Implementing mass redundancies in Europe

February 2020

Freshfields Bruckhaus Deringer

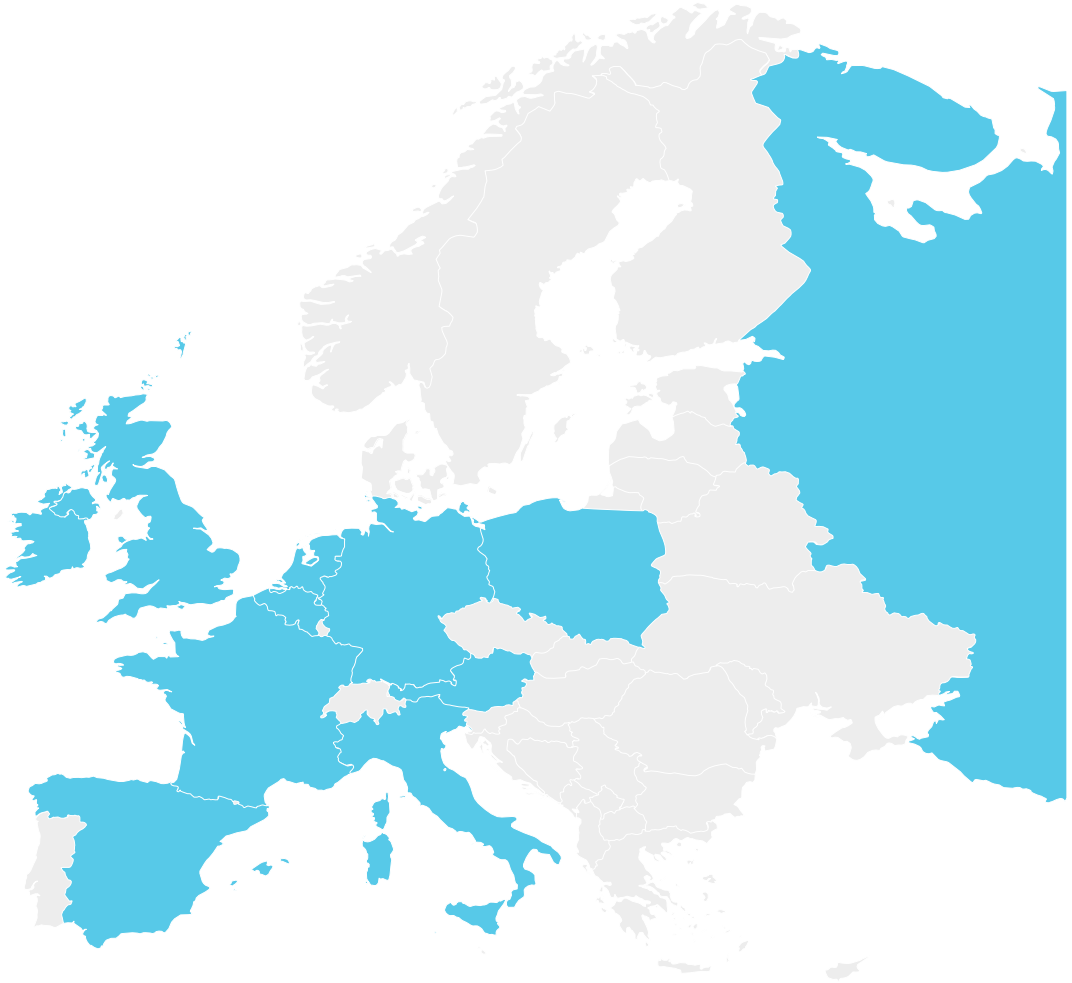
Mass redundancies guide 2020

Introduction

Our new mass redundancies guide highlights some of the key legal features of redundancy scenarios in a number of European countries. At EU level, Directive (98/59/EC) aims to improve protection for workers affected by collective redundancies, setting out rules on the information and consultation of workers' representatives before the redundancies are made, as well as provisions on practical support for the employees who are laid off. However, despite the common source for the laws governing mass redundancies, local differences remain significant. As a global employer planning to carry out collective redundancies in selected jurisdictions, it is therefore important to understand the differences in legislation between these. In this guide, we attempt to answer many of the questions you might be faced with and help you navigate the legal risks and likely challenges that may arise, by outlining the circumstances in which collective redundancies occur, if and when consultation is required, the steps to be followed, selection criteria, costs and penalties.

Thank you to our colleagues at A&L Goodbody in Ireland and Wardynski & Partners in Poland for their contributions to this guide.

Contents



Austria

1. What is 'redundancy'?

Austrian employment law does not define what constitutes a 'redundancy situation'. Pursuant to the wording of law, a collective redundancy situation is defined as follows:

Where an employer proposes to make redundant in any (rolling) 30-day period

- at least five employees in an establishment with more than 20 and fewer than 100 employees;
- at least five per cent of the employees in an establishment with between 100 and 600 employees;
- at least 30 employees in an establishment with more than 600 employees; or
- at least five employees aged 50 or older, irrespective of the company size.

2. Information and consultation requirements

The employer is under an obligation to inform and consult with the works council about any envisaged collective redundancy.

In addition, the employer must inform the works council of every individual termination of employment and consult with the works council, at its request, about every redundancy on an individual basis (this information requirement applies irrespective of whether the thresholds for a collective redundancy measure are met.)

If a collective redundancy is envisaged and no works council is established, there is a requirement to inform the employees concerned by providing them with a copy of the notification to the authority.

The employer must inform and consult with the works council.

There is no requirement to provide information to the trade union but the employer must notify the Austrian Labour Market Service (*Arbeitsmarktservice*, **AMS**), about the proposed mass redundancy (see question 3). The employer must notify the local office of the AMS of any proposed collective redundancy (also see question 3) in any 30-day period.

If there is no works council, a copy of the AMS notification must be provided to the affected employees individually.

3. Timing requirements

In the course of a mass redundancy the employer must notify the local office of the AMS at least 30 days before the first employee is served with notice of termination.

The employer must inform the works council immediately of the planned redundancy, this before the AMS is notified, so that a meaningful consultation can take place, if the works council so requests.

In addition, the works council must be informed again by the employer at least one week before the notice of termination is given to the individual employees.

Austria

4. What does consultation mean?

The employer must explain its position to the works council and must consider any suggestions or proposals it puts forward. The works council is supposed to sign the AMS notification to confirm the information and consultation process has been complied with.

Following such consultation, the employer must, at the works council's request, consult with the works council about each redundancy on an individual basis.

If a dismissal is approved by the works council, the employee can only challenge the dismissal in court on the ground that it was based on an 'illegal motive' (eg union activity).

If the works council does not render an opinion within the one week period, the employee can challenge the termination as 'socially unjustified', meaning that the essential interests of the respective employee are adversely affected. In this case, the employer would need to show that his interests in terminating the employee outweigh the employee's interests in a continued employment.

If the works council has objected to the dismissal, the works council may, at the employee's request, challenge the termination for an 'illegal motive' and as 'socially unjustified'.

Where 20 or more employees are employed in a particular branch, and a 'considerable part' of the workforce will be affected by the proposed redundancies, the works council may request the conclusion of a specific type of works council agreement (a 'social plan' — *Sozialplan*), providing for additional benefits for the employees.

5. How are employees selected for redundancy?

There are no legally prescribed selection criteria. However, for certain groups of employees it will be easier to challenge a termination (eg employees over 50, pregnant employees, employees with disabilities etc).

However, if the works council has objected to a dismissal, the employee may challenge the dismissal in court for 'unsocial' selection, showing that dismissal of a comparable employee would have caused less difficulty and that that other employee should have been dismissed in his place.

In effect, therefore, if the works council opposes an individual dismissal, the employer is under an obligation to select on the basis of social criteria and on the grounds of who would be least negatively affected by the dismissal. This involves the employer looking at individual factors such as each employee's financial and family situation and length of service.

Austria

6. Redundancy/severance entitlement

Notice period

Employees are entitled to receive full compensation until the end of the respective applicable notice period (in accordance with their employment contract, statutory law and the applicable bargaining agreement).

