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Collective Dismissals

In Belgium, France, Germany, Sweden and the
UK: Some legal, institutional and policy
perspectives

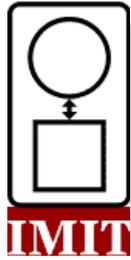
Donald Storrie

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The ultimate aim of this document was to provide some basis of understanding of restructuring behaviour and practices in the five countries. It can be used to understand processes in other countries and as a document to be used by the parties at the international conferences.

Sources included,

- The National Overviews from Belgium, France, Germany, Sweden and the UK:
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0. Introduction

A preliminary glance at the labour law regarding collective dismissals indicates that, as regards the regulations in statutory law, much is similar in the five countries. Given the common level of economic development, that some have similar legal traditions and of course EC law, this is hardly surprising.

The focus here is primarily upon the obligations that fall upon the employer. When the procedures or obligations are costly (broadly defined) we should identify which party bears these costs. The issue of whether costs and obligations fall on the individual employer, sector wide insurance schemes or the central or regional public budget is crucial in understanding behaviour.

1. General legal and institutional background

One can discern three broad legal traditions and institutional environments within EU(15) with respect to labour law: the Continental model, the Anglo-Saxon model and the Nordic model. The *Continental Model* includes Germany, France and Belgium¹ In these countries there is a relatively low level of union density. It is not unusual that there are a number of competing trade unions. Collective agreements are usually decentralised, legally binding and with limited coverage *per se*. However, most have an “extension procedure” whereby the Government can extent their coverage appreciably. See Table 1. Labour law appears to be more detailed and interventionist than in the two other models and often state inspections play an important role in ensuring observance of the law. Despite their similarities, there is still significant heterogeneity and it would be inappropriate to deal with all three countries together.

Table 1
Trade union density and collective bargaining coverage in 2000, percent.

Country	Trade union density	Collective bargaining coverage
Belgium	56	90+
France	10	90+
Germany	25	68
Sweden	79	90+
UK	31	30+

Source: Employment Outlook (2004)

Belgium

¹ The Netherlands, Luxembourg, Spain, Portugal, Italy, Greece and Austria could also be grouped in this classification. As the countries grouped in the continental model constituted the six founding Member States, there is considerable resemblance between this model and the law of the European Union.

Collective bargaining is very important in Belgium. Union density rates are relatively high and quite stable. There are three major ideologically based major trade unions. The ACV/CSC, which is aligned with the Christian Democratic Party, the BVV/FGTB aligned with the Socialist Party and ACLCB/CGSLB aligned with the Liberal Party. The three economically distinct regions (and communities), with considerable federal power, are a further distinguishing feature and add some complications.

The system of industrial relations is often described as neo-corporatist with a highly institutionalised involvement of the social partners in the decision-making process. The state in turn actively involves itself in the labour market as regards, for example, wage determination. As collective bargaining plays such an important role in Belgium (relative to law) there are considerable differences in the degree of job security awarded to blue and white-collar workers. This is exemplified by the very different lengths of periods of notice.

Recent developments include the “Renault Act” which clarified existing law (and provided for additional sanctions) in response to Renault’s blatant non-observance of existing law at the closure of its plant in Vilvoorde. Proposals have been made to further encourage the employer to provide alternatives to the dismissals by means of tax and social security payment incentives.

Germany

The whole issue of labour law and labour relations in Germany is currently in flux. The September 2005 election results would appear to have contributed little towards a clarification of the road to be taken in the near future. There has been intense debate on employment protection issues in Germany in recent years. The *Beschäftigungsförderungsgesetz* (Employment Promotion Act, originally from 1985 was revised by the Liberal/Conservative coalition in 1996. The revision weakened the use of objective selection criteria and raised firm-size thresholds for application of the law. Most of the content of this law was repealed when the SPD/Greens subsequently took office. However, as part of its “Agenda 2010”, the SPD/Green coalition in its second term raised application thresholds again and introduced other measures of deregulation.

France

French labour law and industrial relations appear, at least to an outsider, as exceptionally detailed, complex and confrontational. In this respect the programme on Radical Social Reform (or Social Modernisation) embarked upon in 2000 (between MEDEF and the five major unions is almost a parody. Restructuring issues (particularly the employer’s obligations to finance a *Plan Social*) and collective bargaining procedures have been central and very controversial issues in this process.

Pluralistic, sometimes antagonistic, unions create representivity problems. In our project perhaps this difficult issue may be simplified by focussing on the company level only. The Fillon Law, passed in April 2004, stipulates the following. There are two different means of applying the majority principle at company level. The social partners have to choose between them and codify this choice at the sector-level. One alternative is that a company-level agreement is valid when it is signed by one or more unions with at least 50% of the votes cast in the first round of the most recent

works council (or workforce delegate) elections. If no union (or feasible coalition unions) holds such a majority, the agreement must be approved by a majority of employees in a vote. The other alternative is that the agreement is valid if not opposed by non-signatory unions that received at least 50% of the votes cast in the elections. Opposition must be expressed in writing within eight days of being notified to the Ministry of Labour being notified. If no agreement is made at sector level the second alternative applies.

Sweden

The *Nordic model* (Sweden, Denmark and Finland) is characterised by rather limited state involvement in the labour market. Its involvement is largely to enable the social partners to conclude collective agreements. In this respect the state's role has been to secure rights for the trade unions. One could argue that Swedish unions have most influence of the five countries studied here and with by far the largest degree of unionisation – see Table 1. Collective agreements (without the extensions procedure common in many continental countries) cover almost the entire labour market. They are legally binding and are applicable to all at the workplace. Unions are organised by the industry principle. There is almost always only one agreement for the blue-collar workers and often only one for white-collar workers and demarcation disputes are very rare. Many of the agreements are concluded at a national often peak level. There are no work councils. The relatively extensive co-determination law enables the provision of information to the workers and requires the employer to negotiate in a wide range of issues, including collective dismissals. Despite the terminology “co-determination”, the running of the firm is quite definitely the employer's prerogative. While of course the relationship between the social partners is essentially one of a conflict of interests, the industrial relations climate is relatively cooperative and peaceful. Taking restructuring issues as an example, it is exceptionally rare that industrial action is used to try to prevent job loss or influence the dismissal procedures.

This is not to say that Employment Protection is not a controversial issue. The main conflict concerns the seniority rule. Employers claim that it has negative consequences on productivity. Unions on the other hand see it as a guarantee against arbitrary individual dismissal and are very aware that it is their best bargaining card in the dismissal negotiations. While the state seldom intervenes in the labour market, it has the largest public sector and social spending in the European Union. Social insurance is almost entirely publicly financed. Active labour market policy is a key area of economic and social policy.

The UK

The Anglo-Saxon Model (UK and Ireland) emanates from principles of common law (case law) and epitomises the *laissez-faire* spirit of liberal capitalism. State involvement is limited and the UK has shown some reluctance in implementing much of EC labour law. The collective agreement is more a “gentleman's agreement” and is not legally binding, unless the parties express a view that it should be considered as such.

2. Supranational legislation and conventions

Of most importance in this context is the common body of legislation emanating from EC Directives, which has been almost fully implemented in the five Member States. For example the EC Directive (98/59/EC) on Collective Dismissals applies to all Member States. A further commonality in that most countries have ratified ILO Convention 158 on termination of employment contract and ILO Recommendation 166 on termination of employment contract on the initiative of the employer.²

2.1 ILO conventions and recommendations

The Termination of Employment Convention, 1982 (NO. 158) obliges ratifying States to establish, the grounds upon which a worker can be terminated from employment. The employer may not terminate employment unless there is a valid reason connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking. Union membership, filing a complaint against the employer, acting as a worker representative, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, social origin, absence from work during maternity leave, or temporary absence for illness shall not be valid reasons for termination. The Convention establishes procedural requirements as well. The Convention is supplemented by Recommendation No. 166.

2.2 EU law

Of importance here are

- COUNCIL DIRECTIVE 98/59/EC of 20 July 1998 “On the approximation of the laws of the Member States relating to collective redundancies.”³

This law calls for notification of projected redundancies to the appropriate employee representatives and to the competent public authorities. The purpose of the information requirements is to allow the employee representatives to be able to meaningfully engage in an envisaged consultation procedure and for the competent authorities’ time to prepare a policy response.

- COUNCIL DIRECTIVE on Works Councils (97/74/EC)
- TRANSFER OF UNDERTAKINGS

The latter two directives are mainly of importance at the strategic restructuring level (see the Belgium and French national overviews).

There have been several Court cases between the Commission and the UK concerning the UKs non-compliance of the Collective Dismissal Directive. Since 1999 the Commission is of the opinion that UK legislation is currently “largely consistent” with Community law. The other four countries do, in the opinion of the Commission, comply in full with Community Law.⁴

² The convention was ratified by Sweden (1983), France (1989) Germany? Belgium? UK?

³ See the implementation reports conducted by the Commission at

http://europa.eu.int/comm/employment_social/labour_law/docs/01_collectivereds_implreport_en.pdf

⁴ Note that French legislation does not lay down any minimum content with respect to the information to be provided to the public authorities. However, as there are such stipulations in the information to be provided to the employees representatives and the same information is to be provided to the public authorities, the “the requirements of the Directive are met in practice”

3. Definition of Collective Dismissals

The definition has legal consequences. If defined as “collective dismissals” then both specific procedures are to be observed and various forms of compensation are to be granted to the employees.

Belgium

Dismissals over a 60-day period

<i>Number of employees to be dismissed</i>	<i>size of organisation</i>
10 or more	20-100 employees
10% or more	100-300 employees
30 or more	300+

In 2002 undertakings larger than 20 employees covered 75 percent of all employees and 11 percent of all undertakings in Belgium. In terms of some aspects of social insurance legislation other thresholds apply.

France

The *Code du Travail* defines collective dismissals as initiated by the employer for “economic reasons” (*licenciement pour motif économique*). It is widely defined to include at least two persons in a period of 30 days. However, the rules differ somewhat with firm size and the number of dismissals. Important distinctions are made for when there are more or less than 10 dismissals.

Germany

To the extent that the term “collective dismissal” is relevant in Germany it is related to the obligation to report to the Public Employment Services - PES (thus in the employment protection law of 1951 *Kündigungsschutzgesetz – KSchG* “dismissals that must be announced”).

