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**THE COLLECTIVE REDUNDANCIES IN EUROPE.
COMPARISON BETWEEN ITALY AND IRELAND.**

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Introduction

My thesis work, that has been partly developed in Dublin, Ireland, at DCU (Dublin City University) with the support and patronage of Professor and Director of the Faculty of Law, Michael Doherty, is designed to outline and analyse the rules on Collective Redundancies.

My analysis and my work has been carried out with the intention to understand first all about how Collective Redundancies are made and how they are governed in our country, connecting them with the implementation of the EU Directive 98/59 on the matter, and comparing them with a country ,Ireland, that has a Common Law legal system, where the same articles of the Directive have found an sometimes completely or partially different application than in Italy.

This practical and academic research in Ireland, on a subject so delicate and strong as this one, gave me the opportunity also to deepen my knowledge of Irish labour law and trade union system in a country that has a cultural and historical reality where the vision of “associations” is completely different from Italy. It was for me a great opportunity to compare and mature teaching, a growth smart and rich.

My thesis has the intent in the first place, according to the division of Parts and Chapters, to analyze the regulation of European Collective Redundancies.

I continue by monitoring the implementation of the European Directive in Italy and Ireland, including therefore the fundamental differences between the two countries and deepening my knowledge in particular the Irish system.

Finally I analyzes some real cases of genuine Collective Redundancies as in the case of the Irish subsidiary of US company Dell computers and the Italian telecommunications company Telecom Italia. I also report and analyze a case of Collective Redundancies that were not genuine, where workers were laid off to be replaced by cheaper labour, " The Irish Ferries Dispute", which made a great stir in 2007 in Dublin due to the political sensitivity, delicacy and important of the issue.

Chapter I

Collective Redundancy according to the EC Regulation

1. Collective Redundancies EC Directive. Introduction.¹

Council directive 75/129/EEC was agreed by the Council of Ministers as part of the 1974-6 Social Action Programme.² The Directive had its origins in the conduct of AKZO, a Dutch- German multinational enterprise which wanted to make 5,000 workers redundant as part of a programme of restructuring. AKZO compared the costs of dismissing workers in the various states where it had subsidiaries and chose to dismiss workers in the country where costs were lowest. This led to calls for action at European level to prevent this from happening again: Directive 75/129 was the Community's response. The purpose of the Directive was one- fold³: that greater protection be afforded to workers in the event of collective redundancies, while taking into account the need for balanced economic and social development within the Community .

The Directive set minimum standards to ensure both that major redundancies were subjected to proper consultation with worker representatives and that the competent public authority was notified prior to dismissal.

¹BARNARD "*EC EMPLOYMENT LAW third edition*" (OXFORD) Council directive 75/129/EEC of 17 February 1975 on the Approximation of the Laws of the Member States Relating to Collective Redundancies(OJ 1975 L48/29).

² BLANPAIN "*Labour Law and Industrial Relations of the European Community*"(Kluwer,Deventer,1991)153.

³ Case 115/83 *Commission v. Belgium* 1985 ECR i-1039,PARA.2.Case (C-493/09).

The Directive was not, however, designed to harmonize national practices and procedures for actually making individuals redundant; nor was it designed to affect the employer's freedom to effect ,or refrain from effecting , collective dismissals.

Directive 75/129 was amended by Directive 92/56 EEC⁴ which was drafted against the background of increasing transnationalization of companies , with decisions affecting employees in a subsidiary in State A being taken by controlling parent companies in State B. Directive 75/129 and Directive 92/56 were consolidated and repealed by Council Directive 98/59 EC to which all subsequent references relate⁵.

2. Material and Personal Scope of the Directive.

Article 1 defines collective redundancies as 'dismissals effected by an employer for one or more reasons not related to the individual workers concerned'. In *Commission v. Portugal*⁶ the Court insisted that the concept 'redundancy' be given a Community meaning, namely 'any termination of a contract of employment not sought by the worker, and therefore without his consent.'

For the redundancies to be *collective* , the Directive, in Article 1 adds a quantitative and temporal hurdle: it says that the number of redundancies must be:

⁴ OJ 1992 /245/3.

⁵ OJ 1998/225/16 .

⁶ Case (C-55/02) 2004 ECR I-9387.

(i) either, over a period of 30 days:

- at least 10 redundancies in establishments normally employing more than 20 and less than 100 workers;
- at least 10 per cent of the number of workers in establishments normally employing at least 100 but less than 300 workers;
- at least 30 in establishment normally employing 300 workers or more;

(ii) or, over a period of 90 days, at least 20, irrespective of the number of workers normally employed in the establishment in question.

The choice between these alternatives is left to the Member State.

In **Italy** The discipline of collective redundancies (L.223/1991) applies to companies with more than 15 employees that wish to make at least five redundancies in the period of 120 days, in each production unit, or several production units in the territory of the same province, due to a reduction, or a transformation of the cessation of activity. For the purposes of this law shall be computed also apprentices and workers employed under a contract of training and work.

The criteria to identifying workers to be made redundant are dictated by collective agreement or, failing that, by the law 223/1991, which said the following list:

- family responsibilities
- length of service
- technical requirements of industrial and organizational

However in **Ireland** in a period of 30 days a number of employees are dismissed for redundancy in the same “establishment”. The minimum number of dismissals depending on the size of the total workforce In an establishment normally employing 21 to 49 employees (inclusive) the Act applies if at least five are dismissed

within 30 days; at least 10 in an establishment employing 50 to 99; at least 10 per cent. In an establishment employing 100 to 299; and at least 30 persons in an establishment employing 300 employees or more.

Directive 92/56 added that for the purpose of calculating the number of redundancies ‘terminations of an employment contract which occur on the employer’s initiative for one or more reasons not related to the individual workers concerned’(so-called ‘redundancies by assimilation’)⁷ are to be treated as redundancies, provided at least five redundancies occur. Thus, other forms of termination, such as voluntary early retirement, or where the employment relationship is terminated on the employer’s initiative but with the agreement of the worker, or where the worker is encouraged to give his agreement, are included within the scope of the Directive, but these must be taken to be, like the redundancies themselves, for a reason not related to the individual worker.⁸

From this we can see that the definition of collective redundancies contains both 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.⁹

‘Establishment’ is not defined in the Directive, the Court said that the term had to be given a Community meaning. The different language versions of the Directive use different terms: ‘establishment,

⁷ AG Tizzano in Case C-55/02 *Commission v. Portugal* 2004 ECR I-9387.

⁸ BOURN “*Amending the Collective Dismissals directive : a case of Rearranging the Deckchairs*” 1993 Int.Comp.LLIR 227,234.

⁹ Commission Report to Council, SEC (91) 1639 final, Brussels 13 September 1991, 11.

‘undertaking’, ‘work centre’, ‘local unit’, ‘place of work’. The Court said that a broad interpretation of the term establishment would allow companies belonging to the same group to try to make it more difficult for the Directive to apply to them by conferring on a separate decision-making body the power to take decisions concerning redundancies. They would thus be able to escape the obligation to follow the procedures provided by the Directive.

It therefore said that the term ‘establishment’ had to be interpreted as the unit to which the workers made redundant were assigned to carry out their duties.

It was not essential for the unit in question to be endowed with a management which could independently effect collective redundancies.

As far as the subjective element is concerned, the reasons for the redundancies must not be ‘related to the individual workers concerned’. Therefore, dismissals for reasons relating to a worker’s behavior (e.g. disciplinary dismissals) are excluded from the scope of the Directive.

The Directive applies only when the employer dismisses the employees. The phrase employer is broadly construed, consistent with the worker protection aims of the Directive, and therefore applies to all employers.¹⁰

The Directive does not apply to termination of employment by the employees themselves¹¹ since such resignations might be contrary to the employer’s wishes.

¹⁰ Case C-32/02 *Commission v. Italy* 2003 ECR I-12063.

¹¹ AG Tizzano’s Opinion in Case C-188/03 *Junk* 2005 ECR-I 000.

If the Directive did apply to voluntary resignations, the effect of an employee resigning would be to prevent the employer from discharging the obligations laid down by the Directive. This, would lead to a result contrary to that sought by the Directive, namely to avoid or reduce collective redundancies. The position may, however, be different if the employer is actively seeking to close the business and has forced the workers to give notice in order to escape the obligations imposed by the Directive.¹²

The Directive does not apply to:

- 1- collective redundancies resulting from the expiry of fixed term contracts or the completion of a particular task in the case of a contract to perform a particular task;
- 2- workers employed by public administrative bodies or by establishment governed by public law
- 3- the crews of sea-going vessels.

Since these instances are exceptions to the general rule they must be construed narrowly. Article 1 of Directive 75/129 also excluded workers affected by the termination of an establishment's activities where that is the result of a judicial decision (e.g. an insolvency situation). Directive 92/56 removed this exception.¹³

Nevertheless, the Directive still contains some specific provision for the termination of an establishment's activities as a result of a judicial decision.

¹² VON PRONDZYNSKI and McCARTHY "*Employment Law in Ireland*" (Sweet & Maxwell).

¹³ Ninth recital to the Dir. and Case C-55/02 *Commission v. Portugal* 2004 ECR I-9387.

Article 3 says that the Member States have the discretion whether to require dismissals arising in such circumstances to be notified to the competent public authority .

Actually in **Ireland** taking the latter obligation first, the employer must ,if he “proposes to create collective redundancies”, notify in writing the Minister for Labour at least 30 days before the first dismissal takes effect of his proposal ,and a copy must be sent to the “employees” representatives.

However in **Italy** the employer who wants to proceed with collective redundancies shall notify in advance:

- all trade unions or RSA only if present
- trade associations
- the Provincial Labour Directorate or Regional Directorate of the Ministry of Labour or work, depending on the relevance of dismissal (respectively, provincial, regional or national).

Article 4 provide that Member States need not apply Article 4 (notification of collective redundancies to competent public authorities) to collective redundancies arising in these circumstances. The most notable omission from this list of exceptions concerns cases of emergency or force majeure.

It must be noted that the **Irish and Italian** Acts do not adopt the Directive’s approach of allowing a reduction of the period of notice in certain special circumstances.

3. Employer's Obligations.

An employer who is contemplating collective redundancies has two obligations: first, to consult with worker representatives under Article 2, and second to notify the relevant public authority under Articles 3 and 4.

Article 2 provides that 'where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time with a view to reaching an agreement.'¹⁴ There has been much writing and litigation over the meaning of each aspect of Article 2.

It's possible to examine each limb in turn.

(a) '*Contemplating Collective Redundancies*'

This entire consultation procedure is only triggered when the employer is contemplating redundancies and has drawn up a 'project to that end.'¹⁵ At what moment in time does 'contemplation' occur? The Directive merely states that the consultations must be in good time¹⁶, but The Court makes clear that the obligation to consult and to notify the competent public authority 'arise prior to any decision by the employer to terminate contracts of employment'.

The Court said that 'the event constituting redundancy consists in the declaration by an employer of his intention to terminate the contract of employment' with the result that 'an employer cannot terminate

¹⁴ILO Convention 158 and Art.2 of the Additional Protocol to the Social Charter

¹⁵ Case C-188/03 *Junk v. Kuhnel* 2005 ECR I-000.

¹⁶ *Obiter dicta* of Glidewell LJ in *R v. British Coal Corporation and Secretary of State for Trade and Industry, ex parte Vardy* 1993 IRLR 104.

contracts of employment before he has engaged in the consultation and notification process. The effect of this decision is that the consultation process must take place before employees are given notice of dismissal, rather than after individual notices have been given but before they have taken effect.

By implication the Directive does not apply when redundancies occur which have not been ‘contemplated’ since there is no implied obligation under the Directive to foresee collective redundancies. The Court said that the Directive did not stipulate the circumstances in which employers must contemplate collective redundancies and in no way affected their freedom to decide whether and when they must formulate plans for collective dismissals. This ruling favours the disorganized employers who would not have contemplated redundancies, to whom the Directive may not apply.

(b) Consultations with the Workers Representatives

These consultations are with ‘workers’ representatives’, defined as those representatives provided for by the laws or practices of the Member States.

In **Ireland** the Employer must, also at least 30 days before the first dismissal, enter into consultations with the employees’ representatives “with a view to reaching an agreement.” ‘Employees’ Representatives’ are defined as:

1- A trade union, staff association or excepted body with which it has been the practice of the employer to conduct collective bargaining negotiations, or

2- In the absence of such a trade union, staff association or excepted body, a person or persons chosen (under an arrangement put in place by the employer) by such employees from amongst their number to represent them in negotiations with the employer.

In **Italy** the employer who wants to proceed with collective redundancies shall notify in advance:

- all trade unions or RSA/RSU only if present
- trade associations

(c)The Subject-Matter of Consultation

The substance of these consultations must cover ,as a minimum, two matters: first, ways and means avoiding collective redundancies or reducing the number of employees affected; and secondly, ways of mitigating the consequences of the redundancies by recourse to ‘social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.’

The fact that the ways of avoiding collective redundancies appear as the first item on the list suggests that the drafters of the Directive did not presume that redundancies would occur¹⁷and considered that the avoidance of redundancies was at least as important as giving rights to those who will be made redundant.

Since the emphasis is on consultation and not just information the Directive also makes provision to ensure that the consultations are effective. To enable the workers’ representative to make constructive proposals the employer is obliged to supply the workers’ representatives in good time during the course of the consultations

¹⁷ Case C-188/03 *Junk v. Kuhnel* 2005 ECR I-000.

with all relevant information and the employer must 'in any event' give in writing:

- The reason for the projected redundancies;
- The number of categories of workers to be made redundant;
- The number of workers normally employed;
- The period over which the redundancies are to be effected.

Directive 92/56 added two further items to this list:

- the criteria proposed for the selection of workers to be made redundant in so far as national legislation and/or practice confers this power on the employer;
- the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

The most important addition made by Directive 92/56 is that the obligation to consult workers' representatives applies 'irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.

It is no defence for an employer to argue that the parent or controlling undertaking had not provided the employer with the necessary information.

As a result ,decisions affecting the workforce might be taken by a controlling undertaking which might not be situated in one of the Member States, or possibly not even in the Community. The obligation to acquire the information is , however, placed on the controlled undertaking to avoid the problem of extraterritoriality.

(d) With a View to Reaching an Agreement

The reference to ‘consultation’ with a view to reaching an ‘agreement’ blurs the distinction between consultation and collective bargaining. The Court said(18) : “It thus appears that Article 2 of the Directive imposes an obligation to negotiate.”

The Court continued that the effectiveness of the obligation to negotiate would be compromised if an employer was entitled to terminate contracts of employment during the course of the procedure or even at the beginning of the procedure. It added that it would be significantly more difficult for workers’ representatives to achieve the withdrawal of a decision that has been taken than to secure the abandonment of a decision that is being contemplated. The Court therefore concluded that a contract of employment could be terminated only after the conclusion of the consultation procedure laid down by Article 2.¹⁸

Article 3 imposes an administrative obligation on employers to notify ‘the competent public authority’ in writing of ‘any projected collective redundancies’. The notification must contain all information relevant to the projected redundancies, the consultation with the 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. In the case of planned collective redundancies arising from termination of the establishment’s activities as a result of a judicial decision, the Member States can provide that

¹⁸ Case C-188/03 *Junk* 2005 ECR I-000.

the employer is obliged to notify the competent public authority on the request of the authority¹⁹. The employer must also send a copy of the Article 3 notification to the workers' representatives who may send any comments they have to the competent authority.

The reference to national provisions with regard to 'notice of dismissal' safeguards the application of notice periods which are longer than the 30 days provided by the Directive²⁰. The purpose of this delay is, according to Article 4, to enable the competent authority to seek solutions to 'the problems raised by the project redundancies'.

We will see under, in the Irish and Italian cases that I have analyzed in my thesis (ex. Dell disputes, Telecom Italia redundancies), how is difficult and often impossible regardless of the time, to find and give a solution favorable to workers.

The Member States can grant the competent authority the power to reduce or extend the 30- day period. If, however, the initial period of delay is for less than 60 days member States can grant the competent authority the power to extend the initial period to 60 days or longer following notification, where the problems raised by the projected collective redundancies are not likely to be solved within the initial period. The employer (but not the workers' representatives) must be informed of the extension and the reason why such an extension has been granted before the expiry of the initial 30- day period.

¹⁹ Added by Dir.92/56 .

²⁰ AG Tizzano's Opinion in Case C-188/03 *Junk* 2005 ECR I-000.

4. Implementation and Remedies.

The collective redundancies directive is a minimum standards Directive. So Member States could implement the Directive or promote collective agreements more favourable to employees.

Back to the **Italian** procedure of Collective redundancies to promote collective agreements more favourable to employees, following information from the trade unions or associations, within 7 days of the same, may require the joint examination (bilateral comparison/trade union procedure) about the reasons oversupply and study of alternatives to collective redundancies. Alternative measures that should be considered include:

- the ability to assign employees in the same undertaking work of equal or lower level at the respective location;
- the transfer;
- outsourcing with any clause to another company in the group, connected, controlled and, most recently, having no relationship with the company owned by the seller.²¹

However according to the **Irish** procedure of Collective redundancies to promote collective agreements more favourable to employees, the Employer must, also at least 30 days before the first dismissal, enter into consultations with the employees' representatives "with a view to reaching an agreement."

"Consultations" must include a discussion on the way in which the redundancies are to be implemented and, significantly, on whether

²¹ VON PRONDZYNSKI and McCARTHY "Employment Law in Ireland" (Sweet & Maxwell).

they can be avoided, reduced or the consequences mitigated. The consultations must include the possibility of avoiding/reducing the proposed redundancies and the selection criteria to be observed in deciding which roles will become redundant.

As with any dismissal, an employer must act reasonably when dismissing an employee in a redundancy situation. This requires prior consultation with the employees before the decision is made. In addition, the employer should consider all options including possible alternatives. If the employer makes the employees a reasonable offer of alternative work, and they refuse it, they may lose their entitlement to a redundancy payment. Generally speaking, alternatives which involve a loss of status or worsening of the terms and conditions of their employment would not be considered reasonable. Similarly, they may be justified in refusing an offer that involves them travelling an unreasonable distance to work. They may take up an alternative on trial for up to 4 weeks. Where the alternative involves a reduction of 50% or more in hours or pay, working under the new arrangements for up to 52 weeks will not count as an acceptance. If they accept a new contract or re-engagement with immediate effect and the terms do not differ from those of the previous contract, they will not be entitled to claim redundancy. This also applies if they refuse such an offer unreasonably. If they accept an offer in writing from your employer for a new and different contract which will take effect within 4 weeks of the ending of the previous contract, they will not be entitled to claim redundancy. Equally, if they refuse such an offer unreasonably, they will lose your right to a redundancy payment. Their justifiable refusal of an offer of alternative work, followed by dismissal, may, depending on the circumstances, entitle them to seek statutory

redundancy or make a claim for unfair dismissal. Any offer of alternative work should be given to them in writing and they are entitled to full information concerning the details of the offer.

In any event, the Member States were obliged to implement both Directives 75/ 129 and 92/56 within two years of their notification . The Court is strict about ensuring correct implementation.

Directive 92/56 EEC made no express provision for remedies in the event of employers' failure to comply with their obligations.

Article 6, introduced by Directive 92/56 , requires Member States to ensure 'that judicial and/ or administrative procedures for the enforcement of obligations under this Directive are available to the workers' representatives or to the workers'.

Chapter II

Collective Redundancy in Ireland. Regulation and Acts

1. Collective Redundancy in Irish Employment Law.

One of the most controversial areas of employment law, and one which gives rise to more litigation than any other, relates to the termination of employment.

Frequently, this is because a situation of confrontation has been reached by the parties, so that an agreed or negotiated solution becomes increasingly difficult to achieve.

However, it is important to remember that a contract of employment can be terminated in several ways and not all of these lead to disputes.

A crucial distinction to make is that between termination of employment at *common law* and *statutory* termination of employment.

The latter is primarily governed by the Unfair Dismissal Act 1997-2007. At common law, the issue is essentially one of contract.²²

2. The Protection of Employment Act 1977 and its Application.

In particular, when we are speaking about Collective Redundancy we have to focus our attention in The Protection of Employment Act 1977.²³

²² DALY B./DOHERTY M. "Principles of Irish Employment Law" (CLARUS press).

²³ The consolidated version of The Act was amended by three statutory instruments/enactments; the Protection of Employment Order 1996 (S.I. No. 370), the European Communities (Protection of Employment) Regulations 2000 (S.I. No. 488), and the Protection of Employees (Part-Time Work) Act 2001 (No. 45). It was subsequently further amended by the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (No. 27). The amendment

The Protection of Employment Act 1977 requires an exchange of information and consultation between the employer, the Minister for Labour and employee representatives 30 days before the dismissal of groups of workers by reason of redundancy.