Severance payment

Employees are entitled to severance pay either due to

a. the 'new' severance pay scheme, applicable to employees who started employment on or after 1 January 2003. The employer pays contributions into a pre-funded company pension fund, so in the event of termination of employment no additional employer liability arises and all severance payments are paid by the fund; or

b. under the 'old' severance pay scheme (applicable to employees who started employment before 1 January 2003) an employee is entitled to a statutory one-off severance pay by the employer upon termination of employment. The amount of severance pay depends on the length of service with the employer and ranges from 2-12 months' compensation.

Contractual payment

Employees may also be entitled to an enhanced redundancy payment if a term to that effect is incorporated into their employment contract, social plan, collective agreements etc.

Where there is no social plan in place (see question 4), extra individual payments may be granted in exchange for the conclusion of a settlement agreement under which an employee would waive any right to claim against the employer.

7. Penalties for failure to comply with information/consultation obligations

In particular, the following two deadlines are to be observed:

a. termination of a certain number of employees in an establishment of some size (see question 1) within 30 days; and

b. obligation to notify the AMS 30 days before giving notice of the relevant terminations.

Notices of termination given to employees before the expiry of this 30-day period are void. Hence, if an employer fails to notify the AMS of its redundancy proposals or violates the writing period, any subsequent dismissal is void.

If the employer fails to inform and consult with the works council about the redundancies in a collective redundancy situation (see question 2) it may be subject to an administrative fine up to EUR2,180 for each violation.

If the employer fails to inform the works council at least a week before an envisaged individual dismissal, such dismissal is void.

If the dismissal s successfully challenged by the employee or the works council in court, the employee will have the right to be reinstated with back-pay from the date of the termination of employment.

There is no right of veto in respect of any redundancies.

Belgium

1. What is 'redundancy'?

Redundancy does not exist as a specific legal term in Belgium.

However, individual or collective redundancies on objective grounds relating to the operation of the employer's business are possible.

A collective redundancy is defined as a mass lay-off of employees for reasons unrelated to the person (e.g. economic, technical and/or organisational reasons) involving over an interrupted period of 60 days at least:

- 10 employees in a company employing between 20 and 100 employees;
- 10 per cent of the employees in a company employing between 100 and 300 employees; or
- 30 employees in a company employing 300 workers or more, on average during the previous calendar year.

Note that a collective redundancy can result in a closure of a company or a division thereof, i.e. in case of (i) cessation of the company's main activity, and (ii) reduction of the workforce of more than 75 per cent of the average number of employees employed during the previous calendar year. In that case, the rules concerning collective redundancies and the closure of company (i.e. specific information and consultation obligations, payment of certain compensation) will have to be complied with simultaneously.

2. Information and consultation requirements

Information and consultation obligations arise if the employer has the intention to implement a collective redundancy.

A written report, setting out the proposed intention relating to the collective redundancy, must be communicated and discussed during a notification meeting with employee representatives.

The written report should at least set out (i) the reasons for the dismissal, (ii) the amount and the categories of employees concerned, (iii) the amount and the categories of employees usually employed, (iv) the timeframe over which the dismissals will be implemented, (v) the envisaged criteria to select the redundant staff, and (vi) the calculation method of any indemnity that is not due pursuant to the law or a collective agreement.

Note that sector-level information and/or consultation requirements may also apply for restructurings that entail multiple dismissals, but that do not strictly qualify as a collective redundancy.

A copy of this written report will be sent to the regional labour authority (Actiris, VDAB or FOREM) and to the Federal Public Service (SPF Emploi, Travail et Concertation sociale).

A consultation process should then be conducted on the basis of the written report, i.e. employee representatives may raise questions, objections and remarks, which the employer must answer. It should be noted that no agreement is formally required.

The employer must then notify the project of collective redundancy to the regional labour authorities, the Federal Public Service and the employee representatives. In such notification, the employer must bring evidence that the consultation process has been duly completed.

Information and consultation processes must be carried out with (i) the works council or, absent any works council, (ii) the trade union delegation. In the absence of both of them, (iii) the committee for prevention and protection at work must be informed and consulted or (iv) the employees.

The regional labour authorities must also be informed.

Belgium

3. Timing requirements

The appropriate representatives must be informed and consulted on any proposals to make collective redundancies as soon as there is an intention to carry out such measures by either a parent company or at a local level. They should be informed and consulted at a stage when, in good faith, the redundancies are still reversible and the appropriate representatives' views can be taken into account.

After the notification of the written report (see question 2) to relevant employees representatives and competent public authorities, the employer must (i) arrange a meeting with the appropriate representatives to discuss the proposed collective redundancy, (ii) provide the appropriate representatives with the opportunity to raise questions and make counter-proposals; and (iii) consider and respond to any questions and counter-proposals.

Even if there is no statutory timetable, the consultation process can take three months or more depending on circumstances and the bargaining power of the parties. The employer must then notify the project of collective redundancy to the regional labour authorities, the Federal Public Service and the employee representatives.

During the 30 days following this notification, employee representatives may object that the information and consultation procedure has not been duly completed. During this period (that may be shortened or extended up to 60 days in certain circumstances), the employer may not proceed to implement any dismissal.

After this 30-day period (possibly shortened/extended) the employer may proceed to implement the dismissals.

Within 30 days after the dismissal, dismissed employees may individually claim that the information and consultation procedure has not been complied with, unless no employee representative has so claimed during the 30-days period between the notification of the collective redundancy project to the regional labour authority and the implementation of the collective redundancy.

4. What does consultation mean?

Consultation involves discussing the reasons for the envisaged redundancies and its potential avoidance, alternative measures, ways of alleviating the consequences of any redundancies by accompanying social measures such as training of dismissed employees or professional reclassification (see question 2).

Belgium

5. How are employees selected for redundancy?

Currently, an employer carrying out a collective redundancy is free to decide which employees to dismiss, as long as it complies with anti-discrimination laws and involves the works council (or committee for prevention and protection at work (if any) or the trade union delegation (if any).

A law dated 29 March 2012 provides that an employer carrying out a collective redundancy must distribute the layoffs equally across the company's age groups. The entry into force of this law will be determined by royal decree (and the expected date is currently unclear). However, it is anticipated that the relevant rules will be further amended before its entering into force.

This selection criterion does not apply when the collective redundancy is carried out in the context of a bankruptcy, a judicial liquidation or a complete plant closure that concerns all the company's employees.

The dismissals must be proportionally distributed among the following age groups: below age 30, between 30 and 50, and age 50. The age groups are identified at the level of the company or at the level of the division concerned by the collective redundancy.

The law foresees several adjustments:

- up to 10 per cent deviation from the proportional distribution is accepted;
- employees under contract for defined duration/tasks are not taken into account, unless their contract is terminated before the end of the defined duration/task as a result of the collective redundancy; and
- 'key employees' are not taken into account. The concept of 'key employee' is, however, not (yet) defined.

Any employer that does not comply with the age pyramid will have to reimburse the reductions on social security contributions that it has gained over the past eight quarters in relation to the employees who have been dismissed in the framework of the collective redundancy and who were 50 years old or more at the time the collective redundancy was announced.

6. Redundancy/severance entitlement

Statutory severance package

Dismissed employees will be entitled to a statutory severance package, which will usually include:

- notice depending on the length of service of each employee (worked or a payment made in lieu of notice);
- a prorated end-of-year premium; and
- end-of-service holiday pay.

Depending on circumstances at hand, outplacement and early retirement schemes must be provided by the employer.

In case of a collective dismissalcollective redundancy, employees are entitled, under certain conditions, to an additional payment, on top of the normal severance entitlements (the collective dismissalcollective redundancy indemnity). The amount of this payment is equal to 50% per cent of the difference between the employee's net salary and the amount of unemployment allowances the employee is entitled to.

Belgium

Thresholds previously detailed for the qualification of a collective dismissalcollective redundancy is are slightly different for from the thresholds for entitlement to the indemnity for collective dismissalcollective redundancy. It concerns:

- companies with between 20 and 59 employees : termination of at least 6 six employees within a 60 days' period; and
- companies with at least 60 employees: termination of 10% per cent of the workforce within a 60 days' period. Also, in most cases, the employer will be required to set up a so-called 'redeployment cell' in which at least one trade union and the public employment services are represented. Such redeployment cell provides the dismissed employees with assistance in dealing with their dismissal and with their redeployment.