Sweden

Collective dismissals are commonly viewed to be all dismissals that are not due to the characteristics or behaviour of the individual worker. There are no numerical lower bounds. The number of dismissals impact only on reporting obligations to the PES. Thus the definition is very similar to that in Germany

UK

According to Collective Redundancies and Transfer of Undertakings Regulations (1995/2587) it is defined as at least 20 redundancies during a period of 90 days.

4. Grounds for collective dismissals

Focus here is not on non-compliance with proper procedures which may result in the dismissals being judged to be invalid but simply on the discretion of the employer to initiate the collective dismissals. The regulation of *individual dismissals* is more interventionist and complex but is not really relevant in the MIRE context.

Belgium

The employer unilaterally decides. There is no requirement that reasons must be provided.

France

Previously France had rather strict criteria (“genuine and serious motive”) and collective dismissals were subject to approval from the Ministry of Labour and with quite detailed involvement of the public authorities (primarily the, *Inspection du travail*). Since 1986 “virtually the last major obstacle to quantitative work force adjustments was removed” (Lyon-Caen, 1993). It appears that the Social Modernisation “process” has tried to re-tighten the criteria for economic dismissals. It appears to be rather difficult to ascertain what it actually entails. My understanding is that when the firm is making a profit but dismisses workers to increase profitability there may be cases when the Court of Cassation would not judge this to be “economic grounds” and thus invalid.

Germany

All dismissals must be “socially justified”. They fall in three categories:

- personal circumstances (e.g. long-term illness, which does not impose a cost on the employer since the health insurance fund takes care of income support after 6 weeks, but the interests of the employer to permanently replace and the interests of the employee to return must be socially weighed against each other; or: a bus-driver gets blind in a private accident and is no longer qualified to do his job)
- conduct, “due cause”: judges have developed procedural rules where minor offences must first be answered with the threat of dismissal under condition of repetition
- "Urgent company requirements", more precisely urgent requirements of the operation of the *establishment* concerned

Urgent company requirements” is the criterion that is relevant in this context. It would appear that this is essentially the sole discretion of the employer

Sweden

The decision to lay off workers due to “shortage of work” is indisputably the employer’s sole prerogative. It is the employer alone who decides if there is a “shortage of work”. Given that the employer follows the correct procedures the dismissals cannot be revoked or delayed by any court.⁵

⁵ The only interference in the employer’s prerogative is if the employer has stated that dismissals were due to “shortage of work” when in fact it was to dismiss a worker for reasons related to that particular individual. – termed a “sham” redundancy (also in UK)

UK

Redundancy is a specific term in the UK and has clearly defined consequences in terms of severance pay (redundancy payments) and the right to be consulted. Redundancies occur when the employer has ceased, or intends to cease, to carry on the business for the purposes (or at the place) of which the employee was so employed; or the requirements of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to cease or diminish. Again the decision to dismiss is solely the prerogative of the employer.

It appears that despite phrases like “socially justified”, “for economic reasons” or “shortage of work” etc the employer can in legal terms unilaterally decide how many are to be dismissed. This very clearly the certainly is the case in UK and Sweden, probably in Belgium and Germany but possibly not always in France.

5. Information to and negotiations (or consultations) with employee representatives

Belgium

Before any dismissals are announced the employer must consult with the worker representatives in the works council. If there is no works council the employer should consult with the unions or, if no unions are present, directly with the employees. Before these consultations the employer is required to present oral and written information on;

- The reasons for the proposed dismissals
- The number and categories of workers to be dismissed
- The number and categories of workers normally employed
- The period in which the proposed dismissals are to be carried out
- The proposed criteria for selecting workers to be made redundant
- The method for calculating any redundancy payments other than those arising out of legislation or collective bargaining agreements.

A copy of this information must be sent to the Regional Bureau of the National Employment Agency (RBNEA).

Consultation should deal with the possibilities to avoid the dismissals and mitigate their consequences. The worker representatives must be allowed to ask questions and make proposals and the employer must respond.

The RBNEA should be notified upon the conclusion of the consultation process.

In 1997, the failure of French undertaking Renault to comply with these rules resulted in the so-called “Renault Law” of 13 February 1998. Article 66 of this law focuses particularly on the obligation to follow the information and consultation procedure as defined by collective labour agreement no. 24, and stipulates the four stages which this procedure must follow:

- Presentation of a written report to the workers' representatives, in which the undertaking states its plan for mass redundancy;
- Proof that the employer has met the representatives to inform them of the mass redundancy plan;
- Opportunity for the workers to ask questions, formulate arguments and/or make counter-suggestions;
- Study of these questions, arguments and counter-suggestions and provision of responses to them.

In addition information on decisions that could potentially have an impact on employment must be provided to the works council⁶ according to a very strict formula, and a minimum of 3 months before the undertaking starts the restructuring process, or it may be declared invalid. This applies to firms of more than 100 employees. When the undertaking has between 50 and 100 workers, the information and consultation obligations are more limited and are targeted at workers' representatives. Finally, the principle is not compulsory for SMEs with fewer than 50 workers, i.e. the more than 95% of Belgian undertakings that employ 39% of all workers.

The Claeys & Engels study shows that the consultation phase, which begins on announcement of the mass redundancy, lasts for 39 days on average. It involves a number of meetings, 5 on average. It appears that this number of meetings has over time become an unspoken rule, and in the event of conflict between the employer and employees a labour court judge would consider that the phase was not completed if there had been fewer such meetings. The study carried out by Lawfort in 2005 shows that the information and consultation phase of the restructuring procedure lasts 1.9 months on average (against 2.3 months in 2002) and requires 3 to 5 meetings.

France

The whole issue of procedures in France has undergone considerable change. Laws have been passed and subsequently suspended. The situation is somewhat confusing and new legislation is to be expected. Procedures vary by firm size.

In firms of at least 50 employees workers are represented in the *Comité d'entreprise* and for smaller firms the *Délégués du personnel*. We focus mainly on cases involving the *Comité d'entreprise*. If at least 10 persons are to be made redundant during a period of 30 days the employer must hold at least two meetings with the *Comité d'entreprise*. At least 3 days before the negotiations the employer is required to provide the following information in writing:

- The economic, technical or other reason for the intended dismissals
- The number of dismissals and by type of employment contract (temp etc)
- The proposed selection criteria (usually stipulated in the collective agreement)
- The proposed timing of the dismissals and suggestions as to how to avoid dismissals and ameliorate the transition for the employees.

⁶ "The controlling body, in charge of economic [...] social [...] and employment issues. It is elected by the whole body of workers", in E. Krzeslo, *Fermetures d'entreprise et licenciements collectifs, Plans sociaux et politiques de reclassement en Belgique, Colloque sur les restructurations*, etc.

- Details of the *Plan Social* (obligatory for at least 10 dismissals over a period of 30 days in firms with at least 50 employees)

At the first meeting the *Comité d' entreprise* may use the services of an accountant (paid by the employer). The accountant has 22 days to examine the reasons given for the dismissals and may ask the employer for further information. It is standard practice to use an accountant and this often results in more than the stipulated two meetings. The second meeting must be held within:

- 14 days for less than 100 dismissals
- 21 days for at least 100 dismissals
- 28 days for at least 250 dismissals

Between the two meetings, Court of Cassation rulings now allow the *Comité d' entreprise* to bring legal proceedings to employers if it is unable to persuade the employer to fully comply with the negotiation stipulations. The Judge may (within 24 hours) appoint an expert or suspend the dismissals process. Moreover, within a statute of limitation of up to five years, the *Comité d' entreprise* may seek to have the social plan declared null and void.

At the second meeting, the employer is required to react to the suggestions made at the first meeting and to comment upon the views of the *Comité d' entreprise*. The employer must consider alternatives to dismissal such as a working time reduction.

After the employer's response to the *Inspection du Travail*, (see next section) the dismissals may proceed after:

- 30 days for fewer than 100
- 45 days [100, 250)
- 60 days if more than 250

The collective agreement may allow for a longer waiting period and the *Inspection du Travail* may shorten the period to 14 days (if the social plan leads to new jobs).

Germany

According to 17§ KSchG⁷ the employer is required inform and engage in deliberations with the *Betriebsrat*⁸. The information should contain the following:

- Reason for the intended dismissals
- The number of dismissals and category of workers
- The proposed selection criteria
- The proposed timing of the dismissals
- The means of calculating economic compensation

⁷ Note, however, that this law does not affect the more general law concerning information and negotiations for co-determination with the *Betriebsrat* (*BetrVG*).

⁸ Note of course that the *Betriebsrat* is not formally a trade union organisation. However, in practice the unions do exert considerable influence in this body. The unions themselves have very little involvement in collective dismissals.

The *Betriebsrat* may ask for further information. This initial process is related to the subsequent notification to the PES and thus allowing the *Betriebsrat* an opportunity to give an informed opinion of the process thus far. Consultations (obligatory for firms with more than 20 employees eligible to vote in the *Betriebsrat* elections) with the *Betriebsrat* should start at least two weeks before notification to the public Employment Office. If there are more than 300 employees the *Betriebsrat* may use outside expertise to be paid by the employer.

The consultations shall deal with possibility to avoid dismissal or to reduce their number or the consequences for the employee and to conclude a “Balance of Interests” agreement. If the negotiations lead to an agreement, this shall be laid down in writing and signed by both parties. In practice, balance of interest agreements are rarely very substantial. They are often no more than the preamble to the Social Plan, stating that all alternatives have been discussed. They may also allow the employer to make changes he intended to make anyway but guarantee the workers that there will be no further restructuring. If no agreement can be reached, there is a potential but unlikely option for mediation by a representative of the PES. If this option is not chosen, negotiations proceed to the subject of the Social Plan which the official translation of the law defines as such: “Agreement on full or part compensation for any financial prejudice sustained by staff as a result of the proposed alterations (social compensation plan)”.⁹

If negotiations on the Social Plan fail as well, the employer or the works council may submit the case to the conciliation committee. In no agreement can be reached then the conciliation committee shall make a decision on the drawing up of a social compensation plan. The award of the conciliation committee shall take the place of an agreement between the employer and the works council.”

The conciliation committee may reconsider the ‘balance of interests’, but it is only in matters of the social plan that majority vote of the committee will replace agreement of the parties. Since, in practice, the committee is made up of the two parties plus mutually agreed or appointed chairman, a majority vote normally means the chairman decides. If the parties cannot agree on the composition of the committee, either side may call for a Court Decision. Appeal to this decision may be made to the Regional Labour Court. The entire process may take at least 8 weeks but can last for 20 weeks or more. No dismissals may occur until negotiations are completed. If there is no *Betriebsrat* at the establishment then there will be no balance of interests and no social plan. Only the individual procedures of the Employment Protection Act will apply.

