COMMISSION OF THE EUROPEAN COMMUNITIES

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Report by the Commission
to the Council on progress with regard to implementation
of the Directive on

the approximation of the laws of the Member States
relating to collective redundancies

(Council Directive 75/129/EEC of 17 February 1975)

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INTRODUCTION

On 17 February 1985, the Council of Ministers of the European Communities adopted Directive No 75/129 on the approximation of the laws of the Member States relating to collective redundancies.

The main aim of the Directive was to improve protection of workers affected by collective redundancy by narrowing existing differences in national legislation in respect of the "practical arrangements and procedures" and the "measures designed to alleviate the consequences of redundancy for workers" (quotations taken from the preamble of the Directive).

The Directive provides for a dual procedure comprising, on the one hand, consultation with workers' representatives with a view to reaching an agreement, and on the other an administrative procedure for allocating public funds and resources to seeking ways of alleviating the social consequences of collective redundancies (Articles 2 to 4).

In certain Member States, this system tends to conflict with an administration-oriented tradition derived from state control of the labour market, which may well prove the main obstacle to approximation.

The machinery of the Directive is, of course, based on a very careful definition of "collective redundancies" and other elements used to delimit the actual situations to which the directive can be applied in practice (Article 1).

The purpose behind the Directive is to set a minimum level of general protection with the express admission of national laws, regulations, and administrative provisions which are more favourable to workers (Article 5).

Article 7 of the Directive provides that "within two years following expiry of the two year period laid down in Article 6, Member States shall forward all relevant information to the Commission to enable it to draw up a report for submission to the Council on the application of this Directive".

To facilitate the forwarding of information, the Commission drew up a detailed questionnaire addressed to nine Member States and examined the extent to which the Directive had been implemented in those Member States. The present report is based on the results obtained, in accordance with Article 7 of the Directive, and describes the extent to which the Community text has been incorporated into national laws, indicating the Commission's position vis-à-vis the current situation.

The report is divided into three chapters:

- Chapter 1, covering the general legislative situation i.e. the implementing measures introduced by each Member State, and the scope of those measures.

  For this purpose, the basic definitions are described along with the provisions enacted by Member States, in accordance with the Directive, excluding certain occupations and certain types of collective dismissal from the scope of the measures introduced. This chapter also describes the incorporation into national law of the provisions set down in Articles 2 to 4 of the Council Directive:

  - Consultation procedure

  - Procedure for collective redundancies

- Chapter 2 is devoted to Community disputes in respect of implementation of the Directive, describing both infringement procedures instituted by the Commission against governments for non-conformity of certain provisions with the standards established by the Directive, and cases brought before the Court of Justice of the European Communities;

- The concluding chapter (3) comprises a general analysis of implementation of the Directive.

2. NATIONAL LEGISLATIVE INSTRUMENTS

National legislation applying Directive 75/129/EEC of 17 February differs greatly between Member States. In four countries (Belgium, Denmark, the Netherlands and the United Kingdom), implementing laws were adopted within the period stipulated by the Directive.

In France, a law more or less in line with the aims of the Directive already existed, but a very recent regulation (1989) bringing about certain significant changes in the area now needs to be taken into consideration. In four other Member States (Greece, Ireland, Luxembourg, Federal Republic of Germany), laws were adopted after the Directive had entered into force.

Spain and Portugal represent a special case in view of their recent accession to the Communities. However, both these countries already had laws along the lines of the Directive and in Portugal important legislative reforms took place in 1989.

Finally, in Italy, there is still no statutory (or any other) system sufficiently general in scope and specific in aim to approximate to the substance of the Directive.

The legislative instruments to be taken into consideration when evaluating the extent to which the Directive has been implemented in the Member States are:

BELGIUM

- Royal Decree (Arrêté Royal) of 24 May 1976 on collective redundancies, amended by Royal Decree of 26 March 1984;

- Royal Decree of 24 May 1976 amended by the Royal Decree of 11 June 1986;

- Collective labour agreement (Convention collective de travail - CCT) No 24 of 2 October 1975 on the procedure for information and consultation of workers' representatives in the event of collective redundancies, amended by CCT No 24 bis of 6 December 1983, rendered compulsory by the Royal Decree of 7 February 1984;

- CCT No 10 of 8 May 1973 on collective redundancies, rendered compulsory by the Royal Decree of 6 August 1973.

- CCT No 24 of 8 October 1985, rendered compulsory by the Royal Decree of 20 December 1985.

DENMARK

- Law No 38 of 26 January 1977 concerning amendment of the Law on placement and unemployment benefit;

- Ministry of Labour circular of 4 March 1977 concerning action to be taken by Employment Commissions on receipt of notice of large-scale redundancies;

- Ministry of Labour Decree No 73 of 4 March 1977;

- Ministry of Labour Decree No 755 of 12 November 1990 on the definition of "undertakings" and the registration of employees made redundant.

SPAIN

- Law No 8/1980 of 10 March, on the Workers' Statute (Estatuto de los Trabajadores- ET) (Article 51 and associated provisions);

- Royal Decree (Real Decreto) No 696/1980 of 14 April on application of the ET to procedures relating to substantial changes in working conditions and suspension or breakdown of labour relations.

FRANCE

- Law of 2 August 1989 (No 89-549) on the prevention of economically-motivated redundancy and the right to redeployment (Articles L.122-14, L.123-3-1, L.132-12, L.132-27, L.143-11, L.321-1 to L.321-15, L.322-1, L.322-3, L.322-7 and others from the Labour Code (Code du Travail).

GREECE

- Law No 1387 of 19 August 1983 concerning control of collective redundancies and other provisions.

IRELAND

- Protection of Employment Act 1977

- Protection of Employment Act 1977 (Notification of Proposed Collective Redundancies) Regulations 1977 S.I. No 140 of 1977.

ITALY

There is as yet no generally applicable legal instrument through which the Directive could be implemented.

LUXEMBOURG

- Law of 2 March 1982 on collective redundancies.

- Law of 14 May 1986 on economic growth and regional balance.

NETHERLANDS

- Law of 24 March 1976 on notification of collective redundancies

- Law on Works Councils, 1971, amended

PORTUGAL

- Decree Law No 64-A/89 of 27 February on termination of work contracts and on fixed-term contracts.

FEDERAL REPUBLIC OF GERMANY

- Law on employment protection ("Kündigungsschutzgesetz") of 25 August 1969. (BGBL I p. 1317) lately amended by the law of 13 July 1988 (BGBL I, p. 1037)

UNITED KINGDOM

- Employment Protection Act, 1975 (part IV)

- Industrial Relations (Northern Ireland) Order 1976 (SI 1976 No 1043)

CHAPTER I

ANALYSIS OF NATIONAL LEGISLATION

SECTION I. DEFINITION AND SCOPE OF THE DIRECTIVE

Article One

1. For the purposes of this Directive:

a) "Collective redundancies" means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

- either, over a period of 30 days:

1. at least 10 in establishments normally employing more than 20 and less than 100 workers;

2. at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers;

3. at least 30 in establishments normally employing 300 workers or more;

- or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

b) "workers' representatives" means the workers' representatives provided for by the laws or practices of the Member States.

2. *This Directive shall not apply to:*

a) *collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts;*

b) *workers employed by public administrative bodies or by establishments governed by public law, (or, in Member States where this concept is unknown, by equivalent bodies);*

c) *the crews of sea-going vessels;*

d) *workers affected by the termination of an establishment's activities where that is the result of a judicial decision.*

1. THE CONCEPT OF COLLECTIVE REDUNDANCY

The definition in the Directive is based on two cumulative elements: an objective element concerning the scale of the redundancies (number or percentage of workers to be made redundant over a given period) and a subjective element concerning the reasons for the redundancies.

1. The subjective element is expressed by the reference to "*one or more reasons not related to the individual workers concerned*".

Strictly speaking, this allows for exclusion only of reasons related to workers' behaviour; any other individual exclusions, such as cutting down surplus staff, would be both inappropriate and inadequate.

Including the motive as an element of the definintion does not restrict the scope of the situations covered, except in as far as the text itself deliberately excludes certain situations relating to breach of contract, which includes disciplinary issues.

Inherent in the phrase *"one or more reasons not related to the individual workers concerned"* is the clear intention to cover all circumstances and situations which might lead the employer to decide to dismiss a number of workers as redundant for reasons connected with the organization and management of the undertaking.

This element is found, in the same terms, in the laws of the following countries:

- Belgium - Art. 1 of collective agreement No. 24 bis and Art. 1. 8 of the Royal Decree of 26.03.84
- Denmark - Art. 23 a) of Law No. 38 of 26.01.1977
- Greece - Art. 1 (1.) of Law 1387/1983 of 18.08.83
- Luxembourg - Art. 1 (1.) of the Law of 02.03.82
- Netherlands - Law of 24.03.76

In considering Dutch law, it is worth pointing out that, apart from the law on the notification of collective dismissals implementing the directive which provides for a definition of collective dismissals, the Law on works councils (1971, amended several times) applies. This law lays down an obligation on the employer to inform and consult the council in the event of the business (or part of the business) ceasing activities, or a significant reduction, extension, or other change in activities. The law does not define what is

meant by "significant reduction", but case records would suggest that judges are less than strict in the matter of recognizing partial staff cutbacks as "significant reductions" within the meaning of the law. In the case of businesses with 10 to 100 workers, the Law on works councils expressly imposes a requirement for information and consultaion where the reduction is 25% or more.

The legal situation in the other Member States varies considerably.

