Labour code (article 207), before taking a decision on collective redundancy, the employer must inform and hold consultations with the works council. At least 7 working days before the beginning of the planned consultation, the employer must provide the works council with written information on:

- the reasons for the planned dismissal;
- the total number of employees and the number of redundancies, by category;
- the period during which the employment contracts will be terminated;
- the selection criteria for redundancy;
- the terms of employment contract termination and other relevant information.

When an enterprise, institution or organisation does not have a works council or an employee trustee implementing the functions thereof, the employer must provide the aforementioned information within the time limits established therein to the employer-level trade union as well as to the employees, either directly or at a general meeting of employees of the employer.

On the basis of the information provided (within five days of receipt of the information), consultations shall be held with the works council with the aim to agree on methods and measures to be used to avoid layoffs or to reduce the number of redundancies and to mitigate the negative consequences for the dismissed employees. Consultations must be aimed at coming to an agreement between the employer and employee representatives. The employer-level trade union must be informed by the works council of the course of consultations and shall be entitled to express its opinion to the works council and the employer. The employer must hold consultations for at least 10 working days from the first day of consultation unless the works council agrees to a different term (article 207).

The Labour code also stipulates (article 48) that when, due to valid economic reasons that objectively exist in a certain territory or sector of economic activity and that are recognised as such by the government, the employer is unable to provide employees with work and the collective dismissal may occur, short-time working may be established by the employer. Short-time working time is shortened by up to 50% of the employee's standard working hours. In this case, the employee is paid a short-time work benefit in accordance with the procedure established by the Law on unemployment social insurance.

According to the Law on unemployment social insurance, the amount of the short-time work benefit shall be equal to short-time work hours (up to 50% of the working time rate) in proportion to the lower unemployment benefit that would be paid to the person in accordance with Article 8 of the Law on unemployment social insurance. The amount of the unemployment benefit used to calculate the short-time work benefit may not exceed 58.18% of the gross average wage paid in the national economy in the previous quarter. The short-time work benefit can be paid for a maximum period of three months (article 18). The State Social Insurance Fund Board (Sodra) carries out the final decision regarding the employer's request for short-time work benefits.

Commentary

As of July 2021, Sodra provides no data on the number of the recipients of short-time work benefits.

Additional metadata

Cost covered by	Companies Employer
Involved actors other than national government	Trade union Works council Other

Involvement (others)	State Social Insurance Fund Board (Sodra)
Thresholds	Affected employees: 20 Company size: 10 Additional information: Dismissal of a group of employees shall be deemed to be the termination of the employment contract at the initiative of the employer, without the fault of the employee (Article 57 of the Labour Code), at the will of the employer (Article 59 of the Labour Code), or by agreement between the parties to the employment contract (Article 54 of the Labour Code), initiated by the employer, within a period of no more than 30 calendar days, or where the employer's bankruptcy (Article 62 of the Labour Code) results in the anticipation of dismissal: 1) 10 or more employees in an establishment with an average number of employees of between 20 and 99; 2) 10 per cent or more of the employees in an establishment with an average number of employees of between 100 and 299; 3) 30 or more employees in a workplace with an average number of employees of 300 or more.

Sources

Citation

Eurofound (2015), Lithuania: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Luxembourg

Obligation to consider alternatives to collective dismissals

Phase	Labour Code
Native name	Code du travail
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

L. 513-1 to L. 513-3, L.166-2 and L.166-3

Description

The Labour Code provides two main policy tools to consider alternatives to collective dismissals, namely job retention plans and social plans.

Job retention plan (plan de maintien dans l'emploi)

When the Conjuncture Committee (Comité de conjoncture), consisting of representatives from the government, the employers and trade unions, receives notification from a company with at least 15 employees of 5 dismissals within a three month period or eight within a six month period, they can invite social partners to negotiate on a job retention plan, which must at least cover the possibility of avoiding redundancies, mitigating their consequences, actions to assist redeployment, and financial compensations. The committee can coordinate, or allow a third party, to conduct a study to establish a job retention plan.

Discussions on a job retention plan must include measures such as flexibility of working hours, voluntary part-time work, time saving credits, working time reduction in conjunction with vocational training or retraining measures. Measures to be discussed include early retirement, part-time unemployment, temporary loaning of manpower and individual

guidance to help the employee secure alternative work.