The Act applies to all employees in any firm which employs more than 20 persons and defines the size of a 'group' for the purpose of the Act.²⁴

However in **Italy** the Act of Collective Redundancies (l. 23 July 1991, n. 223) is applied to all employees in any firm which employs more than 15 persons.

Where a number of redundancies are being made by the same employer the Protection of Employment Act 1977 may apply and the relevant employer shall, with a view to reaching an agreement, initiate consultations with employees and/or their representatives affected by the proposed redundancies.

The Act also requires the employer to give notice to the Minister for Jobs, Enterprise and Innovation of any such proposed redundancies.²⁵

²⁶This legislation was necessitated by Ireland's membership of the European Economic Community and more particularly by the EEC Council Directive 75/129 on Collective Redundancies.

The purpose of the Directive, as outlined in Article 2, is to ensure that where an employer dismisses a certain number of workers within a specified period "for one or more reasons not related to the individual

effected by the 2001 Act was superseded by a corresponding amendment (to the level of a penalty) in the 2007 Act.

²⁴DELOITTE HASKINS+SELLS "*Employment Regulations in Europe*".

²⁵TROWERS & HAMLINS "*European Employment Law*" (PITMAN).

²⁶VON PRONDZYNSKI and McCARTHY "*Employment Law in Ireland*" (Sweet & Maxwell).

worker concerned”, he must observe certain procedures. These are consultation with the workers’ representatives, and the notification of the impending redundancies to the public authorities of the State. The 1977 Act is intended to implement this Directive, and it applies to dismissals for redundancy.

Under section 6 the Act applies to a situation where in a period of 30 days a number of employees are dismissed for redundancy in the same “establishment”. The minimum number of dismissals need to bring about the Act’s application varies depending on the size of the total workforce. In an establishment normally employing 21 to 49 employees (inclusive) the Act applies if at least five are dismissed within 30 days; at least 10 in an establishment employing 50 to 99; at least 10 per cent. In an establishment employing 100 to 299; and at least 30 persons in an establishment employing 300 employees or more. This means that the Act does not apply at all to establishment employing 20 persons or less, nor does it apply to, say, redundancies within 30 days of less than 30 employees in a large establishment of 300 or more employees.

An “establishment” for the purpose of the Act²⁷ is defined as a “location” where an employer carries on business; each location is taken separately where an employer operates at more than one.

The Act defines “location” by giving a number of examples, including “workplace, factory, mine quarry, office, shop” and so forth.

The section also specifies that the total number of employees counted should include those “who are based at the establishment but who also perform some of their duties elsewhere”. The total number is

²⁷ Part I. Article 6. point 3. of The Protection of Employment Act 1977.

calculated by taking the average number of those employed within the last 12 months.

As already noted, the Act applies to dismissal for redundancies. It does not apply however to certain categories of persons, such as persons employed under fixed-term contracts where these expire, State employees, local government officers or employees of bankrupt persons or companies being wound up under a court order.²⁸

3. The employer's obligations.

²⁹The main obligations under the act are summarised as “consultation and notification”. Taking the latter obligation first, the employer must, if he “proposes to create collective redundancies” as explained above, notify in writing the Minister for Labour at least 30 days before the first dismissal takes effect of his proposal, and a copy must be sent to the “employees” representatives.

‘Employees’ Representatives’ are defined as:

1- A trade union, staff association or excepted body with which it has been the practice

of the employer to conduct collective bargaining negotiations, or

2- In the absence of such a trade union, staff association or excepted body, a person or persons chosen (under an arrangement put in place by the employer) by such employees from amongst their number to represent them in negotiations with the employer.

If he fails to do this, or if he effects the redundancies before the 30 days have expired, he is guilty of an offence. It must be noted that the

²⁸ TROWERS & HAMLINS “*European Employment Law*” (PITMAN).

²⁹ “VON PRONDZYNSKI and McCARTHY “*Employment Law in Ireland*” (Sweet & Maxwell).

Act does not adopt the Directive's approach of allowing a reduction of the period of notice in certain special circumstances.

The Employer must, also at least 30 days before the first dismissal, enter into consultations with the employees' representatives "with a view to reaching an agreement."

"Consultations" must include a discussion on the way in which the redundancies are to be implemented and, significantly, on whether they can be avoided, reduced or the consequences mitigated. The consultations must include the possibility of avoiding/reducing the proposed redundancies and the selection criteria to be observed in deciding which roles will become redundant.

For the purpose of these consultations the employer must provide certain written information , including the reasons for the redundancies , the number of employees affected and the period during which the dismissals are to take effect. Again, non – compliance with any of these obligations is a criminal offence.

Furthermore ,the employer must keep adequate records and show these on request to an "authorised officer" appointed by the Labour Minister for Jobs, Enterprise and Innovation . The latter officers may inspect the premises where persons are employed to check that the Act's provisions are being implemented. It should also be noted that the Act cannot be derogated from or waived in a contract of employment or a collective agreement. Records should be kept by an employer for 3 years.

The Minister may initiate a prosecution for an offence within one year of the date of an alleged offence under the Act.

³⁰Employers often prepare a questions and answers type document to hand out to employees with a view to minimising confusion and dealing with anticipated questions.

The employer must consider alternatives to the proposed redundancies during the consultation period.

The European Court of Justice has stated that the obligation to consult in this regard is an obligation to negotiate, however there is no obligation on the employer to reach agreement with the employees' representatives.

On conviction of an offence under the 1977 Acts an employer can face fines of up to €250,000. But this fine only applies where an employer tries to effect CR BEFORE or DURING the 30 day period. The 'normal' fine for a breach of the Act is 5, 000 Euro.

To date there have been few prosecutions under the 1977 Acts. In addition, an employee or their representative can make a complaint to a rights commissioner where an employer has not entered into a consultation process at least 30 days prior to the first notice of dismissal being served or has not supplied the employees with the required information. The rights commissioner may, in finding for the employee, require that the employer comply with the provisions of the 1977 Acts, and/or award compensation of up to four weeks' pay to the employee(s) who made the complaint. Due to the delay normally experienced in having claims heard before a rights commissioner, employees could seek to restrain a breach by their employer of its obligations under the 1977 Acts by applying to the High Court for injunctive relief.

³⁰www.williamfry.ie/Libraries/test "Overview of Redundancy Procedure in Ireland".

So, the FINE is a CRIMINAL/ PENAL sanction. The Rights Commissioner remedy is a CIVIL remedy.

Regardless of what notice the employees may be entitled to under their employment contracts there is a 30 days' moratorium placed on collective redundancies. Before the dismissals can take effect, at least 30 days must have expired after the Minister was notified by the employer about the proposed redundancies.³¹

4. Exceptional Collective Redundancy.

³²The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (the 2007 Act) was introduced to give greater protection to employees in collective redundancy situations. An exceptional collective redundancy is a dismissal by reason of a collective redundancy that is not considered a genuine redundancy because the dismissed employees are subsequently replaced by new employees doing the same job at a lower rate of pay.

³³The Part of the Act dealing with exceptional collective redundancies does not apply to the employment of agency workers for temporary or recurring business needs, or the use of outsourcing, contracting-out or other forms of business restructuring in circumstances other than those set out in the definition. This is a complicated definition, the key points being that there must be collective redundancies and the

³¹ FORDE M. "*Employment Law*" RHP.

³² www.williamfry.ie/Libraries/test "*Overview of Redundancy Procedure in Ireland*".

³³ MEENAN, '*Exceptional collective redundancies*' I.E.L.J. (Irish Employment Law Journal) 2007, 4(3), 74-79 (the westlaw.ie database).

employees are to be replaced within the State and such “new” employees are to carry out similar functions with inferior terms and conditions of employment. Section 4(1) provides that certain dismissals proposed by an employer together constitute “exceptional collective redundancies” for the purposes of the Act if they were to take effect. They would be dismissals of the kind referred as follows (s.7(2)(A) of the Redundancy Payments Act 1967, as inserted by s.16 of this Act):

“(2A) for the purposes of subsection (1) an employee who is dismissed should be taken not to be dismissed by reason of redundancy if:

(a) the dismissal is one of a number of dismissals that, together, constitute collective redundancies as defined in Section 6 of the Protection of Employment Act, 1977;

(b) the dismissals concerned were effected on a compulsory basis;

(c) the dismissed employees were, or are to be, replaced, at the same location or elsewhere in the State, (except where the employer has an existing operation with established terms and conditions) by:

(i) other persons who are, or are to be, directly employed by the employer, or

(ii) other persons whose services are, or are to be, provided to that employer in pursuance of other arrangements.

(d) those other persons perform, or are to perform, essentially the same functions as the dismissed employees, and

(e) the terms and conditions of employment of those other persons are, or are to be, materially inferior to those of the dismissed employees.”

Redundancy Panel

Section 5 establishes the Redundancy Panel which will comprise of a Chairman appointed by the National Implementation Body and a member each appointed by ICTU and IBEC (each having a deputy). The conditions of membership are also set out. The Panel shall act by majority decision.

Reference to the Redundancy Panel

On reading Towards 2016 (para.18 et seq.), these procedures were agreed by the social partners. The following is a resume of these procedures:

Reference to the Redundancy Panel (Section 6)

1. Notice in writing addressed to the Chairman c/o of the Secretary General of the Department of Enterprise, Trade and Employment as soon as possible send to.
2. Chairman of the Redundancy Panel within 1 day the Chairman of the Panel shall:
- 3.(a) inform Minister
(b) invite affected parties to make submissions
and within 7 working days of the receipt by the Chairman of the reference.
4. The Chairman shall issue a notice in writing to the Minister to either seek an opinion from the Labour Court or if the Panel is of the view that conditions for meeting such request have not been satisfied. A copy of the reference shall be given to the reference party and other affected parties within 7 working days.
5. The Minister may (or on own initiative in the public interest) request the Labour Court to issue an opinion whether the proposed

redundancies constitute exceptional collective redundancies within 16 days.

6. The Labour Court shall hold a hearing and issue an opinion to Minister or report that it is unable to issue an opinion. No appeal lies from the Labour Court within 7 days.

7. The Minister shall notify the affected parties. At any time during the period of 30 days referred to in ss.9 or 12 of the Protection of Employment Act 1977 (as the case requires), a proposal to create collective redundancies may be referred to the Redundancy Panel by employee representatives acting with the approval of the majority of those whom they represent who are affected by the redundancy proposal, or by the employer concerned by notice in writing addressed to the Chairman of the Panel in the care of the Secretary General and sent or delivered to the Secretary General at the principal office of the Department of Enterprise, Trade and Employment (s.6(1)).

The Secretary General shall arrange (s.6(2)) for such a reference to be forwarded without delay to the Chairman of the Redundancy Panel, and the Panel shall:

(a) within one working day of receipt by the Chairman of the reference:

(i) inform the Minister of the fact; and

(ii) invite affected parties to make submissions to it in relation to the proposal, and

(b) within 7 working days of receipt by the Chairman of the reference:

(i) give notice in writing to the Minister that either requests the Minister to seek an opinion from the Labour Court whether the proposal is a proposal to which this Part applies or states that the

Panel is of the view that the conditions for the making of such a request that are set out below have not been satisfied, and

(ii) give a copy of that notice to the party from which the reference was received and other affected parties.

The Redundancy Panel may not make a request (s.6(3)) to the Minister unless:

(a) it appears to the Panel that the proposed collective redundancies are “exceptional collective redundancies”, and

(b) the Panel is satisfied that, in relation to the proposal, the party from which the reference was received

(i) has unsuccessfully sought to resolve the matter through local engagement, that is, all or any of the following:

(I) established dispute-resolution procedures,

(II) procedures in place, or availed of by custom or usual practice, in the employment concerned,

(III) ordinary consultative procedures,

(ii) has acted reasonably and has not acted in a manner that, in the opinion of the Panel, has frustrated the possibility of agreement to restructuring, or other changes, necessary to secure the viability of the business of the employer and, as a consequence, the best possible levels of employment and conditions, and

(iii) has not had recourse to industrial action (as defined above as a strike or lockout) since the proposal was referred to the Panel.

Request by Minister for Opinion of Labour Court

The Minister may either:

(a) within 7 working days of receiving a request from the Redundancy Panel, or

(b) on the Minister's own initiative in the “public interest”,

request the Labour Court to issue an opinion whether collective redundancies proposed by an employer constitute “exceptional collective redundancies”.

“Public interest” includes:

- (a) public order and the interests of national security,
- (b) public health and safety,
- (c) the need to protect the labour market, and
- (d) the protection of statutory employment rights.

The Minister may make a request only if:

- (a) it appears to the Minister that the proposed collective redundancies are “exceptional collective redundancies”, and
- (b) the relevant period specified has not expired.

The relevant period (s.7(4)) is:

- (a) the period of 30 days specified has not expired and a reference to the Redundancy Panel has not been made - that period is 30 days.
- (b) if reference to the Redundancy Panel has been made but the Panel has not made a request - then the relevant period is 7 working days.

Hearings, and giving of opinions by Labour Court

The Labour Court shall within 16 days of receiving a request:

- (a) hold a hearing into the matter; and
- (b) either
 - (i) issue to the Minister its opinion whether the proposed collective redundancies are “exceptional collective redundancies”, or
 - (ii) report to the Minister that, it is unable to issue an opinion.

The Court may not issue an opinion unless it is satisfied that in relation to the relevant proposal:

(a) the party from which the reference to the Panel was received has unsuccessfully sought to resolve the matter through local engagement, that is, all or any of the following:

(i) established dispute-resolution procedures,

(ii) procedures in place, or availed of by custom or usual practice, in the employment concerned,

(iii) ordinary consultative procedures,

(b) that party has acted reasonably and has not acted in a manner that, in the opinion of the Court, has frustrated the possibility of agreement to restructuring, or other changes, necessary to secure the viability of the business of the employer and, as a consequence, the best possible levels of employment and conditions, and

(c) no industrial action, on the part of that party is current.

Section 21 of the Industrial Relations Act 1946 applies in respect of procedures, witnesses, etc. No appeal shall lie from the Labour Court. Somewhat confusingly the powers of the Employment Appeals Tribunal are still retained in respect of decisions in respect of a rebate or certain decisions of deciding officers (e.g. as to who is the employer of the employee concerned (s.38 of the Redundancy Payments Act 1967) and provisions relating to special redundancy schemes.

The Minister shall within seven working days of receiving an opinion from the Labour Court notify affected parties, by such means as he considers appropriate, of the giving of the opinion and its content.

Effect of opinion:

Section 9 provides that, where:

- (a) the Labour Court issues an opinion that collective redundancies proposed by an employer are exceptional collective redundancies,
- (b) the employer proceeds with the dismissals on the same basis as in the relevant proposal, and
- (c) the employer applies to the Minister for a rebate under Part 3 of the Redundancy Payments Act 1967.

The Minister shall have regard to the opinion of the Labour Court when considering the employers application for the rebate.

If the Minister refuses to pay the rebate, or pays a reduced rebate, the exemption from income tax provided by s.203 of the Taxes Consolidation Act 1997 does not apply in relation to lump sum payments made in pursuance of s.19 of the Redundancy Payments Act 1967 by the employer to employees dismissed (i.e. statutory lump sum payments). Such sums can be significant as the statutory lump sum is now two years pay per years of service (subject to the current ceiling of €600 per week). All termination payments would then fall within the limits of the basic exemption and Standard Capital Superannuation Benefit and other reliefs (ss.123 and 201 of the Taxes Consolidation Act (as amended)). In the Irish Ferries case the government's decision to pay €4.3 million redundancy rebate proved controversial.

Section 7 of the Unfair Dismissals Act 1977, which provides for compensation for unfair dismissal, has effect in relation to a dismissal that is one of a number of dismissals included in a collective redundancy that is determined by the Labour Court to be an exceptional collective redundancy. An employee, who at the date of dismissal has 20 years service or less, is entitled to 208 weeks compensation. If the employee has over 20 years service, they are

entitled to 260 weeks compensation. The Regulations for calculating remuneration shall apply if the employee received a severance or redundancy payment then such sum may be deducted.

Successful claimants in an unfair dismissal claim arising out of an exceptional collective redundancy can be awarded up to five years' remuneration ;that is the effect of the Protection of Employment.(5 years only if the employee has more than 20 years of service; 4 years otherwise).

The Protection of Employment (Exceptional Collective Redundancies) Act, 2007 provides for the insertion of a new Section 16(2) into the Protection of Employment Act, 1977 to give effect to the judgement of the European Court of Justice in Junk. The new subsection makes it an offence for an employer to issue notice of redundancy to any employees during the 30 day period of consultation with employees representatives provided for in Section 9(3) of the 1977 Act. An employer found guilty on indictment of a breach of Section 16(2) shall be liable to a maximum fine of €250,000.(**CRIMINAL/ PENAL** consequences).

The Act applies to all persons in employment in an establishment normally employing more than 20 persons.

The Protection of Employment (Exceptional Collective Redundancies) Act, 2007 does not apply to:

- Employees engaged under a contract for a fixed term or for a specified purpose except where the collective redundancies are effected before the completion of such term or purpose
- State employees other than designated industrial grades
- Local Authority officers
- Seamen.

An employee, or a trade union, staff association or excepted body on behalf of an employee, may present a complaint to a rights commissioner that an employer has contravened Section 9 or 10 of the Act of 1977 in relation to information and consultation of employees.(This remedy was introduced by the Regulations of 2000).

A complaint to a Rights Commissioner may be made - by giving notice of it in writing. The Rights Commissioner, on receipt of a complaint, will send a copy of the notice of complaint to the employer. The Rights Commissioner will then give the parties an opportunity to be heard by him/her and to present any evidence relevant to the complaint. After hearing the parties, the Rights Commissioner will issue a written decision. Proceedings before a Rights Commissioner will be held in private.

The decision of the Rights Commissioner shall do one or more of the following:

- (a) Declare that the complaint was or was not well-founded,
- (b) Require the employer to comply with the principal regulations and for that purpose to take a specific course of action,
- (c) Order the employer to pay the employee compensation of a maximum of 4 weeks remuneration.

The complaint to the Rights Commissioner must be presented within 6 months of the occurrence of the alleged contravention to which it relates, or where the rights commissioner is satisfied that exceptional circumstances existed which prevented the presentation of the complaint within that period, within a further 6 months.

A party concerned may appeal to the Employment Appeals Tribunal from a decision of a Rights Commissioner. The appeal must be made within 6 weeks of the date on which the Rights Commissioner

communicated the decision to the parties. An appeal may be made, by giving notice of the appeal in writing, to the Employment Appeals Tribunal and the Tribunal will copy the notice to the other party concerned. The Tribunal will give the parties an opportunity to be heard and to present any evidence relevant to the appeal. The Tribunal will then issue a written determination, which may affirm, vary, or set aside the decision of the Rights Commissioner.

Where an employer has neither implemented nor appealed the Rights Commissioner's decision, the employee may complain to the Employment Appeals Tribunal. The employee must notify the Tribunal in writing of the complaint. In such circumstances, the Tribunal is empowered to issue a determination without rehearing the case and, if it upholds the complaint, will confirm the decision in its determination.

Failure to appear before the Employment Appeals Tribunal where a subpoena is served and/or failure to produce documentation is an offence liable, on summary conviction, to a fine of up to 1,250 euro.

(Penal consequences)

A party to proceedings before the Employment Appeals Tribunal may appeal to the High Court from a determination of the Tribunal on a point of law and the determination of the High Court shall be final and conclusive.

Chapter III

Comparison between Italy and Ireland on Collective Redundancies according to the implementation of the 98/59 Directive

1. Differences in implementation of the strengths Directive in the two countries.

In this chapter I report the most important points of the European Directive 98/59 to make a comparison to the implementation of this Directive Articles in the two countries, Ireland and Italy, which I analyzed in this thesis.

We have to remember that there is a huge different between the Italian and the Irish law system: Italy is a Civil Law country, Ireland is a Common Law country. Civil law system is different then from the Common law mainly due to the different way of creating general abstract rules: through laws, which provide hypotheses prefigured in the abstract (Civil law), through the decisions of the courts and starting from concrete cases (Common law).

Ireland is a parliamentary democracy. Its legal system is based on "common law", customary law, and the legislation passed by the Oireachtas (the Irish parliament) in terms of the Constitution(Ireland is one of the only Common Law countries that have a Constitution). In Ireland have the force of law even regulations and directives adopted by the European Union.