Additional entitlements (not defined by law but sometimes set at sector level and/or negotiated at company level)

In case of collective redundancies, it is common to negotiate a collective redundancy package for redundant employees, dealing with the consequences of the dismissals for the employees. The document in which such a collective package is laid down is generally called a Social Plan, which may take the form of a company-level collective agreement. It provides benefits on top of statutory requirements and could lead to the cost of the restructuring being significantly higher as the cost of a 'regular' statutory severance package. There is no rule in respect of the total cost of a collective redundancy, as it will also depend on an number of factors such as precedents in the company or the sector, the bargaining power of the parties, the timing, etc. Social Plans often contain a variety of measures including the calculation method for the severance and other financial compensation as well as work-to-work measures (outplacement, job application training and facilities, references).

The advantage of involving employee representatives is that a redundancy package agreed upon with them that represent a significant part of the staff will have more binding effect than a redundancy package offered unilaterally by the company to redundant staff. Moreover, social peace covenants (as in commitments not to start industrial action) are often inserted in collective agreements that contain the Social Plans, which offer some guarantees to the business.

Please note that these additional entitlements granted on the basis of collective agreements or agreements concluded at company or sector level, are chargeable to the amount of the additional payment for collective redundancy. This indemnity will therefore not be due if a company or a sector level agreement provides equivalent or higher benefits.

7. Penalties for failure to comply with information/consultation obligations

Non-compliance with the information and consultation procedure triggers civil, criminal and administrative sanctions.

Among the civil sanctions, it is worth noting that the dismissed employees can challenge the validity of the information and consultation procedure in specific circumstances (see question 3). If their challenge is successful, there is a risk that the planned redundancies may have to be suspended and/or any dismissed employees reinstated until the information and consultation procedure has been completed properly. In practice, damages for non-compliance with the consultation process are more likely to be awarded (in addition to the normal severance compensation).

France

1. What is 'redundancy'?

A redundancy is defined as *"a dismissal carried out by an employer for one or more reasons unrelated to the employee's person and resulting from the elimination or transformation of his/her position; or a change to an essential element of his/her employment contract, which has been refused by the employee, due in particular to economic difficulties, the need to safeguard the group's competitiveness, technical changes or the termination of the company's activities"* (French Labor Code (FLC), art L . 1233-3).

Economic grounds are to be assessed at the level of the business sector in which the employing company and other group companies present in France operate. For these purposes the notion of 'business sector' may be determined by reference, for example, to the type of services/goods supplied, the target clientele and the distribution networks/methods.

A mass redundancy requiring a 'social plan' occurs if:

- 10 redundancies or more are envisaged over a period of 30 days;
- 10 redundancies were notified over three months without reaching 10 redundancies in one month, a social plan will have to be put in place for any redundancy implemented within the next three months;
- 18 redundancies were notified within a civil year: a social plan will have to be put in place for any redundancy implemented in the first three months of next civil year.

2. Information and consultation requirements

The employer must inform/consult the social and economic committee (CSE). on a redundancy project. In certain business sectors, the applicable collective bargaining agreement also provides for the consultation of trade union delegates (e.g. the metallurgy industry). The rules below apply in companies with at least 50 employees.

If only one employee is to be dismissed, the CSE will only be informed and consulted on the definition of the selection criteria (see question 5 below). In large corporate groups, the CSE must also be consulted on the modalities of the redeployment leave (see question 7).

If two to nine employees are to be dismissed (within a period of 30 days), the CSE must be informed and consulted on (i) the economic justification of the contemplated reorganisation and its consequences on employment (ii) the contemplated redundancy (i.e. including the selection criteria for the order of dismissals as well as the redeployment leave) and, in most cases (iii) the impact of the reorganisation project on the health, safety and working conditions of the employees concerned. After the end of the consultation process, the employer must also organise a preliminary meeting with each employee concerned, during which the employee is informed of the reasons for the termination of his/her contract. The labour administration (so-called 'DIRECCTE') must be notified of the redundancy project but its approval will not have to be sought.

If a social plan is triggered (as described above) the three information/consultation procedures described above are required. At least two meetings with the CSE must be held, separated by at least 15 days. (see question 4). In addition to the information provided to the CSE (see question 5), each employee who is to be dismissed is notified in writing of the reasons for the termination of his/her contract. No individual preliminary meeting is required in this process. In a social plan context, the DIRECCTE must be notified of the redundancy project and continuously provided with all the documents that will be shared with the CSE throughout the process (invitation and agenda of meetings, information notes provided, presentations, expert reports etc.). At the end of the process, the DIRECCTE's approval will have to be sought.

France

3. Timing requirements

When fewer than 10 employees are to be dismissed, the consultation procedure is subject to a fixed one-month time limit from the date of the first CSE meeting.

In a social plan context, the consultation procedure is enclosed in fixed deadlines (unless a majority collective agreement, so-called 'methodology agreement' has been concluded), it being specified that the delay in which the CSE must render its opinions starts from the first CSE meeting:

- two months if the number of potential redundancies is below 100;
- three months if the number of potential redundancies is equal of above 100 and below 250;
- four months if the number of potential redundancies is at least equal to 250.

Upon expiry of this timeframe, the information/consultation procedure is deemed completed, even if the CSE has not yet rendered its opinions. At least two meetings must be held, separated by at least 15 days.

Once an opinion has been rendered by the CSE or the above deadline has expired, the employer must send the social plan to the DIRECCTE, who will have 15-21 days to approve or validate the social plan, depending on whether an agreement was reached with trade unions and employee representatives or if the social plan has been unilaterally established by the employer.

In the absence of any reply from the DIRECCTEs within the 15/21-day timeframe, the social plan is deemed approved/validated. No individual dismissal notification can take place before expiry of these deadlines; otherwise, the dismissals are null and void.

4. What does consultation mean?

The object of consultation is to secure a formal 'opinion' (whether positive or negative) from the CSE on the proposed reorganisation and social plan projects. In the absence of such opinion by the end of the timeframe described above, it will be deemed to have given a negative opinion. In any case, the opinion rendered by the CSE, whether positive or negative, does not entitle the CSE to veto the employer's project.

5. How are employees selected for redundancy?

The employer cannot decide at his own discretion the employees it intends to make redundant: it will be compelled to apply selection criteria to determine the employees whose redundancy is contemplated in the absence of redeployment.

If the applicable collective bargaining agreement or any other applicable collective agreement does not provide for specific criteria, the employer must take into account the selection criteria set forth by the FLC, i.e. family situation, length of service in the company, age, status of employees with social specificities that make their reinstatement more difficult (handicap, age etc.) and professional skills/expertise.

Pursuant to legal provisions, the selection criteria must be assessed amongst all employees belonging to the same professional category (defined as a group of employees who perform duties of the same nature within the company, and who have received a common vocational training). This concept is distinct from that of the 'position' of the employee and takes into account the interchangeability between employees who, based on their skills, can be expected to easily change positions (as the case may be, after a short vocational training to help them adapt to the new position).

France

6. Redundancy/severance entitlement

If made redundant, an employee with at least eight months of service is entitled to receive a statutory severance payment, calculated as follows:

- 1/4 month of salary per year of seniority for the first 10 years;
- 1/3 month of salary per year of seniority starting from the 11th year.

Usually, the applicable collective bargaining agreement provides for higher payments. Company wide collective agreements and individual employment contracts can also contain different severance entitlements.

Moreover, where there are large-scale redundancies, the social plan provides for increased compensation payments and ancillary measures (e.g. training measures, mobility incentives etc.).

If the employing entity belongs to a group employing less than 1,000 employees or is under a court-ordered liquidation, it must offer a 'professional security contract' (*contrat de sécurisation professionnelle*) to the dismissed employees. This professional security contract, offered in partnership with the government employment agency (*Pôle Emploi*), intends to accompany the dismissed employees in their research for a new position.