With regards to implementation, the terms of the job retention plan are signed by social partners and forwarded to the Conjuncture Committee. The latter will then submit it for approval to the Minister of Labour, which will decide with the advice of the Conjuncture Committee.

The social plan (plan social)

Before initiating collective redundancies (dismissals of seven employees within 30 days, or 15 employees within 90 days), the employer must inform and consult its employee representatives in writing with regards to its plan to initiate a collective redundancy and preferably before the start of negotiations, or at the latest at the start of negotiations. Then the employer has to begin negotiations with employee representatives, defined as staff delegates, joint committees and trade unions if the company is bound to a collective agreement in order to establish a social plan for the individuals concerned. However, if a job retention plan has been agreed by the Ministry of Work, Employment and of the Social and Solidarity Economy in the last six months, the employer does not have to negotiate a social plan.

The negotiations must focus on the possibilities of avoiding or reducing the number of redundancies and reducing the consequences by means of internal redeployment within the company or reintegration into the job market and/or a more favourable financial compensation than established by law. Similar to the discussion on the job retention plan, the negotiation may also cover the application of the law on part-time unemployment, voluntary part-time work, reductions of working time, possible training, application of the law on temporary loans of employees, application of the law on early retirement, the duration of the plan, principles and procedures to regulate the implementation and follow-up of the plan.

Commentary

In the framework of the law of 23 July 2015 reforming employee representation in companies (Loi du 23 juillet 2015 portant réforme du dialogue social à l'intérieur des entreprises) (EurWork, Luxembourg: Reform of employee representation in companies, 15 December 2015) it should be noted that joint committees will cease to exist after workplace elections which take place after 1 January 2016 (and at the latest after the workplace election scheduled of 2019). As from these elections, the tasks and duties assigned to joint committees will be transferred to the staff delegations in companies which had at least 150 staff during the 12 months preceding the first day of the posting of the announcement of elections.

Additional metadata

Cost covered by	None
Involved actors other than national government	Employer organisation Public employment service Trade union Works council Other National government
Involvement (others)	The Conjuncture Committee is part of the Ministry of the Economy.
Thresholds	Affected employees: 5 Company size: 15 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Luxembourg: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Eurofound

Restructuring legislation database

Malta

Obligation to consider alternatives to collective dismissals

Phase	Cap. 452 - Employment and Industrial Relations Act, 2002; Subsidiary legislation 452.96 - Employee (Information and Consultation) Regulations (Legal Notice 10 of 2006, as amended by Legal Notice 427 of 2007); Subsidiary Legislation 452.80 - Collective Redundancies (Protection of Employment) Regulations (Legal Notice 428 of 2002, as amended by Legal Notices 427 and 442 of 2004)
Native name	Kap. 452 - Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, 2002; Leġislazzjoni Sussidjarja 452.96 - Regolamenti dwar Dritt għal Informazzjoni u Konsultazzjoni mal-Impjegati (Avviż Legali 10 tal-2006, kif emendat bl-Avviż Legali 427 tal-2007); Leġislazzjoni Sussidjarja 452.80 - Regolamenti dwar Sensji Kollettivi (Harsien ta' l-Impjiegi) (Avviż Legali 428 tal-2002, kif emendat bl-Avviż Legali 427 u 442 tal-2004)
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Employment and Industrial Relations Act, 2002 - Article 42; Subsidiary legislation 452.96 and 452.80 - Whole regulations

Description

In situations concerning collective redundancies Consultations shall cover ways and means of avoiding the collective redundancies (10 employees in companies with 21-99 employees, 10% of staff in companies with 100-300 employees, 30 employees in larger companies) or reducing the number of employees affected by such redundancies and mitigating the consequences.

In exceptional circumstances Employers and trade union representatives may agree to different conditions of employment than those specified by law as a temporary measure to avoid redundancies. Such agreements must be approved by the Director of Industrial and Employment Relations, and this approval reviewed every 4 weeks, as is stipulated by Article 42 of the Employment and Industrial Relations Act. Past agreements involved recourses to a four day week which meant a reduction in the weekly wage.

Commentary

Labour legislation and relating amendments are discussed at policy formulation stage in the tripartite Employment Relations Board (ERB). Members forming this board come from trade unions, employers' associations and the government.

Restructuring situations involving public entities Measures undertaken in public entities such as the national airline company Airmalta aimed at avoiding mass redundancies consisted of early retirement schemes and redeployment of employees in other public entities and government departments.