In Spain, the law does not specifically define "collective redundancy", but this is included in the wider concept of "breakdown of industrial relations for economic or technological reasons" (Art. 51 of Law 8/1980 of 10 March, containing the Estatuto de los Trabajadores, henceforth referred to as "E.T."), which is subject to a system of official authorization.

In France, (where a very recent law (that of 2 August 1989) has been passed on the subject, essentially corresponding to Articles L.321-1 to L.321-15 of the Code du Travail, there is no specific definition of collective redundancy. The situations covered by the Directive are included in the concept of "redundancy for economic reasons", which is defined in Article L.321-1.

This definition also adopts the wording "one or more reasons not related to the individual worker concerned", thereby remaining applicable to the dismissal of one or more workers.

In Ireland, section 6 (2) of the PEA 1977 defines collective redundancy by listing the grounds accepted as justification:

a) "The employer concerned has ceased, or intends to cease, to carry on the business for the purposes of which the employees concerned were employed by him, or has ceased or intends to cease, to carry on that business in the place where those employees were so employed.

b) The requirements of the business for the employees to carry out work of a particular kind in the place where the employees concerned were so employed have ceased or diminished or are expected to cease or diminish.

c) The employer concerned has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employees had been employed (or had been doing before their dismissal) to be done by other employees or otherwise.

d) The employer concerned has decided that the work for which the employees concerned had been employed (or had been doing before their dismissal) should henceforward be done in a different manner for which those employees are not sufficiently qualified or trained.

e) The employer concerned has decided that the work for which the employees had been employed (or had been doing before their dismissal) should henceforward be done by persons who are also capable of doing other work for which those employees are not sufficiently qualified or trained".

In Italy, there is, as stated, no legislative instrument capable of implementing the Directive.

Portuguese legislation incorporates a specific and precise definition of collective redundancy (Art. 16 of Decree Law 64-A/89 of 27 February), which contains a subjective element expressed in the following terms: "reasons such as permanent closure of a business, closure of one or more sections, or staff cutbacks for structural, technological or economic reasons".

Legislation in the Federal Republic of Germany contains no specific definition of collective redundancy, but legal provision for it is implicit in the system of protection against redundancy in any form, with the exception of dismissal without notice for reasons related to the behaviour of the worker concerned (§17, (4)). This legislation therefore also incorporates a subjective element which excludes reasons related to the individual worker.

In the United Kingdom, section 126 (6) and (7) of the EPA 1975 lists the grounds justifying collective redundancies:

a) The fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee is or was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee is or was so employed, or

b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he is or was so employed, have ceased or diminished or are expected to cease or diminish.

This clearly excludes any reasons which could be considered to be related to the individual worker concerned within the meaning of the Directive.

2. The definition of collective redundancy in the Directive is also governed by an objective element which requires that the number of workers to be dismissed as redundant reach a minimum limit, set according to one or two alternative methods to be selected by each Member State:

- *either, over a period of 30 days:*

    1) at least 10 in establishments normally employing more than 20 and less than 100 workers;

    2) at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers.

    3) At least 30 in establishments normally employing 300 workers or more.

- *or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question.*

The first alternative (period of 30 days) has been adopted in Denmark by Art. 23, a) 1) of the Law of 26.01.77.

The methods adopted by the other countries on this point (scale of redundancy), are also very diverse.

In Belgium, the quantitative limits defined in Art. 1. of collective agreement No. 24. bis and Art. 1B of the Royal Decree of 26 March 1984 relate to a period of 60 days, the number of workers being

- at least 10 in companies employing more than 20 and less than 100 workers;
- at least 10% of the number of workers in companies normally employing at least 100 and less than 300 workers;
- at least 30 in companies normally employing at least 300 workers.

In Spain, the law does not set any quantitative minimum: the procedure for redundancy for economic or technological reasons is practically the same whatever the scale of the phenomenon. With the exception of one or two very secondary aspects (the most important of which is Art. 51 (13) of the E.T. providing for a shorter procedure and reduced documentation requirements for firms with a workforce of less than 50, or where the number of workers to be made redundant does not exceed 5% of the total workforce), the same system is applicable irrespective of the size of the company and the number of employees affected.

French law makes a very clear procedural distinction between dismissal of fewer than 10 employees over a period of 30 days (which is regarded as economically-motivated individual redundancy), and dismissal of at least 10 employees over a period of 30 days, which entails consultation of the workers' representatives and involvement of the authorities (Articles L.321-3 and L.321-7 of the Code du Travail). While not constituting a full definition of collective redundancy, the legislation is in line with the general meaning of the Directive on this point.

In Greece, Article 1 (2) of Law 1387/1983 defines collective redundancy quantitatively, referred to a set period (one calendar month: paragraph 1 of the same Article), by setting limits above which redundancies are regarded as collective on the basis of the number of staff employed at the beginning of the month, as follows:

- 5 workers in companies or establishments employing 20 to 50 persons;
- 2 to 3% of staff or up to 30 persons in companies or establishments employing over 50 workers. The maximum is set every calendar quarter by the Ministry of Labour in line with a recommendation from the Labour Advisory Committee based on labour market conditions at the time.

In Ireland, section 6 (1) of the PEA 1977 implements the first option in the Directive. The reference period is 30 days. The statutory system becomes applicable where the redundancies affect:

- at least 5 employees in an establishment normally employing more than 20 and less than 50 employees;

or

- at least 10 employees in establishments normally employing at least 50 but less than 100 employees;

or

- at least 10% of the number of employees in an establishment normally employing at least 100 but less than 300 employees;

or

- at least 30 employees in establishments normally employing 300 or more employees.

Regarding Luxembourg, Article 1 (1) of the Law of 2 March 1982 sets the minimum number of redundancies as 10 over a period of 30 days or 20 over a period of 60 days.

Dutch law speaks of collective redundancy where at least 20 workers are laid off either simultaneously or staggered over a period of up to 3 months in an area served by a single regional employment office.

In Portugal, the definition of collective redundancy in Article 16 of DL 64-A/89 adopts the 3-month reference period (i.e. the second option in the Directive) but defines the numbers concerned as a minimum of 2 in companies employing 2 to 50 workers or a minimum of 5 in those employing over 50 workers.

In F.R. Germany, §17 (1) of the Law on employment protection makes declaration of redundancy compulsory where the number of workers affected over a period of 30 days is:

- more than 5 in firms normally employing more than 20 and fewer than 60 workers;
- 10% of workers normally employed by the firm or more than 25 workers, whichever is the lower, in firms normally employing at least 60 and fewer than 500 workers;
- at least 30 in firms normally employing at least 500 workers.

<u>UK</u> legislation on collective redundancy applies to all establishments, however many workers they employ. A quantitative distinction is made between dismissals entailing mandatory information and consultation of workers' representatives, and those which must be notified to the public authorities. The requirement for information and consultation extends to all dismissals, whereas notification is obligatory only where 10 or more employees are affected (Sections 99 and 100 of the EPA 75).

The reference period normally used for calculating the number of redundancies is 30 days or less, but Section 100 1. a) lays down a period of 90 days or less where 100 or more employees are involved.

2. THE CONCEPT OF WORKERS' REPRESENTATIVES

Article of 1 (1) of the Directive states that:

"Workers' representatives" means the workers' representatives provided for by the laws or practices of the Member States".

The implications of this definition are twofold: on the one hand, it means that any form of national representation of workers' interests is acceptable under the Directive (provided it is endorsed by the law or socially accepted practice), and on the other it presupposes the existence in each Member State of a system of representation which could function within the type of consultation/negotiation procedure envisaged in the Directive.

In Belgium, worker representation within a firm is through:

- workers' delegates on the works council (in firms employing 100 workers or more);
- workers' delegates on the Committee for health, safety and improvement of the workplace (in firms employing 50 workers or more);
- the union delegation (in the conditions provided for by the collective labour agreement through which it is instituted).

In the case of collective redundancy, the information and consultation procedure takes place with the works council or, failing this, with the union delegation. If neither council nor delegation exist, such dialogue takes place with the trades unions represented on the competent joint industrial council and with the staff or staff representatives (Article 1 (4) of the Royal Decree of 24 May 1976; Article 6 of Collective Labour Agreement No. 24 of 2 October 1975).

In Denmark, there is no legal requirement for workers' representatives within a firm. Where such representatives exist, they are provided for by the collective agreements on "ombudsmen", and agreements on the election of joint committees, half the members of which represent the workers, and the other half the employer. The law and the explanatory notes attached to the draft law provide that, where appropriate, workers' representatives thus elected must participate in negotiations and receive the communications provided for by Article 23b of Law No. 38 of 26 January 1977. There are also cases of workers within a firm electing an ombudsman or spokesman, even where this is not provided for by the collective agreements. The law also provides for

such representatives to participate in negotiations and receive communications. In the quite common event of there being no representative elected by the workers, Article 23b of the Law and the explanatory notes of the draft make negotiation and receipt of communication the responsibility of the workers concerned.

In <u>Spain</u>, Articles 62 and 63 of the ET designate staff delegates (in establishments employing fewer than 50 workers) and the works councils (in establishments employing over 50 workers) as responsible for employee representation within the firm. They fulfil the general requirements laid down in Article 51 (1) of the ET on the involvement of "workers' official representatives" in the procedure for termination of contracts for economic or technological reasons.

In <u>France</u>, Articles L.321-2 and L.321-3 of the Code du Travail compel the employer to consult the works council, or in the absence of such, the staff representatives. The works councils and the staff representatives are the two entities authorized to represent the entire workforce of a firm, irrespective of whether they are members of a union.