Roughly 67% of firms with more than 50 employees have a *Betriebsrat*. More than 60% of employees in the private sector have no *Betriebsrat* representation. In the public sector, coverage of representation is usually higher, but rights are weaker. Lawmakers did not foresee that there would be redundancies in the public service, and so, in the relevant laws for some of the Länder, there is no clause for a social plan.

⁹ „Einigung über den Ausgleich oder die Milderung der wirtschaftlichen Nachteile, die den Arbeitnehmern infolge der geplanten Betriebsänderung entstehen (Sozialplan).“

The Supervisory Board has no direct role in this process but when the “alteration” is of such a dimension as to be based on a strategic business decision, it must usually be approved by the supervisory board. Employee representatives on the SB will not support the decision unless there is, at least in principle, an understanding about the social plan. But of course, the number of companies with a supervisory board is again much smaller than the number of establishments with a Betriebsrat.

Sweden

The employer's obligation to inform and consult with the employees is exclusively with the trade unions whether or not there is a collective agreement at the workplace. If none of the employees are unionised, the employer does not have to inform or consult with anyone. There are no works councils and there is no obligation to inform or consult with the workforce directly.

The Co-determination at Work Act has detailed provisions about the information to be supplied to the trade unions by the employer. The employer is required to present, in writing, the following information;

- The reason for the proposed dismissals,
- The number of employees who will be affected and their employment category
- The number of employees who are normally employed and the employment categories to which they belong,
- The planned duration of the dismissal process
- The method of calculating any compensation to be paid in conjunction with dismissals in addition to that which is required pursuant to applicable collective bargaining agreement.

The detailed information should be presented to the trade unions as soon as the employer has called for consultation, i.e. at an early stage.

The employer must consult with the trade unions about the intended dismissals, with respect to the reasons for the proposed dismissals, possible alternative measures, the consequences etc. Moreover, and most importantly, the employer must consult with the unions about whom to dismiss. The employer must also give the trade unions adequate time to consider the information given to them and to respond. Furthermore, the employer must give conscientious consideration to the responses and proposals of the unions. The consultation process should be completed before the employer can enact the dismissals.

UK

These matters are regulated in the Trade Union and Labour Relations (Consolidation Act), 1992. The employer's obligations are to the union representatives of the employees in question. If the employer does not recognize the union the obligation is to an “employee representative”. If no such person exists then the employees have the right to choose one. Otherwise the employer may inform the workers in question directly.

According to British law, the employer is to engage in consultation when she is “proposing” to make some employees redundant.¹⁰ Negotiations shall at the latest commence:

- 30 days before the first redundancy is to be enacted for between 20 and 100 dismissals during a period of 90 days
- 90 days before the first redundancy for more than 100 dismissals during a period of 90 days

Prior to these negotiations the employer shall provide the following information;

- Reason for the intended redundancies
- The number of redundancies and type of work they perform
- The proposed selection criteria
- The proposed timing of the redundancies
- The means of calculating economic compensation above and beyond that laid down in law.

The negotiations shall deal with possibility to avoid redundancy or to reduce their number. In “special circumstances” the employer is not required to fulfil the information and negotiation requirement

6. Notice to be provided to public authorities

Belgium

A copy of the information provided to the worker representatives must also be sent to the Regional Bureau of the National Employment Agency (RBNEA). Information must also be provided again (thus exceeding the obligations as stipulated in the EU Directive), after the negotiations. This should contain details of the affected personnel, the activities of the employer and the consultation, which has taken place with the works council. A copy of this later notification must also be sent to the workers’ representatives and posted at the company's premises.

Dismissals may be enacted one month after the second notification to the RBNEA and may be extended by another month.

France

The day after the first negotiation with the *Comité d’entreprise* the employer shall, in writing, inform the *Inspection du Travail (IdT)*. All information available to both parties at that time shall be presented to the Inspectorate.

After the second meeting with the *Comité d’entreprise* the following information shall be given to the *IdT*.

- Name, nationality, date of birth, sex address and qualifications of the employees involved in the dismissal.

¹⁰In the EU Directive the term is “contemplating”, which implies an earlier stage of the process than in British law (“proposing”). Many observers view this to be in breach of the EU directive.

- A presentation of the *Plan Social* (the measures and their timing)
- Any change in the timing of dismissals

The *IdT* has between 21 and 35 days (depending on firm size) to examine this information in light of the stipulations in law (mainly if the measures proposed are likely to be effective and whether they can be implemented). If the *IdT* finds faults in the plan (*constat de carence*), it must inform the employer of these faults and may delay the execution of the dismissals for up to 8 days. The employer is not obliged to implement the suggestions of the *IdT* but is required to pass comment before the dismissals may occur. The role of the *IdT* in this process is to promote an agreement between the two parties. While the *IdT* has no other formal sanctions, its approval of the firm's efforts to draw up a good social plan may in practice substantially improve the opportunity for the firm to receive public funding for the *Plan Social*.

After the employer's response to the *IdT*, the dismissals may proceed after a waiting period (see previous section). The *IdT* may shorten the period to 14 days (if the social plan leads to new jobs).

Germany

According to 17§ KSchG the employer is required to report, in writing, the impending dismissals to the local public Employment Office. This must occur at least two weeks after the *Betriebsrat* was informed. The following information must be provided:

- The number of proposed dismissals
- The timeframe within which the dismissals are to be effected
- The positions and professions which are affected
- The selection criteria
- The criteria for the calculation of compensation payments, if applicable.

The dismissals may take effect after 1 month of informing the Employment Office ("the block period"). The Employment Office may extend the period to 2 months or allow a shorter period.

Sweden

According to the Employment Promotion Act, any employer considering dismissals due to "shortage of work" must notify the County Labour Board if the planned dismissal affects more than five employees. Notification of the decision to close either part or the whole of the business, or to reduce its volume of labour temporarily or permanently must be given at least;

- Two months before the intended realization of the decision, if a maximum of 25 employees are affected by the decision,
- Four months before the intended realization of the decision, if more than 25 employees but less than 100 are affected by the decision,
- Six months before the intended realization of the decision, if more than 100 employees are affected by the decision.

The relevant juncture for calculating the notification period is when the employees with the shortest notice period are calculated to leave the workplace. Due to the

varying length of notice periods, the actual timing of notification to the County Labour Board may be considerably longer than shown above.

The notification to the County Labour Board should include detailed information about the reasons for the planned dismissals, the number of employees being affected, what categories they belong to and the time period over which it is proposed that the restructuring be carried out.

UK

If the redundancies are for 20 employees during a 30 day period or at least 100 over a 90 day period the Secretary of State for the Department of Trade and Industry must be informed, within 30 and 90 days respectively (same time periods as in Section 5 above). The Secretary of State is to receive certain information and may request further information.

7. Notice to the employees

Belgium

Periods of notice differ for blue and white collar workers. The following statutory notice periods apply for blue-collar workers (although they may be increased by a collective bargaining agreement):

Length of service	Notice period
Less than 6 months	28 days
6 months – 5 years	35 days
5 – 10 years	42 days
10 – 15 years	56 days
15 – 20 years	84 days
20 years or more	112 days

White-collar employees earning less than EUR 25,921 p.a (2003) are entitled to a notice period of three months per five-year period of employment commenced before the effective date of termination. A white-collar employee earning more than EUR 25,921 (2003) is entitled to notice not shorter than three months per five-year period of employment. The length of the notice period is determined by the parties during the process. If they fail to reach agreement, the employee may take the matter to the Labour Court. In determining the appropriate notice period, the Labour Court will take into account factors, such as length of service, scope of duties, salary, and age.

France

Notice to the individual employee (*préavis de congédiement* or *préavis de licenciement*) is regulated in the *Code du Travail*. Notice can be served only when the procedures described in Section 6 have been fully completed. The law applies to employees with 6 months of service at the firm. Those with shorter seniority follow the **practice in that sector**. In law those with 6 months seniority are entitled to one-month notice and with 2 years seniority 2 months notice. We note that collective agreements can and often do provide for longer periods of notice.

Germany

Since 2000, both employer and employee must hand in their notice in writing when terminating an employment contract. Notice periods are outlined in various laws (i.e. Dismissal Protection Law and Law on Labour Relations). Specifically though, it is the BGB (Citizens Law Book in English) which lays out which notice periods apply.

Notice of dismissal according to Civil Law (Bürgerliches Gesetzbuch, BGB)¹¹

According to the BGB § 622 employers have to adhere to the following legal notice periods when dismissing an employee:

The following applies to employees and employers	Notice period
During the probation period of up to 6 months	2 weeks
Employment of less than 2 years	4 weeks (15th/ or to the end of a month)
Longer notice periods apply to employers only and are based on actual seniority	Notice period
Seniority of at least 2 years	1 month
Seniority of 5 years	2 months
Seniority of 8 years	3 months
Seniority of 10 years	4 months
Seniority of 15 years	5 months
Seniority of 15 years	6 months
Seniority of 20 years	7 months

When seniority status is being assessed, only those members are considered that are older than 25 years old. That means all employees under the age of 27 have a notice periods of four weeks maximum.

Notice of dismissal according to sector-specific wage agreements (Tarifverträge)

Unions and employers or employers federations are able to negotiate (§ 622 (4) BGB) sector- or firm-specific notice periods, which can decrease or increase the duration of legal notice periods according to BGB. In fact specific wage agreements often set their own notice periods in many sectors. A Tarifvertrag contains regulations that apply sector-specific rules. Tariff partners are generally coalitions (such as employee unions and employer organization) and individual employers. In case of the automobile industry, large employers with their own collective wage agreements might be Opel, DaimlerChrysler and VW. If a company accepts these wage agreements, the notice periods in these wage agreements replace those set in the BGB. In fact there is no general trend to longer or shorter notice periods for the employer in collective wage agreements, compared to those set out in the BGB. For example, wage agreements stipulating a shortened notice period are usual in the sectors construction, fabrics, etc; longer notice periods are e.g. very usual in firm specific wage agreements of bigger conglomerates. Wage agreements also detail criteria (such as seniority) in regard to the entitlement and amount of severance pay in case of dismissal. Shorter notice periods may occasionally be agreed on single occasions in the case of temporary employment during the first three month of the contract, or in small enterprises with a maximum of 20 employees.