Additional metadata

Cost covered by	None
Involved actors other than national government	Employer organisation Trade union Other
Involvement (others)	Employment Relations Board; Department of Industrial and Employment Relations
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Malta: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Netherlands

Obligation to consider alternatives to collective dismissals

Phase	Collective Redundancy (Notification) Act; Works Council Act; Work and Security Act
Native name	Wet melding collectief ontslag (WMCO); Wet op de ondernemingsraden (WOR); Wet Werk en Zekerheid (WWZ)
Type	Obligation to consider alternatives to collective dismissals
Added to database	06 August 2015
Access online	Click here to access online

Article

Article 3, paragraph 2, article 4 and article 7a of Collective Redundancy (Notification) Act/Wet melding collectief ontslag (WMCO); Articles 25, 26, 31, 35b, and 35c of Works Council Act/Wet op de ondernemingsraden (WOR); Article 4 of Work and Security Act/Wet Werk en Zekerheid (WWZ)

Description

Obligation to notify the public employment service

In case of intended collective redundancies (within 30 days dismissals of at least 20 employees in one or more plants of the same company employed within one and the same region of the public employment service), the employer has to notify the relevant unions and the public employment service or the social agreement committee (if installed). The aim of the notification to the unions is consultation aiming to avoid or mitigate the restructuring plan.

The public employment service will not start the procedure to issue the necessary dismissal permits if there has been no consultation with the unions (unless there is an immediate threat to the continuity of the enterprise or employment). In notifying the public employment service (UWV), the employer has to show to have considered

alternatives that diminish the number of dismissals or alleviate the consequences of dismissal for employees. These alternatives have to include the possibility to provide education opportunities or placement in other companies. If the UWV does not accept the reasons or the scope of the collective dismissal, it can refuse to provide the necessary dismissal permits and thereby prevents the collective

Trade unions and work councils must be consulted on the need, the size of collective dismissals, and on the social assistance measures provided for the employees to be dismissed.

The term 'consultation' means that there must have actually been consultation unless these unions or councils (as specified in article 7a):

- do not respond to the written request by the employer, provided that the association has received the request at least two weeks before the date of the consultation; or
- has indicated in writing that they refrain from consultation. Consultation does not imply that agreement must also be reached. The term social assistance measures usually implies a social plan, which is drawn up by enterprises and usually supplements the sectoral or business collective labour agreement. In that social plan or prior to developing one, the employer considers possibilities for relocation and retraining.

Obligation to notify the works council

All major strategic decisions with potential consequences for the employees are included by article 25 of the Works Council Act (Wet op ondernemindsraden). This article refers to the rights and obligations of enterprises towards their works councils. A key theme is the obligation to inform the works council so that the council may provide a formal reflection and advice on the proposed changes or dismissals. In the event that the council's advice is not entirely or not followed, the enterprise must provide a formal response as to why the advice from the works council was not (fully) applied to the planned changes for the enterprise. The changes referred to in this article include both restructuring and business transfers (transfer of undertaking), but also major investments, closures and mergers and acquisitions. In case of restructuring, the employer has to consult the works council. The works council is entitled to at least one consultation meeting with the employer. In principle, a works council should be installed if there are 50 or more employees.

Furthermore, if the works council has given a negative advice on the intended dismissals after being consulted, the employer must abide by a one month waiting period before a permit for collective dismissal is given by the public employment service. A negative advice from the works council could also lead a court to invalidate any dismissals retroactively if employees contest their dismissal in the legal arena. If this happens, employees are

entitled to reemployment or (additional) financial compensation.

In case of a disagreement, the employer has to postpone the decision for one month, during which the works council may go to court. If the advice is not followed by the employer, the works council can challenge the restructuring decision (and possible implementation measures already undertaken). Jurisprudence over the last 35 years shows that employers that have not taken their information and consultation duties seriously run the risk that the court rules the restructuring operation invalid. However, given sufficient care, the managerial prerogative prevails.

The employer has to motivate his/her intended decision and show that he/she has considered possible alternatives. These may include, for example, a reduction in the number of dismissals, starting up new production lines, mergers, sale of the company. In the consultation process, the works council may ask about alternatives or bring up alternatives of its own. If the employer does not answer
the relevant questions on alternatives, the regional court, who together with the UWV are also involved in checking plans for collective dismissals, might rule that the restructuring plan is invalid.