The relevant legislation in <u>Greece</u> is Law 1387/1983, which adopts a system making representation the responsibility of, in the first instance, the company unions.

Article 4 (1) defines workers' representatives as the representatives of the union within the company or establishment whose members account for at least 70% of the total workforce and the majority of workers facing redundancy.

Article 4 (2) states that where there are several unions within a company or establishment, none of which account for 70% of the workforce or the majority of workers facing redundancy, the workers' representatives are the delegates put forward by the various union executive committees in a joint declaration to the employer. The representatives are appointed on a proportional representation basis according to union membership, provided that the unions, combined, represent 70% of the workers and the majority of the workers affected by the dismissals.

Where there is no union satisfying the above conditions, workers are, according to Article 14 of Law 1757/1988, represented by the works council. Where there is no works council, the most representative regional Workers' Centre appoints a committee from among the company's employees. If none of these options are possible, workers are represented by a committee of 3 or 5 persons selected from the longest-serving workers in the company or establishment.

In Ireland, section 2 (1) of the PEA 1977 defines workers' representatives (for the purpose of complying with the right to information and consultation) as:

"officials (including shop stewards) of a trade union or of a staff association with which it has been the practice of the employer to conduct collective bargaining negotiations".

Clearly, this implies the need for de facto recognition by the employer, and no provision is made for the non-recognition or non-existence of representatives within the meaning of the law.

Italian law provides for worker representation within the company or establishment under a system capable of operating along the lines described in the Directive, but there is no national law actually implementing the requirements of the Directive.

Moving on to Luxembourg, Article 2 (1) of the Law of 2 March 1982 stipulates that any employer contemplating redundancies is legally bound to enter into consultation with the staff representatives, the joint committees (where such committees exist), and, in the case of companies bound by the Collective Labour Agreement, with the trade unions party to that Agreement.

Staff delegations exist in all establishments employing at least 15 workers under a work contract. Joint committees exist in companies with at least 150 employees.

In the Netherlands, according to the Law on the Notification of Collective Redundancies, associations of workers concerned is taken to mean the association of workers which has members among the persons employed in the undertaking, which according to its statutes has as its aim the representation of its members' interests as employees, which is active as such in the said undertaking or establishment, and which has held its legal personality for at least two years and is known as such to the employer. This latter provision is taken as given where the association has notified the employer in writing that it whishes to be informed of impending collective redundancies.

The employer is also required under the Works Councils Act to inform and consult the works council under certain circumstances. Even where there is no such works council in firms with between 10 and 35 employees, the employer is required under the Works Councils Act to convene a special meeting with the staff in all cases where there are plans for shedding at least 25% of the workforce, and to give this meeting the requisite information and take note of the staff's views on the planned redundancies. It is important to note, though, that this requirement is in addition to the Law on the Notification of Collective Redundancies - the works council is not regarded as representing workers and employees within the meaning of the directive on the notification of collective redundancies.

In Portugal, Article 17 (1) of Decree Law 64-A/89 designates the "staff committee" (internal representative body composed of a number of members elected from and by all the staff in the company) as the employers' main intermediary in the collective redundancy procedure. Where no staff committee exists, this role may be assumed by the union delegates.

In German legislation, the works council (Betriebsrat) is the representative body which the employer must inform and consult in all cases of dismissal subject to the declaration requirement in accordance with §17(2)(3) of the law on employment protection.

The Law concerning companies' internal staff regulations stipulates that members of works councils must be elected by all the workers in companies with at least 5 employees. The works councils must represent the interests of all the workers, including non-union members.

United Kingdom legislation (Section 99(1) of the EPA 75) makes it compulsory for the employer to inform and consult representatives of an independent trade union recognized by him before effecting collective redundancies.

British legislation considers as independent a union which (section 30 (1) of the Trade Union and Labour Relations Act 1974)

- is not under the influence or control of an employer or group of employers or one or more employers' associations,
  and
- is not subject to influence by the employer or any such group or association as a result of financial or material assistance or any other factor capable of exerting such influence.

3. SITUATIONS OUTSIDE THE SCOPE OF THE DIRECTIVE

A) Fixed-term contracts and contracts for specific tasks

On the whole, under European legislation, the employment relationship ceases more or less automatically upon expiry of the term or completion of the task for which the contract was concluded.

The main aspect to be considered in assessing how far national systems comply with the Directive is whether anticipated curtailment of such a contract by the employer is included in the definition of collective redundancy, thereby falling within the scope of the corresponding legislation.

Some Member States - Belgium, Denmark, Ireland, the Netherlands, FR Germany and Greece - make explicit provision for this eventuality.

In the case of Greece, Article 2 a) of Law No. 1387/1983 adopts Article 1 (2) a) of the Directive practically unchanged.

In the relevant Spanish legislation, the wording of Article 49 (3) of the ET implies that the procedure in Article 51 is not applicable to contracts concluded for a specific period or a specific task.

French legislation covering dismissals for economic reasons (Article L.321-1 ff of the Code du Travail) does not, in the case of temporary contracts, include dismissal before expiry of the term or completion of the task for which the contract was concluded.

In Italy, the lack of any law in line with the Directive's objectives means there are no provisions covering the scale of collective redundancies affecting workers under fixed-term contracts.

Moving on to Luxembourg, the Law of 2 March 1982 does not exclude from its scope workers on fixed-term contracts or those under contract to complete a specific task.

In the case of Portugal, Article 52 (1) of Decree Law 64-A/89 makes the general provisions applying to the termination of contracts equally applicable to short-term contracts, with certain special provisions laid down in the same Article. This means that collective redundancy does, in some cases, include early termination of fixed-term contracts.

United Kingdom legislation on collective redundancy is not applicable to the curtailment of contracts concluded for a period of 3 months or less, but does cover all longer contracts.

B) Workers employed by public administrative bodies or establishments governed by public law

Each national system has its own definition, in terms of both concept and terminology, of what constitutes the "civil service" and the types of work considered to be civil service functions.

Different countries' ways of approaching the problem of applying legislation on collective redundancy in this area are really secondary to the more general consideration of how labour law relates to the civil service occupations within national law.

In Belgium, legislation on collective redundancy (including the above-mentioned national collective agreements) is not applicable to workers employed by public administrative bodies or establishments governed by public law.

In Danish and Luxembourg law, there are no restrictions on the scope of the Directive as regards the public or private nature of the employer.

In Spain, Article 1, ET 3) a) excludes from the ET's scope the employment relationship of public servants, government employees and the staff of local or autonomous public bodies, on condition that there is legislation providing for statutory or administrative instruments governing that relationship.

In France, Article 321-2 of the Code du Travail includes in the scope of the provisions covering redundancy for economic reasons:

- agricultural, industrial or commercial companies or establishments, both public and private;
- public and government service;
- professional occupations;
- private companies;
- trade associations;
- associations of any other description.

Public administrative bodies are the one noteworthy exception.

The legislative situation in Greece appears contradictory. Article 2 (1) of Law 1387/1983 states that the Law's provisions are applicable to public corporations, local authorities and corporate bodies governed by public law "operating in accordance with private business principles"; but, according to para 2 of the same Article, the law is not applicable to persons working for public administrative bodies, local authorities and corporate bodies governed by public law under an employment relationship governed by private law.

Any meaningful interpretation of these two paragraphs would imply the sole exclusion of civil servants exercising the powers of a public authority.

The concepts of "public administrative bodies" and "establishments governed by public law" are not used in Irish Law.

Section 7 of PEA No. 7 of 1977 states that the law on collective redundancy is not applicable to:

"a) A person employed by or under the State other than persons standing designated for the time being under section 17 of the Industrial Relations Act, 1969".

As a result of this reference to the 1969 Industrial Relations Act, 28 categories of persons defined as "Industrial civil servants" are protected by the 1977 PEA.

The exclusion of civil servants is thus limited to those who do not fall into any of the categories defined in the 1969 Industrial Relations Act. The term "civil servants" is defined in the Civil Service Regulation Act, 1956.

b) "Officers of a body which is a local authority within the meaning of the Local Government Act, 1941". "Officers" are distinct from "servants", who are included in the scope of the Directive. The "officers" are the administrative and professional staff employed by the local and health authorities. The "servants" account for the majority of persons employed by the local authorities.

In Italy, despite the absence of any law on the subject, the government has said that legislative and independent measures affecting employment in the public services exclude any possibility of applying the Directive to this type of employment.

Under the Dutch system, the 1976 Law concerning notification of collective redundancies, which implements the principles of the Directive, applies only to employers and workers who have concluded an employment contract under civil law (Art. 1637 of the Civil Code). Generally speaking, employees of public administrative bodies and establishments governed by public law are appointed unilaterally and are therefore not covered by the Law of 24 March 1976.

Since the GGA of 1945 (exceptional Decree concerning labour relations), which subjects redundancies to prior authorization by the Director of the Regional Employment Office, is not applicable to employees of establishments governed by public law, the law on collective redundancies is also inapplicable to parties to an employment contract within such an establishment. The concept of "establishments governed by public law" as such does not exist in the Netherlands; for the purposes of the Directive, establishments such as the Dutch railways and private teaching establishments must also be included.

There are, however, specific autonomous laws making information and consultation compulsory in the event of substantial staff cutbacks in the public sector. Examples are the General Regulations governing the Civil Service for public service employees and the 1981 Law on participation in education. The Dutch railways are covered by the amended 1971 Law on works councils, which has a significant bearing on redundancy procedures.