¹¹ <http://www.arbeitsrecht.org/kuendigung/kuendigungsfristen/artikel07054.html>

Notice periods for parents or parents to be

As in most countries, special legislation applies to parents or parents to be taking paid leave. According to the Federal Provision for Education Law (BERzGG – Bundeserziehungsgeldgesetz, §18 Paragraph 1) employees cannot be dismissed 8 weeks before or during parental leave. By contrast, the employees are allowed to hand in their notice towards the end of the parental leave, in which case the notice period will be three months. If other collective wage agreements (such as Tarifverträge) or similar apply in the workplace. In this case the notice period may be less than three months.

Mothers to be and young mothers may not be dismissed during their pregnancy and up to four weeks after birth according to the Mother Protection Law (MuSchG - Mutterschutzgesetz, § 9). However, a dismissal may be possible with the authorisation of regional authorities such as the Office for Work Protection (Amt für Arbeitsschutz oder das Gewerbeaufsichtsamt). Pregnant employees or young mothers have exceptional further rights when they hand in their notice to an employer. They may hand in their notice during pregnancy or during the protected employment period (Schutzfrist) of four months after birth without having to work the general notice period. The condition is that they hand in their notice on the last day of these four months latest.

Notice periods for members of the Works Council

Members of the Works Council have a special status according Dismissal Protection Law § 16. To dismiss a member of a Works Council, Law on Labour Relations § 103 states that this requires the approval of the Works Council. In the case of the Works Council refusing to approve such a dismissal, the employer has to go to court. If a member of the Works Council has finished his or her time in office, he or she may not be dismissed within one year after the members stepped down, unless the employer has reasons to dismiss the employee in less than the official notice period unless a court order approves the dismissal.

Sweden

Notice of dismissal to the employee must be given in writing. It must state the procedure to be followed by the employee in the event the employee wishes to claim damages as a consequence of the dismissal. Such notice must also state whether or not the employee has rights of priority for recruitment. The employer is obliged, upon request by the employee, to state the reasons for the dismissal. The statement must be made in writing, where the employee so requests.

There are two parallel systems for calculating notice according to statutory law. For employment contracts that commenced before 1997 age is the main criterion. Contracts concluded after January 1997, depend on length of service and vary from one to six months according to the following:¹²

Period of employment:

Less than 2 years: 1 month's notice

¹² Contracts prior to 1997 use age not years of service as a criterion. Moreover, the age criterion is common in many collective agreements.

2-4 years:	2 months' notice
4-6 years:	3 months' notice
6-8 years:	4 months' notice
8-10 years:	5 months' notice
More than 10 years:	6 months' notice

Moreover, the age criterion is still common in many collective agreements. The major agreement within engineering for white-collar workers stipulates notice in terms of both seniority and age.

**Months of notice to be served according to collective agreement
for white-collar engineering workers**

Seniority	Age					
	Less than 25	25-29	30-34	35-39	40-44	35+
Less than 6 months	1	1	1	1	1	1
6 months to 6 years	1	2	3	4	5	6
6 to 9 years	2	3	4	5	5	6
9 to 12 years	-	3	4	5	6	6
12 years or more	-	3	4	6	6	6

UK

Three sources of law stipulate the periods of notice: 86§ Employment Rights Act (1996), the individual employment contract and principles in common law concerning “reasonable notice”. If the contract stipulates longer periods of notice than in law then the contract will apply. In law the periods of notice are as follows:

<i>Period of employment</i>	<i>Notice</i>
[1 month, 2 years)	1 week
[2 years, 12 years)	1 week per year of employment
12 years or more	12 weeks

While the individual notice usually is served after the completion of the negotiations with employee representatives, the law does not forbid that the employer serves notice before their completion!

8. Selection of the employees to be made redundant

Belgium

There are no legal criteria and formally it is the prerogative of the employer. According to the Claeys & Engels study, only 7% of undertakings having implemented mass redundancies have established redundancy criteria for the work force. Several well-placed witnesses encountered during the course of the Belgium national report attribute this low percentage to employers' fears of breaking the anti-discrimination law of 25 February 2003 if they set criteria.

According to the Lawfort study, the principal criterion used at the time of mass redundancies is the position of the worker within the undertaking. This first criterion is closely followed by the second: the worker's age. The authors of the study associate this option with the almost automatic recourse to early retirement measures. Finally, the business heads questioned during the course of this study cite the employee's past record in the undertaking as the third main criterion.

In practice, it seems that the choice of these selection criteria is becoming less the prerogative of the employer, but more and more the outcome of negotiations between with the workers' representatives. Most undertakings in fact refuse to make known their criteria, in case they create hope and/or frustration among the staff.

France

The selection of those employees to be made redundant must be made on the basis of objective criteria, including, length of service, family situation, age. These criteria are obligatory but it may be possible to add other criteria or to apply different weighting to the mandatory criteria.

The employer must also give consideration to those employees who might find it relatively difficult to find work, for example, on account of a disability. The existence of a disability will not affect the procedure or the amount of compensation due, but will reduce the employee's risk of being selected for redundancy. If a disabled employee is dismissed where an employer has failed to follow procedures, the prejudice suffered is likely to be assessed at a higher level than other employees and so higher damages may be awarded.

Germany

When selecting employees for redundancy, a pool of comparable employees must first be identified before specific selection criteria is applied. There are a number of criteria, which can be applied, but age, seniority and family responsibilities are essential. The employer may in general only dismiss those employees who score the lowest marks when those objective criteria are applied. An exception may be made if the employer can show that an employee who is not highly rated according to the applicable criteria is vital to the further existence of the company and so should remain in employment.

In mid 2003 a new law permitted some opening in the social selection at collective dismissals in firms of 5 or less employees.¹³

Sweden

While the grounds for dismissal are as liberal as any country in this study the selection criteria in law are the strictest among the five countries. In many respects the selection criteria is the key part of the Employment Protection Legislation. The basic principle is (Last-In First-Out) LIFO.¹⁴ A *seniority list* of the employees should be drawn up for each *unit* of the company, based on length of service with the company.¹⁵

¹³ It also opened up new possibilities to use of compensation to solve dismissal disputes

¹⁴ However, in companies with a maximum of ten employees, at most two employees may be retained irrespective of their seniority.

¹⁵ Some "extra seniority" is awarded to old workers.

One important condition for continued employment is that the employee has *sufficient qualifications* for one of the alternative posts left in the *unit* after the structural reorganisation. However, in law, the employee only needs to fulfil certain minimum requirements, i.e. the employee does not have to be the best suited for a particular post to be entitled to continued employment.

The parties may make collective agreements stipulating other criteria. Moreover, and most importantly, upon the announcement of the dismissals further derogations may be agreed upon by the employer and the local union. As the employer often will want to dismiss employees by other criteria than in law or collective agreement and the unions are free to agree on any (non-discriminatory) alternative selection, this provides the union with a very strong negotiating lever. This may be to, for example, secure compensation for older dismissed workers. If there is no collective agreement the employers must follow the law. This in turn constitutes a very strong general incentive for the employer to make a collective agreement.

Before the employer may carry out the dismissal, he must also look into whether there is any suitable vacant post in the *company*, i.e. in the whole of the company and not only in the unit affected by the restructuring. If there is no vacant post, the employee may be dismissed. If the employer, within a year of the dismissal, subsequently recruits labour, employment must first be offered to the previously dismissed in accordance with seniority.

The seniority rights highlight the very strong position awarded to the trade unions, possibly at the expense of the individual worker as the union may bargain away the rights of a worker with long seniority.

UK

The employer has considerable leeway in deciding the selection criteria. However, they should be objective and should not contravene any discrimination legislation. If possible, selection criteria should be agreed with the employee representatives. LIFO is objective and verifiable and was previously quite a common criterion, but it is used much less now than in the past.

9. Economic Compensation to the employees excluding the social plan

The idea of separating the two means of compensation is that the social plan is often a “one-off” matter (not always true) and is the subject of negotiation when the dismissals are imminent. Here we deal with worker compensation either in law or by an *existing* collective agreement that was guaranteed before the announcement of the dismissals and not part of the negotiating process.

THIS SECTION IS NOT WELL DONE HERE. IT WAS DIFFICULT TO PULL TOGETHER THE DIFFERENT SOURCES OF INFORMATION TO A CONSISTENT DOCUMENT.

Belgium¹⁶

According to National Agreement No 10 (May 1973), employees are entitled to a “top-up” to 50% of the difference between unemployment benefit (or net wage in new job) and the old job. This is capped at EURO 2,579 (in 2003) and is payable for 4 months but may be reduced if notice is longer than 3 months. Employees between the ages of 50 and 55 may be entitled to a “pre-pension” allowance, to complement unemployment benefits.

Not all workers are included in this scheme. For example, those on most types of temporary contracts and construction workers. Sector level agreements can both widen and limit the categories included.

There is also an Enterprise Closure Fund (*Fonds de fermeture d'entreprises*). The fund is financed by contributions levied on the wage bill.

France

According to the 2002 Social Modernisation Law compensation for collective dismissals is to be paid to those who have been employed continuously for two years on an open-ended contract. There is no statutory stipulation of economic compensation at collective dismissals. The amount to be paid is 20% of a months pay per the first ten years of service. For each year in excess of 10, the compensation amounts to 20% of monthly pay plus 13.33% per year of service.

Usually sector and firm level collective agreements top up the statutory level.

Germany

There is no statutory stipulation of economic compensation at collective dismissals. There may be redundancy pay stipulations in the collective agreement and usually additional compensation will be negotiated in connection with the social plan – see below.

The employee may in court claim that the redundancy payments (both in collective agreement and the social plan) were unfair. Usual praxis is half a monthly wage redundancy pay times the number of year's seniority (capped). This calculation is also similar to praxis when damages are awarded for unjustified dismissal.

<i>Years of employment</i>	<i>Redundancy pay</i>
5 years	2,5 months
10 years	5 months
15 years	7.5 months
20 years	10 months

Sweden

There is no requirement in law that the employer should pay redundancy pay and it probably is very rare that any is paid. However, the state, on an *ad hoc* basis may introduce special active labour market policy measures.

¹⁶ Note that this information comes exclusively from me. There is much more detail in the Belgium national report in the section entitled social plans. In terms of the demarcation above I think this is placed in the wrong section as they are essentially non-negotiable social security matters.