The Italian Republic is in conformity with the institutions of a parliamentary republic, where the President of the Council of Ministers is the head of government is based on a parliamentary majority. The government exercises executive power, while legislative power is vested in the Parliament. The judiciary is independent of the executive and the legislature, the judiciary exercises instead. The President of the Republic is the highest office of the State and represents the unity. The Basic Law and founding of the Italian Republic is the Constitution of the Republic which indicates the fundamental principles of the Republic, the rights and duties of citizens and establishes the laws of the Republic.

Starting to the **Article 1** of the **DIRECTIVE 98/59/EEC** that give the definition of Collective redundancies and the scope of the directive we can see that in **Italy**³⁴ the Law 223/1991 provides two cases of collective dismissal:

- 1- According to Article 4 of the law 223/1991 when the employer, having already implemented layoffs with intervention of Cassa integrazione guadagni Straordinaria, he will be sure that he couldn't implementing the reorganization or restructuring necessary to overcome the fund.
- 2- The discipline of Collective Redundancies(L.223/1991 art.24) applies to companies with more than 15 employees that wish to make at least five redundancies in the period of 120 days, in each production unit, or several production units in the territory of the same province, due to a reduction, or a transformation of the cessation of activity. For the purposes of this law shall be

³⁴ Art.24 and 4 L.223/1991.

computed also apprentices and workers employed under a contract of training and work.

³⁵**Ireland**, in other way, use other type of calculation to define the Collective Redundancies: in fact we can speak of Collective Redundancies if in a period of 30 days a number of employees are dismissed for redundancy in the same “establishment”. The minimum number of dismissals depending on the size of the total workforce in an establishment normally employing 21 to 49 employees (inclusive) the Act applies if at least five are dismissed within 30 days; at least 10 in an establishment employing 50 to 99; at least 10 per cent. In an establishment employing 100 to 299; and at least 30 persons in an establishment employing 300 employees or more.

³⁶In **Italy** the criteria to identifying workers to be made redundant are dictated by collective agreement or, failing that, by the law (article 5 of the law 223/1991), which said the following list:

- family responsibilities;
- length of service;
- technical requirements of industrial and organizational.

The criteria identified in the contract eventually bind all the employees of the company regardless of whether it is registered in the trade union policyholder.

If there is no agreement and the employer has to choose, he must, however, comply with the “quota d’obbligo”: the dismissal day

³⁵ TROWERS & HAMLINS “*European Employment Law*” (PITMAN) & VON PRONDZYNSKI and McCARTHY “*Employment Law in Ireland*” (Sweet & Maxwell).

³⁶ Art. 5 L.223/1991.

disabled can not exceed the quota for these subjects, and a percentage of female workers than that occupied in tasks reference.³⁷

As already noted ,in **Ireland**, the Act applies to dismissal for redundancies. It does not apply however to certain categories of persons, different than the Italian list, such as persons employed under fixed- term contracts where these expire, State employees, local government officers or employees of bankrupt persons or companies being wound up under a court order.

Another interesting element that is not specified in the italian legislation is what is meant for “establishment”.

In “The Protection of Employment Act 1977”³⁸an “establishment” is defined as a “location” where an employer carries on business; each location is taken separately where an employer operates at more than one.

The Act defines “location” by giving a number of examples, including “workplace, factory, mine quarry, office, shop” and so forth.

The section also specifies that the total number of employees counted should include those “who are based at the establishment but who also perform some of their duties elsewhere”. The total number is calculated by taking the average number of those employed within the last 12 months.

Continuing with the **Article 2** of the Directive about the Information and Consultation **Italy** respected the Directive with this sistem:

³⁷ PASSARELLI S. ‘*Diritto del Lavoro*’ sezione II “*La Cassa integrazioni guadagni e i licenziamenti collettivi*”.Giappichelli Editore.

³⁸ Part I.Article 6.point 3. of The Protection of Employment Act 1977.

The employer who wants to proceed with collective redundancies shall notify in advance:

- all trade unions or RSA only if present;
- trade associations;
- the Provincial Labour Directorate or Regional Directorate of the Ministry of Labour or work, depending on the relevance of dismissal (respectively, provincial, regional or national).

However in **Ireland** the employer must ,if he “proposes to create collective redundancies” notify in writing the Minister for Labour at least 30 days before the first dismissal takes effect of his proposal(in **Italy** we haven't a term to do it) ,and a copy must be sent to the “employees” representatives.

The notification must include:

- the reasons determining the surplus staff;
- any technical, organizational and / or production for which you feel you can not avoid layoffs;
- the number, location and company profiles of professional and personal excess of those normally occupied;
- the "time of implementation" of the procedure.

The failure to communicate is anti-union behavior: the employer must not only renew but the acts and layoffs facts are considered null.³⁹

³⁹PASSARELLI S. ‘*Diritto del Lavoro*’ sezione II “*La Cassa integrazioni guadagni e i licenziamenti collettivi*”.Giappichelli Editore.

As in **Italy** in **Ireland** the main obligations under the act are summarised as “consultation and notification”. As I wrote before taking the latter obligation first, the employer must, if he “proposes to create collective redundancies” as explained above, notify in writing the Minister for Labour at least 30 days before the first dismissal takes effect of his proposal (in **Italy** we haven’t a term to do it), and a copy must be sent to the “employees” representatives. If he fails to do this, or if he effects the redundancies before the 30 days have expired, he is guilty of an offence. It must be noted that the Act does not adopt the Directive’s approach of allowing a reduction of the period of notice in certain special circumstances.

⁴⁰According to the Irish legislation ‘Employees’ Representatives’ are defined as:

1- A trade union, staff association or excepted body with which it has been the practice

of the employer to conduct collective bargaining negotiations, or

2- In the absence of such a trade union, staff association or excepted body, a person or persons chosen (under an arrangement put in place by the employer) by such employees from amongst their number to represent them in negotiations with the employer.

Apart from trade unions, the main institutions to ensure the enforcement of employee rights are the Labour Court, NERA (the Labour Inspectorate), and the Health and Safety Authority (HSA). Other institutions with a remit to enforce employee rights and resolve

⁴⁰ TROWERS & HAMLINS “*European Employment Law*” (PITMAN) & VON PRONDZYNSKI and McCARTHY “*Employment Law in Ireland*” (Sweet & Maxwell).

employment-related disputes include the Equality Tribunal, Employment Appeals Tribunal (EAT) and the LRC Rights Commissioner Service.

⁴¹**NERA**(National Employment Rights Authority)is a statutory office dedicated to employment rights compliance .It has a Director ,a tripartite Advisory Board and has five primary functions:

1-Information;2-Inspection;3-Enforcement;4-Prosecution;5-Protection of young person at work.⁴²

NERA has power in the area of labour inspection .The Employment Law Compliance Bill 2008,in s 59,also provides for greater penalties for employer offenders :in most cases fines of up to euro 5,000 and/or 12 months' imprisonment for summary offences and euro 250,000 and /or 3 years' imprisonment for indictable offences.(a CRIMINAL/ PENAL sanction).

Back to the **Italian** procedure of Collective redundancies to promote collective agreements more favourable to employees, following information from the trade unions or associations, within 7 days of the same, may require the joint examination (bilateral comparison/trade union procedure) about the reasons oversupply and study of alternatives to collective redundancies. Alternative measures that should be considered include:

-the ability to assign employees in the same undertaking work of equal or lower level at the respective location;

-the transfer;

⁴¹ DALY B./DOHERTY M. '*Principles of Irish Employment Law*' CLARUS PRESS.

⁴² Employment Rights Compliance Bill 2008,Part.2.

-outsourcing with any clause to another company in the group, connected, controlled and, most recently, having no relationship with the company owned by the seller.

However according to the Irish procedure of Collective redundancies to promote collective agreements more favourable to employees ,the Employer must, also at least 30 days before the first dismissal, enter into consultations with the employees’ representatives “with a view to reaching an agreement.”

“Consultations” must include a discussion on the way in which the redundancies are to be implemented and, significantly, on whether they can be avoided, reduced or the consequences mitigated. The consultations must include the possibility of avoiding/reducing the proposed redundancies and the selection criteria to be observed in deciding which roles will become redundant.

For the purpose of these consultations the employer must provide certain written information , including the reasons for the redundancies , the number of employees affected and the period during which the dismissals are to take effect. Again, non – compliance with any of these obligations is a criminal offence.

As with any dismissal, an employer must act reasonably when dismissing an employee in a redundancy situation. This requires prior consultation with the employees before the decision is made. In addition ,the employer should consider all options including possible alternatives. If the employer makes the employees a reasonable offer of alternative work, and they refuse it, they may lose their entitlement to a redundancy payment. Generally speaking, alternatives which

involve a loss of status or worsening of the terms and conditions of their employment would not be considered reasonable. Similarly, they may be justified in refusing an offer that involves travelling an unreasonable distance to work. They may take up an alternative on trial for up to 4 weeks. Where the alternative involves a reduction of 50% or more in hours or pay, working under the new arrangements for up to 52 weeks will not count as an acceptance. If they accept a new contract or re-engagement with immediate effect and the terms do not differ from those of the previous contract, they will not be entitled to claim redundancy. This also applies if they refuse such an offer unreasonably. If they accept an offer in writing from your employer for a new and different contract which will take effect within 4 weeks of the ending of the previous contract, they will not be entitled to claim redundancy. Equally, if they refuse such an offer unreasonably, they will lose your right to a redundancy payment. Their justifiable refusal of an offer of alternative work, followed by dismissal, may, depending on the circumstances, entitle them to seek statutory redundancy or make a claim for unfair dismissal. Any offer of alternative work should be given to them in writing and they are entitled to full information concerning the details of the offer.

In **Italy** this procedure must be exhausted within forty-five days from the date of receipt of the communication of the company. This gives the Provincial Labour Office and maximum employment in writing on the outcome of the consultation and the reasons for its eventual failure. Similar written notice may be sent by the trade unions of workers. If it is not an agreement was reached, the Director of the

Department of Labour and the maximum occupancy shall summon the parties to a further consideration of the matters, also formulating proposals for the implementation of an agreement. This examination must still run out within thirty days of receipt by the Office of the Provincial Labour and maximum occupancy of the company's communications. If the number of workers involved in the procedure of mobility is less than ten, the terms are reduced by half. In case of failure of the joint takes place a second consultation (three-way comparison) on the initiative of the Provincial Directorate of work that examines the issue with the employer and union representatives.(administrative procedure)

Having completed the consultation(trade union and administrative procedure) stage, with or without union agreement, the employer may proceed with the dismissal of redundant workers. At the end of the procedure, if you come to the dismissal, it must be ordered by the employer with a written contract in respect of the notice period. Must accompany the notice from the employer, containing all the information relating to the dismissal, given:

- the Regional Directorate of Labour;
- the Regional Commission;
- the trade unions.

According to the reform law 92/2012 dismissal must be reported within 7 days.

The vices of communication can be healed with a trade union agreement⁴³.

Dismissal may substitute a verbal agreement between the company and the employee. Worker and the company signed an agreement counts as release, which waives any future claims against the other party, the employee resigns and the company is committed to pay him a reasonable good output in a single tranche.

Dismissal that is done orally is ineffective, communicated to the unions without any written or imposed without following the formal procedures prescribed. It is, however, annulled the dismissal imposed without complying with the criteria for selecting workers. In general, according to the Code of Civil Procedure, the failure of any step in a procedure leads to the nullity of the whole procedure, or for acts and redundancies committed before and after the transition that is not observed. The dismissal may be appealed by the individual worker involved or by workers' representatives to the Labour Court and must take place within the time period of 60 days following the notice of dismissal.

Furthermore, in **Ireland** the employer must keep adequate records and show these on request to an “authorised officer” appointed by the Minister for Labour. The latter officers may inspect the premises where persons are employed to check that the Act’s provisions are being implemented. It should also be noted that the Act cannot be derogated from or waived in a contract of employment or a collective agreement. Records should be kept by an employer for 3 years. The

⁴³ Riforma Monti-Fornero L.92/2012

Minister may initiate a prosecution for an offence within one year of the date of an alleged offence under the Act.

Employers often prepare a questions and answers type document to hand out to employees with a view to minimising confusion and dealing with anticipated questions.

The employer must consider alternatives to the proposed redundancies during the consultation period.

The European Court of Justice has stated that the obligation to consult in this regard is an obligation to negotiate, however there is no obligation on the employer to reach agreement with the employees' representatives.

Now we can analyze what happen If the dismissal is held to be unlawful.

In **Italy** is applies the protection provided by art. 18 of the Workers' Statute (Law 300/1970), chosen by the worker (**Civil Persecution**):

- reintegration into the workplace and damages;

- payment to the employee of an economic compensation or damages;

In the case of employer non entrepreneur applies the protection of the law 604/1966, at the option of the employer:

- reinstatement;

- payment of compensation to the worker compensation.

In **Ireland** on conviction of an offence under the 1977 Acts an employer can face fines of up to €250,000(**Criminal/Penal Prosecution**). To date there have been few prosecutions under the 1977 Acts. In addition, an employee or their representative can make a complaint to a rights commissioner where an employer has not entered into a consultation process at least 30 days prior to the first notice of

dismissal being served or has not supplied the employees with the required information. The rights commissioner may, in finding for the employee, require that the employer comply with the provisions of the 1977 Acts, and/or award compensation of up to four weeks' pay to the employee(s) who made the complaint. Due to the delay normally experienced in having claims heard before a rights commissioner, employees could seek to restrain a breach by their employer of its obligations under the 1977 Acts by applying to the High Court for injunctive relief.

Regardless of what notice the employees may be entitled to under their employment contracts there is a 30 days' moratorium placed on collective redundancies. Before the dismissals can take effect, at least 30 days must have expired after the Minister was notified by the employer about the proposed redundancies.

1-Rights Commissioner: (Civil Remedy)An employee, or a trade union, staff association or excepted body on behalf of an employee, may present a complaint to a rights commissioner that an employer has contravened Section 9 or 10 of the Act of 1977 in relation to information and consultation of employees.

A complaint to a Rights Commissioner may be made - by giving notice of it in writing. The Rights Commissioner, on receipt of a complaint, will send a copy of the notice of complaint to the employer. The Rights Commissioner will then give the parties an opportunity to be heard by him/her and to present any evidence relevant to the complaint. After hearing the parties, the Rights Commissioner will issue a written decision. Proceedings before a Rights Commissioner will be held in private.

The decision of the Rights Commissioner shall do one or more of the following:

- (a) Declare that the complaint was or was not well-founded,
- (b) Require the employer to comply with the principal regulations and for that purpose to take a specific course of action,
- (c) Order the employer to pay the employee compensation of a maximum of 4 weeks remuneration.

The complaint to the Rights Commissioner must be presented within 6 months of the occurrence of the alleged contravention to which it relates, or where the rights commissioner is satisfied that exceptional circumstances existed which prevented the presentation of the complaint within that period, within a further 6 months.

Rights Commissioners operate as a service of the Labour Relations Commission and are independent in their functions. They investigate disputes, grievances and claims that individuals or small groups of workers refer under specific legislation and issue the findings of their investigations in the form of either decisions or non-binding recommendations, depending on the legislation under which a case is referred.

2-Employment Appeals Tribunal: A party concerned may appeal to the Employment Appeals Tribunal from a decision of a Rights Commissioner. The appeal must be made within 6 weeks of the date on which the Rights Commissioner communicated the decision to the parties. An appeal may be made, by giving notice of the appeal in writing, to the Employment Appeals Tribunal and the Tribunal will copy the notice to the other party concerned. The Tribunal will give the parties an opportunity to be heard and to present any evidence relevant to the appeal. The Tribunal will then issue a written

determination, which may affirm, vary, or set aside the decision of the Rights Commissioner.

Where an employer has neither implemented nor appealed the Rights Commissioner's decision, the employee may complain to the Employment Appeals Tribunal. (Penal Remedy) The employee must notify the Tribunal in writing of the complaint. In such circumstances, the Tribunal is empowered to issue a determination without rehearing the case and, if it upholds the complaint, will confirm the decision in its determination. The Employment Appeals Tribunal is an independent body bound to act judicially and was set up to provide a fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights.

3-The most prominent of these institutions, **the Labour Court**, was established under the Industrial Relations Act 1946. The Labour Court is an independent tripartite body that was originally established to support collective bargaining through a conciliation, mediation and arbitration service. The court consists of nine full-time members: a chair, two deputy chairs, three employee representatives and three employer representatives. Members of the Labour Court are appointed by the Minister for Jobs, Enterprise and Innovation. The court's duties involve the investigation of industrial disputes that have not been resolved by the LRC, on the basis of submissions made by both employee and employer representatives, and the issuing of recommendations following its investigations. However, the Labour Court's recommendations are – apart from the special 'inability to pay' and trade union recognition dispute procedures – not legally binding and the parties are not obliged to use the services of the court in the event of a dispute. Moreover, access to the Labour Court is

dependent on both parties having exhausted all other dispute resolution procedures. It's important to remember that the Labour Court has a very important role under the 2007 Exceptional Collective Redundancies legislation.

An important element that we couldn't find in the Irish legislation but that is very important in the Italian one is that the workers chosen for collective redundancies are placed on "*Mobilità*". The employer is required to pay 6 times the initial treatment of the mobility and 9 times if has failed to proceed with the layoffs. If the consulting auditors finding an agreement, the amount is halved and it has benefited from the layoff of a third party. The work allocated in *Mobilità* lists enjoy the retirement benefits. However, the reinstatement of the worker and his reinstatement by the employer is facilitated by tax exemptions for a short time. The assumption by other employers, provided they are not close to the employer who effected the dismissal (to avoid fraudulent transactions), as well as provides many tax benefits, including the payment of the treatment of mobility which would be payable to the employee.

However from January 1, 2013 came into force the ASPI, the Social Insurance For Employment, introduced by the Fornero Reformation in support of workers who have involuntarily lost their jobs. The ASPI will tend to replace the current mobility and unemployment benefits, leaving the agricultural unemployment. Infact from ASPI are excluded agricultural workers in temporary and permanent, as well as workers whose employment is terminated due to resignation or consensual resolution.

The ASPI is created to:

- employees in the private sector;
- be public sector employees with fixed-term contracts;
- apprentices;
- artists and artistic employees (theater, film).

The requirements that these workers must have are:

- involuntary unemployment;
- state of unemployment;
- two years of employment taxes;
- 52 weeks of contribution two years prior to dismissal.

For the year 2013, the ASPI will be divided as follows:

- 8 months for those under 50;
- 12 months for those over 50.

The ASPI allowance is related to the social security taxable remuneration for the past 2 years (including items continuous, non-continuous and additional monthly). The amount shall be divided by the average weekly earnings (number of weeks of contributions) and multiplied 4.33 (average monthly wage). The ASPI ends when the employee ceases to be in the status of unemployed and starts a new job (employee, occasional accessory, or independent project).

The ASPI decade in other cases:

- If employees are eligible for retirement;
- If they are eligible for the disability allowance;
- If they start an activity without giving notice to the INPS of the income which is assumed to obtain.

If the employer complies with the procedure laid down by law and the selection criteria, the only way to oppose this kind of decision is the commissioner of the Government.

The commissioner there in two cases:

-a more general, required by law n. 400 of 1988, which authorizes the government to appoint special commissioners to achieve specific objectives approved by the parliament or the government itself. The law is as applicable to persons governed by public law as to private companies;

-a special administration procedure, governed by the Prodi Law (No. 270, 1999) and by the Marzano Law (No. 347 of 2003). For both, the court must ascertain a state of insolvency: the Prodi Law may be imposed by the bankruptcy court at the request of creditors, while the Marzano Law can only be initiated following a request of the entrepreneur who wishes to conclude a corporate restructuring, and excludes cases liquidation.

However according to the Protection of Employees Act's, in **Ireland** the Insolvency Payments Scheme implements the provisions of EU Directives 80/987 and 2002/74/EC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer. The legislative basis for the Scheme is the Protection of Employees (Employers' Insolvency) Acts, 1984 – 2004 and associated regulations.

The Scheme provides for the payment of certain outstanding entitlements relating to the pay of an employee where employment has been terminated because of an employer's insolvency. Payments are made from the Social Insurance Fund.

For the purposes of the Scheme, Insolvency includes liquidations, receiverships, resolutions to wind-up companies, bankruptcies, petitions filed or deeds executed for particular arrangements and insolvency under succession legislation. The Scheme also covers employees working in Ireland for employers who become insolvent under the laws of another EU Member State. The Scheme covers arrears of pay, holiday pay and pay in lieu of statutory notice and a range of other entitlements that might be owed to employees by the employer. These include awards made under employment rights legislation covering such issues as unfair dismissal, discrimination, working time and the minimum wage. Certain unpaid pension scheme and personal retirement savings account (PRSA) contributions are also covered.