The works council in smaller companies

In smaller companies employing between 10-50 employees, the Works Council Act obliges the employer to consult the workers' representatives (which may be a works council, but not necessarily so), or the staff meeting on any decision that could lead to job loss or a significant change in the employment, labour conditions or working conditions of at least one-fourth of the persons employed in the company. Contrary to the situation with works councils, decisions cannot be challenged in court. The articles do not specify the need to present alternatives.

Commentary

Although employer organisations generally maintain that current rules regarding dismissal permits and considering alternatives are acceptable, they stress the importance of simplifying the dismissal process for small and medium enterprises. Furthermore, it is stressed that the process should be swift to ensure the continuity of the enterprise's activities. Currently, the employee is well protected within Dutch employment law, and collective dismissals require acceptance from the regional courts, the public employment service (UWV in the Netherlands), and an enterprise’s works council or body of employee representatives in the case of smaller enterprises. For small enterprises the requirements appear to be less stringent than for enterprises with 50 employees or more.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Public employment service Trade union Works council Court
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: 10 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Netherlands: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Norway

Obligation to consider alternatives to collective dismissals

Phase	Working Environment Act
Native name	Arbeidsmiljøloven
Type	Obligation to consider alternatives to collective dismissals
Added to database	29 June 2015
Access online	Click here to access online

Article

15-2-2

Description

An employer contemplating collective redundancies (at least 10 dismissals within 30 days) shall at the earliest opportunity enter into consultations with the employees' elected representatives with a view to reaching an agreement to avoid collective redundancies or to reduce the number of persons made redundant. The act does not specify any sanctions for the employer if consultations are not entered into, but NAV (Norwegian Labour and Welfare Administration) may decide to prolong the notice period if consultations have not started as early as the act prescribes. This regulation should allow employees to have influence over the final decision and how many employees that are affected.

As a part of the consultation the employer is obliged to give the shop stewards or other representatives all relevant information including the reasons for the dismissals, number of employees that might be affected, which group(s) of employees will be affected, the timeframe of the dismissals, the criteria for deciding which employees will have to leave and so forth. A copy of this information should also be given to NAV as the public employment service, and the shop steward can bring forward their comments on the information provided to NAV directly.

If redundancies cannot be avoided, efforts shall be made to mitigate their adverse effects. The consultations shall cover possible social welfare measures aimed, inter alia, at providing support for redeploying or retraining workers made redundant. In this process the employer may involve NAV as the public employment service.

If the employer is considering closing down its activities or an independent part of them and this will involve collective redundancies, according to the Restructuring Act (omstillingslova), the possibility of further operations shall be discussed, including the possibility of the activities being taken over by the employees.

Commentary

Regulations on the involvement of shop stewards can also be found in collective agreements and will apply to companies bound by such agreements.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Trade union
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 10 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Norway: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Poland

Obligation to consider alternatives to collective dismissals

Phase	Act of 13.03.2003 on special principles of termination of employment contracts with employees for reasons not related to employees - 'Collective Dismissals Act'
Native name	Ustawa z dnia 13.03.2003 o szczególnych zasadach rozwiązywania z pracownikami stosunków pracy z przyczyn niedotyczących pracowników
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

2, 3

Description

In cases of collective redundancies (within 30 days, dismissals of at least 10 employees in companies with 20-99 workers, at least 10% of workforce in firms with 100-299 workers or 30 dismissals in larger companies than 300 employees) employers must provide (in writing) specific information about the planned dismissals to the company trade union or employees' representatives. This should occur in advance to enable the trade union or employees' representatives to start a consultation process and make own proposals. The consultation shall specifically cover the possibility of avoiding the collective redundancies or reducing their scale. Also employment matters shall be discussed related to such redundancies, and specifically chances of the employees planned to be made redundant to qualify for other jobs, retraining, or to secure other employment (outplacement).

The employer is obliged to provide the trade union or employees' representatives with the following information (in writing):

- the reasons for the projected redundancies;
- the number of employees employed and job categories they belong to as well as the job categories of the employees to be made redundant;
- the period over which the projected redundancies are to be effected/implemented;
- the proposed criteria for the selection of the employees to be made redundant;
- the order of making the redundancies (ranking of employees to be made redundant, timing of the process);
- proposals on resolving the employment matters connected with the projected collective redundancies (such as training or other support mechanism as outplacement, psychological support etc.), and if they cover any payments, the method to be used for calculating of their amounts.