Moreover, there are various peak (broad sector) level collective agreements (Transition Agreements) covering most of the labour market. The major exception is blue-collar municipal workers. These agreements are all rather similar. We outline the main agreement for privately employed white-collar workers. They are financed by contributions paid in by the employer (0,03% of the wage bill). Transition support activities are organised by the Job Security Foundations, established by the social partners that have agreed upon transition agreements (TRR is the bipartisan private white-collar worker administrative body). The Job Security Foundations are independent in relation to both the social partners and the Government. The TRR, measures apply to workers over 40 years old, with 5 years seniority, and working more than 5 hours per week. Compensation, together with unemployment benefit aims to attain 70% of previous wage income for a period between 18 and 30 months. TRR also actively assists the employees to search for new work and can finance a wide range of “active labour market policy measures”. The activities are said to be characterised by adjustment to the conditions and needs of the individual and the labour market conditions. Normally the program starts with counselling and reorientation activities. Then, according to the needs of the individual, some form of activity is initiated to support job search, training, apprenticeship or programs to start a new firm.

UK

Employees with at least two years of employment at the firm are by law entitled to redundancy pay, the level of which depends upon age, wage and seniority.

- For age 18-21 0.5 a weeks wage for each year of seniority
- For age 22-40 1.0 week’s wage for each year of seniority
- For age 41-64 1.5 weeks wage for each year of seniority

There is an upper limit on redundancy pay. Only 20 years of seniority can be claimed the calculation is based on, at the most, £290 a week (2005).

The employee may forfeit right to redundancy pay if she has partaken in industrial action in relation to the dismissal or if she has been offered and refused a “suitable” other job at the firm.

Collective agreements usually provide higher levels of compensation and ah hoc payments often provide further compensation, at least in larger firms. See Employment Trends 743, January 2002.

The employer finances the redundancy pay. If the employer is insolvent, the state pays.

10. Conflict resolution, remedies and sanctions

While this section could possibly be omitted and instead be inserted in the particular sections where the particular sanctions apply, its content may be of

great importance. To have a law is one thing to have it properly applied in practice is another. These issues require a very high level of legal competence.

Belgium

If the employer fails to comply with the legally stipulated procedures, they may be contested (a collective challenge) by the workers' representatives in the Works Council within 30 days following notification. If they fail to do so within this time limit, the procedure is considered to have been correct.

The employee has the same prerogative up to 30 days after the dismissal. This challenge is made on an individual basis, provided that a collective challenge has been made. If the employee contests the procedure, the notice period will be suspended for a period of 60 days and the employer must provide work and pay to the employee. If the employee has been dismissed without notice, the employee can claim reinstatement. If the information and consultation procedure was not followed, the employer must reinstate the employee and pay backdated salary from the date of dismissal. If the dismissed worker cannot be reinstated, the employer must pay the worker's salary for the period up until 60 days after notification to the head of the RBNEA.

France

An employee may claim in court that a dismissal was invalid. If the employee is successful he may be re-instated. However, if one of the parties opposes this then the employee will be compensated by at least 6 months wages. The employer may even be liable to pay to the state any unemployment benefit that had been paid to the wrongfully dismissed worker.

If a social plan is judged to be invalid then the dismissals may be judged also invalid. The validity of the social plan should be based on the company's resources. In other respects the Court can take a rather interventionary stance. For example, in a case (March 2000) the Court judged it insufficient that the company had offered some of the dismissed a new job and that the company should have considered a reduction in working time.¹⁷

If the employer does not fulfil the negotiation requirement or in other ways does not follow procedure then it can lead to damages and that the whole dismissal process must start again from the very beginning. The amount of damages depends upon the harm caused to the dismissed. If the employer prevents the worker representatives from performing their duties criminal action may ensue.

Finally, if the employer does not report the impending dismissals to the *Inspection du Travail* then a court may fine the employer up to EURO 4,000 per employee (level of fine in 2002)

Germany

A worker who has been employed longer than 6 months in firms with at least 5 employees may claim that the dismissal was not socially justified. In this case the dismissal cannot be executed until the matter is resolved. The employer may however

¹⁷The case law that this matter was previously based upon is now statutory law (Social Modernisation).

ask the Court to shorten this period. If the dismissal is judged to be invalid the worker has the right to re-instatement. In practice, however, damages are often paid instead.

If the employer executes the dismissals without having come to an agreement (or made sufficient effort to come to an agreement by means of negotiation, and in the arbitration they are illegal. If the employer does in fact enact the dismissals, then the *Betriebsrat* may at short notice refer the matter to court to prevent the employer from doing so.

If the employer does not fulfil the obligation with respect to the social plan then the *Betriebsrat* may request an arbitration committee to do so.

If the employer neglects to report the impending dismissals to the employment exchange before they are implemented they are judged to be invalid and the worker may be re-instated or awarded damages.

Sweden

An employee can question a dismissal and claim damages or that the dismissal be declared invalid. There are two types of damage payments, economic and general. The former pertains to loss of wages due to the employer's incorrect behaviour. General damages are to compensate for other non-pecuniary suffering. This is not likely to apply at collective dismissals, unless the seniority rules have been broken.

Infringement of the information and negotiation procedures to the trade unions according to the co-determination law can result in fines of several hundred thousand Crowns (highest fine ever was kr 900,000¹⁸. The fines are payable to the trade union. However, even the most flagrant infringements will not affect the validity of the dismissal.

A serious infringement of the employer's obligations to notify the Regional Labour Market Board will result in fines. The fine amounts to between 100 and 500 Crowns per worker per week. There is some discretion to both increase and decrease this amount. Appeal may occur in the general court.

UK

Where an employer has failed to comply with its collective consultation obligations, a complaint may be presented to an Employment Tribunal. If a Tribunal upholds the claim, may make a "protective award" amounting to at the most 90 days' pay to each of the affected employees depending upon the seriousness of the employer's failure to consult. While the employer may claim "special circumstances", in practice, the courts have been very unwilling to allow the "special circumstances" defence.

The employer may be fined up to £ 5,000 if he neglects to report the redundancies to the Department of Trade and Industry.

An employee who considers the dismissal unfair may refer the matter to an Employment Tribunal. If the dismissal is judged to be unfair the employee may be re-instated (seldom) or receive two types of compensation. The "basic award" is

¹⁸ 10 Swedish Crowns ≅ EURO 9.1

calculated as for redundancy pay. The other is termed “compensatory award” which varies in accordance with what is considered to be the loss incurred.

11. Social plans

AS SOCIAL PLANS ARE OFTEN “ONE-OFF” MATTERS – THIS SECTION IS BEST ADDRESSED BY CASE STUDIES.

Belgium

There are no statutory stipulations on social plans. It is however, common practice that the employer, together with the trade unions, produce a Social Plan containing measures, in addition to mandatory compensation, designed to alleviate the consequences of the collective dismissals. A Social Plan will usually contain some of the following measures:

- Early retirement (“pre-pension”) scheme (often providing for a reduction in the retirement age and an increase of the “pre-pension” allowances);
- Supplements to social security benefits;
- "Farewell premiums" (proportionate to seniority);
- Job security for those employees who remain in service (whereby the employer incurs
- Financial penalties if those employees are dismissed); and
- Internal or external outplacement services

France

A Social Plan is obligatory for redundancies involving 10 or more employees in companies with at least 50 employees. Of all 5 countries, French law is the most specific in terms of legally stipulated content. The plan must contain an internal redeployment plan and more than just simple retraining agreements. The plan should be relevant, appropriate, precise and in proportion to the size of the company (Case Law from the Court of Cassation, 1995).

Important case law (the Samaritaine Case February 1997) concerns sanctions on non-observance of Social Plans. It showed that failure to comply with the law could lead to the dismissals to be deemed null and void and could not be enacted. According to Professor Moreau¹⁹ this led to “real improvements ... in the quality and the diversity of measures for re-deployment”. The right awarded to the *Comité d’entreprise* to obtain a legal ruling within 24 hours (in the event of a manifestly illegal Social Plan) has given the *Comité* a central role in the whole restructuring process

Before consultation begins, a draft Social Plan must be provided to the *Comité d’entreprise*.

¹⁹ Marie-Ange Moreau “Changes in French labour law between 1992 and 2003. European University, Florence.

In firms or groups with more than 1,000 employees in Europe, the employees are entitled to a nine months partly paid leave to look for a new job, and the employer must take steps to encourage the creation of jobs in the area affected by the closure of the plant.

Germany

If an alteration to the business is proposed, the employer must agree a Social Plan with the works council to compensate those employees dismissed as a result of the collective redundancies and those employees that remain behind and are affected by the alterations to the business. The contents of the Social Plan will be negotiated having regard to the information and proposals set out in the Balance of Interests Agreement. The provisions under the Social Plan are enforceable by law. If a Social Plan cannot be agreed as a result of informal negotiation, a mediation committee will be formed to assist with this process. The mediation committee will eventually draw up a Social Plan if the employer and works council fail to reach an agreement. The mediation committee will have regard to the social well being of the affected employees as well as the financial situation of the employer. The employees will be offered financial compensation proportionate to their prospects of finding alternative work. The mediation committee must also ensure that the level of financial compensation proposed under the Social Plan will not impede the future prospects of the company or adversely affect those employees that remain. The Social Plan may make provision for the redundancy payments to be made to the affected employees.

If the collective redundancies will result only in a reduction of the workforce, a Social Plan is only obligatory if a certain number of employees, as set out below are to be dismissed.