Portuguese labour law does not, on the whole, apply to civil servants and other administrative officers, including employees of regional and local authorities, but does apply in principle to workers in public undertakings and establishments in industry, commerce, agriculture, banks, and insurance, if a private law employment contract exists between worker and employer.

In FR Germany, the provisions concerning dismissals subject to declaration are applicable to private and public law undertakings and public bodies.

In United Kingdom legislation, section 121(1) of EPA 75 excludes from the scope of the Directive "persons in crown employment" as defined in subsections 2 to 5. "A number of public administrative bodies" and "employees employed in nationalized industries and public utilities" are not covered by the section. A definition of "employees" is given in section 126(1) and excludes the police and the armed forces.

C) The crews of sea-going vessels and other excluded occupations

In Belgium, Article 3 of the Royal Decree of 24 May 1976 (amended by Article 2 of the Royal Decree of 11 June 1986) does not cover undertakings employing sea fishermen or merchant seamen.

Notes under Article 5 of CCT No 24 state that, in view of the spirit and structure of the EEC Directive and the exclusion clauses set outin Article 5 of CCT No 24, the latter is not applicable to seasonal undertakings.

In Denmark, crews of sea-going vessels are excluded from the scope of legislation on collective redundancies.

There is no provision excluding the crews of sea-going vessels in Spanish law on redundancy for economic or technological reasons.

In France, Article 94, para. 1 of the Code du Travail Maritime (Maritime Labour Code) states that the general provisions on redundancy for economic reasons can be made applicable to the sea-going personnel of shipping companies, in particular conditions and subject to the necessary adaptation, by Council of State decree.

In Greece, ships' crews are excluded from the scope of Law No 1387/1983 (Art. 2, para. 2).

Art. 1 of the Code of Private Maritime Law defines a ship as any self-propelled sea-going vessel of a net capacity of at least 10 tonnes. Law 1387/1983 also excludes workers laid off by a construction firm or firm carrying out other contract work due to stoppage or suspension of the work by the contracting authority, where the latter is the State or a corporate body governed by public law (Art. 2 (2) d) of Law 1387/83).

Irish legislation excludes the crews of sea-going vessels from the protection envisaged under the Directive (section 7 of PEA 1977). Furthermore, section 7 (3) authorizes the Minister of Labour not to apply the law to certain categories of workers. Such exclusions are by ministerial order.

In Italy, it can be inferred from the nature of the employment contract for seamen that they are not covered by any definition of collective redundancy.

In Luxembourg, Article 104 of the law of 9 November 1990 excludes ships' crews from the law of 2 March 1982 concerning collective dismissals.

The Dutch law on collective redundancy does not apply to:

a) the categories of workers set down in subsections a, b, and d of Article 1.2 of the Directive. Dutch law does not cover the crews of sea-going vessels;

b) railway staff;

c) workers in public and special teaching institutions;

d) disabled workers employed in sheltered workshops;

e) priests;

f) men and women whose main or exclusive occupation is domestic work or provision of personal services.

In Portugal, general legislation on the employment contract, including that contained in Decree Law 64-A/89 is not applicable to the crews of sea-going vessels. The same sort of "secondary" exclusion applies to port workers forwhom specific legal provision is made (Decree-Law 282-A/84 of 20 August); the legislation is not explicit on what constitutes collective redundancy, which is mentioned (Art. 10) but for which no specific rules are laid down.

German legislation on employment protection does not cover the crews of sea-going vessels.

United Kingdom law (EPA 1975) excludes the crews of sea-going vessels, and extends the exclusion to other categories:

- Share fishermen (Section 119 (4) who are regarded as partners rather than employees.

- Employees who ordinarily work outside Great Britain.
- Employees covered by collective agreements on redundancies, provided the Secretary of State for Employment has issued an appropriate order (Section 107). The Secretary of State in such cases has to be satisfied that the arrangements are at least as favourable as the general statutory provisions.

D) Termination of an establishment's activities as a result of a judicial decision

In Belgium, if the termination of an establishment's activities is a result of a judicial decision the rules on closures rather than those on collective redundancies apply.

Belgium has specific legislation covering redundancy due to closures, namely the Law of 28 June 1966 and its implementing Decree of 20 September 1967, Article 4 of which lays down the requirement to inform the works council or, in the absence of such, the union representatives; but the requirement is only for information and not for consultation.

In Denmark, Article 23 a), (2) of the Law of 26 January 1977 implements Article 1, para. 2 d) of the Directive.

In Spain, Article 16 of Royal Decree 696/1980 of 14 April concerning the application of the Estatuto de los Trabajadores makes Article 51 of the ET applicable in cases of bankruptcy declaration with cessation of activities and compulsory sale of the whole company. The exception provided for in the Directive has therefore not been adopted into Spanish law.

In French law, Article L. 321-8 of the Code du Travail provides for situations of compulsory liquidation or rehabilitation: the administrator, employer or liquidator, as applicable, is bound to inform the competent authority before effecting dismissals for economic reasons, but this obligation is subject to the specific rules laid down in Law 85/98 of 25 January 1985. Article L. 321-9 also makes compulsory consultation of the works council, or, where no works council exists, the staff representatives. In essence, there seems to be no effective exclusion of these situations under the legislation applying to dismissals for economic reasons.

In Greece, Law 1387/1983 does not apply, according to Article 2, (2) c), to workers made redundant due to the company or establishment ceasing activities, where this is the result of a decision by a court of first instance.

In Ireland, section 7 (2) of the PEA 1977 excludes from the scope of the Directive dismissal of workers as a result of a judicial decision or "following bankruptcy or winding-up proceedings or for any other reason as a result of a decision of a court of competent jurisdiction".

The problem of the exclusion specified in Article 1, (2) d) of the Directive cannot even be considered in Italian legislation, as there is no specific law on the subject.

In Luxembourg, Article 1, (2) of the Law of 2 March 1982 excludes from its scope collective dismissal of workers following termination of the activities of the establishment employing them, where this is the result of a judicial decision.

In the Netherlands, Portugal, FR Germany and the United Kingdom, all legislation concerning collective redundancies is applicable in the case of an establishment ceasing activities as a result of a judicial decision.

SECTION II. CONSULTATION PROCEDURE

Article 2

1. Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives with a view to reaching an agreement.

2. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and mitigating the consequences.

3. To enable the workers' representatives to make constructive proposals the employer shall supply them with all relevant information and shall in any event give in writing the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

The employer shall forward to the competent public authority a copy of all the written communications referred to in the preceding subparagraph.

1. THE PRINCIPLE OF CONSULTATION

One way in which the Directive has had a major impact is in introducing the general principle that collective redundancy must always be preceded by contact with workers' representatives to enable them to participate either in the decision-making process or in finding ways of dealing with the associated social problems.

This principle has now been incorporated into the legislation of most European countries.

This is true of Belgium (Article 1 of the Royal Decree of 24 May 1976; Article 6 of Collective Labour Agreement No 24 of 2 October 1975), Denmark (Art. 23 b of Law No 38 of 26 January 1977), Ireland (section 9 of the PEA 1977), Luxembourg (Art. 2, (1) of the Law of 2 March 1982), the Netherlands, (Art. 6, (2) of the Law of 24 March 1976), the United Kingdom (section 99 (1) and (2) of the EPA 1975) and FR Germany (§17(2) of the Law of on employment protection).

In Spain, Article 51 (1) of the ET compels the employer to allow a period of 30 calendar days for discussion and consultation with the workers' official representatives. According to para. 5 of the same article, the purpose of this consultation period is to reach agreement on the measures to be taken to deal with the situation.

French law has also adopted the principle of consultation. Articles L. 321-2 and L. 321-3 compel the employer to convene a meeting of staff representatives and consult them on the proposed redundancies. The text does not specify the aim of such meetings (unlike the Directive, which specifies "reaching an agreement"), although Art. L. 321-6 does refer to the possibility of a collective agreement on redundancy conditions, to be concluded at the planning stage.

This is also true of Greece, Article 3 of Law 1387/1983 compelling the employer to inform and consult the workers' representatives without specifying the aim of such consultation as reaching an agreement. Article 5 mentions agreement of the parties as one possible outcome.

In Portuguese legislation, Articles 17 and 18 of Decree-Law 64-A/89 lay down in considerable detail the nature of the information and consultation requirement imposed on employers vis-à-vis workers' representatives. In defining the procedure, paragraph 1 of Article 18 actually uses the terms "negotiation" and "with a view to reaching an agreement".

2. THE FORM CONSULTATION SHOULD TAKE AND THE SUBJECTS TO BE COVERED

Paragraphs 2 and 3 of Article 2 of the Directive cover what could, in general, be described as the content of consultation with workers' representatives. They deal with the point or aim of the exercise and the actual information to be submitted to the representatives for consideration. The latter is the most concrete of the employer's obligations.

Some national legislation contains parallels with paragraph 2 of the Directive with respect to the aims of consultation, e.g. Greece (Art. 3 (1) of Law 1387/1983), Ireland (section 9 (2) of the PEA 1977) and Portugal (Art. 18 (1) of Decree-Law 64-A/89), although no detailed procedures are laid down in Spanish or French law.

The picture is very different when considering the information the employer is legally obliged to supply to the workers' representatives.