Except of the information about payments the same information should be delivered by employer to local employment office at the same time.

The employer is obliged either to conclude an agreement with trade unions (within 20 days of notification) or issue a dismissals regulation after consultation with employees' representative if there is no trade union.

If the employer and trade unions do not reach an agreement, the employer needs to issue a dismissals regulation. This should take into consideration the process of negotiation with trade unions.

Commentary

It is only generally written in Polish law that the employer and trade unions or employees' representatives (if there are no trade unions at the workplace) should negotiate and consider the issue of alternatives to collective dismissals. But there is no clear binding indication to what extent the employer must take alternative measures. So, it is hard to say that there are any legal obligations to consider alternatives to collective dismissal.

Social partners, in addition to general statements that radical solutions should be avoided, have not come up with any common position concerning the issue.

Additional metadata

Cost covered by	None

Involved actors other than national government	Public employment service Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Poland: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Portugal

Obligation to consider alternatives to collective dismissals

Phase	Labour Code (Law 7/2009 of 12 February)
Native name	Código do Trabalho (Lei 7/2009 de 12 de fevereiro)
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

361

Description

The information and consultation process with workers' representatives in the framework of collective dismissals shall cover alternative measures aimed at reducing the number of workers to be dismissed, namely: * suspension of the employment contracts; * work reduction; * professional retraining and reclassification; * pre-retirement and early retirement.

The application of the 'professional retraining and reclassification' and the 'pre-retirement and early retirement' measures depends on the agreement of the worker.

Collective dismissal is defined as the dismissal of at least two workers in micro and small companies, and at least five workers in larger companies.

Commentary

For more information on collective dismissal see 'definition of collective dismissal'.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union Works council Employer organisation Other
Involvement (others)	Directorate General for Employment and Labour Relations (Direcção-Geral do Emprego e das Relações de Trabalho - DGERT)
Thresholds	Affected employees: 2 Company size: 2 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Portugal: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Romania

Obligation to consider alternatives to collective dismissals

Phase	Labour Code, Law no. 53/2003, republished in the Official Gazette of Romania no. 345 of 18 May 2011
Native name	Codul muncii, Legea nr. 53/2003, republicată în Monitorul Oficial nr. 345 din 18 mai 2011
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 69, paragraph 1 (a) and (b), and article 71, paragraphs 1 and 2

Description

If an employer contemplates to resort to collective dismissals (i.e. dismissal of at least 10 employees in companies with 21-99 workers, at least 10% of staff in companies with 100-299 workers or at least 30 employees in larger firms), the employer is under the obligation to initiate, in due time, for the purpose of reaching an agreement, consultations with the trade union or the employee representatives, as appropriate, with regard to the methods and the means by which collective redundancies can be avoided, or the number of redundancies can be diminished, the social measures that can be taken to reduce the social effects of the dismissals, such as the employer's support for the redundant employees' vocational requalification or retraining.

The trade union or the employee representatives may, within 10 days of the receiving date of the collective dismissal notice, propose to the employer measures to avoid collective dismissals or reduce the number of redundancies.

Within five days of the receiving date of the proposals made as above, the employer must respond in writing, and substantiate the decision.

Commentary

Romanian legislation is in line with Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies.

The sanction for non-fulfilment of the obligation to consult the trade union with the purpose of identifying alternatives to the collective redundancy will nullify the decision to dismiss. In jurisprudence and doctrine, there is no unitary view in respect of the trade union having the right to be consulted in order to identify alternative measures for collective redundancies; the question of whether it is only the representative union or any union within the unit that should be consulted remains open. The question is important because in some cases the court has cancelled the decision of collective dismissal ordered without consulting all unions established in the unit, whether representative or not, and indeed, the Labour Code does not refer here to representativeness.