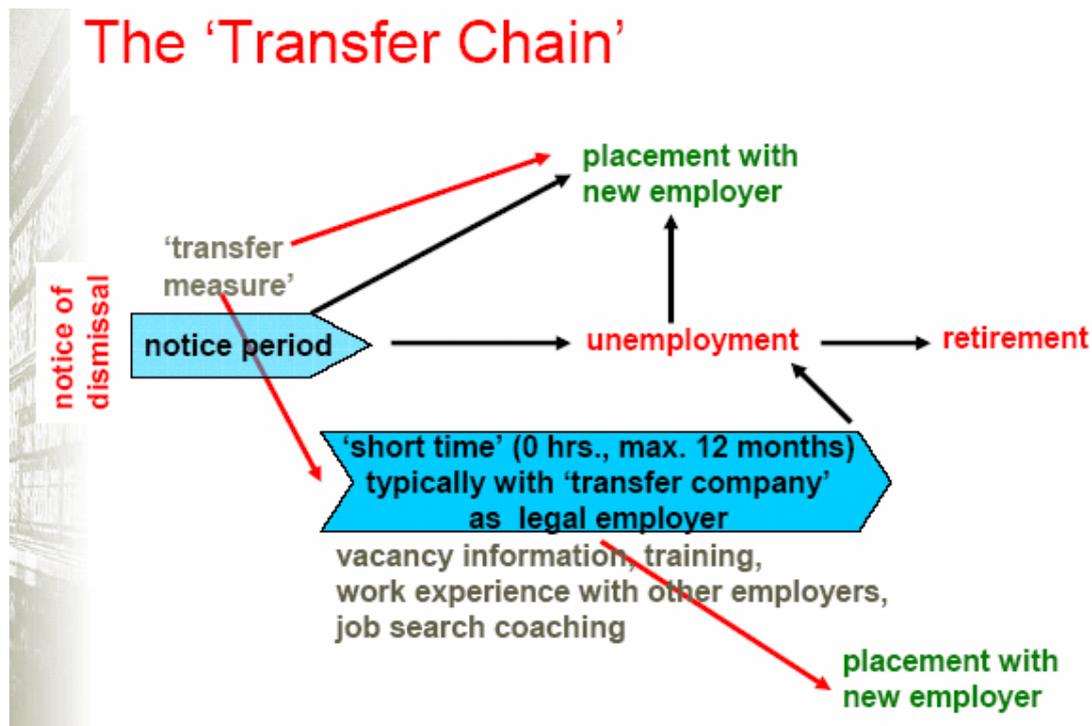
Number of employees to be dismissed

At least 6 employees or 20% of workforce
At least 37 employees or 20% of workforce
At least 60 employees or 15% of workforce
At least 60 employees or 10% of the workforce

Size of the organisation

Less than 60 employees
between 60 and 249 employees
between 250 and 499 employees
At least 500 employees

Compensation will not be paid to those employees dismissed for reasons other than operational requirements. As an exception to the rule, the obligation for a Social Plan, in the case of a reduction in workforce, does not apply to companies founded less than four years before the reorganisation. This exception does not apply to newly founded companies within pre-existing corporations.



This was taken from Knuth (2004)²⁰

Sweden

There is no stipulation in law that the employer should provide a social plan. However, there are usually a number of forms of compensation and active measures financed by the Social partners at sector level (see above) and the state.

Moreover, the union may be able to bargain various forms of compensation for the employee in return for exceptions to the strict seniority rules.

UK

There is no stipulation of social plans in British law. However, the consultation process *may* result in means to reduce the number of redundancies or means of ameliorating their consequences for the employees.

12. Labour market policy and other measures

12.1 Introduction and motivation

This section has not been done by the national overviews in any detail. It is however necessary that this work be carried out in order to understand restructuring cases. Specifically the matter is about what is available on the publicly financed *smörgåsbord* that can be used at restructuring (A more narrow definition of the content in this section can be found in Section 9). Moreover, without knowing what is

²⁰ Matthias Knuth "Continuous Restructuring and Transfers from Redundancy: Critical Demands on the Main Social Actors in Germany" Presentation to Summer European University, *Change at Work: The European Challenge*, Nantes, August 29-31, 2004.

financed elsewhere one cannot evaluate good practise by the employer. Even if this section cannot be fully completed, the points raised here should be bourn in mind when evaluating the cases and may prompt specific questions regarding the available outside options.

Thus we should describe the various types of public policy measures that may be used to deal with the workers involved at restructuring. Broadly speaking they could be classified in two dimensions - *general or specific*. General measures are open to a wider range of people that just those who experience or are threatened by collective dismissal. This includes for example unemployment benefit and public pension schemes. It is obviously relevant to the restructuring process whether the worker will get a reasonable level of compensation even if the firm does nothing. Specific measures are measures that only apply to dismissed workers. In all the measures it should be made clear whether they are general or specific for the dismissed worker. A further classification is *passive* (various forms of cash payments) or *active* (that try to promote transition to a new job) measures. I list the types of measures that we envisage though of course this varies from country to country.

12.2 Passive measures

The most important ones in this context are various forms of pension systems and unemployment insurance. In some countries sickness insurance may also be of relevance.

Early pension schemes (pre 65 years old)

These include public (state or region) pensions that allow a dismissed worker to make transition into retirement (part or full-time) with a degree of security. (Again note the distinction between general and specific). Other means of doing this, for example a sector financed scheme, are also of relevance. The important issue here is that is paid by someone else than the employer. While formally disability pensions are based on medical grounds I think in many cases they should be included here also. Often an objective medical ailment becomes a disability when the worker loses the environment in which he could function with this ailment. Sometimes implicit or even explicit reference is made to the state of the labour market and so they in fact function as an early pension. All these will usually apply mainly to workers over 50 years of age.

Unemployment benefit

I assume that nearly all employees qualify to unemployment benefit as the main qualification is a previous employment record. So all that needs to be done is to set out the benefits - duration and level, expressed the level in terms of a replacement ratio and in Euro (2005 prices). Again there may be benefit schemes other than above and not paid by the employer, for example, some sector agreements. Note also that in some countries there may be combinations of unemployment benefit and early pensions that in practice are important at restructuring.

Other relevant passive measures.

One example is sickness benefits. This may be used as a temporary measure perhaps as a prelude to early pension.

12.3 Active measures

These are active measures addressed to individual workers – broadly speaking labour market policy measures. Again it may be important to make a distinction between measures available to all (including the dismissed workers) and only to dismissed workers.

- The possibility to receive active measures for all unemployed workers generally and so even the dismissed workers by the public authorities.
- What initiatives do the public authorities usually take in this respect at (large) collective dismissals?
- If other bodies conduct active policies (for example on basis of sector agreements) then these should be outlined.

OECD provides some attempt to present standardised measures of the funds spent and the numbers involved by broad type of general labour market policy measure.

Country Measures	Belgium		France		Germany		Sweden		UK	
	Exp.	flows	Exp.	flows	Exp.	flows	Exp	flows	exp	flows
Public employment services and administration	0.21		0.18		0.23		0.37		0.17	
Labour market training	0.30	13.43	0.23	2.27	0.32	1.24	0.29	2.50	0.02	
Youth measures	0.01	0.74	0.40	2.69	0.10	1.01	0.02	0.61	0.13	
Subsidised employment	0.60	4.74	0.35	2.45	0.22	0.97	0.21	1.95	0.03	
Measures for the disabled	0.13		0.09	0.55	0.30	0.38	0.50	0.99	0.02	
Unemployment compensation	1.94		1.63	7.12	2.10		1.04		0.37	
Early retirement for labour market reasons	0.45		0.17	0.17	0.03		0.01			
Total	3.65		3.06	15.26	3.31		2.45		0.75	
Unemployment rate 2002	7.3		8.8		8.6		4.9		5.1	
Unemployment rate 2003	8.1		9.4		9.3		5.6		5.0	

Source Employment Outlook 2004

I give a very brief outline of my impression of some of the national systems

Belgium

Unemployment insurance (*assurancechômage/werkloosheidsverzekering*) is a compulsory scheme. It is said to be one of the most generous in the world. As a general rule, benefits do not expire in Belgium. However, they are reduced after one and two years of unemployment. The official replacement rate is 60% of the lost wage during the first year of unemployment and 40% after that. However, these rates provide little indication as to the sum actually received as many UI recipients receive a compensation, which is entirely based on family status and income. Thus 'heads' of households receive a flat amount, which can be higher than 60% of their lost wages, whilst the benefits of most other workers are limited by a cap on benefits and are often below 60% of their lost wages.

France

The Associations administer the traditional scheme of unemployment insurance for Employment in Industry and Commerce (*associations pour l'emploi dans l'industrie et le commerce, ASSEDIC*) with the National Union for Employment in Industry and Commerce (*Union nationale pour l'emploi dans l'industrie et le commerce, UNEDIC*) at the national level. Up until 30th June 2001 there were special publicly financed programmes for large-scale dismissals. Since then a less distinct array of measures may be applied to companies of less than 1000 employees who refuse to accept re-assignment measures. PAP. An important source of funds for dealing with impending collective dismissals is the *Fonds National pour l'Emploi (FNE)* held by the Ministry of Labour. The Ministry *may* sign an agreement with either a sector or an individual firm and provide economic support. The various agreements allow for different types of support.

Germany

Unemployment insurance (*Arbeitslosenversicherung*) is a compulsory social insurance scheme. Unemployment assistance (*Arbeitslosenhilfe*) is tax financed social assistance scheme.

Sweden

The Swedish Model (the Rehn-Meidner Model) can be seen as a model to promote and accommodate structural change. The re-allocation of the displaced labour to higher productivity firms was the initial rationale for the extensive active labour policy that is still a central feature of Swedish economic policy and has always been the main public policy response to redundancies. The high point in state involvement in restructuring was in the 1970s and 1980s when large plant closures (shipyards, steel and mining) were accompanied with very ambitious government financed extraordinary (selective) policy packages. These were comprised of a broad array of industrial and infrastructure policy measures but with a clear orientation to active labour market policies. The measures including job search activities, mobility grants, retraining schemes, and relief work and wage subsidies. From the middle of the 1980s onwards, large state involvement in restructuring has declined appreciably. The relatively limited state involvement with large-scale redundancies is, however, still largely through active labour market policy through the National Labour Market Board and still on an *ad hoc* basis.

Income related unemployment benefit system is voluntary and administered by the trade unions. It is financed by worker contributions but predominately by taxation.