If the employing entity belongs to a group employing at least 1,000 employees in Europe, it must offer 'Redeployment leave' (*congé de reclassement*) of 4-12 months, including notice period. During the statutory notice period, the employee receives full pay and during any additional contractual notice period is paid at least 65 per cent of his/her salary. In practice, the compensation granted during the redeployment leave is often higher than the minimum set up by law and the duration can also be longer, in particular in case of social plan.

7. Penalties for failure to comply with information/consultation obligations

Failure to comply with the applicable information and consultation obligations of the CSE is a criminal offence that exposes the company to:

- a fine of EUR 3,750 for each employee concerned. Employees may additionally claim damages for the harm suffered;
- a fine of EUR 7,500 for the legal representative of the company and EUR 37,500 for the company itself.

Failure to implement a social plan when mandatory or involving the DIRECCTE as required, would render null and void any redundancy already implemented. Employees made redundant would be entitled to request their reintegration within the company (as well as back pay since the termination) or, when the reintegration is impossible, they would be entitled to an indemnity that could not be inferior to their 6 last months of salary.

Germany

1. What is 'redundancy'?

A redundancy situation will arise where:

- there is a business closure;
- there is a workplace closure; or
- an employer has a reduced requirement for employees to carry out work of a particular kind.

A mass redundancy occurs where an employer plans to dismiss within a period of 30 calendar days

- more than five employees in establishments which regularly employ more than 20 but fewer than 60 employees,
- 10 per cent or more than 25 employees in establishments which regularly employ at least 60 but fewer than 500 employees,
- 30 employees or more in establishments which regularly employ at least 500 employees.

2. Information and consultation requirements

The employer is not required to inform and consult with the employees individually under German law. Instead, if the employees are represented by a works council, the competent works council must be informed and consulted.

Also, as in any dismissal case, the competent works council or — in relation to any affected executive employees — the representative body for executive staff must be informed and consulted on each individual dismissal case.

In case of a planned mass redundancy, the employer must notify the local employment office beforehand.

The notification must include the employer's name, the seat and nature of the business, the reasons for the planned dismissals, the number and occupational group of employees to be dismissed and of those regularly employed, the time period during which dismissals are to take place and the intended criteria for the selection of the employees to be dismissed.

Also, the employer must inform and consult with the competent works council before giving notices of termination to the affected employees (for further details see question 4).

If an economic committee exists in the company, the employer must discuss the planned mass redundancy with this committee as well.

As in any dismissal case, the employer must also consult with the works council or — if executive staff is affected by the planned dismissal — the representative body for executive staff on each individual dismissal prior to the dismissal.

3. Timing requirements

The works council must be informed and consulted about a planned mass redundancy as soon as the employer has a clear proposal regarding the envisaged restructuring plans and before a final decision has been made. If an economic committee exists, it must also be informed about the planned mass redundancy before any dismissals and even before any works council consultations take place.

The employment office must be notified of the proposed mass redundancy before the employer serves any notices of termination to the employees. Also, consultations on individual dismissals with the works council or the representative body for executive staff must be conducted before notices of termination are given.

Germany

4. What does consultation mean?

The employer must inform the works council of its proposed decision and outline any measures it proposes to make that may result in the reduction of headcount or affect the employees' working conditions. It must provide the works council with detailed information on the planned mass redundancy process and inform it on the consequences for the affected employees and the planned timeframe for such measures. The employer and the works council must then endeavour to reach an agreement regarding the rationalisation measures and their implementation (implementation agreement). In addition the employer and the works council must enter into an agreement regarding the financial compensation for the affected employees.

Before issuing any notice of dismissal, the employer must also inform the works council or, respectively, the representative body for executive staff of each individual employee or executive employee it intends to dismiss (including information such as age, years of service, maintenance obligations, special protection against dismissal) and explain the reasons for each dismissal.

The consultation process ends when either a statutory waiting period (usually one week) expires or the works council or representative body for executive staff either gives its final opinion on the dismissal or clarifies that it does not wish to comment on the dismissal.

Where an economic committee exists, the company must provide it with any information which is necessary to reasonably discuss the planned measures with the company.

5. How are employees selected for redundancy?

Dismissals must be carried out in accordance with certain rules on social selection, which, in principle, require the employer to terminate from among a group of comparable employees (comparable in terms of their tasks and their positions in the hierarchy) those in least need of protection. This means that the employer may not select employees based on their individual performance only, but must take into account the employees' length of service, age, any dependents and any severe disability.

6. Redundancy/severance entitlement

As a general rule, employees are only entitled to a severance payment if the employer and the works council have agreed on a social plan.

The average compensation is calculated by multiplying the employee's number of years of service, the average monthly salary and a factor which normally ranges between 0.5 and 1.0. The factor may vary depending on the employee's age and their prospects of finding a new job.

The total costs of the social plan will, to a large extent, depend on the particular circumstances of the case, e.g. the employer's local and overall economic situation.

Germany

7. Penalties for failure to comply with information/consultation obligations

Failure to comply with the requirement to consult with the works council/representative for executive staff on each individual dismissal will render the respective dismissals invalid.

The same applies if an employer does not notify the employment office of an envisaged mass redundancy before issuing any notices of dismissal.

If an employer implements rationalisation measures (e.g. dismissals of employees) prior to negotiating an implementation agreement with the competent works council, the labour court may prohibit the further implementation of such measures by means of a preliminary injunction, and the affected employees may claim damages.

Finally, any violation of the works council's or the economic committee's rights to be informed about a planned mass redundancy constitutes an administrative offence and may be punished with a fine of up to EUR10,000.

Ireland

1. What is 'redundancy'?

A redundancy of an employee arises in one or more of the following circumstances:

- an employer ceases to carry on its business in part or entirely;
- work requirements have diminished;
- work is to be done in a different manner for which the affected employee is not qualified;
- work is to be done by a different person who already performs other work for which the affected employee is not qualified; or
- work is to be done at a different location.

A collective redundancy arises where it is proposed that, within a 30 day period:

- five or more employees are to be made redundant in an establishment employing between 21 and 49 employees;
- ten or more employees are to be made redundant in an establishment employing between 50 and 99 employees;
- ten percent or more of the workforce is to be made redundant in an establishment employing between 100 and 299 employees; or
- thirty or more employees are to be made redundant in an establishment employing 300 or more employees.

The number of employees normally employed in an establishment is the average number employed in each of the twelve months preceding the date on which the first dismissal takes effect. An establishment is defined as meaning an employer or a company or a subsidiary company or a company within a group of companies which can independently effect redundancies.

2. Information and consultation requirements

Under the Protection of Employment Act 1977, an employer is obliged to inform and consult if a collective redundancy is proposed.

Irish collective redundancy legislation obliges an employer to consult with employee representatives (i.e. trade unions, staff association(s), or where there is no trade union or staff association, elected employee representatives) on the proposed redundancies with a view to reaching an agreement.

Irish legislation does not prescribe how an election process must be carried out. If there are union representatives in place, the employer must consult with them.

3. Timing requirements

Consultation should be initiated at the earliest opportunity and, in any event, at least 30 days before the first notice of dismissal is given. Case law makes clear that the obligation to consult is triggered when an employer has made a strategic or commercial decision compelling it to contemplate or plan for collective redundancies.

The employer is obliged to give the employee representatives certain statutorily prescribed information relating to the proposed collective redundancies at the outset of the statutory consultation process.

The employer is also obliged to notify the Minister for Employment Affairs and Social Protection of the proposed redundancies at least 30 days before the first dismissal takes effect. In addition, the employer must furnish a copy of the notification to the employee representatives, who may forward to the Minister any observations that they may have regarding the proposed dismissals. If the Minister so requests, the employer has to enter into consultations with the Minister or an authorised officer in relation to the proposed collective redundancies.

Ireland

3. Timing requirements

Consultation should be initiated at the earliest opportunity and, in any event, at least 30 days before the first notice of dismissal is given. Case law makes clear that the obligation to consult is triggered when an employer has made a strategic or commercial decision compelling it to contemplate or plan for collective redundancies.

The employer is obliged to give the employee representatives certain statutorily prescribed information relating to the proposed collective redundancies at the outset of the statutory consultation process.

