

ADVANT Pulse

Restructuring in Europe

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WELCOME

Dear readers,

ADVANT is pleased to send you today a special newsletter that deals with a current issue and is of great importance beyond national borders.

In a wide range of industries, companies of all sizes are affected by the negative development of the economic situation in many countries. Globally active companies in particular are considering whether and in which site their staffing levels need to be adapted to these significantly changed conditions. As the legal framework for this are very

different from country to country, this special newsletter describes an overview of this framework in France, Germany and Italy. This makes it clear how important it is to have the best possible support and advice from experts when planning and carrying out a restructuring in these countries due to the great legal complexity.

We hope you will enjoy reading this special newsletter. Do not hesitate to contact the experts from **ADVANT Altana**, **ADVANT Beiten** and **ADVANT Nctm** for a brainstorming session, for further questions and for an in-depth exchange.

Best regards



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Against the current and prospective economic background, restructuring efforts will likely become more and more relevant in Europe. **ADVANT** is providing an overview of employment specifics that must be considered when restructuring companies in France, Germany and Italy.

For illustration purposes, let us assume the following example case:

A group of companies has operations in France, Germany and Italy, each with 300 employees. Each national company is bound by CBAs and local works councils (but no joint works councils or a European works council) exist. The operations in each country shall be shut down completely and as soon as possible.

Central management would like to have a basic understanding for each country regarding (A) an overview of the required steps to implement such measure (B) a basic timeline (C) costs to be expected and (D) to learn about common pitfalls.

A. OVERVIEW

France:

As a preliminary remark, French legislation provides for several mechanisms aimed at reducing and/or adapting the workforce without resorting to redundancies: voluntary redundancy plans ("*plan de départ volontaire*") and collective severance agreements ("*rupture conventionnelle collective*"). Generally accompanied by attractive financial incentives, the aim is to avoid redundancies.

There is **no legal provision for employers to keep their businesses in operation "for the sole purpose of ensuring stable employment for their staff"** (Cass. soc., 6 mai 1975, n° 74-40.258). Unless, it can demonstrate **fraud or recklessness of the employer**, the voluntary cessation of activity irrevocably terminates the employment contracts. In French law, this is known as an "autonomous" reason for economic redundancy. Since the cessation is total and definitive, there is no need to check whether the closure of the business is justified by other economic reasons. The French Supreme Court recently ruled that the complete and definitive cessation of a company's activity constitutes an economic reason for dismissal, even if it is not effective at the time of dismissal, but irremediably underway, and is not complete within the group. The only fact that other companies in the group have pursued similar activities is not in itself an obstacle to the employer's cessation of activity being regarded as total and definitive (Cass. soc., 20 sept. 2023, n°22-13.485).

Employers are required to draw up an employment protection plan ("*Plan de sauvegarde de l'emploi*" or "*PSE*"), either by **collective agreement** or through a **unilateral document**. This plan is mandatory whenever an employer plans to lay off at least 10 employees over a 30-day period in a company with at least 50 employees, whether there are staff representatives in the company or not. This is a set of measures designed to avoid redundancies or, at the very least, to limit their number. It includes an outplacement plan ("*plan de reclassement*") destined to facilitate the redeployment of employees whose redundancy could not be avoided, in particular older employees or those whose social characteristics or qualifications make their professional reintegration particularly difficult (C. trav. art. L 1233-61, L 1233-62).

In any case, the works council ("*Comité social et économique*" or "*CSE*") will be informed and consulted on the Plan.

The Plan will then be subject to **an administrative decision for validation**, in the case of a collective agreement, or **approval** ("*homologation*") in the case of a unilateral decision. The plan is executed in good faith.

Germany:

A shut-down of business operations can lead to a valid reason to terminate employment. Under German law, the company's decision to cease operations is only subject to limited judicial review and there will be no test whether the decision is "reasonable" or "economically necessary". What is reviewed, however, is whether the closure of the business is indeed being implemented. Dismissals for operational reasons are possible even before the closure is implemented if the implementation has already taken on "tangible forms".

The intended shutdown will constitute a **change in operations** ("*Betriebsänderung*"). According to the legal regulations in Germany, such changes in operation are a matter which the employer may not implement unilaterally. Rather, it is mandatory to first conclude a so-called **reconciliation of interests** ("*Interessenausgleich*") with the works council. This regulates the implementation of the measure in terms of labor law and this is required if the relevant company has at least 20 employees. Furthermore, a **social compensation plan** ("*Sozialplan*") must be concluded which is intended to mitigate the disadvantages for the employees associated with the job loss.

According to the concept of German labor law, negotiations on the reconciliation of interests and social compensation plan must take place at the company level. The negotiating partner is the works council. There is no provision for the mandatory participation of the trade union.

If the employer were to implement the change in operations without proper involvement of the works council, there would be a risk - at least in large parts of Germany - that the works council would stop the implementation of the measure by means of a temporary injunction. Irrespective of this, employees would be entitled to separately regulated claims for compensation (so-called "*Nachteilsausgleich*").

Employers may only implement the operational change once they have at least attempted to negotiate a reconciliation of interests with the works council. If this attempt fails, a conciliation body ("*Einigungsstelle*") must be set up. If the attempt to reach an agreement on the reconciliation of interests fails there as well, the employer can implement the operational change unilaterally. The conciliation body will then only negotiate - and may finally vote on - the social compensation plan.