UK

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13. Summary and Comparison of Regulation and measures

PROCEDURE	Belgium	France	Germany	Sweden	UK
INFORMATION TO WORKER REPRESENTATIVES	YES	YES	YES	YES	YES
CONSULTATION WITH WORKER REPRESENTATIVES	YES	YES	YES	YES	YES
NOTIFICATION TO PUBLIC AUTHORITIES	YES 30 days, can be extended to 60 days	YES 30 days [0,100) 45 days 60 days	YES 1 month, can be extended to 2	YES 2 months (0, 25) 4 months [25,100] 6 months 100+	YES 30 days [20, 100) 90 days 100+
PERMISSION FROM AUTHORITIES ²¹	NO	NO	NO	NO	NO
PERIOD OF NOTICE	- 7 to 56 days for blue collar workers according to seniority	1-2 months in law according to seniority	1-7 months in law according to seniority	1-6 months in law According to seniority	1-12 weeks in law according to seniority
SOCIAL PLANS	NO	YES usually with public funding	YES	NO	NO
REDUNDANCY PAY IN LAW	NO	Yes usually 50% covered by state	NO	NO	YES
OTHER ECONOMIC COMPENSATION	Payment of the notification period when not respected.	Redundancy pay often in collective agreement	Redundancy pay usual in collective agreement	Redundancy pay in sector collective agreements	Can be included in collective agreements

²¹ Some form of permission is required in Spain and the Netherlands

	Belgium	France	Germany	Sweden	UK
Consequences of employer not following procedures <i>vis a vis</i> worker reps	None	- Dismissals declared null and void, reinstatement and damages - Decision to begin process again - Criminal case if employer prevents worker reps from doing their job	- Dismissals declared null and void - Damages to workers 'Criminal case if employer prevents worker reps from doing their job	Damages to trade union	Damages, also to workers
Consequences of employer not following procedures <i>vis a vis</i> public authorities	None	Fines and damages to workers	Dismissals declared null and void	100-500 kr per workers and day	Fines max £5,000
Consequences of unfair dismissal	Re-instatement and backdated salary or damages	Re-instatement or damages	Damages or reinstatement	Damages Declared null and void.	Damages or reinstatement

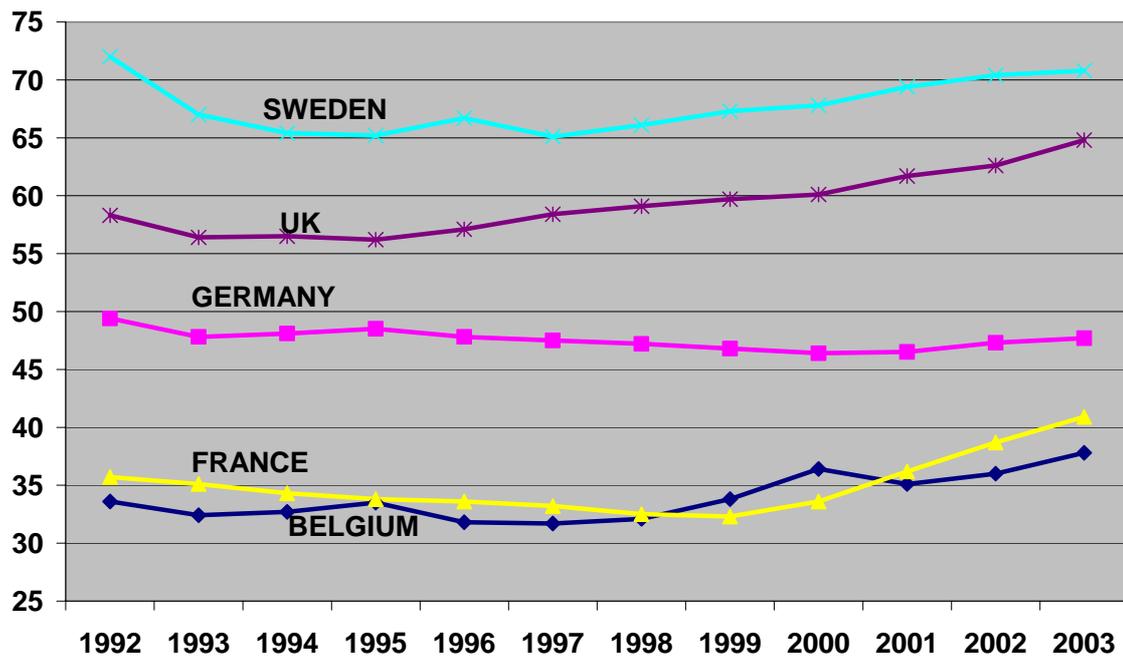
There appear to be many similarities in the legal background which broadly follows the process envisaged by the European Directive of first notification, then consultation before final enactment. There are some differences in terms of time periods and thresholds but I judge these to be of minor importance. The vital commonality is that it would appear that in all countries that the decision to dismiss workers is the sole prerogative of the employer. While the employee representatives have a legal right to information and consultation there is no *co-determination* in this respect.

However, there are quite significant differences as regards selection rules. In Sweden the law is clear – the LIFO principle applies, though it can be replaced by a collective agreement. This is a vital negotiating tool for the unions and restructuring cases in Sweden do not make sense without understanding this fact. In Belgium the law is silent on selection and at least previously appeared to be the sole prerogative of the employer, though one can note some tendency towards more involvement of employee representatives. The criteria actually used are, however, totally un-transparent. The law is more specific in France and even more so in German which list several criteria which should be applied. However, the trade unions in France refuse to negotiate on these issues and thus the matter is in fact decided by the employer alone. In Germany negotiation does occur. In the UK the law only requires that objective criteria be used.

Although not we have not been able to systematically and conclusively deal with these issues it does appear that the policy options available outside the firm vary considerably between the various countries. Again Sweden with its focus and resources for active measures is a distinctive case for active measures and Belgium is possibly an equally distinctive case for the availability of passive measures.

Regarding the impact of various institutional and legal stipulations on labour market outcomes the labour market status of older males can present a very simple and informative picture of which factors may be of importance for successful restructuring. There are only very minor differences in the employment rates for men between the ages of 30 and 50. Somewhat simplistically expressed - nearly all middle aged men work in EU (15). However, there are very significant differences in employment rates for older men, with, for example, the employment rate for 55 to 64 year old males in Sweden being consistently around double of that in Belgium and France. See Figure

Employment rate for men between the ages of 55 and 64 in Sweden, the UK, Germany, France and Belgium.



Source - European Labour Force Survey, Eurostat

As these men had previously (when they were younger) very similar employment rates, the only possible explanation for these very striking differences must be related to restructuring. Either job loss hit sectors dominated by older men more in Belgium and France than in Sweden – very unlikely; Or that within firms experiencing restructuring that it is more frequent in France and Belgium that older workers lose their jobs than in Sweden – very likely due to seniority rules; Or that after job loss men in Belgium and France are much less likely to get a new job – very likely given the different active and passive mix in Sweden compared to the Continent.

There are further institutional differences between the various countries that may be of great importance but which may be difficult to firmly place in a comparative framework. This is the behaviour and strategies of the actors which is strongly related to the “spirit of industrial relations”. This was the subject of a separate series of reports in MIRE.

Finally it may also be of importance to do further legal analysis of non-observance of the law. This was taken-up in the section on “Remedies and Sanctions” and may require a deeper legal competence.

14. Measuring job loss and policy outcomes at restructuring

“There is evidence of increased job loss at restructuring everywhere except in the statistics” A paraphrase of Robert Solow’s comment on the increased use ICT and productivity.

14.1 Measuring Job Loss at Restructuring

14.1.1 Available data sources

There is a widespread impression in both the media and in policy circles that job loss due to restructuring is now more common than at any time in the post war period. This is next to no firm statistical evidence that this in fact is the case and a number of studies on the duration of job tenure show no significant average decline.²² There is however considerable evidence that *employee perceptions* of job security declined appreciably between 1980s and 1990s.²³

I think much effort should be devoted to clarifying this issue. We are addressing the issue of job loss at restructuring. Let us equate job loss at restructuring with “job loss for economic reasons” as opposed to job loss due to the personal qualities or behaviour of the employee. Let us first clarify the conceptual and the associated legal and statistical concepts.

Announcement of impending job loss.

This information comes from inside the company. It is usually provided by the management in a press release. It is a declaration of intent.

Notification of projected redundancies

According to Council Directive 98/59/EC of 20 July 1998 “On the approximation of the laws of the Member States relating to collective redundancies”, when an enterprise in contemplating collective dismissals certain information is to be provided to both the employee representatives and the competent public authority. This legal obligation is envisaged as necessary for a meaningful subsequent consultation with employee representatives before final enactment of the collective dismissal (redundancy is commonly meant as collective dismissal for economic reasons) and to enable the authorities to prepare an appropriate policy response. It is a formal declaration of intent.

Enacted collective dismissal

This is the legal act of formally serving definite notice of termination of a specific (individual) employment contract for economic reasons.

None of these three concepts corresponds to job loss at restructuring, or job loss for economic reasons. Either announcement or notification may not in fact be enacted. If this is due to a change of mind by management due to an improved economic climate or as a result of concessions in negotiations with employee representatives then notification or announcement will overestimate job loss for economic reasons.

However, neither do enacted collective dismissals correspond to job loss for economic reasons. The management may notify that a certain number of dismissals are to occur

²² See Auer P. and Cazes S (2000) “The Resilience of the long-term employment relationship – evidence from the Industrialised countries” *International Labour Review*, vol 139, nr 4 and Farber H.S (1999) “Are Lifetime Jobs Disappearing? Job Duration in the United States 1973-1993” in Haltiwanger J, Manser M and Topeal R (eds) *Labour Statistics Measurement Issues*, University of Chicago Press, Chicago IL.

²³ See Employment Outlook (1997) OECD, Paris.

but does not have to legally enact some of these dismissals. Typically one will find that a number of the notified workers (potentially to be dismissed) will “voluntarily” terminate their employment relationship to take up a new job or to search for a new job. While they formally quit they did so due to threat of impending dismissal and obviously these “quits” should be classified as job loss due to economic reasons. Moreover, many of the (typically older) workers may be offered an early pension and those who accept may not be formally dismissed by their employer. In these circumstances announcement or notification will in fact be a better measure of job loss for economic reasons than the legal event of an enacted collective dismissal.

How then does one capture job loss for economic reasons statistically. There are various potential sources.

(i) *Announcement data*

This information is the source of the only attempt to capture job loss at restructuring at a European Level, namely the European Restructuring Monitor (ERM) conducted by the European Monitoring Centre for Change at the European Foundation for the Improvement of Living and Working Conditions, Dublin. For a number of reasons that I do not want to go in to here it should largely be seen as a very large data bank of case studies and should not without further validation be considered as appropriate in this context.

(ii) *Notification as stipulated in the EU Directive* should in principle be available (or could be made available) by the public authorities. Some Member States compile and disseminate this information with reasonable quality – for example Sweden and France. In the respects outlined above, it may be a much more useful measure of job loss at restructuring than, for example, enacted collective dismissals.²⁴

(iii) *Enacted collective dismissals for economic reasons.* While this is a very concrete and clear legal term, I have no knowledge of any reporting requirement of such data and have difficulties in conceiving how it could occur.

(iv) Labour force or other surveys addressed to employees.