Note that the Government may impose the commissioner of a private company even when there is a state of insolvency. Conversely, a debt may be in receivership and with a collective dismissal procedure for claims of individual creditors, without the consent of the employer.

2. Other interesting differences between the Irish and Italian System.

⁴⁴In a general context is very interesting outline other fundamental differences between the Irish and the Italian system.

⁴⁵*The Organization and role of the social partners in Ireland: The collapse of Ireland's centralised social partnership model in early*

⁴⁴ HASTINGS, T. (ed.), *The state of the unions: Challenges facing organised labour in Ireland*, Dublin, The Liffey Press, 2008.
Industrial Relations News (IRN). European Industrial Relations Observatory (EIRO).

⁴⁵ DOBBINS T. "Ireland: 2010 Annual Review" Galway, NUI 12-10-2011

2010 has had, and will continue to have, significant implications for the role of the social partners. Some of the substantial architecture of social partnership that has been built up since 1987 looks set to be dismantled. Further, the social partners and their affiliates will have to sharpen their negotiating skills in the event of an increase in local pay bargaining activity. A major change in the organization of Ireland's largest union, the Services Industrial Professional and Technical Union (SIPTU), has been unfolding in 2010. The union has approved various changes, which include moving to a sectoral structure from regional units, almost tripling the resources put into organising new members, and having specialised staff deal with individual grievances.

Collective bargaining developments in Ireland: It is not possible to estimate the number of collective agreements in Ireland in 2010, as there is no official database referring to the extent of agreements.

The most important collective bargaining development in Ireland in late 2009/early 2010 was that the country's twenty-two year old system of centralised social partnership agreements formally broke down, after the Irish government announced that talks with the public sector unions on a consensus approach to securing a €1 billion plus reduction in the public pay bill had failed. After the failure to reach consensus agreement, the government decided on a straightforward wage cut for over 250,000 public servants. This unilateral pay cut was imposed by the government in Budget 2010 (which took place in December 2009) (ranging from 5% for the lower paid up to 15% for the highest paid). Moreover, in December 2009, the Irish Business and Employers' Confederation (IBEC) formally withdrew from the terms

of the private sector pay agreement that had been negotiated as part of the Transitional Agreement in 2008, paving the way for the first period of company-level bargaining in Irish industrial relations since 1987. Since 1987, basic pay levels for unionised workers had primarily been set by centralised wage agreements, with many non-union employers also ‘shadowing’ centrally set pay outcomes.

Yet despite the formal collapse of national wage bargaining, in March 2010, IBEC and the Irish Congress of Trade Unions (ICTU) agreed a new voluntary protocol that establishes a tripartite overarching procedure between the government, IBEC and ICTU with a view to managing future private sector pay claims. The protocol provides negotiators with broad pay guidelines, using a set of criteria for issues like competitiveness. Regarding the new pay bargaining climate, IBEC and ICTU state that they are ‘operating in a new context without a formal agreement on pay determination’, which suggests that there may be some informal coordination between them. In any case, local pay claims were uncommon in private sector companies in 2010, given the severity of the recession and fears over job losses. Regardless, the protocol provides a more informal basis for the processing of pay claims if and when they emerge.

Concession bargaining became a common occurrence in 2010, frequently in the form of pay freezes. While much media attention in Ireland has focused on the appearance of pay cuts in the private sector as a feature of the Irish employment landscape, there has been a tendency to exaggerate the extent of cuts in basic pay. Reductions in average earnings do not necessarily equate to cuts in basic pay. For

example, overtime hours and shift rates can be cut, leading to hourly pay declines, even if basic pay is merely frozen. In relation to this, a special analysis of wage bill change in enterprises, by the Central Statistics Office (CSO) in 2010 examined the relative importance of three components of reducing labour costs for companies between the third quarter of 2008 and the third quarter of 2009: employment levels, average working hours and average hourly earnings. The survey found that most labour cost savings came through redundancies, followed by reduction in working time, and then falling average hourly earnings. Cutting the number of employees was the means used by most employers to reduce wage costs, with 66% reducing employment by more than 2% over the year, with just 21% increasing employment by more than 2%. Average weekly paid hours were reduced by more than 2% in 51% of companies, and increased by more than 2% in 31% of enterprises. Average hourly earnings, which can include overtime, was the smallest component of the wage bill reduction, with 35% of employers reporting decreases of 2% or more. The salient issue emerging from the CSO survey is that when employers seek to cut costs during the recession, they are more likely to cut employee numbers or hours of work, before they focus on regular earnings.

In addition, the specialist independent publication Industrial Relations News has charted pay trends during the recession. According to IRN, the practice of cutting basic pay and salaries has become a more regular feature of the Irish industrial relations landscape since 2008, even if its extent has been exaggerated at times. In late 2010, IRN conducted a review of pay cutting featuring a sample of over 50

employments where pay cuts of one kind or another were agreed, implemented or attempted over the past two years. The deepest recession in decades has clearly been the main reason for increased pay cuts, but also playing a role, IRN suggest, was a period of price deflation that began in January 2009, peaked in October 2009 at -6.6% and only ended in August 2010. Accordingly, the pay cuts of recent years have to be set against the fact that both consumer prices indices (the domestic CPI and the EU's HICP) show that prices are now at the same level that they were in April/May 2007, almost three and a half years ago. Yet, IRN emphasize, the relatively novelty of pay cutting as a cost reduction option has led to something of an exaggerated impression in the media of the extent to which it has been used on the ground in the private sector.

In the public sector, government and the public sector trade unions negotiated a bi-partite deal on public service reform in June 2010 in exchange for a promise of no pay cuts prior to 2014 – which was called the ‘Croke Park agreement’ [IE1007039I](#). Employer associations were not party to the agreement. The four-year deal, which potentially covers 330,000 Irish public servants, was accepted by the Public Services Committee of the ICTU. The agreement was voted through by a majority of almost two to one and incorporates a four-year pay freeze, commitments by the government not to implement compulsory redundancies, and to maintain existing pension arrangements. In return, unions have signed up for a ‘transformation’ programme, expected to yield major productivity improvements and efficiencies – as well as a broad commitment to maintain industrial peace. The wide range of workers affected by the deal includes civil servants, health

workers, teachers and employees in the security services. The latest CSO earnings data (up to September 2010) show the effect of the Budget 2010 public service pay cuts, while private sector earnings remain relatively static. Average weekly earnings fell to €685.10 in Q3 2010, down from €694.69 a year earlier, representing a fall of 1.4% over the year. The fall in weekly earnings reflects the decrease in both average hourly earnings (-1.2%) and average weekly paid hours (-0.3%) year on year. Across economic sectors, average weekly earnings fell in 8 of 13 sectors, with the largest decreases in the education (-12.3%) and construction (-6.2%) sectors. Weekly earnings in the public sector fell by 4.5%, compared with a fall of 0.3% in the private sector. This public sector earnings data was, however, calculated before deduction of the pension levy introduced in March 2009.

Trade union representation

By far, the most common channel of employee representation at workplace level continues to be trade unions – either through collective bargaining or joint consultation. Workplace collective bargaining may encompass negotiations with management over issues such as pay, working time, terms and conditions of employment, pensions, sick pay and work organisation. Workplace collective bargaining is voluntarist, and workplace trade union representatives – shop stewards – engaged in collective bargaining are elected by union members.

As well as collective bargaining, trade unions may represent employees at the workplace by engaging management in Joint

Consultative Committees (JCCs). Again, JCCs are voluntarist, and their core function is consultation of workers. The subject of consultation may vary widely, but may consist of consultation over 'lower-level' operational issues like pensions, employment and work organisation, as well as 'higher-level' strategic issues such as business plans, the financial situation and productivity. Trade union representatives or shop stewards are elected by union members. JCCs comprise members of management and union representatives. JCCs may also consist of non-union staff representatives. The committees are sometimes associated with voluntarist workplace 'partnership' agreements between employers and unions. However, partnership agreements, especially those formally and explicitly labelled as such, are seldom concluded.

Non-union representation

For many years, workplace trade unionism was the sole channel of employee representation. This has changed, however, in recent years, as non-union employee representative structures have increased. In particular, for the first time, under Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community (This Act is in force, but has very little value, as very few employers have set up I&C bodies) Ireland now has general statutory legislation governing employee representation. It is significant, however, that the information and consultation rights contained in Irish legislation have to be 'triggered' by groups of workers rather than being automatically applicable. The Employees (Provision of Information and Consultation) Act 2006 gives employees the right to request that an employer enters into

negotiations on an information and consultation structure – a ‘negotiated agreement’. In order to exercise this right, 10% of employees in an undertaking must make such a request (subject to a minimum of 15 and a maximum of 100 employees), with applications made in confidence either directly to the employer or to Labour Court, unless employers volunteer to introduce information and consultation arrangements. The timeline for concluding a ‘negotiated agreement’ is six months from the commencement of negotiations.

Alternatively, or following failure to conclude a ‘negotiated agreement’, Standard Rules – as set out in Section 10 of the 2006 act – provide for elected representative Information and Consultation Employee Forums, which will be set up along the lines of ‘continental style’ employee representative works councils. However, Standard Rules must provide representative arrangements – that is, it is not possible for employers to inform and consult directly with employees under Standard Rules. The Standard Rules stipulate that employee representatives must be employees of the undertaking, elected or appointed for the purposes of the information and consultation act. The employer is obliged to arrange for the election or appointment of representatives. An Employee Forum must be composed of not less than three or more than 30 elected/selected employee representatives only, who must be employees of the undertaking.

As intended in Directive 2002/14/EC, trade unions are not the sole channel for employee representation. However, the employees act provides that where it is the practice of the employer to conduct collective bargaining negotiations with a trade union or excepted body, and a union or excepted body represents at least 10% of the

employees, those employees are entitled to have their own representatives on a pro-rata basis to non-union representatives. Therefore, much depends on trade union density and bargaining levels. Undertakings with at least 50 employees came within the scope of the Employees (Provision of Information and Consultation) Act 2006 as of 23 March 2008. Irish legislation was enacted in July 2006, but few new information and consultation agreements have been concluded. Many commentators suggest that the Irish government transposed the legislation in a minimalist manner. A concern not to do anything that could jeopardise inward investment from American multinationals has loomed large in government policy in this regard. Other forms of employee representation include various voluntary employer-sponsored non-union staff associations, company councils or 'excepted bodies' in the private sector. Moreover, there are also provisions for worker directors (company board) and representative forums (at sub-board level) in a number of commercial semi-state bodies. As of 2003, there were about 60 worker directors across the commercial semi-state sector.

Employee rights

Apart from trade unions, the main institutions to ensure the enforcement of employee rights are the Labour Court, NERA (the Labour Inspectorate), and the Health and Safety Authority (HSA). Other institutions with a remit to enforce employee rights and resolve employment-related disputes include the Equality Tribunal, Employment Appeals Tribunal (EAT) and the LRC Rights Commissioner Service.

The Irish industrial relations system is heavily reliant on dispute resolution procedures to resolve conflicts of interest that arise from the process of collective bargaining. Accordingly, the state has introduced auxiliary institutions with the intention of resolving these disputes in order to promote industrial peace.

1-Rights Commissioner: An employee, or a trade union, staff association or excepted body on behalf of an employee, may present a complaint to a rights commissioner that an employer has contravened Section 9 or 10 of the Act of 1977 in relation to information and consultation of employees.

A complaint to a Rights Commissioner may be made - by giving notice of it in writing. The Rights Commissioner, on receipt of a complaint, will send a copy of the notice of complaint to the employer. The Rights Commissioner will then give the parties an opportunity to be heard by him/her and to present any evidence relevant to the complaint. After hearing the parties, the Rights Commissioner will issue a written decision. Proceedings before a Rights Commissioner will be held in private.

The decision of the Rights Commissioner shall do one or more of the following:

- (a) Declare that the complaint was or was not well-founded,
- (b) Require the employer to comply with the principal regulations and for that purpose to take a specific course of action,
- (c) Order the employer to pay the employee compensation of a maximum of 4 weeks remuneration.

The complaint to the Rights Commissioner must be presented within 6 months of the occurrence of the alleged contravention to which it

relates, or where the rights commissioner is satisfied that exceptional circumstances existed which prevented the presentation of the complaint within that period, within a further 6 months.

Rights Commissioners operate as a service of the Labour Relations Commission and are independent in their functions. They investigate disputes, grievances and claims that individuals or small groups of workers refer under specific legislation and issue the findings of their investigations in the form of either decisions or non-binding recommendations, depending on the legislation under which a case is referred.

2-Employment Appeals Tribunal: A party concerned may appeal to the Employment Appeals Tribunal from a decision of a Rights Commissioner. The appeal must be made within 6 weeks of the date on which the Rights Commissioner communicated the decision to the parties. An appeal may be made, by giving notice of the appeal in writing, to the Employment Appeals Tribunal and the Tribunal will copy the notice to the other party concerned. The Tribunal will give the parties an opportunity to be heard and to present any evidence relevant to the appeal. The Tribunal will then issue a written determination, which may affirm, vary, or set aside the decision of the Rights Commissioner.

Where an employer has neither implemented nor appealed the Rights Commissioner's decision, the employee may complain to the Employment Appeals Tribunal. The employee must notify the Tribunal in writing of the complaint. In such circumstances, the Tribunal is empowered to issue a determination without rehearing the case and, if it upholds the complaint, will confirm the decision in its determination. The **Employment Appeals Tribunal** is an

independent body bound to act judicially and was set up to provide a fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights.

3-The most prominent of these institutions, **the Labour Court**, was established under the Industrial Relations Act 1946. The Labour Court is an independent tripartite body that was originally established to support collective bargaining through a conciliation, mediation and arbitration service. The court consists of nine full-time members: a chair, two deputy chairs, three employee representatives and three employer representatives. Members of the Labour Court are appointed by the Minister for Jobs, Enterprise and Innovation. The court's duties involve the investigation of industrial disputes that have not been resolved by the LRC, on the basis of submissions made by both employee and employer representatives, and the issuing of recommendations following its investigations. However, the Labour Court's recommendations are – apart from the special 'inability to pay' and trade union recognition dispute procedures – not legally binding and the parties are not obliged to use the services of the court in the event of a dispute. Moreover, access to the Labour Court is dependent on both parties having exhausted all other dispute resolution procedures. It's important to remember that the Labour Court has a very important role under the 2007 Exceptional Collective Redundancies legislation.

⁴⁶**Italy:** Tripartite concertation

Even if there is no institutionalised framework, policy concertation has been very important on various occasions. The tripartite agreement of July 1993 – on establishing a new institutional framework for income policy, restructuring bargaining procedures, modification of forms of workplace union representation, policies on employment and measures to support the production system – can be interpreted as a major turning point in the history of Italian industrial relations. In the 1990s, other concertation agreements have covered pension reform (1995), labour market reform (1996) and economic growth (1998). In the 2000s, social concertation has become less frequent and more controversial. In 2002, the government together with employer organisations and trade unions (except Cgil, the largest trade union confederation) agreed on the so-called ‘Pact for Italy’ (Patto per l’Italia). The pact dealt with income policy, labour market reform, tax concessions, investment and employment. The agreement also included the government’s commitment to reform unemployment benefits and social shock absorbers. Cgil’s reasons for not signing the agreement included fundamental concerns about a weakening of the dismissal protection attributed to this agreement. In 2007, a protocol on the welfare system was signed concerning six fundamental areas relating to welfare, the labour market and pensions. The agreement passed an employee referendum in the autumn of 2007, but was harshly criticised by some trade unionists – namely the Italian

⁴⁶VISSER J., ‘*The quality of industrial relations and the Lisbon Strategy*’, in European Commission, *Industrial relations in Europe 2008*, Luxembourg, Office for the Official Publications of the European Commission, Luxembourg, 2008.

Federation of White-Collar and Blue-Collar Metalworkers (Federazione Italiana Operai Metalmeccanici, Fiom) affiliated to Cgil) – and received only mild support from the employers. In 2009, the government and the social partners, with the notable refusal of Cgil, signed the previously mentioned agreement on the experimental reform of the collective bargaining structure.

Workplace representation

The Workers' Statute of 1970 gives the workers the right to organise a plant-level union representation structure (Rappresentanza sindacale aziendale, RSA). The tripartite agreement of July 1993 introduced – in addition to the RSA – a so-called unitary workplace union structure (Rappresentanza sindacale unitaria, RSU). This body is elected by all employees, but representatives are usually elected through trade union lists. Therefore, it includes features of both works councils (the broad active electorate) and trade union bodies (the almost exclusive inclusion of trade union representatives). In general, it can be associated with trade union bodies. The establishment of RSUs confirms the traditional system of single-channel representation in Italy, whereby union and employee representation are entrusted to a single body, as opposed to dual-channel systems where union delegates operate alongside works councils.

Two thirds of the representatives in the RSU are elected by the workforce (both union and non-union members); one third of the positions is reserved for the trade union organisations affiliated to the signatory organisations of the sectoral national collective agreement (Contratto Collettivo Nazionale di Lavoro, CCNL) applied in the

company. RSUs, when present, have all of the rights attributed to RSAs by law or collective agreements (1970 Workers' Statute rights, as well as rights regarding information and consultation). Since 1993, RSUs can negotiate at plant level on issues that are delegated from the industry-wide level. RSUs have tended to replace RSAs, which are now usually found only in very small companies.

Employee rights

Individual labour disputes are decided in specific sections of the civil courts (*sezione lavoro*), which are the functional equivalent of labour courts. The court for second-level judicial decisions is the *Corte di appello* whereas the *Corte di Cassazione* covers the third level.

Chapter IV

Analysis of Collective Redundancies real cases in Ireland and Italy

1. Genuine Collective Redundancies: Dell Redundancy 2009.

⁴⁷The transfer of 1,900 manufacturing jobs from the Dell computer plant in the midwestern city of Limerick in Ireland, to an alternative manufacturing site in Poland, came as a shock to an Irish economy already suffering its third quarter of recession. At least another 1,500 jobs are likely to be lost in suppliers to Dell and in local services. The European Commission has contacted the Irish government about applying to the European Globalisation Adjustment Fund. A statement was issued by the computer giant Dell in January 2009, explaining that the ‘migration’ of production from the midwestern city of Limerick in Ireland to Łódź in central Poland was part of a US\$3 billion (€2.33 billion as at 16 February 2009) cost-reduction initiative already announced in 2008. The transfer of 1,900 manufacturing jobs to the alternative site in Poland forms part of a series of steps being taken by the company to ‘simplify operations, improve productivity, reduce costs and deliver even higher levels of customer satisfaction’ (see also the European Restructuring Monitor (ERM) fact sheet on the announcement). The remaining Dell employees in Limerick – who number over 1,000 workers – are to continue coordinating manufacturing, logistics and supply chain activities across a range of functions, including product development, engineering, procurement

⁴⁷ SHEEHAN B. ‘*Dell to transfer 1,900 jobs to Poland*’ IRN Publishing 23-02-2009.

and logistics. The existing sales, marketing and support base in the south suburb of Cherrywood in the capital city of Dublin is also unaffected by this announcement. Dell is a non-union company. Several major companies in the Limerick area are engaged in a substantial amount of contract work for Dell and these are likely to be adversely affected, unless they can source significant alternative work from elsewhere. In all, another 1,500 workers may lose their jobs as a direct result of the Dell transfer. This is before any other job losses in local services, arising from reduced consumer spending in the area. Limerick city has a population of some 52,000 people, although many Dell workers came from throughout the midwest region. It is estimated that as many as 500 of the redundant workers come from Poland, and some of these may be interested in returning to their native country to work in the new manufacturing operation there.

⁴⁸There may be some criticism of the way that one small city has become so dependent on a single industry. Yet, if a significant industry is willing to locate outside Dublin, it is difficult to discourage them. Unfortunately, while it is booming it can have the effect of ‘crowding out’ other industry, in that it can create a shortage of skilled workers that makes it difficult for other industries to locate there – thus making the region even more dependent. This is a lesson to be learned in terms of inward investment policy – but if another major company was to be interested in Limerick or a city of a similar scale tomorrow, few would turn it down.

Workers were to be let go on a phased basis over the next 12 months, with the first significant numbers to leave in April 2009.