The employer is also obliged to notify the Minister for Employment Affairs and Social Protection of the proposed redundancies at least 30 days before the first dismissal takes effect. In addition, the employer must furnish a copy of the notification to the employee representatives, who may forward to the Minister any observations that they may have regarding the proposed dismissals. If the Minister so requests, the employer has to enter into consultations with the Minister or an authorised officer in relation to the proposed collective redundancies.

4. What does consultation mean?

Employers must consult with the employee representatives on the proposed redundancies with a view to reaching agreement. The purpose of the consultation is to engage on:

- the possibility of avoiding the proposed redundancies, reducing the number of employees affected and/or mitigating their consequences (e.g. by re-deploying and/or re-training the employees), and
- the basis upon which employees are to be selected for redundancy.

Consultation must be conducted in good faith "with a view to reaching agreement". There is no requirement to actually reach agreement.

As part of the consultation exercise, alternatives to redundancy must be explored. This includes discussing the possibility of redeploying employees to potentially suitable alternative roles. There is, however, no obligation to create a new role for an employee, where the requirement for that role does not exist.

5. How are employees selected for redundancy?

There are no selection criteria prescribed by law. Certain employers have collectively agreed redundancy selection procedures and, where they do, they should be adhered to. Redundancy selection is only required where employees are in interchangeable roles from which employees to be made redundant need to be selected. In the first instance, a redundancy selection pool should be identified and an objective process applied in determining who from amongst that group is to be selected.

Employers typically use a detailed redundancy selection matrix to score at risk employees, with marks allocated under different headings (e.g. attendance record, performance record, disciplinary record, length of service). Following the assessment process, those with the lowest marks are selected for redundancy. Following such a rigorous approach to redundancy selection assists in defending any litigation that arises from redundancy selection.

Ireland

6. Redundancy/severance entitlement

Statutory payment

Employees with at least 104 weeks' continuous service are entitled to a tax free lump sum statutory redundancy payment in the event of the termination of their employment by reason of redundancy. This payment is calculated by reference to a statutory formula: two weeks' normal remuneration for every year of service plus one bonus week payment. A week's remuneration is capped at EUR 600.

Enhanced redundancy payment

Certain employees enjoy a contractual right to enhanced redundancy terms, over and above the statutory minimum terms. Even where such rights are not enjoyed, it is customary for employers in Ireland to pay enhanced redundancy payments to employees in exchange for the execution of a release of claims related to employment/ the termination of employment. The quantum offered is a matter for each employer but is typically calculated by reference to a formula related to length of service (e.g. two or three weeks' remuneration per year of service).

Notice

An employee who is being made redundant (and who has at least two years' continuous service) must be given at least two weeks' notice of the redundancy in writing. However, two weeks is the minimum notice that must be provided and employees may be entitled to longer notice periods under their contract of employment or under statute, based on their length of service. Employees with less than two years' continuous service who are made redundant are entitled to at least one week's statutory notice or contractual notice if greater, but have no entitlement to a statutory redundancy lump sum.

Accrued annual leave

Employees have a statutory entitlement to receive payment in lieu of any accrued but untaken annual leave on the termination of their employment.

7. Penalties for failure to comply with information/consultation obligations

An employer who fails to initiate consultation with the employee representatives or fails to supply them or the Minister with all relevant information or who fails to notify the Minister of the proposed collectives redundancies is guilty of an offence and liable on conviction to a fine not exceeding EUR 5,000.

An employer who effects collective redundancies before the expiry of the 30 day notice period provided to the Minister for Employment Affairs and Social Protection is guilty of an offence and liable on conviction to a fine not exceeding EUR 250,000.

Employees who are not informed/consulted about proposed collective redundancies can pursue statutory redress and, if successful in their claims, be awarded compensation of up to four weeks' pay each.

Italy

1. What is 'redundancy'?

A genuine redundancy situation will arise where an employee's post will be eliminated as part of a restructuring process and an alternative post cannot be found elsewhere within the organisation.

Collective consultation obligations arise if an employer with more than 15 employees proposes to make five or more employees redundant at one establishment or in different establishments based in the same province within 120 days.

2. Information and consultation requirements

A letter must be sent to the union representatives containing the following information:

- an explanation of the reason for the employer's decision;
- an explanation of the technical, production and organisational reasons whereby the employer deems that no alternative measures can be taken;
- the number, the position and professional profile of the entire workforce, and in particular of the employees who are to be made redundant;
- the timeframe of the proposed redundancies; and
- any proposal or measure to reduce the possible social consequences of the redundancies.

Once the information and consultation procedure is carried out, the relevant dismissals must be effected by sending written notice to each redundant employee. At the same time, the employer must send the union representatives and the competent public bodies a document containing key facts about the individual redundancies.

The employer must consult with all employee representatives, including the plant-level union representatives and the representatives of the largest unions of the employer's industry (generally this is the trade union that signed the national collective agreement adhered to by the employer).

3. Timing requirements

The employer is obliged to give prior notice of the proposed redundancies in writing to all employee representatives, who then have the right to call a meeting with the employer within seven days of receipt of the notice to request a detailed explanation of the proposals and to discuss possible alternatives.

If an agreement is not reached within 45 days of the employee representatives' receipt of the notice, the local labour office will mediate for a maximum period of 30 days.

The timescales are halved if fewer than 10 redundancies are proposed.

4. What does consultation mean?

The aim of the consultation is to consider the number of posts selected for redundancy and whether employees can be transferred to other production units. The effects of the redundancies on the relevant employees must also be considered, as well as whether the affected employees should (if applicable) enter into a government-funded jobsaving scheme or into a state salary support scheme.

5. How are employees selected for redundancy?

In selecting employees, the employer must consider selection criteria set out in any applicable collective bargaining agreement (the criteria can also be agreed with the employee representatives) or in statutes, such as technical and production requirements, length of service and family obligations.

Italy

6. Redundancy/severance entitlement

Severance pay

The employer must pay severance pay to each employee, which is calculated as follows:

- for service before 1 July 2007, a payment is made that is equal to the sum of each employee's annual overall salary (including bonuses) divided by 13.5; and
- for service from 1 July 2007 a monthly payment is paid into pension funds.

Supplementary monthly payments

The employer must also pay a supplementary monthly payment if required in accordance with the applicable collective bargaining agreement. The employer must pay the amount due up to the date on which the employment contract is terminated (including a prorated amount accrued during the notice period).

Notice period

Employees are also entitled to be given notice of termination in accordance with the applicable collective bargaining agreements.

A payment in lieu of notice may be made if the employer and the employee agree.

Unemployment benefits

NASPI is an unemployment benefit based on the salary and the social security contributions accrued by the employee. NASPI is paid monthly and covers a number of weeks equal to half of the contribution weeks accrued in the last four years of employment. The maximum duration of NASPI is 24 months.

NASPI's amount varies depending on the employee' salary and contributions of the last four years preceding the employment termination, however, it can be equal to around EUR1,000 per month.

7. Penalties for failure to comply with information/consultation obligations

Breach of these information and consultation procedures or of the collective or statutory selection criteria may render the dismissals invalid.

It is worth noting that if an employer fails to comply with its consultation obligations, the trade unions may apply to the employment court to obtain an order to force the employer to comply. If the employer fails to comply with the order, its legal representatives (commonly the directors) will be subject to criminal penalties.

Employees may challenge their personal selection before the courts, for example, alleging that they were selected on the basis of discriminatory criteria.

The Netherlands

1. What is 'redundancy'?

Redundancy arises where an employee's position ceases to exist as a result of economic, technical or organisational reasons. Redundancy is a valid reason for termination of the employment.

As a starting point, Dutch employment law does not allow for the unilateral termination of an employment agreement by an employer. In case of a termination by reason of redundancy the employer must obtain approval from the Dutch Labour Authorities (UWV) to serve notice of termination.

Please add thresholds here — see other countries

2. Information and consultation requirements

There is no requirement to consult with employees individually. There may be a requirement to consult with employee representatives.