In some Member States the labour force surveys (for example in the UK)²⁵ ask employees if they have had recent experience of job loss. Apart from the usual issues related to surveys such as non-response, recall bias etc one matter is particularly problematic in this context.²⁶ Given that the employee lost his job due to economic reasons will he/she answer that this was the case. For example, if he formally quit due to knowledge (notification or informal information) of impending collective dismissal. Even in the USA which has a regular special supplement to the Current

24 A similar type of data is the Mass Layoff Statistics (MLS) from the United States. The data refers to job loss from establishments which have at least 50 initial claims for unemployment insurance (UI) filed against them during a 5-week period. Extended mass layoff numbers (issued quarterly) are from a subset of such establishments--where private sector non-farm employers indicate that 50 or more workers were separated from their jobs for at least 31 days. The filing for UI is an indication that job loss has occurred, it is then followed up by the local authorities.

25 A recent very detailed analysis of the UK LFS data can be found in DTI Employment Relations Research Series NO37, 2004.

26 While most labour force surveys do not ask questions about collective dismissals, many national household panel surveys do, for example, the German Household Panel. They suffer from the same problems as labour force surveys and are in addition often published only after a considerable lag.

Population Survey (The Displaced Worker Survey) to address such issues, the quality of the data is considered to be highly questionable.

(v) Employer interviews

Employer surveys are generally more difficult to conduct than surveys of individuals (sampling frames, finding the correct person to interview and non-response). One is likely to encounter similar problems as in labour force surveys as regarding the distinction between voluntary and involuntary separations. Again one must be rather uncertain as to how employers would respond to the voluntary and involuntary distinction.

(vi) Establishment registers

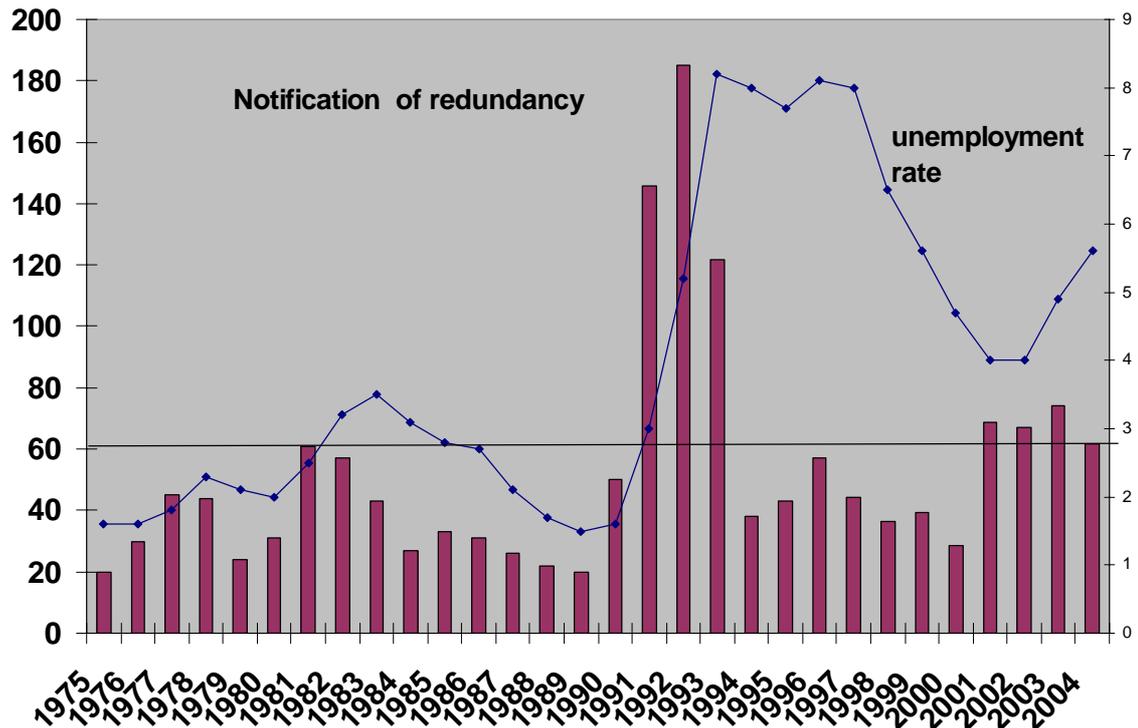
I am convinced that the best source of data on job loss is based on establishment registers that can accurately measure actual employment levels on a regular basis. These registers have a number of practical problems such as sampling frames and false deaths.²⁷ But their simple recording of employment levels (and in some cases origins and destinations of job flows) in the establishment provides an invaluable source of information. Plant closures can be quite easily identified and collective dismissals by applying a suitable level of employment decline from which to infer collective dismissals. The ideal data set would link the notification information of to the public authorities with these registers.

14.1.2 What can the data say – the Swedish example

In terms of establishing whether we have entered a new world of higher levels of on-going restructuring leading to new plateau of high job loss, one requires a long time series with consistent definitions over time. Thus it may not be necessary that the instrument can fully capture job loss at restructuring but rather that the strengths or weaknesses of this data are constant over time. I believe that the best candidate in this respect is the notification data based on the EU Directive enacted in 1975. Some Member States do collect and disseminate this data well. One such good example is Sweden.

Figure 1

²⁷ See Peter Kuhn (2002) *Losing Work Moving On – International Perspectives on Worker Displacement* W.E Upjohn Institute for Employment Research, Kalamazoo, for a discussion of many of issues regarding establishment registers.



Over the period of 30 years there is unquestionably a higher level of notification of redundancies in the 15 years after 1990 than the 15 years before. This is mainly due to the unparalleled level of job loss in the early 1990s. So perhaps one should not focus too much on the early 1990s as they may well have been exceptional years and not provide the basis for conclusions on long-term trends. The horizontal line drawn at the level of the pre-1990s peak of job loss in 1982 illustrates that the recent spate of redundancies since 2000 are somewhat higher than the recessions of the late seventies and early 1980s. This gives some indication that the level of job loss may be somewhat higher today than previously was the case. The critical issue is however, whether the notification data is consistent over time. I have found no indication of significant changes over time as regards definitions and the internal treatment of these statistics in the National Labour Market Board. However there is some scattered evidence that the time series may actually *underestimate* job loss since the mid 1990s. Recent case study evidence from Sweden shows that a number of companies are restructuring (shedding labour) through voluntary programmes. Not only are there no enacted collective dismissals but they are not even notified to the public authorities. The programmes encourage employees to formally quit. We have no systematic evidence of this from earlier decades but our impression is quite certainly that this is a new practice. Recent examples of restructuring where a large part of restructuring was done voluntarily was at various Ericsson plants, the Postal Services and Telia (old state owned telephone monopoly). Our impression is that this may also be a trend in other countries. These recent developments only further underline the suitability of identifying job loss at restructuring by using establishment level employment levels.

14.2. Evaluating restructuring policy

The most commonly applied single measure of a successful restructuring case is the subsequent re-employment rate of those dismissed. There are of course reasons to ascribe some importance to this indicator. The European Commission and most national governments place great emphasis on active policy and outcomes and certainly the on-going demographic changes in most European countries suggests that the passive option as emphasised in Continental countries in the 1970s and 1980s is even less of a desirable option today.

However, there are a number of reasons why the re-employment rate is very unsatisfactory measure of evaluating the relative merits of two cases. The employment outcome for those dismissed in a case depends on three broad factors, the level of labour demand at the time and place of restructuring, the employability of the workforce and policies and practices. Ascribing the relative success of one set of practices over another must be able to identify and control for both the labour demand and supply factors. Moreover, a successful policy outcome may not be solely attributable to the specific practices or measures set in at the case of redundancy but were due to the whole array of active measures and social security systems that are part of the particular society in general and not due to the specificities of the particular case. This point is the motivation for Section 12 above.

What then of the measure itself? One interpretation of the re-employment rate of those who lost their jobs due to restructuring is that it is simply a measure of the success that they had in competing with other members of the local labour force in finding new jobs. Thus, active measures may have had positive effects for the dismissed but impacted negatively on, for example, youth unemployment. This calls into question the whole idea of social responsibility at restructuring and indicates that social responsibility may in fact only be an expression of preference for the welfare of insiders at the expense of outsiders. At the very least, this so-called crowding-out phenomena must be noted in evaluations of cases. It is likely to be more severe when unemployment is high and less of a problem in expansive labour markets or when there are skill miss-matches. The crowding out phenomena presumes (correctly I believe) that active labour market policies do not create more jobs and underlines the importance of a regional industrial policy dimension and net job creation measures at this level..

In the previous section we underlined the problems in determining whether current levels of job loss at restructuring were higher than in the 1970s and 1980s. While there may be some evidence of some increase, the statistics are not shouting out major changes. Thus, it appear more appropriate to consider that the persistent and chronically high levels of unemployment experienced in Europe as not directly related to job loss at restructuring *per se* but rather to a lower rate of job creation. If this is the case then it has a number of implications for policy. Firstly, given that active labour market policies do not create jobs and in fact presuppose the existence of job vacancies to which policy can only assist in matching with displaced job seekers, this would suggest a less obvious role for active measures than in times when job creation was more vibrant. What role then for passive measures? It has been generally accepted that the passive measures that accompanied the structural change in heavy industry in continental Europe in the 1970s and 1980s were misguided. If they were

unaffordable then, and given the current demographic imbalances of the ageing societies, it is hard to see what role can these measures can play today.

It has always been obvious that unemployment is best addressed by job creation by either micro or macroeconomic policy. It should now also be obvious that the microeconomic measures whether active or passive addressed to those made redundant can only in exceptional cases be a satisfactory answer to restructuring at the firm or regional level. The evaluation of restructuring cases should thus more than before be based on their success in creating new jobs. Thus the regional industrial policy perspective should be attributed much more importance than typically is the case when only observing the labour market outcome of those directly made redundant.

Finally I return to the most solid systematic international information that we have concerning job loss, namely OECD and other studies that find that people feel appreciably more insecure in their jobs than before. It has been suggested that this is not due to legal changes in employment protection or contractual form. Possibly it is not even due to an appreciably higher level of job loss but rather these survey responses reflect a perception of *increased costs* of job loss. Job loss costs more today because the chances of finding a new one are lower (and thus making active measures less viable) and because if a job is not found then the generous passive measures not uncommon in, for example, the restructuring of heavy industry in Continental Europe in the seventies and eighties are not such a readily available option.