In Belgium (Art. 6 CCT No 24), Denmark (Art. 23b, 2 and 3, Law of 26 January 1977), Ireland (Section 10 of PEA No 7, 1977), Luxembourg (Art. 2 (3) of the Law of 2 March 1983), Federal Republic of Germany (§17, paras 2 and 3 of the Law on employment protection) and the United Kingdom (Section 99 of EPA 75) legislation exists compelling the employer to provide workers' representatives with the following information:

- the reasons for the redundancies;
- the number of workers to be made redundant;
- the number of workers employed;
- the period over which the redundancies are to be effected.

Spanish legislation is less specific. Article 51 (3) of the ET laying down the consultation requirement is restricted to compelling the employer to provide the workers' representatives with background information and documentation. The wording of Article 10 of Royal Decree 696/1980 is also generic, referring to documentary evidence of the reasons for the redundancies.

In French legislation, Article L.321-4 refers to:

- the economic, financial or technical reason(s) for the planned redundancies;
- the number of workers affected by the proposed redundancies;

- the categories of workers concerned and the proposed criteria for the order of redundancies;
- the number of workers, permanent or otherwise, employed in the establishment;
- the provisional timing of redundancies.

In the case of dismissal of at least 10 workers within 30 days, the same Article adds that the employer is also obliged to inform the staff representatives of planned measures to avoid redundancies or limit the number of workers affected and to facilitate the redeployment of staff where redundancy is unavoidable. The wording of the Article thus corresponds to that of Article 2 (2) of the Directive.

The Greek law (Art. 3 (2)) places the criteria given in Article 3 (3) of the Directive in a different order (the reasons for the redundancies, the number of workers to be made redundant, specifying sex, age and qualifications, and the number of workers' employed, along with any information which may help them (the workers' representatives) make constructive proposals). There is, however, one notable omission, in that there is no requirement to indicate the period over which the redundancies are to be effected.

The information with which employers are required to provide the workers' representatives under Dutch law (Article 4 of the Law of 24 March 1976) is that specified in the Directive: reason for the redundancies, number of workers to be made redundant, number of workers normally employed and the period over which the redundancies are to be effected. The workers' representatives must also be informed of any attempt made by the firm to avert the threat of redundancy. Furthermore, in the event of a significant

reduction in the firm's activities, the law on works councils (Art. 25 (3)) obliges the employer to inform the council of the reasons, probable consequences for the staff and proposed ways of keeping those consequences to a minimum.

In Portugal, the information the employer is obliged to supply is defined in Art.17 (2) of Decree-Law 64-A/89 as follows:

- description of the technical, economic and financial reasons for the redundancies;
- the number and category of workers in each sector of the company;
- criteria for the choice of workers to be made redundant;
- number of workers to be made redundant and their respective professional categories.

However, the Law makes no mention of the period over which the redundancies are to be effected.

SECTION III. COLLECTIVE REDUNDANCY PROCEDURE

Article 3

1. *Employers shall notify the competent public authority in writing of any projected collective redundancies.*

   This notification shall contain all relevant information concerning the projected collective redundancies and the consultation with workers' representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

2. *Employers shall forward to the workers' representatives a copy of the notification provided for in paragraph 1.*

   The workers' representatives may send any comments they may have to the competent public authority.

Article 4

1. *Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3 (1) without prejudice to any provisions governing individual rights with regard to notice of dismissal.*

Member States may grant the competent public authority the power to reduce the period provided for in the preceding subparagraph.

2. *The period provided for in paragraph 1 shall be used by the competent public authority to seek solutions in the problems raised by the projected collective redundancies.*

3. *Where the initial period provided for in paragraph 1 is shorter than 60 days, Member States may grant the competent public authority the power to extend the initial period to 60 days following notification where the problems raised by the projected collective redundancies are not likely to be solved within the initial period.*

   Member States may grant the competent public authority wider powers of extension.

   The employer must be informed of the extension and the grounds for it before expiry of the initial period provided for in paragraph 1.

1. POINTS TO BE COVERED IN THE NOTIFICATION

Legislation in Belgium (Art. 7 of the Royal Decree of 24 May 1976), Denmark (Art. 23 c of the Law of 26 January 1977), the Netherlands (Art. 4 of the Law of 24 March 1976), Luxembourg (Art. 3 of the Law of 2 March 1982), FR Germany (§ 17 (3) of the Law on employment protection) lays down the requirement to

notify the public authority ofthe planned redundancies and stipulates that this notification must contain all relevant information, including the reason for the redundancies, the number of workers normally employed and the period over which the redundancies are to be effected. The employer must also provide the public authority with information to allow identification of the employees made redundant.

In Spain, in the event of no agreement being reached during the consultation period, Art. 51 (5) of the ET gives the employer the option of requesting authorization from the competent authority to terminate the work contracts. In such cases, the employer must provide the authority with supporting documentation and the record of the consultations.

Article 13 of Royal Decree 696/1980 specifies the documentation required, which is:

- a list of the workers to be made redundant
- a separate list of the remainder of the company's staff
- details of the economic or technological reasons for the redundancies
- the company's general accounting documentation
- the opinion of the works council or staff representatives

What is required in this case is not so much notification as an application for authorization, which, if anything, makes the requirements more exacting.

In France, according to Article L.321-7 of the Code du Travail, the procedure in the event of projected redundancies affecting ten employees or more within a period of 30 days must include notification of the employment service.

The aim of notification is to allow the authority to check whether the requirements in respect of information and consultation of workers' representatives and the rules on social measures (including ways of implementing the redeployment agreements) have been complied with, and to ensure that the social measures have been effectively implemented (Article L321-7).

French law does not impose a minimum notification requirement, specifying only that projected collective redundancies must be notified, including the list of employees whose contracts are to be terminated. However, where redundancy affects at least 10 employees within 30 days, thus constituting collective redundancy in the terms of the Directive, the competent authority must immediately be notified of all information passed on to the staff representatives.

In Greece, Art. 3 (3) of the above-mentioned law obliges the employer to provide the competent authority, i.e. the regional authority and labour inspectorate, with a copy of all documentation concerning the planned redundancies (the documentation sent to the workers' representatives in accordance with § 2 of the same article). If the company or establishment has branches in several regions, the documents must be sent to the Minister for Labour and the Labour Inspectorate for the area in which the establishment or branch affected is situated.

The collective redundancy procedure - within the meaning of the Directive - is initiated by receipt (submission) of the record of the consultations held between the employer and the workers' representatives (Art. 5 (1)). The record must be sent either to the regional Chief Administrator or the Minister for Labour, in accordance with Art. 3 (3).

Collective redundancies can only be implemented by a local or central authority decision limiting their scope.

Irish law (section 12 (1) of the PEA 1977) also makes notification compulsory, this time to the Minister for Labour. The information to be provided by an employer proposing to make collective redundancies under section 12 of the PEA is detailed in S.I. No 140. Employers are obliged to provide the following information :

(a) the name and address of the employer, indicating whether he is a sole trader, a partnership or a company;
(b) the address of the establishment where the collective redundancies are proposed;
(c) the total number of persons normally employed at that establishment;
(d) the number and descriptions or categories of employees whom it is proposed to make redundant;
(e) the period during which the collective redundancies are proposed to be effected, stating the dates on which the first and the final dismissals are expected to take effect;
(f) the reasons for the proposed collective redundancies;

(g) the names and addresses of the trade unions or staff associations representing employees affected by the proposed redundancies and with which it has been the practice of the employer to conduct collective bargaining negotiations;

(h) the date on which consultations with each such trade union or staff association commenced and the progress achieved in those consultations to the date of notification.

Section 22 of the PEA 1977 stipulates that where an employer is convicted of an offence under Section 11 or 14 he may plead in mitigation there were substantial reasons as to why he could not comply with the section under which an offence was committed.

In Italy, the specific area of competence of the public authorities with respect to collective redundancies is defined in Law No 675 of 1977: where there is no collective redundancy procedure (i.e. in small firms and non-industrial sectors) the employer is obliged to inform the local employment offices of the intended staff cutbacks, following which the employment office arranges a conciliation meeting.

On the remaining points, there is no legal requirement for involvement of the public authorities or provision for the parties concerned to request such involvement. The employment offices are, however, empowered to settle labour disputes through conciliation and to provide a conciliation service where this is requested by employers and staff.

To summarize, there are three main points:

1) there is no general obligation to inform the public authorities applying equally in all sectors other than industry and transport;
2) in the latter two sectors, involvement of the public authorities is not compulsory;
3) no written notification of projected redundancies is required under Italian law.

Portuguese law makes no provision for an administrative procedure separate from consultation with workers' representatives.

Action by the authorities, which has hitherto taken the form of authorization, now involves participation in the negotiation procedure in order to ensure that proceedings are properly conducted and to seek to reconcile the interests of all parties (article 19 (1)).

There is therefore no provision for independent notification as laid down in the Directive; the authority simply receives a copy of the communication made to the workers' representatives together with the relevant documentation (cf. Art. 2 (3) of the Directive).

In the United Kingdom, under Section 100 of the EPA 1975, notification by the employer to the public authority must include all the relevant information concerning the projected collective redundancies, particularly the justification, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

However, British legislation on collective redundancies contains an escape clause (Section 100 (6) of the EPA 1975) allowing the employer to take the "steps towards compliance which are reasonably practicable" where there are special circumstances rendering it not reasonably practicable for the employer to comply with the requirements of subsections 1 to 5 of EPA section 100, (compelling the employer to notify the public authority of any collective redundancies envisaged).

The inclusion of clause 6 implies that certain projected redundancies need not necessarily be notified.