As a result of amendments to the Labour Code, the legal measures concerning collective redundancies are not applicable to employees of public institutions.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Other
Involvement (others)	Workers' representatives, in case there is no trade union
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Romania: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Slovakia

Obligation to consider alternatives to collective dismissals

Phase	Labour code
Native name	Zákonník práce
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

73

Description

According to Act No. 311/2001 Coll. of the labour code, at least one month before the start of collective dismissal, consultations with the employee representative or the affected employees need to be held with the aim of reaching an agreement. Employers should attempt to minimise redundancies, try to redeploy the affected employees within other workplaces at the organisation and reduce the negative impact of the collective redundancy (dismissals of at least 10 employees in companies with 21-99 workers, at least 10% of staff in companies with 100-299 workers, or at least 30 employees in companies with 300 or more workers, within 30 days). Then the employer has to submit in written the outcomes of consultations with the employee representatives on measures to mitigate the unfavourable impact of collective dismissal on employees to the competent employment office of the headquarters of Employment, Social Affairs and Family (ÚPSVaR). During the available time to the start of dismissals, the employment office should look for ways of employing the redundant employees elsewhere, and ways of employing the redundant employees after retraining.

Commentary

There is no particular obligation for the employers to seek 'effective' measures which will be able to avoid the negative aspects of the restructuring process. It is not easy for the employer to adopt some alternatives to redundancies because the employer is constrained by his/her financial situation and in some cases (e.g. redeployment at other workplaces) the employer needs consent of the employee concerned. In many cases of restructuring, it is not particularly common for the employer to adopt any additional measures with the aim of reducing the number of redundancies.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Trade union Works council Other
Involvement (others)	Affected employees if there are no employee representatives at the employer.
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Slovakia: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Slovenia

Obligation to consider alternatives to collective dismissals

Phase	Employment Relationship Act (ZDR-1); Trade Secrets Act (ZPosS)
Native name	Zakon o delovnih razmerjih (ZDR-1); Zakon o poslovni skrivnosti (ZPosS)
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Articles 101 and 103 of the Employment Relationship Act (ZDR-1); Articles 4 and 7 of the Trade Secrets Act

Description

The act allows the termination of any employment contract, not just in the event of collective redundancies, only as ultima ratio – the last resort. With collective redundancies (within 30 days, dismissal of at least 10 workers in companies with 21-99 employees, at least 10% in companies with 100-299 employees and at least 30 dismissals in larger firms) the employer must aim to achieve an agreement and first consult with the trade unions.

The dismissal programme for redundant workers must also contain measures for limiting the number of laid-off workers as much as possible and for preventing the harmful consequences of termination of the workers' employment relationships, whereby the employer must check the possibilities of continuation of employment under modified conditions. By trying to reach an agreement, the employer must consult with the trade union on possible measures for limiting the harmful consequences of collective dismissal.

The employer must send the dismissal programme to the employment service as well as to the trade union for information. Any proposal from the employment service regarding the

possible measures for preventing or limiting the termination of employment relationships should be taken into consideration. At the same time, the employer is obliged to consider any possible measures for the mitigation of harmful consequences of the termination of employment relationships. Usually, the employer can lay off workers 30 days after the submission of the dismissal programme, but this period can be prolonged to 60 days upon the employment service's request.

The Trade Secrets Act stipulates that trade secrets disclosed during the obligatory consultations with the trade union, works council or labour representative are legally obtained. It is also not unlawful disclosure of trade secrets if a worker gives information to his or her representative for protecting the interests of worker(s). The exemption applies to the exercise of workers' rights, which must follow the rules on the activities and protection of trade union representatives.

Commentary

A study on the role of HRM in crisis management (Trebše, 2006) examined alternative solutions to dismissals undertaken by the management. The examples given in the study of how the management tried to reduce the harmful consequences of dismissals were the following:

- explored possibilities for employment with business partners,
- financed early retirement,
- offered interest-free loans to employees, who decided to become self-employed,
- explored possibilities for employment with temporary work agencies,
- extended the period of notice,
- dismissed only one family member, if both were employed with the company, so that the family kept one source of revenue,
- offered scholarships with no repayment obligation
- offered a higher severance pay than the payment to which the worker was entitled by law.

However, not all companies included in the study offered such possibilities to redundant workers.