Internal employee representative bodies

- If a works council has been established (i.e. where there are 50 or more employees), it will have consultation rights if the redundancy is caused by a significant reduction of or change to the activities of the company.
- If the company has an employee representative body (i.e. where there are between 10 and 50 employees) it has the right to be consulted if 25 per cent or more of the employees are being made redundant.
- If the company does not have a works council or employee representative body, the employer will be required to organise a meeting with all employees collectively and consult on a proposed redundancy of 25 per cent or more of the employees.

External employee representatives

Consultation of trade unions may be required if prescribed by an applicable collective labour agreement or in case of a redundancy process leading to a collective redundacy. A collective redundancy is the redundancy of at least 20 employees working within one district of the UWV within a rolling period of three months. Not only forced dismissal will count towards the number of 20, also agreed terminations for redundancy reasons will need to be taken into account. As the 20-employee principle needs to be applied during a rolling period, a collective redundancy situation may arise retro-actively.

In case of a collective dismissal the company will have to notify the UWV and the trade unions and consult with trade unions and the applicable internal employee representative bodies, if any. Not observing these rules may render terminations already effected (whether based on an agreement or forced dismissals effected with a permit issued by the UWV) null and void retroactively. For that reason it is of the utmost importance to closely monitor the number of dismissals for redundancy reasons within any period of three months.

Additional consultation requirements may arise from agreements between the employer and internal and/or external employee representative bodies.

The Netherlands

3. Timing requirements

To the extent required, consultation of the works council should take place when the works council's opinion may still affect the employer's decision hence before any final decision is made. If the advice of the works council is positive, the proposed redundancies can be implemented. Timing could be impacted if the works council renders a negative advice (please see question 7).

In the case of a collective redundancy, the UWV will only consider requests for permission to terminate employment agreements after one month has elapsed following the notification to the UWV and the employee representative bodies involved. However, if the trade unions confirm in writing that they have no objections to the proposed dismissals or in case there is a real risk of bankruptcy, the one-month waiting period does not need to be observed. Following the notification to the UWV and the trade unions, consultation with the trade unions can take place. The preparation and implementation of a collecollective redundanciesctive dismissal can on average take up to a few months.

4. What does consultation mean?

Consultation should be carried out to consider the social, economic and financial consequences of the proposed redundancies for the employees. Consultation of works councils means that a meeting will be organized between management and the works council to discuss the proposed redundancy. After that, the works council can render a positive, negative or conditional advice.

Consulting with trade unions about of a collective dismissal entails a discussion on ways to prevent it, mitigate its consequences or decrease the number of employees to be dismissed. It is common to negotiate a collective redundancy package (social plan) with the relevant trade unions. Social plans often contain a variety of measures, including a severance calculation method and other financial measures (e.g. reimbursement of legal fees), a voluntary leaver bonus and/or work-to-work measures.

5. How are employees selected for redundancy?

The employer must, when selecting employees to be made redundant, apply the reflection principle. This means that employees who have positions which are exchangeable within one organisational unit should first be divided into age groups (15-25, 25-35, 35-45, 45-55 and 55 and older). Subsequently, the number of dismissals to be effected for one particular position should be divided proportionately over these age groups. Finally, the individual employees who will be made redundant should be selected within the relevant age group based on the 'last-in-first-out' principle.

The Netherlands

6. Redundancy/severance entitlement

Employers are required to pay a statutory severance to employees who have been employed for at least 24 months and:

- whose employment agreement is terminated or not renewed at the initiative of the employer; or
- who has himself terminated or not renewed his employment as a result of culpable acts or omissions by the employer.

The statutory severance amounts to, in short:

- 1/6 monthly salary for each six months of service for the first 10 years of service, and after that 1/4 monthly salary for each six months of service;
- 1/2 gross monthly salary for each six months of service from the age of 50 for employees employed by the employer for at least 10 years;
- at maximum EUR81,000 gross (amount for 2020) or, if the annual salary exceeds EUR81,000 gross, not more than one annual salary.

For the purposes of calculating the severance, 'salary' means the fixed salary, the average variable salary earned over the three years preceding the termination and fixed income elements like shift allowance, commission, 13th month, holiday allowance etc.

Social plans usually provide for a higher severance or additional benefits.

[There is a legislative proposal which intends to amend the calculation of and eligibility to the statutory severance. The envisaged date of entry into force is 1 January 2020.]

7. Penalties for failure to comply with information/consultation obligations

Works Council

If an employer decides to pursue its redundancy proposals despite receiving negative feedback from the works council or without consulting at all, a one month waiting period will apply during which the works council may initiate court proceedings on the grounds that the decision is unreasonable.

Generally such proceedings will take between two and three months to be finalised. Strictly speaking, the company is free to implement the decision after the one-month waiting period has lapsed, regardless of whether the works council has filed an appeal with the court. However, the works council may file for summary proceedings and request the court to impose an injunction on the employer preventing the redundancies from going ahead until the court has considered the case.

UWV

As indicated, if the employer fails to make the required notification to the UWV and the trade unions involved in case of a collective dismissal, the UWV will refuse any requests for permission to terminate employment agreements until it receives such notification. Where the employer has already effected redundancies, employees can request the cantonal court to annul the dismissal.

Trade Unions

Trade unions have no specific remedies other than the general industrial relations options, e.g. strikes and creation of unrest within the company, if they feel that they have not been consulted properly.

Poland

1. What is 'redundancy'?

Under the Act on collective redundancies, these are defined as the termination of employment contracts, by an employer that employs 20 persons or more, on the grounds of redundancy, over a period not exceeding 30 days, of:

- 10 employees in establishments employing fewer than 100 employees;
- 10 per cent of all employees in establishments employing 100 or more but fewer than 300 employees; or
- 30 employees or more in establishments employing 300 employees or more.

The above numbers also include employees whose contracts are terminated by mutual consent of the parties (if above five), but for reasons not attributable to the employees.

A precise definition of reasons not related to employees is not provided and should be assessed separately for each case, e.g. the employer's liquidation or bankruptcy, reorganisation of work, limitation of operational costs, or financial difficulties can constitute a reason not related to employees.

2. Information and consultation requirements

An employer must notify in writing and consult with trade unions at the workplace or with employee representatives if there is no trade union operating at the employer's workplace (the information to be given in the notification are set out by labour law).

Separately, the employer must inform and consult the works council (if it exists) at the workplace.

3. Timing requirements

There are specific timing requirements regarding the collective redundancies, in particular relating to the notifications to the labour office (two notifications), notifications / consultation with employee representatives (or trade unions / works council) and the conclusion of an agreement with the trade union on collective redundancies or the introduction of a collective redundancy regulation (if there is no trade union).

Once the procedure is fulfilled (depending on the situation, it can take at least 25 -30 days), the employer may serve termination notices to individual employees. Termination notice periods are the same as under general provisions of the Polish Labour Code or as contractually agreed, if more beneficial for an employee. However, it is possible to shorten the notice period of three months (maximum statutory notice period) to a period of no less than one month, in such case the employee will be entitled to compensation equal to his/her remuneration during the entire notice period.

Poland

4. What does consultation mean?

Generally, the employer is obliged to consult on the intention of carrying out collective redundancies with trade unions operating at the employer, specifically, on the possibility of avoiding, or reducing the extent, of the collective redundancies, as well as on employment issues connected with the dismissals, such as the possibility to retrain employees or for dismissed employees to change role?.

Also, the employer needs to notify trade unions in writing of:

- the reasons for the intended collective redundancies;
- the number of employees employed and their professional groups;
- the employees professional groups affected by the intended collective redundancies;
- termination period;
- the proposed criteria for selecting which employees are to be dismissed;
- the succession of termination and proposed obligations of the employer to dismissed employees;
- the proposals for settling employment matters connected with the intended collective redundancies; and
- if these matters contain any payments, the employer is additionally obliged to present the method used to calculate those amounts.

If there are no trade unions operating at a given employer, representatives of employees, chosen in a manner accepted by such employer, are entitled to the rights of such trade union organisations and must be notified and consulted.

5. How are employees selected for redundancy?

Criteria for selecting employees to be dismissed should be non-discriminatory and justified.

If an employer intends to cut one of several similar positions or functions, termination in such case would only be justified if objective criteria for selecting employees for redundancies were applied, with an indication of the employee slated for termination as the weakest and least needed.