Please note: Negotiations with the works council are mandatory and must be performed. However, under German law, the works council cannot ultimately prevent the implementation of a change in operations. The works council can effectively only delay the process, and experience shows that this is often the works council's intent.

Italy:

Under Italian law, it is possible to downsize the workforce either for economic reasons (ranging from economic or financial crisis to the need to streamline the productivity and sustainability of the company) or organizational reasons, including the decision to shut down a business.

The judicial review will determine whether the economic or organizational reasons exist, and the reorganization has been implemented. It cannot extend to the merit of the reasons, that it leaves to the sole discretion of the entrepreneur.

Collective dismissal procedure needs to be launched every time that the downsizing is supposed to impact at least 5 employees in a timeframe of 120 days. It consists of several stages of consultation and information exchange with the trade unions and internal work councils (if established) and may also see the involvement of public authorities (e.g. local labour office or Ministry of Welfare and Social Security).

Restructuring projects that have a high impact (those that involve any employer counting at least 250 employees who intends to close a head office, a factory, a branch, or an office or autonomous department located in the national territory, with termination of the relevant activity and with redundancy of not less than 50 workers) need also to go through a preliminary procedure before starting a collective dismissal. That requires extended length of time and involves several public authorities.

In a nutshell, this procedure can last for 180 days. Its purpose is to approve a social plan, in coordination among employer, unions, local and central authorities (e.g. Ministry of Welfare and Social Security as well as Ministry of Enterprises and Made in Italy) that, over a period of 12 months, may significantly reduce the impact to the workforce (e.g., using the support of public funding, finding a potential buyer to take over the business, applying short-time work programs, etc.).

Both the “ordinary” dismissal procedure and the preliminary one above described, aim at reaching an agreement with the trade unions within a given timeframe.

Generally speaking, even if an agreement on the modalities and timing for implementing the restructuring is not found with the trade unions, it is possible for the employer to serve the dismissals once all the required steps have been taken. Procedures closed with no agreement are frequently a subject to legal disputes and public scrutiny by authorities, although neither trade unions nor public authorities have a veto power or ability/faculty to invalidate the procedure.

B. TIMELINE

France:

The planned closure will require the implementation of a Plan, either through a unilateral document or a collective agreement. In view of the stakes involved in the planned operation, it is generally recommended that a method agreement (“*accord de méthode*”) be concluded, setting out in particular the procedures for informing and consulting the works council, in order to facilitate relations between the stakeholders. This optional arrangement also provides a framework for consultations and any expertise required.

The required time to complete a restructuring measure under French law very much depends on the facts of each individual case. Generally speaking, a time frame of around 5 months will be required to perform all essential steps – information and consultation of the works council, negotiation with the unions, discussion with the administration – and to be able to start the process of issuing notices of termination.

For a detailed overview of the relevant phases and the timeline, please refer to [Link](#)

Germany:

The time required for the planning and negotiation phases leading to the conclusion of a reconciliation of interests and a social plan naturally depends to a large extent on the specific circumstances of the underlying situation. Extensive job losses and complex structures prolong the need for preparation on the part of the employer and probably also the negotiation phase.

In general, however, it can be said that a reconciliation of interests and a social plan can be achieved in about 5–6 months. This period will be extended by 2–3 months if a conciliation procedure is to be carried out.

Please take this into account: Once the reconciliation of interests has been reached, but before the redundancies are announced, the procedure for the notification of impending collective redundancies must be carried out, official approvals must be applied for in the case of special protection against dismissal, and the works council must be consulted on each individual case of redundancy.

For a detailed overview of the relevant phases and the timeline, please refer to [Link](#)

Italy:

Implementing a collective dismissal based on the “ordinary procedure” requires the company to go through different phases. The timing for launching such a formal procedure may be impacted by preliminary consultation procedure required by the specific collective bargaining agreement applied (both at national or company level) and that the general obligations deriving from the law governing the duty of informing and consulting the trade unions need to be properly evaluated.

The required time to complete a restructuring measure under Italian law very much depends on the facts of each individual case. Generally speaking, a time frame of around 7 months will be required to perform all essential steps and to be able to start the process of issuing notices of termination.

For a detailed overview of the relevant phases and the timeline, please refer to [Link](#)

C. COSTS OF RESTRUCTURING

France:

As a preliminary remark, costing is an essential step for any employer contemplating the closure of his business and the implementation of a PSE. It varies according to the number of employees whose employment contracts are to be terminated...

[Read full article](#)

Germany:

The majority of the costs will be spent on severance payments under the social plan. The law does not specify any concrete values for this; rather, there is only the principle that the economic disadvantages resulting from the change in operations...

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Italy:

From the cost perspective a restructuring plan should consider the statutory entitlements (to be paid also if the dismissal is served on individual basis) for the terminated employees such as notice period, end-of-service allowances...

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D. TYPICAL PITFALLS

France:

Failure to prepare sufficiently in advance for the negotiation phase with the representative bodies (if any) or the information/consultation procedure with the Work Council: in addition to the difficulties this can cause when the French authorities...

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Germany:

Many things can go wrong when negotiating a reconciliation of interests and a social plan. However, the following aspects should be averted in any case:...

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Italy:

Employer may expect challenges along the way associated to the management of the existing workforce over the process as well as legal challenges related to trade unions and authorities, such as:...

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