⁴⁸ IRN:Industrial relations news ‘*Dell backed in consultation case, workers plan appeal*’. (NEWS FEATURE - IRN 27 -)11/07/2012

Those workers who choose to leave before their scheduled departure time may not qualify for the redundancy payments. One of the biggest problems cited with the package is the cap of 52 weeks' pay, which means that any workers with more than 8.66 years' service will not get credit for service over this amount. (Dell has been in Limerick for 18 years). Most of the shopfloor workers' basic pay would be below the statutory ceiling of €600 per week, so the 52-week cap means that the largest severance payments would be not far above €30,000 for those with eight years' service or more. But even if the terms are similar, the scale of the redundancies on this occasion means that there will be no voluntary redundancies. Since voluntary severance by definition implies that those leaving are happy with the terms, it may be that many of those departing on these terms in the past were not affected by the cap.

CONSULTATION PROCESS

An alleged breach of Section 9 of the European Communities (Protection of Employment) Regulations, 2000, was the subject of the case. This regulation clarifies the 1977 Protection of Employment Act, to the effect that non-union companies as well as unionised companies are subject to statutory consultation of employees in collective redundancy situations. The Rights Commissioner, Michael Rooney, had decided that because of the terms of letters sent to individual employees on January 8, 2009, (around the time that the possible job losses were publicly announced) the company could not have complied with Section 9. These letters had included estimates of severance payments that might apply to individuals.

In another complaint taken at the same time by the same workers, under Section 10 of the 2000 Regulations, the Rights Commissioner had backed Dell's position that a major consultation process had taken place and so Section 10 had been complied with. This element of the Rights Commissioner decision had not been appealed by the worker.

COMPANY ENTITLED TO MAKE 'STRATEGIC DECISION'

In relation to Section 9, the EAT heard the appeal on October 27, 2011, and issued its decision in 2012. This said that Dell was "entitled to make a strategic decision and the Tribunal is satisfied that the meeting of 08th January 2009 was the commencement of this process". Therefore, it unanimously determined that the employer was not in breach of Section 9, overturning the Rights Commissioner's decision.

Section 9 states:

"(1) Where an employer proposes to create collective redundancies he shall, with a view to reaching an agreement, initiate consultations with employees' representatives representing the employees affected by the proposed redundancies.

(2) Consultations under this section shall include the following matters –

(a) the possibility of avoiding the proposed redundancies, reducing the number of employees affected by them or otherwise mitigating their consequences,

(b) the basis on which it will be decided which particular employees will be made redundant.

(3) Consultations under this section shall be initiated at the earliest opportunity and in any event at least 30 days before the first dismissal takes effect.”

Counsel for the employer, Mark Connaughton SC (instructed by Joanne Hyde of Eversheds O’Donnell Sweeney), told the Tribunal that communication with the employees had taken place on three levels: (1) general communication to all; (2) more directly by individual unit managers and pre-prepared presentations; (3) letters addressed to the affected employees.

Mr Connaughton argued that the letters of January 8, 2009, were nothing more than “indicative” letters and provided estimates, not specifics. He added that not a single employee was served with notice before April 1, 2009, opening correspondence to this effect at the Tribunal hearing.

Terms of redundancy

The redundancy terms for the Dell workers are based on a calculation of six weeks of pay per year of service, inclusive of the state’s statutory redundancy payment, with a maximum payment of 52 weeks. The package does not include shift allowances or overtime. A 7% payment of a twice-yearly incentive cash plan will also be paid. Furthermore, health and life assurance are to be paid for a period of six months. In addition, the company will provide career outplacement services.

Dell states that the terms are in line with severance packages offered in its other recent redundancy programmes. The company let go 60

white-collar staff in 2005 and 100 administrative staff in 2007 on the same terms (ERM fact sheet).

EU globalisation fund

The scale of the job losses may bring it within the scope of the European Globalisation Adjustment Fund (EGF), which has operated since the start of 2007 and makes up to €500 million available each year for situations where globalisation results in significant job losses. It has helped about 15,000 workers over the past two years and the rules were recently changed to make it easier to qualify. The Dell closure is well above the threshold required, which has recently been reduced from 1,000 to 500 workers and allows job losses in suppliers to be included. The overall situation of the labour market has also clearly worsened, which would help the case for an application. So far, the Irish economy has reported its third successive quarter of recession. Thus, the European Commission has been in contact with the Irish Department of Enterprise, Trade and Employment (An Roinn Fiontar, Trádála agus Fostaíochta) to assist it in putting together a proposal which could yield up to €35 million in funds. Such funds would require co-financing from the Irish government and would go towards job-search and career assistance, training and promoting entrepreneurship. Under the original fund, the contribution required from the national government would have been 50%, but this proportion has been lowered to 25% in the recent changes.

Transfer of jobs within Europe may not be eligible

One of the main issues with an application to the EGF would be to show that the job losses are linked to changes in global trade patterns.

While Dell is moving jobs to a lower-cost country, the dilemma for the European Commission is that, in this case, the low-cost country in question – Poland – is another EU Member State. The EGF was intended to assist EU Member States that lose jobs to the wider world, whereas funding a ‘jobs migration’ to another Member State may be a more delicate matter, as it could set a precedent for use of the funds.

Nevertheless, as part of the recent changes, the European Commission has stated that, for a temporary period, it is willing to financially support employees made unemployed as a result of the current economic crisis, rather than restricting the eligibility of the EGF to workers made redundant through the negative consequences of global trade developments. It is hoped that the present situation may meet the terms of the fund.

POLISH AID

In a separate but related development, the European Commission announced in December that it had opened an investigation into the €52.7 million in Polish Government aid provided to the Dell plant to which the Limerick manufacturing jobs are going. The aid amounted to over a quarter of the €183 million cost of the development at Lodz in central Poland. The Commission said it had doubts as to whether the aid was compatible with the rules of regional aid for large investment projects. Member states (including Ireland) and third parties can “provide information in particular on the incentive effect and the positive and negative effects of the aid”, according to the Commission’s statement.

EVIDENCE FROM HR MANAGER

Dell's site HR manager for manufacturing at the time of the redundancies told the Tribunal that there were about 2,800 employees in the company, with 2,000 working in manufacturing. He had arranged a meeting for January 8, 2009 and was involved in subsequent meetings.

The HR manager was asked if letters of termination of employment dated January 8, 2009, were sent to employees and he replied: "No". He explained that previous redundancies and redundancy processes were made available on the company's internal intranet. However, some employees did not have access to this intranet so they decided to send letters. He said employees wanted to know two things: when their jobs might end; and what severance they might get.

A first presentation on the redundancies had been made on January 8, 2009, after which there was a meeting on January 13, 2009, to meet with employees that they needed to consult with in order to comply with the legislation. They also met to get feedback from the employees. Some employees had been concerned that the severance payment was capped at one year's pay, while some were concerned that the weekly sum was based on basic weekly pay. It had also been asked why the company's chief executive had not made an announcement. Management had met with the site team again on five separate occasions. Documents for a meeting on February 11, 2009, were opened to the Tribunal, along with minutes of the same meeting.

A document was opened to the Tribunal that contained every question that was asked by the employees' representative group at a meeting.

The questions and answers were placed on the intranet. In cross-examination, the witness was asked if the decision was made i.e. “you will be leaving” in the January 8, 2009, letter. He said it had not, that the letters were a genuine attempt to address questions that employees might be asked their families, such as when their jobs might end and what severance they might get. When it was put to the witness that there was certainty that the jobs were coming to an end, he replied: “No, the letter is not definitive enough, for instance to get mortgage protection.” He further explained that the intent of the letter was to reach out to the employees.

NEW YORK TIMES REPORT

On the workers’ side, the Tribunal heard evidence from DR, who was an employee with the respondent from 2008 to 2009. He explained that in the latter part of 2008 there had been rumours and speculation, as well as a report in the New York Times, about the company having made a decision about the company situation in the west of Ireland. At a meeting in January 2009, management told the employees that the company was ceasing production in the west of Ireland and moving production to Poland. Management were asked if jobs could be saved and they said no. The witness opened his own letter from January 8, 2009, to the Tribunal and his understanding was that his job was gone. The witness said he had been amenable to taking a redundancy package. At the end of January, he approached a person in the company and requested a meeting. He asked if there was any chance of something being done about his redundancy and also if the redundancy package could be improved. He had also said to him that

if the redundancy package was improved he would “leave on Sunday night and you would heard no more from me”.

Counsel for the workers, Peter O’Brien BL (instructed by David O’Brien of solicitors McMahon O’Brien), contended at the Tribunal hearing that the employer’s consultations must include the possibility of avoiding redundancies, the basis on which it would be decided which particular employees were made redundant and the consultations should begin as early as possible, or at least 30 days before the first dismissal. He added that on January 8, 2009, it was made clear a decision had been taken to make redundancies and that the type of language used in the communication could only mean their employment was at an end. The decision on redundancies had been taken some time prior to January 8, 2009 and the discussions after that were about severance.

At the end of the analysis of this case we can then ask whether the law really DID protect workers in this case. Maybe the answer must be negative because still prevailed the economic needs of the company on the conservation of employment for the workers.

2. Non-Genuine Collective Redundancies in Ireland: Irish Ferries Dispute 2007(Non-genuine Collective Redundancies- Exceptional Collective Redundancy).

⁴⁹A bitter industrial dispute at Irish Ferries was ignited after management unilaterally issued proposals to replace 543 directly employed seafarers with predominantly eastern European agency

⁴⁹ DOBBINS T. ‘Irish Ferries dispute finally resolved after bitter stand-off’ Industrial Relations News 21-12-2005.

crew, and to reflag its vessels to Cyprus in the process because the wage costings for new agency seafarers are significantly lower than those applying to existing seafarers. This culminated in a stand-off, starting on 27 November 2005, whereby, provoked by management actions in bringing agency crews aboard Irish Ferries vessels backed by a security presence, local representatives and members from Ireland's largest union, the Services Industrial Professional and Technical Union (SIPTU), responded by mobilising and applying industrial pressure. The result was that Irish Ferries ships were laid up in Welsh and Irish ports for close on three weeks.

However, the deadlock between the parties was eventually broken, following intensive talks at Ireland's primary dispute-resolution institution, the Labour Relations Commission. The proposals for resolving the Irish Ferries dispute were painstakingly drafted by the Commission, following the prior intervention of the National Implementation Body, which established the broad parameters of the final settlement.

There is something for all parties - employer, unions, government and, indeed, the dispute-resolution institutions themselves - in the proposals drawn up by the LRC, following the prior intervention of the NIB, which set the parameters for the settlement. Negotiating teams on the employer and union side have recommended the proposals for acceptance. Balloting of workers was due to be concluded by the end of December 2005. Ships have resumed sailing as normal and, as part of the return to work formula, the parties agree that all personnel, on return to work, will be treated as if the dispute

had 'never happened'. However, this may be easier said than done, given the low level of trust between the protagonists. The Irish Ferries dispute LED TO the 2007 Act (which was negotiated as part of the tripartite concertation (Towards 2016 Agreement)).

⁵⁰The Court classified three categories of redundancy as follows:

1. 13 compulsory redundancies, of which notice of dismissal was given by letter dated May 15,2009 (the notice was extended pending completion of the Redundancy panel process). These 13 compulsory redundancies, were part of a wider 19 redundancies, 6 of which were enacted on a voluntary basis.

2. All other port operatives employed in the company who were offered new terms and conditions of employment. In a letter to SIPTU, the company stated that should workers fail to accept new terms and conditions their current posts would be made redundant. However, a letter dated May 28, 2009 (after the matter had been referred to the Redundancy Panel), the employer informed those workers concerned that the new terms and conditions had “no further effect for the time being”.

3. A further proposed nine redundancies which the company stated, in its letter dated May 28, 2009, it intended to effect. To date, no further action has been taken by the employer to advance these proposed redundancies. The proposal to effect redundancies in this final category post-dated the reference to the Redundancy Panel. Therefore,

⁵⁰ FARRELLY R. ‘*MTL dispute - first Court opinion under “Irish Ferries” legislation*’
IRN:Industrial relations news 01/07/2009

that proposal was not considered by the Panel and the Court did not consider this category.

According to the Court, “the issue for consideration by the Court is whether the dismissals proposed by the company, of which notice was given on 15th May 2009, and the proposed dismissal of employees who did not accept new terms and conditions of employment, together constitute an exceptional collective redundancy within the statutory meaning ascribed to that term.”

NO EVIDENCE WORKERS TO BE REPLACED

In the Court’s opinion, the first category of dismissal, for reasons of redundancy, were “for the purpose of reducing the overall number of persons employed by the employer. There is no evidence from which it can be inferred that those whose employment is thus to be terminated will be replaced by other persons who are, or are to be, directly employed by the employer. Nor is there evidence that they will be replaced by other persons whose services are, or are to be, provided to the employer in pursuance of other arrangements.” “Accordingly the Court is of the opinion that the dismissals which had been due to take effect on 29th May 2009 (and which have been deferred pending the completion of this process) do not constitute an exceptional collective redundancy”.

Regarding the second category of redundancy, “the employer has indicated that the apprehended dismissals of those who failed to agree to new terms and conditions are not to have effect for the time being. For the sake of completeness the Court is of the opinion that were those dismissals to take place, it would, as a matter of probability, be

operationally necessary for the employer to replace some or all of them.” “In that event, and of the conditions specified in s.7(2A) of the Redundancy Payments Act 1967, as amended, were fulfilled, an exceptional collective redundancy in relation to those dismissals could arise. “However, if such a situation were to arise a definitive opinion for the purposes of the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 could only be given after the matter was again considered through the procedures provided for by the Act.” The Court stated that it did not consider it appropriate to issue an opinion in respect of the third category of proposed redundancies.⁵¹ For their part, the unions - SIPTU was the main union in the negotiations - secured, above all, a negotiated settlement, which was sacrosanct from their point of view. Irish minimum wage standards (EUR 7.65 per hour and EUR 18,615 per annum) will be applied to new, predominantly Latvian, contract personnel, which is twice the amount (EUR 3.60 per hour) that the company was initially seeking. It has been speculated that part of the reason why the company came round to accepting a minimum wage benchmark may be because it simply could not find a sufficient number of Latvians prepared to work for EUR 3.60. In relation to this, Jazeps Spridzans, the director of the Latvian seafarers’ register, recently suggested that the Riga-based agency charged with recruiting staff would find it impossible to find crew in any of the Baltic states prepared to work at a rate of EUR 3.60. However, an Irish Ferries spokesperson has disputed this.

⁵¹ DOBBINS T., ‘*Irish Ferries dispute finally resolved after bitter stand-off*’ Industrial Relations News 21-12-2005

The minimum wage figure of EUR 18,615 per annum may seem low when compared with the current Irish average industrial wage of EUR 30,000, but it is certainly much higher than the Latvian minimum wage of EUR 0.71 per hour and EUR 120 per month (2004 rate). The average industrial wage in Latvia is EUR 3,900 per year. So, seen through the eyes of non-Irish workers from some of the poorest EU states, it is difficult to refute the fact that the Irish minimum wage will put them some way above national average earnings when they return home on leave. They will also receive round-trip transportation expenses when they go on leave. Another successful outcome from a union perspective is that the pay and conditions of existing seafarers who choose to remain with the company will be 'red-circled'. In view of this, the company has agreed that the pay and conditions of the staff (a maximum of 48) who decide to remain will be protected (for instance, existing bosuns will remain on EUR 42,000 per year). Individuals who remain will have the option of agreeing on an individual basis to a reduction in 'ratio' with the company offering a sum equivalent to three years of the value of the compensation. Significantly, all remaining staff will continue to be represented by SIPTU/SUI. Turning to redundancy terms, those employees who decide to leave will receive managements' severance offer of four weeks' pay for each year of service, plus two weeks' statutory entitlement, and an additional two weeks for cooperating with the changeover to agency crewing - giving a potential total of eight weeks' pay per year of service, which compares favourably with 'top-end' severance packages. Under this package, the minimum pay-out will be EUR 2,000 for workers with less than one year's service, and it is understood that one individual officer with over 30 years' service

could receive up to EUR 300,000. The average will be roughly EUR 60,000. The Irish Ferries Dispute was a No Genuine case of Collective Redundancies. Actually the Irish Ferries company reflagged its vessels to Cyprus but with no one Irish employees working in.

3. Collective Redundancies in Italy: Telecom Italia Redundancies 2010.

⁵²*Agreement signed on redundancies at Telecom Italia*

An agreement on redundancies at Telecom Italia was signed on 4 August 2010 by the government, company and trade unions. The agreement amends the Industrial Plan for 2010–2012, presented by the company in April, which had proposed 6,822 redundancies. However, this was changed when protesting unions asked the government to set up social partner talks. Now, 3,900 workers will enter ‘voluntary mobility’, and more than 2,000 employees will receive ‘solidarity’ contracts.

About the company

Telecom Italia is the biggest telecommunications group in Italy. It was created by the merger of five state-controlled companies in 1994 and was later privatised in 1997. According to data from Telecom Italia in March 2010, it employs 70,965 employees and operates in all areas of telecommunications (fixed, mobile and internet, multimedia and television). It is also present on the international market.

⁵² SANZ S. ‘*Agreement signed on redundancies at Telecom Italia*’ Eurofound 19-10-2010.

The company has recently gone through a process of restructuring which, in 2008, led to the signing of an agreement that stipulated recourse to a job mobility scheme for 5,000 workers by December 2010. In 2009, another agreement transformed 470 redundancies into 1,054 employment solidarity contracts (IT0908019I).

Announcement of redundancies

In April 2010, Telecom Italia's Industrial Plan announced a total of 6,822 redundancies to be implemented by December 2012. In July, some 3,700 workers received their dismissal notices. The sectoral federations – the Communication Workers' Union (Slc-Cgil), the Federation of Information, Entertainment and Telecommunications Workers (Fistel-Cisl), and the Italian Communication Workers' Union (Uilcom-Uil) – organised a national strike for the group on 9 July. Following a request by the trade unions, Paolo Romani, Deputy Minister of Communications, and Minister of Labour Maurizio Sacconi, set up negotiations between the social partners.

Outcome of negotiations

On 14 July 2010, representatives from Telecom management, the unions Slc-Cgil, Fistel-Cisl, Uilcom-Uil, UGL Telecomunicazioni and the government met at the Ministry of Economic Development. Following this meeting, Telecom put the 3,700 announced redundancies on hold. On 4 August, after a series of meetings, the parties reached an agreement.

Content of agreement

The principal aspects of the agreement (in Italian, 1.39Mb PDF) signed between Telecom Italia and the unions are outlined below.

Mobility

- In 2010–2012, the company will set up mobility procedures for 3,900 workers. This means that they will be placed on a waiting list giving them preferential consideration for any new vacancies at the company, as well as compensation for their wages while awaiting employment. These people, however, will have the right to refuse the measure.
- Workers in the mobility scheme will predominantly be those who will become entitled to retire while awaiting employment (a maximum of 36 months).
- Workers in the scheme will also be guaranteed a monthly income of 90% of their monthly salary for the duration of the scheme. This compensation will be extended after the mobility period expires, until they become entitled to retirement.

Job security agreements

- These agreements, stipulating lower pay and working hours for 1,100 workers, will be offered alongside vocational training programmes aimed at professional requalification.
- Job security agreements for the 470 workers that were signed in 2009 will be renewed for another two years;

- Telecom Italia's plan to sell off its information technology (IT) services company, Shared Services Company Srl, will be suspended. The 450 workers at this company will be offered job security agreements, together with vocational training and requalification programmes. The workers who do not want these agreements will be able to opt for the mobility scheme.

Other aspects of the agreement are:

- the possibility of job relocation for 40 workers made redundant by the recent closure of Telecom Italia Learning Services (TILS);
- a move to keep IT activities, human resources and customer operations in-house during the 2010–2012 period;
- a stop on redundancies for the entire duration of the Industrial Plan.

Reactions of social partners

The Chief Executive Officer of Telecom, Franco Bernabè, says the agreement is perfectly in line with efficiency objectives foreseen in the Industrial Plan and that, at the same time, it guarantees workers' protection from job losses. Emilio Miceli, Secretary General of Slc-Cgil, favours the training as the best solution for restructuring problems that the company faces. Vito Vitale, Secretary General of Fistel-Cisl, says he is satisfied at the company's efforts to reintegrate certain important activities and the use of social shock absorbers to reduce redundancies. Uilcom-Uil has expressed satisfaction that the mobility scheme will remain voluntary, and that Telecom has agreed to reintegrate some of its activities.

Conclusions

In relation to the research that I developed it was possible to note the differences in the implementation of EU Directive 98/59 and to make a comparison in the implementation of this Directive Articles in the two countries, Ireland and Italy, which I analyzed in this thesis.