2. COMMUNICATION TO WORKERS' REPRESENTATIVES OF THE NOTIFICATION MADE TO THE PUBLIC AUTHORITY

Under legislation in Belgium (Article 8 of the Royal Decree of 24 May 1976), Denmark (Art. 23(c) - Law of 26.1.77, Ireland (section 12 (3) PEA No. 7, 1977), the Netherlands (Art.4 para 3 - Law on notification of collective redundancies), Germany (§17, para 3 of the Law on employment protection), United Kingdom (Section 100(1) - EPA 1975) and Luxembourg (Art.3(3) of the Law of 2 March 1982), the employer must provide the workers' respresentatives with a copy of the notification made to the public authority.

In Spain, France, Greece and Portugal, however, the employer is under no such obligation.

However, the following points should be mentioned:

a) In Spain it is not a matter of simple notification: the employer must submit an application for authorization, which will be considered on a purely administrative basis taking the situation of the employment market as the main criterion.

b) In Greece, as already mentioned, the administrative procedure is initiated by receipt of the record of consultations "signed by both parties". A further point is that the Chief Administrator or Minister for Labour may, at any time during the procedure, require the workers' representatives to put forward their viewpoint (Art. 5 (3) of law 1387/1983).

c) In Portugal, the absence of any provision corresponding to Art.3 (2) of the Directive stems from the lack of a concrete administrative procedure for collective redundancies.

3. THE PERIOD BETWEEN NOTIFICATION AND COLLECTIVE REDUNDANCIES TAKING EFFECT

A) Notice period

According to Belgian and Danish law (Art. 9 of the Royal Decree of 24 May 1976 and Art. 23 d of the Law of 26 January 1977 respectively), redundancies cannot take effect until at least 30 days have elapsed following notification of the public authority by the employer.

Spanish law does not specify a notice period. Art. 9 of Royal Decree 696/1980 sets as the upper limits the periods set down in Art. 51 of the ET (for consultation of workers' representatives). The consultation period may be curtailed in the event of agreement being reached or the lack of likelihood of agreement acknowledged.

In addition, the public authority must issue a decision on whether to authorize the redundancies within a maximum period of 30 days (Art. 51 (6)).

No notice period is specified in cases of dismissal for economic or technological reasons; it would appear that where the authorization of collective redundancy is granted, the employer is free to terminate the contracts even where the period of thirty days referred to in Article 4.1 of the directive has not elapsed.

In France, according to Article L.321-6 of the Code du Travail, the employer may not give his employees notice of dismissal before a period of at least 30 days has elapsed following notification of the planned redundancies to the competent authority.

The minimum 30-day period separating notification from notice of dismissal has a twofold effect in line with the Directive:

- termination of contracts will always be after expiry of the 30-day period calculated from the notification date (except where the authority exercises its power to reduce that period);

- the procedure for economically-motivated dismissals does not prejudice application of the general regulations concerning the term of notice (see Art. L.122-14-1).

In Greece, the consultation period is 20 days (Art. 5 (1)).

Where an agreement has been reached, the collective redundancies take effect ten days after submission of the record to the Chief Administrator or Minister for Labour; where there is no agreement, the public authority has ten days (from the date of receipt of the record) in which to take any reasoned decision against immediate or complete implementation of the redundancies (para 3.). The Law adds that if this decision is not taken within the specified period, the collective redundancies shall be effected within the conditions accepted by the employer during consultation (para.4).

To summarize, the redundancies originally envisaged cannot, as a general rule, take effect before expiry of a 30-day period calculated from, in the terms of Article 3 (3) of the same law, the date on which a copy of the redundancy plan is submitted to the competent authority, at the start of consultations with the workers' representatives.

Article 6 (2) extends application of the provisions concerning normal termination of the employment relationship and payment of compensation to include collective redundancies.

In Ireland, section 12 (1) of the PEA 1977 sets the minimum period between notification of the Ministry of Labour and the first redundancy taking effect at 30 days. This condition is found again in section 14 (1).

In addition, Section 16 safeguards "the right of any employee to a period of notice of dismissal or to any other entitlement under any other Act or under his contract of employment".

In Luxembourg, Art. 4 (4) of the Law of 2 March 1982 provides for a period of 60 days (without prejudice to the provisions governing the rights of individuals in respect of the notice period.

In the Netherlands, a period of 30 days must elapse following notification of the authority and unions before the Director of the Regional Employment Office can consider the application for authorization to terminate the employment relationship (Article 6 (1)). Proceedings before the Regional Employment Office cannot therefore start before the termination of the said 30 day period and the notice periods cannot begin to run before the date of a administrative authorisation. The Law concerning notification of collective redundancies does not, however, specify the period which must elapse before the redundancies take effect, and since notice periods vary considerably, there may also be wide variation in the effective dates of dismissal once authorization has been obtained.

According to Portuguese law (the above-mentioned Decree Law 65-A/89), collective redundancy is based either on an agreement between the employer and the workers' representatives, or on a unilateral decision by the employer, which may not be taken less than 30 days following the communication initiating the consultation procedure.

Every worker must be given at least 60 days official notice of dismissal (Article 20. (1) and Article 21 (1)).

This means that the time elapsing between announcement of the planned redundancies and the redundancies taking effect does not depend on the authorities (who play a very secondary role), but may on no account be less than 60 days (notice period) and, where there is disagreement, must be at least 90 days.

In FR Germany, the period is one month rather than 30 days (§18 (1) of the Law on employment protection).

In addition, §8 of the Law on employment promotion stipulates that if, within 12 months, changes are likely to be envisaged within a company which will involve a number of redundancies equal to that laid down in §17 (1) of the Law on employment protection, or redeployment to an activity commanding a lower salary, the employer must immediately inform the Director of the Regional Employment Office in writing, enclosing the opinion of the works council.

In the United Kingdom, projected collective redundancies of which the public authority has been notified take effect:

- a minimum of 60 days following notification of the public authorities, where 10 to 99 employees at one establishment are to be made redundant over a period of 30 days or less;

- a minimum of 90 days following notification of the public authorities where 100 or more employees at one establishment are to be made redundant over a period of 90 days or less (Section 100 of the EPA 1975).

B) Reduction or extension of the notice period

a) Reduction

The final paragraph of Article 4 (1) of the Directive enables the Member States to grant the public authority the power to reduce the notice period provided for in the preceding subparagraph. This would generally be an administrative decision reflecting an early solution to the problems posed by the planned redundancies (paragraph 2 of the same Article).

This power is also granted in France (Article 321-6, second paragraph) and in Luxembourg (Article 5 of the Law of 2 March 1982) where the period may not be reduced beyond the standard or statutory notice period to which the employee is entitled.

Belgian Law grants the same right, but at present it can only be exercised (by the Director of the Sub-regional Employment Service) in respect of projected collective redundancies following closure of a company where this is not the result of a judicial decision, or companies employing port workers and ship repairers, or construction firms.

In Dutch legislation, Article 6 (4) of the Law of 24 March 1976 stipulates that the Director of the Regional Employment Office is not bound to observe the notice period of one month where such observation would prejudice the redeployment of workers threatened with redundancy or the jobs of other workers in the company concerned. The Director of the Regional Employment Office may only reduce this period with the approval of the Minister for Social Affairs and Employment.

Denmark, Spain, Greece, Ireland and Portugal, for various reasons linked to other aspects of their own legal systems, have not made use of the possibility afforded by the final paragraph of Article 4 (1) of the Directive.

Two special cases are worthy of mention: the Federal Republic of Germany and the United Kingdom.

In FR Germany, §18 (1) of the Law on employment protection stipulates that the Employment Office committee responsible for redundancies subject to declaration may reduce the one-month compulsory notice period prior to the redundancies taking effect. In reaching a decision, the committee, composed, inter alia, of workers' representatives and employers, must take account of the particular circumstances in each case and also examin whether the employer has accomplished its duty to notify laid down by paragraph 8 of the law on the employment promotion ("Arbeitsförderungsgesetz").

In the United Kingdom, Section 100 (6) of the EPA 1975 enables the employer to take any steps which are reasonably practicable where the particular circumstances make it impracticable for him to comply with all the requirements laid down in Articles 3 and 4 of the Directive, which includes respecting the 30-day period between notification of the public authorities and the redundancies taking effect. The employer is therefore empowered to reduce this period in special circumstances.

b) Extension

Article 4 (3) of the Directive allows Member States to *"grant the competent public authority the power to extend the initial period to 60 days following notification where the problems raised by the projected collective redundancies are not likely to be solved within the initial period"*.

Provision is also made for *"wider powers of extension"*.

To qualify for extension, according to the same paragraph, the inital period must be less than 60 days and the employer must be informed of the extension and the grounds for it, before expiry of the initial period.

These provisions have been incorporated into national legislation in very different ways.

In Belgium, the 30-day period may be extended by the Director of the Sub-regional Employment Service up to a maximum of 60 days following notification. At least one week before expiry of the initial 30-day period, the employer must be informed of the extension and the grounds for it (Art. 1 b) of the Royal Decree of 24 May 1976).

Where a company is being closed down, the Law of 28 June 1966 and the Royal Decree of 20 September of 1967 implementing Articles 3 and 17 of this Law do not provide for extension of the notice period.

In Danish, Spanish, French, Irish, Dutch, Portuguese and British legislation there are no provisions equivalent to Article 4 (3).

However, in the United Kingdom, Section 106 (4) of EPA 1975 states that the notice period may be varied (but may not be less than 30 days) by an order adopted by both Houses.