Polish labour law does not provide any selection criteria. However, the Polish Supreme Court takes the view that an employer should consider its own needs and interests when selecting criteria to ensure that employees made redundant are objectively 'the weakest' and/or the least needed. It follows from selected Supreme Court judgments that the selection criteria related to employee performance include, in particular:

- employee utility for work;
- employee professional qualifications and work skills;
- professional experience;
- attitude towards tasks;
- career to date;
- employee seniority at the employer (however, seniority cannot be used as a sole selection criterion, but rather as an additional criterion).

Poland

6. Redundancy/severance entitlement

Statutory severance pay amounts to:

- one month of pay — when employed at a given employer for less than two years
- two months of pay — when employed at a given employer for two but no more than eight years
- three months of pay — when employed for longer than eight years.

Under statutory provisions, severance pay cannot exceed the equivalent of 15 times the minimum national wage on the date of employment contract termination (currently, the cap is PLN33,750 — approx. EUR 7,800).

These limits do not apply if higher severance payments were agreed to in employment contracts or internal regulations. The employer can also voluntarily provide additional contractual severance payments (which is an optional business decision).

7. Penalties for failure to comply with information/consultation obligations

Failure to fulfil the requirements? for collective redundancies (notifications / consultations obligations) has been deemed by the Polish courts to constitute unlawful termination of an employment contract, which may result in:

- reinstatement of the employee to work and payment of the remuneration for the period after being dismissed — in general for no longer than two months; however, in case of dismissing protected employees (e.g. pregnant employees), such employees are entitled to receive remuneration for the whole period they have been without work; or
- payment of damages if so claimed in court by the individual employee (as a rule from two weeks to three months remuneration).

Accordingly, where the above conditions of collective redundancy are not met, it is likely that employees will bring claims against the employer. Therefore, it is essential that the procedure is strictly followed.

Russia

1. What is 'redundancy'?

One of the accepted grounds for dismissal is redundancy arising as a result of:

- business closure or reorganisation;
- a elimination of the relevant post.

Staff redundancy will qualify as mass redundancy depending on the number of the employees dismissed during the relevant period, as follows:

- 50 or more people over 30 calendar days; or
- 200 or more people over 60 calendar days; or
- 500 or more people over 90 calendar days; or
- 1 per cent of the total number of employees dismissed within 30 calendar days in regions where the total number of the employed population (i.e. the total people employed in that region, including employees not employed by the company that is carrying out the redundancy) is less than 5,000.

Additional specific criteria for mass redundancy may be set by territorial and/or industry agreements to which the employer is a party.

2. Information and consultation requirements

The employer is not obliged to consult with the employees, unless a collective bargaining agreement provides otherwise.

The employer must notify (inform) the employees of the decision to make them redundant two months prior to the planned redundancy date. During the notice period the employees will continue to be paid and the employer must offer them vacant positions in the company.

The notification requirement can be waived based on the employees' consent and provided that the employer pays them an average salary in the amount proportional to the notice period.

To conduct the redundancy procedure, no consultations are required under Russian law.

However, besides giving notice to the employees, the employer must inform:

- the local employment service; and
- the employee representative body.

Members of the local trade union enjoy additional protections in case of redundancy. The employer must obtain the local trade union's opinion to dismiss the trade union's members. To dismiss an employee who belongs to the local trade union management, the employer needs to obtain approval of the relevant higher-level trade union elected body.

Russia

3. Timing requirements

An employer is obliged to notify the employees about the forthcoming redundancy no less than two months in advance.

The local employment service and the employee representative body (if there is one in the company) must be notified about the forthcoming redundancy two months in advance as well, unless there is a mass redundancy planned. In the latter case they should be notified no less than three months in advance.

4. What does consultation mean?

By general rule, no consultations are required under Russian law to conduct the redundancy procedure, unless a collective bargaining agreement provides otherwise.

5. How are employees selected for redundancy?

The following employees cannot be made redundant:

- pregnant women;
- female employees who have children under three years of age;
- single mothers raising a child under 14 years of age (or a disabled child under 18); and
- anyone raising children in these categories without a mother (i.e. maternal orphans).

In addition some other categories of employees have preferential rights to employment and should be made redundant last.

Employees with a higher performance rate should be made redundant after colleagues who have a lower performance rate. If the performance rate is equal, the following should be treated preferentially:

- individuals who have a family with two or more dependants;
- employees who are the only working individuals in the family;
- employees with a professional injury or illness linked to their employment with this employer;
- Second World War disabled veterans and disabled ex-servicemen of the Russian Army whose disability resulted from the country's defence operations; and
- employees improving their qualification at the initiative of the employer.

It is not permitted to make an employee redundant during a period of temporary disability.

Certain additional restrictions on dismissal based on redundancy or additional preferences for remaining employed may be established by laws, territorial or industry agreements.

Russia

6. Redundancy/severance entitlement

The employer should make the following redundancy payments to the employee:

- one average month's pay; plus
- an average month's pay payable each month for the period starting from the redundancy date and ending on the new employment date; however not for longer than two months in total, minus the pay mentioned above; plus
- an additional average month's pay if the employee applies for a job with a local employment service within two weeks of the dismissal date and has not been offered a new job within three months after the redundancy.

Higher severance entitlements are envisaged for employees working in the Far North and similar regions.

The company's collective bargaining agreement may provide for additional redundancy payments.

7. Penalties for failure to comply with information/ consultation obligations

Breach of the information/consultation procedures or any other requirements applicable to redundancies may render the dismissals invalid and result in further reinstatement of the employee(s) at work with payment of average salary for the whole period of forced absence from work.

Violation of the law when conducting the redundancy procedure may result in a fine of up to RUB50,000 (approximately USD760), fines for officials of up to RUB5,000 (approximately USD76). Higher fines and temporary disqualification are envisaged in cases when the employer and/or its official have already been subject to administrative liability for the same type of violations.

Spain

1. What is 'redundancy'?

A redundancy is a dismissal based on one or more of the following objective grounds, as a result of which the position will no longer exist:

- Economic reasons which concur when the company's results reflect a negative economic situation;
- Technical reasons, i.e. changes in the means or instruments of production;
- Organisational reasons, i.e. changes in the work systems and methods used by the workforce, or in the manner in which production is organised;
- Production-related grounds, i.e. changes in the demand of goods and services that the company produces.

Collective information and consultation obligations will arise if an employer proposes to dismiss within 90 days:

- 10 or more employees where the total workforce is less than 100;
- 10 per cent of the total workforce where this is between 100 and 300 employees;
- 30 or more employees where the total workforce is 300 or more; or
- the entire workforce where the total number of affected employees is higher than five.

2. Information and consultation requirements

If the proposed number of redundancies falls below the above mentioned thresholds, there will be an obligation to inform, but not to consult.

The thresholds above need to be evaluated at the level of both the company and/or a specific establishment.

In a collective redundancy, the employer must consult with a special negotiating body composed by the employees' legal representatives or, in the absence of such, by ad-hoc elected employees.

In the case of non-collective redundancies, a copy of the redundancy letter must be provided to the employees' legal representatives.

3. Timing requirements

The consultation period with the employee representatives must begin in 'good time' and last up to a maximum of 30 natural days, or 15 days where the company has fewer than 50 employees, unless an agreement is reached before. At the end of the consultation period, the employer must inform the labour authority about the outcome of the consultation.

If the consultation period ends with an agreement between the employer and the employees' representatives, a copy of the agreement should be sent to the labour authority.

If no agreement is reached, the employer will communicate its final decision regarding the redundancy and its conditions to the employee representatives and the labour authority within 15 calendar days from the last meeting.

In the case of non-collective redundancy, the employee must be given 15 days' notice or payment in lieu. There are no other timing requirements.

4. What does consultation mean?

Consultation is defined by the Workers' Statute, as 'the exchange of views and the opening of a dialogue between the employer and the works council on a given issue, including, where appropriate, the issuing of a report by the works council.'

Consultation must focus on the causes behind the redundancy proposals and on the possibility of reducing or avoiding the need for redundancies. It must also consider any measures that may be necessary to mitigate the effect of the redundancies on the dismissed employees.