Additional metadata

Cost covered by Employer

Involved actors other than national government	Public employment service Trade union
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Slovenia: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Spain

Obligation to consider alternatives to collective dismissals

Phase	Law 3/2012 of 6 July on urgent measures to reform the labour market; Royal Decree 801/2011 of 10 June that enacts Regulation of the procedures of employment regulation and administrative measures in cases of collective relocation; Statute of Workers' Rights; Royal Decree 43/1996 of 19 January that approves the rules of the procedures of employment regulation and administrative actions in collective transfers
Native name	Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral; Real Decreto 801/2011, de 10 de junio, por el que se aprueba el Reglamento de los procedimientos de regulación de empleo y de actuación administrativa en materia de traslados colectivos; Estatuto de los Trabajadores; Real Decreto 43/1996, de 19 de enero, por el que se aprueba el Reglamento de los procedimientos de regulación de empleo y de actuación administrativa en materia de traslados colectivos
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Art. 9 Royal Decree 801/2011; Art. 51 Statute of Workers' Rights; Royal Decree 43/1996; Art. 18.3 Law 3/2012

Description

During the consultation period of a collective dismissal (within 90 days, more than 5 employees made redundant if the whole workforce is affected; at least 10 employees in companies with fewer than 100 employees; 10% of the employees in companies between 100 and 299 employees; and at least 30 employees in companies with more than 299

employees), employers and workers' representatives discuss not only the motivating reasons of the restructuring or downsizing, but also the possibility of avoiding or reducing its effects, as well as on the necessary measures to attenuate its consequences for the affected workers.

For example, management and workers' representatives can agree on measures such as the use of outplacement companies or training for the improvement of workers' employability or others measures to guarantee the future viability of the undertaking.

In undertakings with 50 or more employees, the employer must provide a social plan to the public authorities and workers' representatives. The social plan must include: * measures intended to avoid or reduce the effects of restructuring – for instance, internal redeployment, functional or geographical mobility, substantial modifications of contractual conditions, training or retraining measures; * measures aimed at reducing the effects of restructuring on employees; * external relocation, training and retraining actions; * promotion of self-employment; * financial compensations for geographical mobility; * economic, technical, organisational and other types of measures intended to make the continuance of the undertaking and its activity possible.

Companies have to carry out a special training and redeployment plan of at least 6 months implemented by means of an authorised outplacement company if the collective dismissal affects over 50 employees.

Commentary

Overall, measures and practices that are reported in the media that are more common across several sectors are: early retirement, voluntary and incentivised exits and, to a lesser extent, relocation. Restructuring measures involving training and retraining actions or promotion of self-employment are not commonly used. Recent collective dismissals (since 2012, when the financial assistance programme for the recapitalisation of financial institutions was approved) reported in the media affecting the financial sector show, for instance, that voluntary and incentivised leaves, together with early retirement measures, are the most common alternatives implemented.

Additional metadata

Cost covered by Employer

Involved actors other than national government	Trade union Works council Other
Involvement (others)	Authorised outplacement companies
Thresholds	Affected employees: 6 Company size: 6 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Spain: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin

Sweden

Obligation to consider alternatives to collective dismissals

Phase	Employment protection act (1982:80)
Native name	Lag (1982:80) om Anställningsskydd
Type	Obligation to consider alternatives to collective dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

7, 22

Description

For a termination due to redundancy to be justly caused, the employer is obliged to investigate the possibility of internal redeployment to vacant positions within the company.

Under the previous law, amended in 2022, the rules stipulated that if any vacant position exists, the employer must offer it to the employee if this is reasonable. If there are no possibilities of redeployment to vacant positions, the order of priority for the redundancies is based on seniority, i.e. a last-in-first-out principle. Under the new rules, the last-in-first-out principle must also be taken into account when redeploying workers with similar tasks within the same operational unit. Workers with the shortest period of employment will be offered a position with fewer hours first.

The employer is also obliged to inform the concerned trade unions. However, there is no specific obligation to consult on the alternatives to dismissals.

Commentary

An example of a conflict which highlighted the difficulties in determining what constitutes a dismissal and what constitutes a redeployment took place in 2015, where employees at a supermarket in Örebro were given new employment contracts with fewer weekly working hours. The workers felt pressured to sign the new contracts and the case eventually ended up in the labour court. According to the Commercial Employees' Union, the workers were in effect dismissed, and that the order of priority rules should have been complied with. But the employer argued that the workers were only redeployed, and that therefore no consideration to the order of priority rules had to be paid. The labour court ruled in favour of the employer.

The ruling has sparked a fierce debate as many unions feared that, as a result, employers would start 'redeploying' workers systematically in order to reduce their working hours. This fear was meant to be adressed in the social partner agreement on changes to the Employment protection act.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Sweden: Obligation to consider alternatives to collective dismissals, Restructuring legislation database, Dublin