In Greece, Article 5 (3) of Law 1387 stipulates that where consultation with the workers' representatives has not led to an agreement, the Chief Administrator or the Minister for Labour, by a reasoned decision issued within 10 days of the date of receipt of the record, and having examined the dossier, may, with due regard to the situation of the employment market and of the company, and the economic interests of the country, extend the consultation period by 20 days at the request of one of the parties. This means that where the parties are not in agreement, a period of up to 50 days could elapse between public authority notification and the collective redundancies taking effect.

In Luxembourg, the Minister for Labour may extend the 60-day period to 75 days if the problems created by the collective redundancies are not likely to be solved within the initial period. (Art. 5 (1) of the Law of 2 March 1982). On the other hand, Article 12 of the law of 14 May 1986 (the framework law on the economy) allows the Minister of labour to extend the period to 90 days where undertakings benefiting from public aid resort to collective dismissals without justifying the existence of objective reasons.

The employer must be informed of the extension and the grounds for it not later than the fifteenth day preceding expiry of the initial period (Article 5 (2)).

In FR Germany, §18 (2) of the employment protection law stipulates that the Employment Office committee with jurisdiction in the matter of redundancies subject to notification may extend the consultation period before the redundancies take effect by a maximum of two months. Use of this provision is most commonly made where a large number of workers are laid off in medium-sized or large companies.

CHAPTER II

DECISIONS OF THE COURT OF JUSTICE

1.1. The Court of Justice has considered the provisions of the Collective Redundancies Directive in four cases, three of which arose out of infringement proceedings brought by the Commission against Member States for failure to implement the Directive. The fourth came to the Court by way of reference for a preliminary ruling from the Høiesteret (Danish Supreme Court). Each of these cases will be considered in turn.

1.2. Commission v. Italy, Case 91/81 1982 ECR p.2133 (Annex 3)

This action arose out of an application by the Commission to the Court for a declaration that Italy had failed to implement the Directive with respect to certain sectors of the economy, in particular agriculture and commerce. In addition, it appeared that under Italian law, there was no provision for the notification of planned redundancies to the competent public authority, and that those authorities were not compelled to seek solutions to the problems raised by the planned redundancies. Moreover, collective agreements purporting to implement the Directive did not make any provision for the workers' representatives to be notified in writing of the information specified in the Directive. The Court, after examining the provisions of Italian law purporting to implement the Directive, held that Italy had not fully implemented it.

1.3. On a more general note, the Court took the opportunity of emphasizing that the Directive laid down minimum criteria, leaving it open to Member States to adopt higher standards if they so wished.

"In this connection it should be emphasized that the Directive, which the Council considers corresponds to the need, stated in Article 117 of the Treaty, to promote improved working conditions and an improved standard of living for workers, is intended to approximate the provisions laid down in this field by the Member States .... whilst leaving to the Member States power to apply or introduce provisions which are more favourable to workers".

1.4. Commission v. Italy Case 131/84 1985 ECR 3531 (Annex 4).

This case concerned the failure of the Italian government to implement the Court's Judgement in Case 91/81 considered above in paragraphs 2.2 and 2.3. It did not, therefore, consider the provisions of the Directive. However, it is of interest to note that the Court dismissed arguments, based on domestic social and economic difficulties, raised to justify non-implementation of the Directive.

"The Italian Republic contends that Directive 75/129 has not yet been fully implemented for objective reasons. In Italy's present social and economic situation, legislative activity must be directed primarily towards maintaining the level of employment and it would be inappropriate to adopt rules concerning collective redundancies at a time when there is an emergency which must be dealt with in order to safeguard employment.

It has been consistently held by the Court that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify failure to comply with obligations and time limits laid downin directives. According to Directive 75/129, the measures should have been adopted by 19 February 1977. In its judgement of 8 June 1982 the Court held that by failing fully to implement the Directive within the prescribed period, the Italian Republic had failed to fulfil its obligations under the Treaty".

1.5. With respect to non-compliance with its judgement, the Court was equally firm. It stated that although Article 171 of the EC Treaty did not lay down a time limit within which a judgement must be complied with, it was well established that the implementation of a judgement must be commenced immediately and must be completed as soon as possible. In the present case, there had been unreasonable delay.

2. Commission v. Belgium - Case 215/83 1985 ECR 1039 (Annex 5)

2.1 In this case, the Commission alleged that the measures adopted by the Belgian authorities to implement the Directive were narrower in scope than the Directive in two main respects:

- Belgian law did not meet the requirements of the Directive with respect to the protection of workers in the event of collective redundancies arising from the closure of undertakings where such closure did not come about as a result of a judicial decision;

- certain categories of workers, namely ship repairers, port workers and manual workers in the building industry were excluded from the scope of the measures purporting to implement the Directive.

2.2. Concerning the first point, the Belgian Government, in its defence, claimed that the distinction drawn in Belgium between the closure of undertakings and collective redundancies had historical origins and that in any event, the vast majority of closures of undertakings which were likely to lead to collective redundancies came about as a result of a judicial decision, and so were excluded from the scope of the Directive.

2.3. The Court rejected this argument holding that even if most closures of undertakings came about as a result of a judicial decision, that did not mean that Belgium was relieved of its duty to protect workers threatened with redundancy as a result of other closures. The Court went on to find that the measures taken in Belgium to implement the Directive did not provide for the information set out in the Directive to be provided, nor for a standstill period of at least 30 days from the date of notification of the proposed redundancies to the public authorities.

2.4. With respect to the exclusion of certain categories of workers from the scope of the provisions implementing the Directive, the Belgian Government argued that such exclusions were justified by the nature of the employment in question and the provision of adequate social security benefits in cases of unemployment. The Court firmly rejected this argument.
"The Court has consistently held that the Member States must fulfil their obligations under Community directives in every respect and may not plead provisions, practices or circumstances existing in their internal legal system in order to justify a failure to comply with those obligations. The Kingdom of Belgium cannot, therefore, plead in its defence that the circumstances at issue are of little practical significance. Nor is its failure to comply fully with Directive 75/129 justified by the fact that Belgian law provides the workers in question with other forms of social security".

3. Dansk Metalarbeiderforbund and Specialarbeiderforbundet i Danmark v. Nielsen & Son Maskin-fabrik A/S in liquidation Case 284/83 1985 ECR 553 [Annex 6]

3.1. This case came to the Court by way of a reference for a preliminary ruling from the Danish Supreme Court. The questions arose in proceedings brought by two trade unions acting on behalf of their members against H. Nielsen & Son, a company in liquidation, [the Company]. The facts were as follows.

3.2. In February 1980, the Company informed the staff representatives of its financial difficulties. On 14 March 1980 it informed the bankruptcy court that it was suspending payment of its debts. The two trade unions then asked the Company to provide a bank guarantee for the future payment of wages. No such guarantee was given, and on 19 March 1980 the workers stopped work on the advice of their trade unions.

3.3. On 21 March 1980 the Company informed the competent Danish Employment Office that it was considering dismissing all its workers. On 25 March it was declared insolvent on its own application. On 26 March 1980 the workers were dismissed.

3.4. The two trade unions claimed compensation from the company under Danish law implementing Directive 75/129 (Article 102 a (2) Danish Law on the Procurement of Employment and Unemployment Insurance), which stipulated that if the employer did not give the competent authorities 30 days notice of proposed collective redundancies he must pay the workers compensation equivalent to their salary for that period. In the event of the employer's insolvency the Wage-earners' Guarantee Fund is responsible for the payment of this compensation.

3.5. When the case came before the Højesteret, the question arose as to whether the cessation of work in the circumstances of the case fell within the scope of the Directive. It was further queried whether the Directive covered situations where the employer ought to have contemplated large-scale redundancies and to have given advance notice of them but did not in fact do so.

The Court answered both questions in the negative reasoning as follows: the Directive did not affect the employer's freedom to effect or refrain from effecting collective dismissals. Its sole objective was to provide for consultation with the trade unions and for notification of the competent public authority prior to such dismissals for the purpose of avoiding the contemplated redundancies and mitigating their consequences.

3.6. To interpret the Directive otherwise would give the workers the possibility of bringing about dismissals against the will of the employer and without his being in a position to discharge his obligations under the Directive. It would lead to a result contrary to the objective of the Directive, namely to avoid or reduce collective redundancies. Consequently, the termination by workers of their contract of employment following an announcement by the employer that he is suspending payment of his debts cannot be treated as dismissal by the employer.

3.7. With respect to the second question, the Court held that there was no implied obligation under the Directive on employers to foresee collective redundancies. The Directive did not stipulate the circumstances in which the employer must contemplate the collective redundancies and in no way affected his freedom to decide whether and when he first formulated plans for collective dismissals.

Conclusion

The case law on collective redundancies has been, for the most part, concerned with the adequacy of measures adopted by the Member States to implement the Directive, rather than with the interpretation of its particular provisions. With respect to the duty of Member States to execute the provisions of the Directive, it is quite clear from the judgements of the Court that the Court requires the Directive to be fully and properly implemented regardless of socio-economic difficulties or industrial practices prevailing in the Member States. There is no obligation on an employer to foresee collective redundancies: he is at liberty to decide if and when he should resort to dismissing his workers.

CHAPTER III

CONFORMITY OF NATIONAL LEGISLATION WITH DIRECTIVE 75/129/EEC

BELGIUM

1. Belgian legislation shows a high degree of conformity with the provisions of the Directive.

Certain points on which the Court of Justice of the European Communities (Decision of 28 March 1985, Case 215/83) held that Belgium had failed to discharge its obligations under the EEC Treaty - exclusion of the case of closure of undertakings where this is not the result of a judicial decision, exclusion of port workers, ship repairers and manual workers in the building industry - were brought into line with the Directive by the Royal Decree of 11 June 1986.