Consultation must be undertaken in good faith with a view to reaching an agreement with the employee representatives.

Spain

5. How are employees selected for redundancy?

There are no legally prescribed selection criteria. Employees must be selected on the basis of objective and non-discriminatory grounds. The employees' representatives have a preferential right to stay with the company.

6. Redundancy/severance entitlement

Statutory payment

In both collective and individual redundancies, each employee is entitled to a minimum compensation payment of 20 days' salary per year of service, prorated by months for any period of time of less than one year, up to a maximum of 12 months' salary. For these purposes, salary means total salary, both fixed and variable, in cash or in kind.

In case of collective redundancies, and depending on the number of employees affected and their profiles, additional costs and contributions to the Social Security might arise.

Contractual payment

In case of collective redundancies, employees usually obtain the right to a redundancy payment over and above their statutory entitlement through negotiation by the special negotiating body. This redundancy payment would be subject to taxation, to the extent that it exceeds the statutory payment.

In the case of non-collective redundancies employees are also entitled to receive their contractual notice or a payment in lieu of notice, if any.

7. Penalties for failure to comply with information/consultation obligations

Collective redundancies require employer's compliance with rigid and detailed procedural requirements. Penalties of up to EUR187,515 may be imposed on the employer for non-compliance, in cases such as the breach of its collective consultation duties, or failure to provide the affected employees with an outplacement package where the number of affected employees exceeds 50.

In addition, if an employer fails to comply with its collective consultation duties or other procedural duties, an employment tribunal can declare the process - and therefore, the dismissals - null and void and order that all affected employees be reinstated with an entitlement to salaries accrued from the date of termination until the date of the reinstatement (but paying back any severance received).

If the employer fails to show sufficient evidence for the reasons underlying the redundancy, the dismissal will be declared unfair (individual redundancies) or unlawful (collective redundancies), entitling the employee to compensation equivalent to 33 days of salary per year of service up to a maximum of 24 months' salary.

United Kingdom

1. What is 'redundancy'?

A genuine redundancy situation will arise where:

- there is a business closure;
- there is a business relocation; or
- an employer has a reduced requirement for employees to carry out work of a particular kind. Typically this will cover the situation where an employer needs fewer employees to do a particular kind of work but it can also apply where the same number of employees is required overall but the particular kind of work (i.e. skills-set) has changed.

2. Information and consultation requirements

Collective information and consultation obligations arise if an employer proposes to make 20 or more employees redundant at one establishment within 90 days. There is no statutory definition of 'establishment'. However, it can be either a single or multiple sites, depending on whether they fall under a common management organisation.

In addition to these collective consultation obligations, there are also additional consultation requirements that apply on an individual basis. These are not covered by this guide.

At the start of the collective consultation, prescribed information must be given to employee representatives in writing. The information should include: the reasons for the proposed redundancies; the numbers and descriptions of employees it is proposed to make redundant; the total number of employees of any such description employed by the employer at the establishment in question; the proposed method of selecting the employees who may be dismissed; the proposed method of carrying out the dismissals including the period over which they are to take effect; the number of agency workers engaged by the employer, the type of work that those agency workers are doing and the parts of the undertaking in which they are undertaking that work.

The employer must consult with the affected workforce via 'appropriate representatives', who are either:

- recognised trade union representatives; or
- elected employee representatives.

UK legislation prescribes how any election process must be carried out. If the employer recognises a trade union in respect of a particular category of employees and the affected employees fall within that category, the employer must consult with those union representatives.

3. Timing requirements

The employer must carry out consultation while the redundancy proposals are still at a formative stage (i.e. when no decision has yet been taken).

Consultation must begin in 'good time' and in any event no later than:

- 30 days before the first dismissal takes effect if an employer proposes to dismiss between 20 and 99 employees in a 90-day period; or
- 45 days before the first dismissal takes effect if an employer proposes to dismiss 100 or more employees.

Additionally, an employer must give the Secretary of State at least:

- 30 days' notice before the first dismissal occurs where it proposes to make between 20 and 99 employees redundant at one establishment within 90 days; and
- 45 days' notice where it proposes to make 100 or more employees redundant within 90 days.

A prescribed form must be completed, which asks various questions about the proposed redundancy exercise.

The employer should not give employees notice to terminate their employment for redundancy before the consultation process is complete.

United Kingdom

4. What does consultation mean?

The consultation must be conducted in good faith 'with a view to reaching agreement', although there is no actual requirement to reach an agreement.

Consultation should include consultation on the business reason behind the proposed dismissals, not just the consequences flowing from them.

The employer must be capable of reconsidering its business reasons.

Consultation must cover ways in which the dismissals could be reduced or avoided, such as by looking at the possibility of redeployment within the organisation. The employer must also consider how the consequences of any dismissals could be mitigated.

In practice, 'mitigation' means that there will be consultation on matters such as the redundancy package that employees will receive and whether any assistance can be offered with alternative employment.

5. How are employees selected for redundancy?

There are no legally prescribed selection criteria. An employer must adopt a fair basis on which to select for redundancy and must apply objective selection criteria in a fair manner to the correct pool of employees.

6. Redundancy/severance entitlement

Statutory payment

An employee with at least two years' continuous service who is dismissed by reason of redundancy is entitled to receive a statutory redundancy payment calculated as follows:

- for each year of continuous service up to the age of 22, an employee will receive half a week's pay;
- for each complete year of continuous service from age 22 up to age 41, an employee will receive one week's pay; and
- for each complete year of continuous service above age 41, an employee will receive one and a half week's pay.

The maximum number of years' continuous service that will be taken into account is 20 years.

One week's pay is currently capped at GBP508 (the amount is increased each April).

Contractual payment

An employee may also be entitled to an enhanced redundancy payment if such a term is incorporated into his contract of employment. The statutory redundancy payment is usually offset against the contractual severance payment.

Notice

An employee is also entitled to be given notice of termination in accordance with their contract of employment.

United Kingdom

7. Penalties for failure to comply with information/consultation obligations

Protective award

If an employment tribunal upholds a claim for failure to comply with the collective consultation obligations, it can make a declaration to that effect and order a 'protective award', subject to a maximum of 90 days' pay per employee. A week's pay for this purpose is not subject to the statutory cap.

Unfair dismissal

If an individual dismissal is unfair, for example because the selection process was tainted with discriminatory criteria or because there was no proper consultation, this could give rise to a claim for unfair dismissal, which carries a separate and additional penalty. The maximum compensatory award (based on loss of earnings) that can be awarded is currently GBP86,444 (the amount of the award is reviewed each year).

Secretary of State fine

Failure to comply with the obligation to notify the Secretary of State (see question 3) is a criminal offence and may be subject to an unlimited fine.

There is no power or right to veto in respect of any redundancies.

Freshfields contacts

Austria

Karin Buzanich-Sommeregger
Partner
T +43 1 515 15 125
E karin.sommeregger @freshfields.com

Belgium

Satya Staes Polet
Counsel
T +32 2 504 7594
E satya.staespolet @freshfields.com

France

Christel Cacioppo
Partner
T +33 1 44 56 29 89
E christel.cacioppo @freshfields.com

Germany

René Döring
Partner
T +49 89 20 70 25 33
E rene.doering @freshfields.com

Italy

Luca Capone
Partner
T +39 02 625 30401
E luca.capone @freshfields.com

The Netherlands

Brechje Nollen
Partner
T +31 20 485 7626
E brechje.nollen @freshfields.com

Russia

Olga Chislova
Counsel
T +7 495 785 3032
E olga.chislova @freshfields.com

Spain

Raquel Flórez
Partner
T +34 91 700 3722
E raquel.florez @freshfields.com

United Kingdom

Kathleen Healy
Partner
T +44 20 7832 7689
E kathleen.healy @freshfields.com

Global

Jean-Francois Gerard
Head of Practice Development
T +32 2 504 7697
E jean-francois.gerard @freshfields.com

Other contacts

Ireland

Michael Doyle
A&L Goodbody
E mvdoyle
@algoodbody.com

Poland

Szymon Kubiak
Wardynski & Partners
E szymon.kubiak
@wardynski.com.pl

freshfields.com