We have to remember that there is a huge different between the Italian and the Irish law system: Italy is a Civil Law country, Ireland is a Common Law country. The Civil law system is different from the Common law mainly due to the different way of creating general abstract rules: through laws, which provide hypotheses prefigured in the abstract (Civil law), compared to through the decisions of the courts and starting from concrete cases (Common law).

Starting with **Article 1** of the **DIRECTIVE 98/59/EEC** that give the definition of Collective redundancies and the scope of the directive we can see that in **Italy** the Law 223/1991 provides two cases of collective dismissal:

- 1- According to Article 4 of the law 223/1991 when the employer, having already implemented layoffs with intervention of Cassa integrazione guadagni Straordinaria, he will be sure that he couldn't implementing the reorganization or restructuring necessary to overcome the fund.
- 2- The Law on Collective Redundancies(L.223/1991 art.24) applies to companies with more than 15 employees that wish to make at least five redundancies in the period of 120 days, in each production unit, or several production units in the territory of the same province, due to a reduction, or a transformation of

the cessation of activity. For the purposes of this law apprentices and workers employed under a contract of training and work are also counted.

Ireland, uses a different type of calculation to define Collective Redundancies :infact we can speak of Collective Redundancies if in a period of 30 days a number of employees are dismissed for redundancy in the same “establishment”. The minimum number of dismissals depends on the size of the total workforce In an establishment normally employing 21 to 49 employees(inclusive)the Act applies if at least five are dismissed within 30 days; at least 10 in an establishment employing 50 to 99; at least 10 per cent in. An establishment employing 100 to 299;and at least 30 persons in an establishment employing 300 employees or more.

In this case we could remember the transfer of 1,900 manufacturing jobs from the **Dell computer** plant in the midwestern city of Limerick in Ireland, to an alternative manufacturing site in Poland, came as a shock to an Irish economy already suffering its third quarter of recession.

In this thesis I also reported and analyzed a case where Collective Redundancies were not genuine, where workers were laid off to be replaced by cheaper labour, " **The Irish Ferries Dispute**", which made a great stir in 2007 in Dublin due to the political sensitivity, delicacy and importance of the issue.

Continuing with **Article 2** of the Directive regarding Information and Consultation, in **Italy** the system is as follows.

The employer who wants to proceed with Collective redundancies shall notify in advance:

- all trade unions (or RSA only if present);
- trade associations;
- the Provincial Labour Directorate or Regional Directorate of the Ministry of Labour or work, depending on the relevance of dismissal (respectively, provincial, regional or national).

However in **Ireland** the employer must ,if he “proposes to create collective redundancies” notify in writing the Minister for Enterprise at least 30 days before the first dismissal takes effect of his proposal, and a copy must be sent to the “employees” representatives.

As in **Italy** in **Ireland** the main obligations under the act are summarised as “consultation and notification”. As I wrote before taking the latter obligation first, the employer must ,if he “proposes to create collective redundancies” as explained above, notify in writing the Minister for Enterprise at least 30 days before the first dismissal takes effect of his proposal, and a copy must be sent to the “employees” representatives. If he fails to do this, or if he effects the redundancies before the 30 days have expired, he is guilty of an offence.

According to the Irish legislation ‘Employees’ Representatives’ are defined as:

- 1- A trade union, staff association or excepted body with which it has been the practice of the employer to conduct collective bargaining negotiations, or

2- In the absence of such a trade union, staff association or excepted body, a person or persons chosen (under an arrangement put in place by the employer) by such employees from amongst their number to represent them in negotiations with the employer.

Apart from trade unions, the main institutions to ensure the enforcement of employee rights are the Labour Court, NERA (the Labour Inspectorate), and the Health and Safety Authority (HSA).

The **Italian** procedure of Collective redundancies attempts to promote collective agreements more favourable to employees, following information from the trade unions or associations, within 7 days of the same, and may require the joint examination (bilateral comparison/trade union procedure) of the reasons for the redundancies and study of alternatives to collective redundancies. Alternative measures that should be considered include:

- the ability to assign employees in the same undertaking to work of equal or lower level at the respective location;

- the transfer;

- outsourcing with any clause to another company in the group, connected, controlled and, most recently, having no relationship with the company owned by the seller.

As an example we could remember the agreement on redundancies at **Telecom Italia** that was signed on 4 August 2010 by the government, company and trade unions. The agreement amends the Industrial Plan for 2010–2012, presented by the company in April, which had proposed 6,822 redundancies. However, this was changed when protesting unions asked the government to set up social partner talks.

Now, 3,900 workers will enter ‘voluntary mobility’, and more than 2,000 employees will receive ‘solidarity’ contracts.

However according to the Irish procedure on Collective redundancies to promote collective agreements more favourable to employees ,the Employer must, also at least 30 days before the first dismissal, enter into consultations with the employees’ representatives “with a view to reaching an agreement.”

“Consultations” must include a discussion on the way in which the redundancies are to be implemented and, significantly, on whether they can be avoided, reduced or the consequences mitigated. The consultations must include the possibility of avoiding/reducing the proposed redundancies and the selection criteria to be observed in deciding which roles will become redundant.

If the employer makes the employees a reasonable offer of alternative work, and they refuse it, they may lose their entitlement to a redundancy payment.

In **Italy** this procedure must be exhausted within forty-five days from the date of receipt of the communication of the company. This gives the Provincial Labour Office and maximum employment in writing on the outcome of the consultation and the reasons for its eventual failure. Similar written notice may be sent by the trade unions of workers. If no agreement is reached, the Director of the Department of Labour and the maximum occupancy shall summon the parties to a further consideration of the matters, also formulating proposals for the implementation of an agreement. This examination must take place within thirty days of receipt by the Office of the Provincial Labour and maximum occupancy of the company's communications. If the

number of workers involved in the procedure of mobility is less than ten, the terms are reduced by half. In case of failure of the joint consultation, a second consultation takes place(three-way comparison) on the initiative of the Provincial Directorate of work that examines the issue with the employer and union representatives.(administrative procedure). Having completed the consultation(trade union and administrative procedure) stage, with or without union agreement, the employer may proceed with the dismissal of redundant workers. At the end of the procedure, if the dismissal takes place , it must be ordered by the employer in writing, and respecting the notice period.

If the dismissal is held to be unlawful:

- In **Italy** the protection provided by art. 18 of the Workers' Statute (Law 300/1970) applies, chosen by the worker (**Civil Persecution**):
- reintegration into the workplace and damages;
- payment to the employee of economic compensation or damages;

In the case of employer non entrepreneur the protection of the law 604/1966 applies, at the option of the employer:

- reinstatement;
- payment of compensation to the worker compensation.

In **Ireland** on conviction of an offence under the 1977 Acts an employer can face fines of up to €250,000(**Criminal/Penal Prosecution**). To date there have been few prosecutions under the 1977 Acts. In addition, an employee or their representative can make a

complaint to a rights commissioner where an employer has not entered into a consultation process at least 30 days prior to the first notice of dismissal being served or has not supplied the employees with the required information. The rights commissioner may, in finding for the employee, require that the employer comply with the provisions of the 1977 Acts, and/or award compensation of up to four weeks' pay to the employee(s) who made the complaint. Due to the delay normally experienced in having claims heard before a rights commissioner, employees could seek to restrain a breach by their employer of its obligations under the 1977 Acts by applying to the High Court for injunctive relief.

Regardless of what notice the employees may be entitled to under their employment contracts there is a 30 days' moratorium placed on collective redundancies. Before the dismissals can take effect, at least 30 days must have expired after the Minister was notified by the employer about the proposed redundancies.

An important element that we couldn't find in the Irish legislation but that is very important in the Italian one is that the workers chosen for collective redundancies are placed on "*Mobilità*".

However from January 1, 2013 came into force the ASPI, the Social Insurance For Employment, introduced by the Fornero Reformation in support of workers who have involuntarily lost their jobs. The ASPI will tend to replace the current mobility and unemployment benefits, leaving the agricultural unemployment.

Infact from ASPI are excluded agricultural workers in temporary and permanent, as well as workers whose employment is terminated due to resignation or consensual resolution.

The ASPI is created to:

- employees in the private sector;
- be public sector employees with fixed-term contracts;
- apprentices;
- artists and artistic employees (theater, film).

The requirements that these workers must have are:

- involuntary unemployment;
- state of unemployment;
- two years of employment taxes;
- 52 weeks of contribution two years prior to dismissal.

For the year 2013, the ASPI will be divided as follows:

- 8 months for those under 50;
- 12 months for those over 50.

The ASPI allowance is related to the social security taxable remuneration for the past 2 years (including items continuous, non-continuous and additional monthly). The amount shall be divided by the average weekly earnings (number of weeks of contributions) and multiplied 4.33 (average monthly wage).

The ASPI ends when the employee ceases to be in the status of unemployed and starts a new job (employee, occasional accessory, or independent project).

The ASPI decade in other cases:

- If employees are eligible for retirement;
- If they are eligible for the disability allowance;
- If they start an activity without giving notice to the INPS of the income which is assumed to obtain.

Appendices

1. Full text of Directive 98/59 EEC.
2. Full text of The Protection of Employment Act 1977.
3. Full text of The Protection of Employment Act(EXCEPTIONAL COLLECTIVE REDUNDANCIES AND RELATED MATTERS) 2007.
4. Full text of L.223/1991.

1. Full text of Directive 98/59 EEC.

COUNCIL DIRECTIVE 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies

THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty establishing the European Community, and in particular Article 100 thereof, Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

(1) Whereas for reasons of clarity and rationality Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (3) should be consolidated;

(2) Whereas it is important that greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community;

(3) Whereas, despite increasing convergence, differences still remain between the provisions in force in the Member States concerning the practical

arrangements and procedures for such redundancies and the measures designed to alleviate the consequences of redundancy for workers;

(4) Whereas these differences can have a direct effect on the functioning of the internal market;

(5) Whereas the Council resolution of 21 January 1974 concerning a social action programme (4) made provision for a directive on the approximation of Member States' legislation on collective redundancies;

(6) Whereas the Community Charter of the fundamental social rights of workers, adopted at the European Council meeting held in Strasbourg on 9 December 1989 by the Heads of State or Government of 11 Member States, states, inter alia, in point 7, first paragraph, first sentence, and second paragraph; in point 17, first paragraph; and in point 18, third indent:

'7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community (. . .).

The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.

17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

(. . .)

18. Such information, consultation and participation must be implemented in due time, particularly in the following cases:

(- . . .)

(- . . .)

- in cases of collective redundancy procedures;(- . . .)`;

(7) Whereas this approximation must therefore be promoted while the improvement is being maintained within the meaning of Article 117 of the Treaty;

(8) Whereas, in order to calculate the number of redundancies provided for in the definition of collective redundancies within the meaning of this Directive, other forms of termination of employment contracts on the initiative of the employer should be equated to redundancies, provided that there are at least five redundancies;

(9) Whereas it should be stipulated that this Directive applies in principle also to collective redundancies resulting where the establishment's activities are terminated as a result of a judicial decision;

(10) Whereas the Member States should be given the option of stipulating that workers' representatives may call on experts on grounds of the technical complexity of the matters which are likely to be the subject of the informing and consulting;

(11) Whereas it is necessary to ensure that employers' obligations as regards information, consultation and notification apply independently of whether the decision on collective redundancies emanates from the employer or from an undertaking which controls that employer;

(12) Whereas Member States should ensure that workers' representatives and/or workers have at their disposal administrative and/or judicial procedures in order to ensure that the obligations laid down in this Directive are fulfilled;

(13) Whereas this Directive must not affect the obligations of the Member States concerning the deadlines for transposition of the Directives set out in Annex I, Part B,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Definitions and scope

Article 1

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:

(i) either, over a period of 30 days:

- at least 10 in establishments normally employing more than 20 and less than 100 workers,

- at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers,

- at least 30 in establishments normally employing 300 workers or more,

(ii) 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.

For the purpose of calculating the number of redundancies provided for in the first subparagraph of point (a), terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned shall be assimilated to redundancies, provided that there are at least five redundancies.

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 seagoing vessels.

SECTION II

Information and consultation

Article 2

1. Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time 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 of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.

Member States may provide that the workers' representatives may call on the services of experts in accordance with national legislation and/or practice.

3. To enable workers' representatives to make constructive proposals, the employers shall in good time during the course of the consultations:

(a) supply them with all relevant information and

(b) in any event notify them in writing of:

- (i) the reasons for the projected redundancies;*
- (ii) the number of categories of workers to be made redundant;*
- (iii) the number and categories of workers normally employed;*
- (iv) the period over which the projected redundancies are to be effected;*
- (v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;*
- (vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.*

The employer shall forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph, point (b), subpoints (i) to (v).

4. The obligations laid down in paragraphs 1, 2 and 3 shall apply irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.

In considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the ground that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies.

SECTION III

Procedure for collective redundancies

Article 3

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

However, Member States may provide that in the case of planned collective redundancies arising from termination of the establishment's activities as a result of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests.

This notification shall contain all relevant information concerning the projected collective redundancies and the consultations 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 to 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.

4. Member States need not apply this Article to collective redundancies arising from termination of the establishment's activities where this is the result of a judicial decision.

SECTION IV

Final provisions

Article 5

This Directive shall not affect the right of Member States to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers.

Article 6

Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to the workers' representatives and/or workers.

Article 7

Member States shall forward to the Commission the text of any fundamental provisions of national law already adopted or being adopted in the area governed by this Directive.

Article 8

1. The Directives listed in Annex I, Part A, are hereby repealed without prejudice to the obligations of the Member States concerning the deadlines for transposition of the said Directive set out in Annex I, Part B.

2. References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 9

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Communities.

Article 10

This Directive is addressed to the Member States.

2. Full text of The Protection of Employment Act 1977.

Provisional consolidated text, incorporating amendments and deletions (to 2007)

Notes:

- *All texts are taken from the Irish Statute Book at the website of the Office of the Attorney General, other than the 2007 Act referred to below (which postdates the current term of the ISB).*
- *The most recent version of the Chronological Table of the Statutes (to 2004, on the website of the Office of the Attorney General) indicates that the Act was amended by three statutory instruments/enactments; the Protection of Employment Order 1996 (S.I. No. 370), the European Communities (Protection of Employment) Regulations 2000 (S.I. No. 488), and the Protection of Employees (Part-Time) Work) Act 2001 (No. 45). It was subsequently further amended by the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (No. 27). The amendment effected by the 2001 Act was superseded by a corresponding amendment (to the level of a penalty) in the 2007 Act.*
- *Amendments deriving from the 1996 Order are shown in RED; those deriving from the 2000 Regulations are shown in GREEN; and those*

deriving from the 2007 Act are shown in PURPLE. Deletions are shown in square brackets [].

Protection of Employment Act 1977

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AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE DIRECTIVE OF THE COUNCIL OF THE EUROPEAN COMMUNITIES DONE AT BRUSSELS ON THE 17TH DAY OF FEBRUARY, 1975, REGARDING THE APPROXIMATION OF THE LAWS OF MEMBER STATES OF THOSE COMMUNITIES RELATING TO COLLECTIVE REDUNDANCIES, AND TO PROVIDE FOR OTHER MATTERS RELATING TO THAT MATTER. [5th April, 1977]

BE IT Enacted by the OIREACHTAS AS FOLLOWS:

PART I PRELIMINARY AND GENERAL

Short title and commencement.

1.—(1) This Act may be cited as the Protection of Employment Act, 1977.

(2) This Act shall come into operation on such day as may be appointed by order of the Minister.

Interpretation. 2.—(1) In this Act—

"authorised officer" means a person appointed by the Minister to be an authorised officer for the purposes of this Act;

"contract of employment" means

(a) a contract of service or of apprenticeship; and

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 (No. 27 of 1971), and is acting in the course of that business, to perform personally any work or service for a third person (whether or not the third person is a party to the contract), whether the contract is express or implied and, if express, whether it is oral or in writing;

"employee" means a person who has entered into or works under (or, in the case of a contract which has been terminated, worked under) a contract of employment with an employer, whether the contract is for manual labour, clerical work or otherwise, is express or implied, oral or in writing, [and "employer" and references to employment shall be construed accordingly] – DELETED]

“employees’ representatives”, in relation to employees who are affected, or are likely to be affected, by proposed collective redundancies (whether by being selected for redundancy or otherwise), means-

(a) a trade union, staff association or excepted body with which it has been the practice of the employer to conduct collective bargaining negotiations, or

(b) in the absence of such a trade union, staff association or excepted body, a person or persons chosen (under an arrangement put in place by the employer)

by such employees from amongst their number to represent them in negotiations with the employer;

“employer” means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, 4 entered into or worked under) a contract of employment, subject to the qualification that the person who, under a contract of employment referred to in paragraph (b) of the definition of “contract of employment”, is liable to pay the remuneration of the individual concerned in respect of the work or service concerned shall be deemed to be the individual’s employer;

“excepted body” has the meaning assigned to it by section 6(3) of the Trade Union Act, 1941 (No. 22 of 1941), as amended;

“Minister” means the Minister for Jobs, Enterprise and Innovation; (as per S.I. 245 of 2011, 2nd June).

"prescribed” means prescribed by regulations under this Act;

"staff association” means a body of persons all the members of which are employed by the same employer and which carries on negotiations for the fixing of the wages or other conditions of employment of its own members only;

"trade union” means a trade union which is the holder of a negotiation licence granted under the Trade Union Acts, 1941 and 1971.

(2) In this Act a reference to a section is to a section of this Act unless it is indicated that reference to some other enactment is intended.

(3) In this Act a reference to a subsection is to the subsection of the section in which the reference occurs unless it is indicated that reference to some other section is intended.

Regulations and orders.

3.—(1) The Minister may make regulations for the purpose of giving effect to this Act.

(2) (a) The Minister may by order amend any provision of this Act so as to comply with any international obligations relating to collective redundancies that the State has decided to assume.

(b) The Minister may by order amend or revoke an order under this section.

(3) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations.

Laying of orders and regulations before Houses of Oireachtas.

4.—(1) Every order and regulation under this Act (other than an order under section 3, section 6 or section 7 (3)) shall be laid before each House of the Oireachtas as soon as possible after it is made and, if a resolution annulling the order or regulation is passed by either House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

(2) Where an order is proposed to be made under section 3, section 6 or 5 section 7 (3), a draft of the order shall be laid before both Houses of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each House.

Expenses. 5.—The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Meaning of collective redundancies.

6.—(1) For the purpose of this Act, ‘collective redundancies’ means

dismissals effected by an employer for one or more reasons not related to the individual concerned where in any period of 30 consecutive days the number of such dismissals is -

(a) at least 5 in an establishment normally employing more than 20 and less than 50 employees,

(b) at least 10 in an establishment normally employing at least 50 but less than 100 employees,

(c) at least ten per cent. of the number of employees in an establishment normally employing at least 100 but less than 300 employees, and

(d) at least 30 in an establishment normally employing 300 or more employees.

(2) For the purpose of calculating the number of redundancies where the number of dismissals is at least 10 in an establishment normally employing 20 and less than 100 employees, terminations of a contract of employment which occur to the individual workers concerned shall be assimilated to redundancies provided there are at least 5 redundancies.

(3) In this section 'establishment' means an employer or company or a subsidiary company or a company within a group of companies which can independently effect redundancies.

Application and non-application of Act.

7.—(1) Subject to subsection (2), this Act applies to all persons in employment on or after the commencement of this Act in an establishment normally employing more than 20 persons.

(2) This Act does not apply to—

(a) dismissals of employees engaged under a contract of employment for a fixed term or for a specified purpose (being a purpose of such a kind that the duration of the contract was limited but was, at the time of its making, incapable

of precise ascertainment) where the dismissals occurred only because of the expiry of the term or the cesser of the purpose,

(b) 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 .

(c) officers of a body which is a local authority within the meaning of the Local Government Act, 1941 ,

(d) employment under an employment agreement pursuant to Part II or IV of the Merchant Shipping Act, 1894,

[(e) employees in an establishment the business carried on in which is being terminated following bankruptcy or winding-up proceedings or for any other reason as a result of a decision of a court of competent jurisdiction. – DELETED]

(3) (a) The Minister may by order declare that this Act shall not apply to a class of employees specified in the order and from the commencement of the order this Act shall not apply to that class.

(b) The Minister may by order declare that this Act shall apply to a specified class of employee and from the commencement of the order this Act shall apply to that class.

(c) The Minister may by order amend or revoke an order under this subsection.