2. There is, however, a difference in form between Belgian law and the Directive in respect of the reference period pertaining to the definition of collective redundancy: Article 1 (1 a) of the Directive gives the option of 30 or 90 days, while Belgian law specifies 60 days.

This cannot really be described as an infringement, however, as the definition is, overall, more favourable to workers (Article 5 of the Directive).

DENMARK

There are no major problems as regards application of the Directive in this Member State. Where there are differences between national law and the Directive, the result is always more favourable to workers.

SPAIN

1. Spanish legislation is broadly in conformity with the general spirit of the Directive and in most cases also coincides on points of detail.

2. There is no specific definition of collective redundancy in Spanish law. This does not, in itself, imply non-application of the Directive, as an equal level of protection covering dismissals on any scale is implicit in the idea of termination of contracts for economic or technological reasons.

It should not be forgotten that in Spanish legislation, official authorization is required before dismissals for economic or technological reasons can be effected.

3. There is, however, one area in which conformity with the Directive is questionable, namely, what consultation with workers' representatives must entail under Spanish law, including information requirements. The law contains only a rather vague reference to supporting information and documentation (Article 51 (3) of the ET) or documentation providing grounds for the dismissals (Article 10 of Royal Decree 696/1980).

No reference is made to the aims or purpose either of consultation or the provision of information to the workers' representatives. In view of the emphasis laid by the Directive on the consultation/negotiation phase of the collective redundancy procedure, this would appear to constitute a significant omission.

In order to assess this point properly, consideration must be given to the fact that the law lays down extremely detailed requirements for full documentation before official authorization may be granted (Article 13 of Royal Decree 696/1980) and that under Spanish law official authorization must be obtained before collective dismissals are effected.

4. A further point to note is that Spanish law does not compel the employer to inform the workers' representatives of the notification (or rather, the application for authorization) made to the competent public authority. There is no minimum period before redundancies can take effect, and therefore no provision for reducing or extending such a period.

5. All these aspects of the Spanish legal requirements in respect of dismissal for economic or technical reasons appear to be the logical consequence of the major role played by the labour administration in the redundancy procedure.

There are, however, certain major aspects which could be improved, particularly in the matter of informing workers' representatives of the application for authorization, and the minimum notice period before redundancies can take effect.

6. Furthermore, it must be emphasized that the lack of specific legislation safeguarding the notice period (as provided for by the Directive) could leave the employer complete freedom as regards the timing of the dismissals.

FRANCE

1. The very recent law (2 August 1989) concerning the prevention of dismissal for economic reasons and the right to redeployment has brought French legislation more into line with the Directive.

Most of the descrepancies (in the scale of the redundancies, situations excluded, the content of consultation with workers' representatives and the notice period required before the redundancies take effect) result from the adoption of provisions more favourable to workers.

2. However, French law does not establish minimum information requirements for notification of the projected redundancies to the competent authority.

This being said, Article L.321-4 compels the employer , at the start of consultations with the workers' representatives, to provide the authority with "all relevant information", which necessarily includes the minimum laid down in Article 3 (1) of the Directive.

GREECE

Law No. 1387 of 18 August 1983 largely conforms with the Directive.

There are certain points to note, however:

a) The exclusion of workers made redundant by firms carrying out contract work where the cessation or suspension of activities is attributable to the contracting authority, if the latter is the State or a corporate body governed by public law (Art. 2 (2)d);

b) Article 3 (2) of this law does not require an indication of the period over which the planned redundancies are to be effected to be included in the information supplied to the workers' representatives.

The Commission considers these to be two major points on which the national legislation is at variance with the Directive.

With regard to a) above, it should be borne in mind that the list set down in Article 1 (2) of the Directive is clearly restrictive in intent.

The omission of Article 3 (2) of Law No. 1387 should also be seen in the light of the fact that the Greek system makes no real provision for notification of the public authority (the minimum requirements for which could include indication of the period over which the redundancies are to be effected).

The collective redundancy procedure is initiated by submission of the record of the consultations, which cannot really be seen as the equivalent of detailed notification of the planned redundancies.

IRELAND

1. There appears to be a number of respects in which Irish law may not be fully in line with the aims and procedures set down in the Directive.

2. By including an exclusive typological list of the circumstances in which 'collective redundancies' are regarded as having taken place for the purposes of the legislation, the 1977 Protection of Employment Act may be narrower in scope than the provisions of the directive.

3. The Irish system makes no provision for information and consultation with employee representatives where it has not been the practice of the employer concerned to conduct collective bargainging negotiations with a trade union of staff association. Satisfactory compliance with the Directive is therefore not guaranteed on this point.

ITALY

Throughout this report, reference has been made to the general lack of legislation on collective redundancy in Italian national law.

An inter-union agreement exists within the industrial sector, concluded on 5 May 1965 and still considered to be in force. The system set up by the agreement is based on joint analysis of the company's situation by the employer and the workers' organization with a view to reaching agreement on the scale and timing of the redundancies. Also to be taken into account is Law No. 675 of 1977 which provides for involvement of the authorities in conciliation in those sectors in which no procedure based on agreement exists.

In recent years, various items of draft legislation more in line with the Directive have been produced, but so far none has been passed.

The Court of Justice of the European Communities has twice found Italy to be in breach of its obligations under the EEC Treaty (Decisions of 8 June 1982, Case 9/81; and 6 November 1985 Case 131/84). In its judgement in the first case, the Court drew attention both to the limited scope of existing legislation (which did not cover commerce or agriculture), and to the fact that the regulations in force departed from the Directive on several essential points.

In view of this situation, Italy has not been considered in most of the areas covered by this report when dealing with national approaches to the problems of applying the Directive.

LUXEMBOURG

The Law of 2 March 1982 has made the Luxembourg system one of the most closely aligned with the Directive.

Any aspects of national legislation which differ from the Directive (scale of the redundancies, excluded situations, period between notification and the redundancies taking effect) do so in a way which is more favourable to workers, and therefore in accordance with Article 5 of the Directive.

NETHERLANDS

Dutch law is broadly in line with the aims and procedures of the Directive. The only problems which might arise in applying the Directive in the Netherlands would be in respect of excluded situations. However, any such problems would not really constitute a failure to apply the Directive, either because they fell outside the scope of its objectives or because they were adequately covered by the Law on works councils.

PORTUGAL

1. The very recent Decree Law 64-A/89 represents a change of direction in Portuguese legislation on collective redundancies in that a system of consultation/negotiation with workers' representatives has replaced that of official authorization. Adaptation to the Directive could be seen, rather ironically, as a step backwards in terms of protection against redundancy, which has now become a matter purely for the employer to decide, open to prior legitimation through agreement with workers' representatives and subject to subsequent examination by the judge, but which can be neither prevented nor modified a priori either by the authorities or by the workers.

2. The definition of collective redundancy, in terms of the grounds given, does not seem entirely satisfactory in view of the Directive's requirements, in that it leaves open (while not providing for) the possibility of collective redundancies for reasons other than cessation of activities or staff cutbacks.

The replacement of certain grades of staff for technological reasons would be one such example.

The limits set on the scale of the redundancies, on the other hand, are rather more favourable than thresohlds set out in the Directive.

3. Under the occupations to which the collective redundancy procedure does not apply, port workers constitute a special case. Portuguese legislation has developed in such a way as to offer more stability to dockers than has hitherto been the case, and redundancy is therefore presenting more of a problem. However, our information seems to suggest that port workers are outside the scope of the Law on collective redundancies.

4. The law does not stipulate a specific period over which the redundancies are to be effected. Furthermore, there is no independent administrative procedure, the public authorities playing a purely auxiliary role in the consultations/negotiations between the employer and the workers' representatives. The employer must provide the authority with a copy of the written communication and documents passed to the workers' representatives at the start of the procedure.

The main objectives of administrative involvement as set down in the Directives are, however, safeguarded by the Law (particularly Article 19).

FEDERAL REPUBLIC OF GERMANY

German legislation does not lay down a collective redundancy procedure as such, but the legislation as a whole is completely in line with the Directive, certain aspects being more favourable to workers.

UNITED KINGDOM

UK legislation appears to be inconsistent with the requirements of the directive in a number of respects.

1. The definition of situations covered by the collective redundancy procedure - reflecting that of "redundancy", i.e. situations involving cessation or reduction of activity or a reduced need for certain functions or professional activities - seems narrower in scope than that of the Directive in respect of the grounds for the dismissals, described as "not related to the individual workers concerned".

2. The definition of workers' representatives in Section 99 of the EPA 1975 is problematic. The idea of conducting negotiations with representatives of an independent trade union recognized by the employer makes it possible for the consultation procedure to be completely inapplicable where no trade union is recognized by the employer.

3. United Kingdom legislation does not compel an employer contemplating collective redundancies to initiate consultation "with a view to reaching an agreement".

In 1989, the Commission sent the British Government a formal notice of complaint in respect of these three points together with a fourth, ie. that the system of penalties adopted by British law (sections 101-105 of the EPA) was not, in the opinion of the Commission, in conformity with the effective

implementation of Community law. In their reply of 9 March 1990, the British authorities acknowledged that UK law did not implement the Directive adequately in respect of points 1, 3 and 4 and agreed to amend the relevant legislation but rejected the Commission's criticism in respect of point 2. The Commission subsequently decided that the British authorities should be sent a reasoned opinion in respect of these matters.