(4) Where a notice of dismissal by reason of redundancy which was given before the commencement of this Act expires after such commencement, sections 9, 10, 12 and 14 shall not apply to the dismissal concerned, but such a notice shall be in accordance with the Minimum Notice and Terms of Employment Act, 1973, and with the relevant contract of employment.

(5) In this section "establishment" has the same meaning as in section 6.

Calculation of normal number of employees.

8.—For the purposes of this Act, the number of employees normally employed in an establishment (within the meaning of section 6) shall be taken to be the average of the number so employed in each of the 12 months preceding the date on which the first dismissal takes effect.

PART II CONSULTATION AND NOTIFICATION

Obligation on employer to

9.—(1) Where an employer proposes to create collective redundancies he shall, with a view to reaching an agreement, initiate consultations with employees' representatives [representing the employees affected by the proposed redundancies – DELETED].

(2) Consultations under this section shall include the following matters—

(a) the possibility of avoiding the proposed redundancies, reducing the number of employees affected by them or [otherwise mitigating their circumstances - DELETED], mitigating their consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining employees made redundant,

(b) the basis on which it will be decided which particular employees will be made redundant.

(3) Consultations under this section shall be initiated at the earliest opportunity and in any event at least 30 days before the first notice of dismissal is given.

Obligation on employer to supply certain information.

10.—(1) For the purpose of consultations under section 9, the employer concerned shall supply the employees' representatives with all relevant information relating to the proposed redundancies.

(2) Without prejudice to the generality of subsection (1), information supplied under this section shall include the following, of which details shall be given in writing—

(a) the reasons for the proposed redundancies,

(b) the number of employees, and description or categories, normally employed,

(c) the number of employees normally employed, and

(d) the period during which it is proposed to effect the proposed redundancies.

(e) the criteria proposed for selection of the workers to be made redundant,

(f) the method for calculating any redundancy payments other than those methods set out in the Redundancy Payments Acts, 1967 to 1991, or any other relevant enactment for the time being in force or, subject thereto, in practice.

(3) An employer shall as soon as possible supply the Minister with copies of all information supplied in writing under subsection (2).

8 Application of sections 9 and 10 in certain circumstances

10A.- Sections 9 and 10 shall apply to an employer irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking which controls the employer and it shall not be a defence on the part of the employer that the necessary information had not been provided to the employer by a controlling party, or parties, which took the decision leading to the collective redundancies.

Penalty for contravention of section 9 or 10.

11.—An employer who fails to initiate consultations under section 9 or fails to comply with section 10 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000.

Obligation on employer to notify Minister of proposed redundancies.

12.—(1) Where an employer proposes to create collective redundancies, he shall notify the Minister in writing of his proposals at the earliest opportunity and in any event at least 30 days before the first dismissal takes effect.

(2) The Minister may prescribe the particulars to be specified in a notification under this section.

(3) A copy of a notification under this section shall be supplied as soon as possible by the employer affected to the employees' representatives affected who may forward to the Minister in writing any observations they have relating to the notification.

(4) In the case of collective redundancies arising from the employer's business being terminated following bankruptcy or winding up proceedings or for any other reason as a result of a decision of a court of competent jurisdiction the person responsible for the affairs of the business need comply with subsection (1) only if the Minister so requests.

Penalty for contravention of section 12.

13.—An employer who contravenes section 12 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000.

PART III COMMENCEMENT OF COLLECTIVE REDUNDANCIES

Collective Redundancies not to take effect for 30 days.

14.—(1) Collective redundancies shall not take effect before the expiry of the period of 30 days beginning on the date of the relevant notification under section 12.

(2) Where collective redundancies are effected by an employer before the expiry of the 30-day period mentioned in subsection (1) the employer shall be guilty of

an offence and shall be liable on conviction on indictment to a fine not exceeding €250,000.

(3) Subsections (1) and (2) shall not apply in the case of collective redundancies arising from the employer's business being terminated following bankruptcy or winding up proceedings or for any other reason as a result of a decision by a court of competent jurisdiction.

Further consultations with Minister.

15.—(1) For the purpose of seeking solutions to the problems caused by the proposed redundancies, the employer concerned shall, at the Minister's request, enter into consultations with him or an authorised officer.

(2) For the purpose of consultations under this section, an employer shall supply the Minister or an authorised officer with such information relating to the proposed redundancies as the Minister or the officer may reasonably require.

Saver for employees' rights to notice, etc.

16.—Nothing in this Act shall affect 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.

Provisions relating to authorized officers.

17.—(1) An authorised officer may—

(a) enter at all reasonable times any premises or place where he has reasonable grounds for supposing that any employee is employed,

(b) there make any examination or enquiry necessary for ascertaining whether this Act has been or is being complied with,

(c) require an employer or his representative to produce any records which the employer is required by this Act to keep, and inspect and take copies of entries in the records.

(d) examine with regard to any matters under this Act any person whom he has reasonable cause to believe to be or to have been an employer or employee and require him to answer any questions (other than questions tending to incriminate him) which the officer may put relating to those matters and to sign a declaration of the truth of the answers.

(2) The powers conferred on an authorised officer by subsection (1) (a) shall not be exercisable in respect of a private dwelling house unless the Minister (or an officer of the Minister appointed by the Minister for the purpose) certifies that he has reasonable grounds for believing that an offence under this section in relation to an employee employed in the house has been committed by the employer, and the authorised officer in applying for admission to the house produces the certificate.

(3) Any person who—

10 (a) obstructs or impedes an authorised officer in the exercise of any power conferred by this section,

(b) refuses to produce any record which an authorised officer lawfully requires him to produce,

(c) produces, or causes to be produced or knowingly allows to be produced, to an authorised officer any record which is false in any material respect knowing it to be false,

(d) prevents or attempts to prevent any person from appearing before or being questioned by an authorised officer, or

(e) wilfully fails or refuses to comply with any lawful requirement of an authorised officer under subsection (1) (d) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000.

(4) An authorised officer shall be furnished with a certificate of his appointment and, on applying for admission to any premises or place, shall, if so required, produce the certificate to the occupier and to any person being examined by him.

PART IV MISCELLANEOUS

Records to be kept by employers.

18.—(1) An employer shall keep such records as may be necessary to enable the Minister or an authorised officer to ascertain whether or not the provisions of this Act are being and have been complied with.

(2) Records kept under this section shall be retained by an employer for a period of not less than three years from the date on which they were made.

(3) An employer who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000.

(4) Where an employer fails to keep or retain records under this section the onus of proving that he has complied or is complying with this Act shall lie on him.

Certain provisions to be null and void.

19.—Any provision in any agreement (whether a contract of employment or otherwise) purporting to exclude or limit the operation of any provision of this Act shall be null and void .Notices, etc. to Minister.

20.—Any notice or other document which is required or authorised by this Act to be given by an employer to the Minister shall be in writing and shall be sent

by registered post addressed to the head office of the Department of Labour or, where that is not practicable, shall be delivered to that office.

Proceedings under Act.

21.—(1) An offence under this Act may be prosecuted by the Minister.

(2) Proceedings for an offence under this Act may be commenced within one year from the date of the offence.

(3) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Mitigation of penalty for certain offences.

22.—Where an employer is convicted of an offence under section 11 or 14, he may plead in mitigation of the penalty for that offence that there were substantial reasons related to his business which made it impracticable for him to comply with the section under which the offence was committed.

3. Full text of The Protection of Employment Act (EXCEPTIONAL COLLECTIVE REDUNDANCIES AND RELATED MATTERS) 2007.

PROTECTION OF EMPLOYMENT (EXCEPTIONAL COLLECTIVE REDUNDANCIES AND RELATED MATTERS) ACT 2007

AN ACT TO MAKE PROVISION, CONSEQUENT ON THE CONCLUSION OF THE TEN-YEAR FRAMEWORK SOCIAL PARTNERSHIP AGREEMENT 2006-2015 KNOWN AS “TOWARDS 2016”, FOR THE ESTABLISHMENT OF A REDUNDANCY PANEL AND THE REFERENCE TO IT OF CERTAIN PROPOSED COLLECTIVE REDUNDANCIES AND FOR RELATED ACTION BY THE MINISTER FOR ENTERPRISE, TRADE AND EMPLOYMENT, INCLUDING THE OBTAINING FROM THE LABOUR COURT OF OPINIONS ON THE NATURE OF PROPOSED COLLECTIVE REDUNDANCIES; TO REMOVE THE UPPER AGE LIMIT FOR ENTITLEMENT TO REDUNDANCY PAYMENTS; TO MAKE CONSEQUENTIAL AMENDMENTS OF THE PROTECTION OF EMPLOYMENT ACT 1977, THE REDUNDANCY PAYMENTS ACT 1967, THE REDUNDANCY PAYMENTS ACT 1971, THE REDUNDANCY PAYMENTS ACT 1979, THE UNFAIR DISMISSALS ACT 1977 AND THE EMPLOYMENT EQUALITY ACT 1998; AND TO MAKE FURTHER AMENDMENTS OF THOSE ACTS TO UPDATE PENALTIES AND FOR PURPOSES OF STATUTE-LAW REVISION. [8th May, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short title, construction and collective citation.

1.— (1) This Act may be cited as the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 .

(2) The Protection of Employment Act 1977 , together with the Protection of Employees (Part-Time Work) Act 2001 and this Act (insofar as they apply to the first-mentioned Act), shall be construed together as one and may be cited together as the Protection of Employment Acts 1977 to 2007.

(3) The Redundancy Payments Acts 1967 to 2003 and this Act (insofar as it relates to those Acts) shall be construed together as one and may be cited together as the Redundancy Payments Acts 1967 to 2007.

(4) The Unfair Dismissals Acts 1977 to 2005 and this Act (insofar as it relates to those Acts) shall be construed together as one and may be cited together as the Unfair Dismissals Acts 1977 to 2007.

(5) The Employment Equality Acts 1998 and 2004 and this Act (insofar as it relates to those Acts) shall be construed together as one and may be cited together as the Employment Equality Acts 1998 to 2007.

Definitions.

2.— In this Act—

“employee representatives” has the same meaning as in section 2(1) of the Protection of Employment Act 1977 ;

“ industrial action ” means—

(a) a cessation of work by any number or body of workers acting in combination or a concerted refusal or a refusal under a common understanding of any number of workers to continue to work for their employer done as means of compelling their employer, or to aid other workers in compelling their employer, to accept or not to accept terms or conditions of or affecting employment, or

(b) the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by that employer in consequence of a dispute, done with a view to compelling

those persons, or to aid another employer in compelling persons employed by that other employer, to accept terms or conditions of or affecting employment;

“ Minister ” means the Minister for Enterprise, Trade and Employment;

“ Secretary General ” means the Secretary General of the Department of Enterprise, Trade and Employment.

Duration of effect of Part 2 and related matters.

3.— (1) Subject to this section, Part 2 has effect only for the period of 3 years from the commencement of this Act.

(2) The Minister may, by order made before the expiration of the period mentioned in subsection (1) or of any extension of that period under this subsection, extend that period or periods for a further period of 3 years if—

(a) both the Irish Congress of Trade Unions and the Irish Business and Employers Confederation have requested the extension; and

(b) the Minister is satisfied that the continued operation of Part 2 would be conducive to the continued orderly conduct of industrial relations.

(3) If— (a) on any day, Part 2 ceases to have effect in accordance with subsection (1), and

(b) on that day, any action remains to be taken under that Part in relation to a redundancy proposal in respect of which action had commenced to be taken under that Part,

Part 2 continues in force to the extent necessary for completing the taking of that action, and any subsequent action provided for by that Part, in respect of that redundancy proposal and, for that purpose, the Redundancy Panel as constituted immediately before that day continues in existence for such time as is necessary for it to take any outstanding action in accordance with that Part.

PART 2

Exceptional Collective Redundancies

What constitutes exceptional collective redundancies.

4.— (1) Subject to subsection (2), dismissals proposed by an employer together constitute exceptional collective redundancies for the purposes of this Part if, were they to take effect, they would be dismissals of the kind referred to in section 7(2A) of the Redundancy Payments Act 1967 (inserted by section 16).

(2) For the avoidance of doubt, it is declared that this Part does not apply to—
(a) the employment of agency workers for temporary or recurring business needs, or

(b) the use of outsourcing, contracting-out or other forms of business restructuring, in circumstances other than those referred to in section 7(2A) of the Redundancy Payments Act 1967.

Redundancy Panel.

5.— (1) For the purposes of this Part, there is established a Redundancy Panel.

(2) The Redundancy Panel consists of the following members:

(a) a Chairman appointed, in writing, by the National Implementation Body (being the body of that name established, under the aegis of the Department of the Taoiseach, to oversee the attainment and maintenance of industrial peace and stability);

(b) a member appointed, in writing, by the Irish Congress of Trade Unions;

(c) a member appointed, in writing, by the Irish Business and Employers Confederation.

(3) Each member of the Redundancy Panel shall have a deputy appointed, in writing, by the body by which that member was appointed, who shall act as a member of the panel on any occasion when that member is unable to attend a meeting of the panel, and, in subsections (4) to (9), a reference to a member includes a reference to a deputy of a member.

(4) Subject to subsections (5) to (10), a member—

(a) holds office for such period, not exceeding 3 years, as is specified in the relevant instrument of appointment, and

(b) is eligible for re-appointment.

(5) A member may resign by letter addressed to the relevant appointing authority, and the resignation shall take effect on the date of receipt of the letter.

(6) A member shall, unless he or she sooner dies, resigns or otherwise ceases to be a member, hold office until the expiration of his or her term of office.

(7) A person is not eligible to be appointed, or to continue to hold office, as a member of the Redundancy Panel if that person—

(a) is, or accepts nomination as, a member of Seanad Éireann,

(b) is, or is nominated as, a candidate for election as a member of either House of the Oireachtas or to be a member of the European Parliament,

(c) is regarded, under Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to that Parliament, or

(d) is or becomes a member of a local authority,

and a member who ceases, under this subsection, to be eligible to continue to hold office as a member shall thereupon cease to be a member of the Redundancy Panel.

(8) The Government may, for stated reasons, at any time remove a member from office for misbehaviour or where they consider that—

(a) the member has become incapable through ill health of effectively performing the functions of a member, or

(b) the member's removal is necessary for the effective performance by the Redundancy Panel of its functions.

(9) A member shall cease to be a member on—

(a) being adjudicated bankrupt,

(b) making a composition or arrangement with creditors,

(c) being sentenced to imprisonment on conviction on indictment, or

(d) ceasing to be ordinarily resident in the State.

(10) Whenever a vacancy occurs in the office of a member of the Redundancy Panel, the vacancy shall be filled, for the unexpired portion of the member's term of office, by the member's deputy, and the relevant appointing body shall appoint a new deputy.

(11) The Redundancy Panel shall act by majority decision.

(12) Subject to subsection (11), the practice and procedure of the Redundancy Panel shall be as determined by it.

(13) The Secretary General shall arrange for the provision to the Redundancy Panel of all secretarial and other services necessary for its efficient operation.

(14) A member of the Redundancy Panel shall be paid such remuneration (if any) as is determined by the Minister with the consent of the Minister for Finance.

Reference to Redundancy Panel.

6.— (1) At any time during the period of 30 days referred to in section 9 or 12 of the Protection of Employment Act 1977 (as the case requires), a proposal to create collective redundancies may be referred to the Redundancy Panel—

(a) by employee representatives acting with the approval of the majority of those whom they represent who are affected by the redundancy proposal, or

(b) by the employer concerned,

by notice in writing addressed to the Chairman of the Panel in the care of the Secretary General and sent or delivered to the Secretary General at the principal office of the Department of Enterprise, Trade and Employment.

(2) The Secretary General shall arrange for a reference under subsection (1) to be forwarded without delay to the Chairman of the Redundancy Panel, and the Panel shall—

(a) within 1 working day of receipt by the Chairman of the reference—

(i) inform the Minister of the fact, and

(ii) invite affected parties to make submissions to it in relation to the proposal,

and

(b) within 7 working days of receipt by the Chairman of the reference—

(i) give notice in writing to the Minister that either requests the Minister to seek an opinion from the Labour Court whether the proposal is a proposal to which this Part applies or states that the Panel is of the view that the conditions for the making of such a request that are set out in subsection (3) have not been satisfied, and

(ii) give a copy of that notice to the party from which the reference was received and other affected parties.

(3) The Redundancy Panel may not make a request to the Minister under subsection (2)(b)(i) unless—

(a) it appears to the Panel that the proposed collective redundancies are exceptional collective redundancies, and

(b) the Panel is satisfied that, in relation to the proposal, the party from which the reference was received—

(i) has unsuccessfully sought to resolve the matter through local engagement, that is, all or any of the following:

(I) established dispute-resolution procedures;

(II) procedures in place, or availed of by custom or usual practice, in the employment concerned;

(III) ordinary consultative procedures,

(ii) has acted reasonably and has not acted in a manner that, in the opinion of the Panel, has frustrated the possibility of agreement to restructuring, or other changes, necessary to secure the viability of the business of the employer and, as a consequence, the best possible levels of employment and conditions, and

(iii) has not had recourse to industrial action since the proposal was referred to the Panel.

Request by Minister for opinion of Labour Court.

7.— (1) The Minister may, either—

(a) within 7 working days of receiving a request from the Redundancy Panel under section 6, or

(b) subject to subsection (3), on the Minister's own initiative, in the public interest, request the Labour Court to issue an opinion whether collective

redundancies proposed by an employer constitute exceptional collective redundancies.

(2) In subsection (1)(b), “ public interest ” includes—

(a) public order and the interests of national security,

(b) public health and safety,

(c) the need to protect the labour market, and

(d) the protection of statutory employment rights.

(3) The Minister may make a request under subsection (1)(b) only if—

(a) it appears to the Minister that the proposed collective redundancies are exceptional collective redundancies, and

(b) the relevant period specified in subsection (4) has not expired.

(4) For the purposes of subsection (3)(b), the relevant period is—

(a) if the period of 30 days specified in section 9(3) of the Protection of Employment Act 1977 has not expired and a reference to the Redundancy Panel has not been made under section 6 (1) — that period of 30 days,

(b) if a reference to the Redundancy Panel has been made under section 6 (1) but the Panel has not made a request under section 6 (2) — the period of 7 working days specified in section 6 (2).

Hearings, and giving of opinions, by Labour Court.

8.— (1) Within 16 days of receiving a request under section 7 , the Labour Court shall—

(a) hold a hearing into the matter, and

(b) either—

- (i) issue to the Minister its opinion whether the proposed collective redundancies are exceptional collective redundancies, or*
- (ii) report to the Minister that, by reason of subsection (2), it is unable to issue an opinion, specifying in the report the circumstances attracting the operation of that subsection.*

(2) The Court may not issue an opinion under subsection (1) unless it is satisfied that, in relation to the relevant proposal—

(a) the party from which the reference to the Panel was received has unsuccessfully sought to resolve the matter through local engagement, that is, all or any of the following:

- (i) established dispute-resolution procedures;*
- (ii) procedures in place, or availed of by custom or usual practice, in the employment concerned;*

(iii) ordinary consultative procedures,

(b) that party has acted reasonably and has not acted in a manner that, in the opinion of the Court, has frustrated the possibility of agreement to restructuring, or other changes, necessary to secure the viability of the business of the employer and, as a consequence, the best possible levels of employment and conditions, and

(c) no industrial action, on the part of that party, is current.

(3) For the purposes of this Part, section 21 of the Industrial Relations Act 1946 has effect as if in subsection (1) of that section “and under Part 2 of the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007” were inserted after “for the purposes of any proceedings before it under this Act”.

(4) No appeal shall lie from an opinion given by the Labour Court under this section, but nothing in this section affects the power of the Employment Appeals Tribunal to make a decision on any question referred to it under section 39 of the Redundancy Payments Act 1967 .

(5) The Minister shall, within 7 working days of receiving an opinion from the Labour Court under subsection (1), notify affected parties, by such means as he considers appropriate, of the giving of the opinion and its content.

Effect of opinion.

9.— (1) Where—

(a) the Labour Court issues an opinion that collective redundancies proposed by an employer are exceptional collective redundancies,

(b) the employer proceeds with the dismissals on the same basis as in the relevant proposal, and

(c) the employer applies to the Minister for a rebate under Part III of the Redundancy Payments Act 1967 ,

the Minister shall have regard to the opinion of the Labour Court when considering the employer's application for the rebate.

(2) If the Minister refuses to pay the rebate, or pays a reduced rebate, the exemption from income tax provided by section 203 of the Taxes Consolidation Act 1997 does not apply in relation to lump sum payments made in pursuance of section 19 of the Redundancy Payments Act 1967 by the employer to employees dismissed as mentioned in subsection (1).

(3) Section 7 of the Unfair Dismissals Act 1977 has effect in relation to a dismissal that is one of a number of dismissals included in a collective redundancy that is determined by the Labour Court, in an opinion given under section 8 , to be an exceptional collective redundancy as if—

(a) the following paragraph were substituted for paragraph (c) of subsection (1) of section 7:

“(c) payment by the employer to the employee of such compensation as is just and equitable having regard to all the circumstances but does not exceed in amount remuneration in respect of the employment from which the employee was dismissed (calculated in accordance with regulations under section 17 of this Act) for—

- (i) in the case of an employee who, at the date of the dismissal, had not more than 20 years’ continuous service — 208 weeks, or*
- (ii) in the case of an employee who, at the date of the dismissal, had more than 20 years’ continuous service — 260 weeks.”,*

and

(b) the following subsection were substituted for subsection (2) of section 7:

“(2) Without prejudice to the generality of subsection (1), in determining any reduction in the amount of compensation otherwise payable under paragraph (c) of that subsection regard shall be had only to the amount (if any) of severance or redundancy payment accepted by the employee in relation to the dismissal.”.

Extension of time during which dismissal may not take place.

10.— (1) The first dismissal under a proposal for collective redundancies that is referred to the Redundancy Panel under section 6 (1) shall not take effect earlier than the expiration of the latest of whichever of the following periods is applicable:

(a) the period of 7 working days commencing on the day on which reference of the proposal is received by the Panel;

(b) the period of 7 working days commencing on the day on which a request made by the Redundancy Panel under section 6 (2) is received by the Minister; or

(c) the period of 16 days commencing on the day on which a request made by the Minister under section 7 (1) is lodged with the Labour Court.

(2) Nothing in subsection (1) affects either—

(a) the operation of section 9(3) or 12(1) of the Protection of Employment Act 1977, or

(b) the right of an employer to dismiss an employee otherwise than in pursuance of the proposal for collective redundancies.

(3) An employer who effects a dismissal in pursuance of a proposal for collective redundancies before the expiration of such of the periods specified in subsection (1) and in sections 9(3) and 12(1) of the Protection of Employment Act 1977 as are applicable is guilty of an offence and liable on conviction on indictment to a fine not exceeding €250,000.

PART 3

Amendments of the Protection of Employment Act 1977

Amendment of section 2 (interpretation) of the Protection of Employment Act 1977 .

11.— Section 2 of the Protection of Employment Act 1977 is amended in subsection (1) by substituting the following for the definition of “the Minister”:

“ ‘ Minister ’ means the Minister for Enterprise, Trade and Employment;”.

Amendment of section 9 (obligation on employer to consult employees’ representatives) of the Protection of Employment Act 1977 .

12.— Section 9 of the Protection of Employment Act 1977 is amended in subsection (3) by substituting “before the first notice of dismissal is given” for “before the first dismissal takes effect”.

Further amendments (penalties) of the Protection of Employment Act 1977 .

13.— The Protection of Employment Act 1977 is amended in each of the provisions of it specified in the Table to this section by substituting the amount specified in column (3) of that Table for the amount specified in column (2) of that Table opposite the number of the provision concerned.

TABLE

<i>(1)</i> <i>Provision</i>	<i>(2)</i> <i>Delete—</i>	<i>(3)</i> <i>Substitute—</i>
<i>Section 11</i>	<i>£1,500</i>	<i>€5,000</i>
<i>Section 13</i>	<i>£1,500</i>	<i>€5,000</i>
<i>Section 14</i>	<i>€12,500</i>	<i>€250,000</i>
<i>Section 17(3)</i>	<i>£1,500</i>	<i>€5,000</i>
<i>Section 18(3)</i>	<i>£1,500</i>	<i>€5,000</i>

PART 4

Amendments of the Redundancy Payments Act 1967

Amendment of section 2 (interpretation) of the Redundancy Payments Act 1967.

14.— Section 2 of the Redundancy Payments Act 1967 is amended in subsection (1) by substituting the following for the definition of “the Minister”:

“ ‘ Minister ’ means the Minister for Enterprise, Trade and Employment;”.

Amendment of section 4 (classes of persons to which this Act applies) of the Redundancy Payments Act 1967 .

15.— Section 4 of the Redundancy Payments Act 1967 is amended by substituting the following for subsection (1):

“(1) Subject to this section and to section 47, this Act applies to—

(a) employees employed in employment which is insurable for all benefits under the Social Welfare Consolidation Act 2005 ,

(b) employees who were so employed in such employment in the period of four years ending on the date of termination of employment, and

(c) employees who have attained the age of 66 years and are in employment that would be insurable for all benefits under the Social Welfare Consolidation Act 2005 but for—

(i) their attainment of that age, or

(ii) the fact that the employment concerned is excepted employment by reason of paragraph 2, 4 or 5 of Part 2 of Schedule 1 to that Act.”.

Amendment of section 7 (general right to redundancy payment) of the Redundancy Payments Act 1967

16.— Section 7 of the Redundancy Payments Act 1967 is amended by inserting the following after subsection (2):

“(2A) For the purposes of subsection (1), an employee who is dismissed shall be taken not to be dismissed by reason of redundancy if—

(a) the dismissal is one of a number of dismissals that, together, constitute collective redundancies as defined in section 6 of the Protection of Employment Act 1977 ,

(b) the dismissals concerned were effected on a compulsory basis,

(c) the dismissed employees were, or are to be, replaced, at the same location or elsewhere in the State, (except where the employer has an existing operation with established terms and conditions) by—

(i) other persons who are, or are to be, directly employed by the employer, or

(ii) other persons whose services are, or are to be, provided to that employer in pursuance of other arrangements,

(d) those other persons perform, or are to perform, essentially the same functions as the dismissed employees, and

(e) the terms and conditions of employment of those other persons are, or are to be, materially inferior to those of the dismissed employees.”.

Amendment of section 38 (decisions by deciding officers) of the Redundancy Payments Act 1967 .

17.— Section 38 of the Redundancy Payments Act 1967 is amended in subsection (1) by substituting the following for paragraphs (a) to (f):

“(a) as to who is the employer of an employee,

(b) in relation to the payment from the Social Insurance Fund of—

- (i) *rebates to employers under section 29, or*
- (ii) *lump sums to employees under section 32,*

or

(c) on such other matters arising under this Act as are prescribed,”.

Amendment of section 39 (Redundancy Appeals Tribunal and appeals and references thereto) of the Redundancy Payments Act 1967 .

18.— Section 39 of the Redundancy Payments Act 1967 is amended in subsection (16) by deleting “in the prescribed manner”.

Further amendments (penalties) of the Redundancy Payments Act 1967

19.— The Redundancy Payments Act 1967 is amended in each of the provisions of it specified in the Table to this section by substituting the amount specified in column (3) of that Table for the amount specified in column (2) of that Table opposite the number of the provision concerned.

TABLE

(1)	(2)	(3)
<i>Provision</i>	<i>Delete—</i>	<i>Substitute—</i>
<i>Section 17(3)</i>	<i>€3,000</i>	<i>€5,000</i>
<i>Section 18(4)</i>	<i>€3,000</i>	<i>€5,000</i>
<i>Section 36(3)</i>	<i>€3,000</i>	<i>€5,000</i>
<i>Section 39(17)e</i>	<i>£150</i>	<i>€5,000</i>

PART 5

Amendments of the Redundancy Payments Act 1971

Repeal of section 3 (provisions relating to persons reaching qualifying age for old age pension) of the Redundancy Payments Act 1971 .

20.— Section 3 of the Redundancy Payments Act 1971 is repealed.

Amendment of section 16 (offences relating to payments under Principal Act) of the Redundancy Payments Act 1971 .

21.— Section 16 of the Redundancy Payments Act 1971 is amended in subsections (1) and (2) by substituting “€5,000” for “£300”.

PART 6

Amendments of the Redundancy Payments Act 1979

Amendment of section 1 (definitions) of the Redundancy Payments Act 1979

22.— Section 1 of the Redundancy Payments Act 1979 is amended by substituting the following for the definition of “the Minister”:

“ ‘ Minister ’ means the Minister for Enterprise, Trade and Employment;”.
Repeal of section 5 (provisions relating to persons reaching qualifying age for old age pension) of the Redundancy Payments Act 1979 .

23.— Section 5 of the Redundancy Payments Act 1979 is repealed.

PART 7

Amendments of the Unfair Dismissals Act 1977

Amendment of section 1 (definitions) of the Unfair Dismissals Act 1977 .

24.— Section 1 of the Unfair Dismissals Act 1977 is amended in subsection (1) by substituting the following for the definition of “the Minister”:

“ ‘ Minister ’ means the Minister for Enterprise, Trade and Employment;”.

Amendment of section 2 (exclusions) of the Unfair Dismissals Act 1977 .

25.— (1) Section 2 of the Unfair Dismissals Act 1977 is amended in subsection (2)—(a) by substituting “Subject to subsection (2A), this Act” for “This Act”, and

(b) by deleting the proviso (commencing with the words “Provided that where, following dismissal”, including the interpretative passage commencing with the words “In this proviso ‘antecedent contract’,”).

(2) Section 2 of the Unfair Dismissals Act 1977 is amended by inserting the following after subsection (2):

“(2A) Where, following dismissal consisting only of the expiry of the term of a contract of employment of a kind mentioned in subsection (2) (‘the prior contract’) without the term being renewed under the contract or the cesser of the purpose of the contract—

(a) the employee concerned is re-employed by the employer concerned within 3 months of the dismissal under a contract of employment of that kind made between the employer and the employee (‘the subsequent contract’) and the nature of the employment is the same as or similar to that of the employment under the prior contract

(b) the employee is dismissed from the employment,

(c) the dismissal consisted only of the expiry of the term of the subsequent contract without the term being renewed under the contract or the cesser of the purpose of the contract, and

(d) in the opinion of the rights commissioner, the Tribunal or the Circuit Court, as the case may be, the entry by the employer into the subsequent contract was

wholly or partly for, or was connected with, the purpose of the avoidance of liability under this Act,

then—

- (i) this Act shall, subject to its other provisions, apply to the dismissal, and*
- (ii) (ii) the term of the prior contract and of any antecedent contracts shall be added to that of the subsequent contract for the purpose of the ascertainment under this Act of the period of service of the employee with the employer and the period so ascertained shall be deemed for those purposes to be one of continuous service.*

(2B) In subsection (2A), ‘ antecedent contract ’, in relation to a prior contract, means—

(a) a contract of employment of the kind mentioned in subsection (2) the term of which expired not more than 3 months before the commencement of the prior contract, or

(b) each of a series of contracts the term of the last of which expired not more than 3 months before the commencement of that of the prior contract and the term of the other or of each of the other contracts in the series expired not more than 3 months before the commencement of that of the other, or the next, contract in the series, being a contract or contracts made between the employer and the employee who were parties to the prior contract and the nature of the employment under which was the same as or similar to that of the employment under the prior contract.”.

(3) Section 2 of the Unfair Dismissals Act 1977 is amended in subsection (5) by substituting “subsection (2A)” for “the proviso (inserted by the Unfair Dismissals (Amendment) Act, 1993) to subsection (2) of this section”. Amendment of section 5 (dismissal by way of lock-out or for taking part in strike) of the Unfair Dismissals Act 1977 .

26.— Section 5 of the Unfair Dismissals Act 1977 is amended by inserting the following after subsection (2):

“(2A) Without prejudice to the applicability of any of the provisions of section 6 to the case, where—

(a) an employee—

(i) is deemed by subsection (1) to have been dismissed by reason of a lock-out, or

(ii) is dismissed for taking part in a strike or other industrial action,

and

(iii) none of those who were locked out, or took part in the strike or industrial action, were re-engaged,

in determining whether, in those circumstances, the dismissal is an unfair dismissal, the rights commissioner, the Tribunal or the Circuit Court, as the case may be, shall have regard, for that purpose only, to—

(i) the reasonableness or otherwise of the conduct (whether by act or omission) of the employer or employee in relation to the dismissal,

(ii) the extent (if any) of the compliance or failure to comply by the employer with the procedure referred to in section 14(1),

(iii) the extent (if any) of the compliance or failure to comply by the employer or the employee with provisions of any code of practice referred to in section 7(2)(d), and

(iv) whether the parties have adhered to any agreed grievance procedures applicable to the employment in question at the time of the lock-out, strike or industrial action.”.

PART 8

Amendments of the Employment Equality Act 1998

Amendment of section 17 (compliance with statutory requirements, etc.) of the Employment Equality Act 1998 .

27.— (1) The amendment of section 17 of the Employment Equality Act 1998 made by paragraph (b) of section 10 of the Equality Act 2004 is deemed to have had effect from the commencement of that paragraph as if “inserting the following subsection after subsection (3)” had appeared instead of “substituting the following subsection for subsection (4)”.

4. Full text of L.223/1991.

Legge 23 luglio 1991, n.223

Norme in materia di cassa integrazione, mobilità, trattamenti di disoccupazione, attuazione di direttive della Comunità europea, avviamento al lavoro ed altre disposizioni in materia di mercato del lavoro

(G.U. n. 175 del 27 luglio 1991)

artt. da 1 a 24

Titolo I

NORME IN MATERIA DI INTEGRAZIONE SALARIALE E DI ECCEDENZE DI PERSONALE

Capo I

Norme in materia di integrazione salariale

Art. 1

Norme in materia di intervento straordinario di integrazione salariale

1. La disciplina in materia di intervento straordinario di integrazione salariale trova applicazione limitatamente alle imprese che abbiano occupato mediamente più di quindici lavoratori nel semestre precedente la data di presentazione della richiesta di cui al comma 2. Nel caso di richieste presentate prima che siano trascorsi sei mesi dal trasferimento di azienda, tale requisito deve sussistere, per il datore di lavoro subentrante, nel periodo decorrente dalla data del predetto trasferimento. Ai fini dell'applicazione del presente comma vengono computati anche gli apprendisti ed i lavoratori assunti con contratto di formazione e lavoro. 2. La richiesta di intervento straordinario di integrazione salariale deve contenere il programma che l'impresa intende attuare con riferimento anche alle eventuali misure previste per fronteggiare le

conseguenze sul piano sociale. Il programma deve essere formulato in conformità ad un modello stabilito, sentito il Comitato interministeriale per il coordinamento della politica industriale (CIPI), con decreto del Ministro del lavoro e della previdenza sociale. L'impresa, sentite le rappresentanze sindacali aziendali o, in mancanza di queste, le organizzazioni sindacali di categoria dei lavoratori più rappresentative operanti nella provincia, può chiedere una modifica del programma nel corso del suo svolgimento. 3. La durata dei programmi di ristrutturazione, riorganizzazione o conversione aziendale non può essere superiore a due anni. Il CIPI ha facoltà di concedere due proroghe, ciascuna di durata non superiore a dodici mesi, per quelli tra i predetti programmi che presentino una particolare complessità in ragione delle caratteristiche tecniche dei processi produttivi dell'impresa. 4. Il contributo addizionale di cui all'art. 8, comma 1, del decreto-legge 21 marzo 1988, n. 86, convertito, con modificazioni, dalla legge 20 maggio 1988, n. 160, è dovuto in misura doppia a decorrere dal primo giorno del venticinquesimo mese successivo a quello in cui è fissata dal decreto ministeriale di concessione la data di decorrenza del trattamento di integrazione salariale. 5. La durata del programma per crisi aziendale non può essere superiore a dodici mesi. Una nuova erogazione per la medesima causale non può essere disposta prima che sia decorso un periodo pari a due terzi di quello relativo alla precedente concessione. 6. Il CIPI fissa, su proposta del Ministro del lavoro e della previdenza sociale, sentito il comitato tecnico di cui all'art. 19 della legge 28 febbraio 1986, n. 41, i criteri per l'individuazione dei casi di crisi aziendale, nonchè di quelli previsti dall'art. 11, comma 2, in relazione alle situazioni occupazionali nell'ambito territoriale e alla situazione produttiva dei settori, cui attenersi per la selezione dei casi di intervento, nonchè i criteri per l'applicazione dei commi 9 e 10. 7. I criteri di individuazione dei lavoratori da sospendere nonchè le modalità della rotazione prevista nel comma 8 devono formare oggetto delle comunicazioni e dell'esame congiunto previsti dall'art. 5 della legge 20 maggio 1975, n. 164. 8. Se l'impresa ritiene, per ragioni di ordine tecnico-organizzativo connesse al mantenimento dei normali livelli di efficienza, di non adottare meccanismi di rotazione tra i lavoratori che espletano le

medesime mansioni e sono occupati nell'unità produttiva interessata dalle sospensioni, deve indicarne i motivi nel programma di cui al comma 2. Qualora il CIPI abbia approvato il programma, ma ritenga non giustificati i motivi adottati dall'azienda per la mancata adozione della rotazione, il Ministro del lavoro e della previdenza sociale promuove l'accordo fra le parti sulla materia e, qualora tale accordo non sia stato raggiunto entro tre mesi dalla data del decreto di concessione del trattamento straordinario di integrazione salariale, stabilisce con proprio decreto l'adozione di meccanismi di rotazione, sulla base delle specifiche proposte formulate dalle parti. L'azienda, ove non ottemperi a quanto previsto in tale decreto, è tenuta, per ogni lavoratore sospeso, a corrispondere con effetto immediato, nella misura doppia, il contributo addizionale di cui all'art. 8, comma 1, del citato decreto-legge 21 marzo 1988, n. 86, convertito, con modificazioni, dalla legge 20 maggio 1988, n. 160. Il medesimo contributo, con effetto dal primo giorno del venticinquesimo mese successivo all'atto di concessione del trattamento di cassa integrazione, è maggiorato di una somma pari al centocinquanta per cento del suo ammontare.

9. Per ciascuna unità produttiva i trattamenti straordinari di integrazione salariale non possono avere una durata complessiva superiore a trentasei mesi nell'arco di un quinquennio, indipendentemente dalle cause per le quali sono stati concessi, ivi compresa quella prevista dall'art. 1 del decreto-legge 30 ottobre 1984, n. 726, convertito, con modificazioni, dalla legge 19 dicembre 1984, n. 863. Si computano, a tal fine, anche i periodi di trattamento ordinario concessi per contrazioni o sospensioni dell'attività produttiva determinate da situazioni temporanee di mercato. Il predetto limite può essere superato, secondo condizioni e modalità determinate dal CIPI ai sensi del comma 6, per i casi previsti dall'art. 3 della presente legge, dall'art. 1 del decreto-legge 30 ottobre 1984, n. 726, convertito, con modificazioni, dalla legge 19 dicembre 1984, n. 863, dall'art. 7 del decreto-legge 30 dicembre 1987, n. 536, convertito, con modificazioni, dalla legge 29 febbraio 1988, n. 48, ovvero per i casi di proroga di cui al comma 3.

10. Per le imprese che presentino un programma di ristrutturazione, riorganizzazione o conversione aziendale a seguito di una avvenuta significativa trasformazione del loro assetto proprietario, che abbia

determinato rilevanti apporti di capitali ed investimenti produttivi, non sono considerati, ai fini dell'applicazione del comma 9, i periodi antecedenti la data della trasformazione medesima. 11. L'impresa non può richiedere l'intervento straordinario di integrazione salariale per le unità produttive per le quali abbia richiesto, con riferimento agli stessi periodi, l'intervento ordinario.

Art. 2

Procedure

1. Il trattamento straordinario di integrazione salariale è concesso mediante decreto del Ministro del lavoro e della previdenza sociale, previa approvazione del programma, di cui all'art. 1, comma 2, da parte del CIPI, per la durata prevista nel programma medesimo. 2. Le modifiche e le proroghe dei programmi di cui all'art. 1, commi 2 e 3, sono approvate dal Ministro del lavoro e della previdenza sociale nel caso in cui i lavoratori interessati alle integrazioni salariali siano in numero pari o inferiore a cento unità; sono approvate dal CIPI negli altri casi. 3. Successivamente al primo semestre l'erogazione del trattamento è autorizzata, su domanda, dal Ministro del lavoro e della previdenza sociale per periodi semestrali subordinatamente all'esito positivo dell'accertamento sulla regolare attuazione del programma da parte dell'impresa. 4. La richiesta del trattamento straordinario di integrazione salariale deve essere presentata nel termine previsto dal primo comma dell'art. 7 della legge 20 maggio 1975, n. 164, all'Ufficio regionale del lavoro e della massima occupazione ed all'Ispettorato regionale del lavoro territorialmente competenti. Nel caso di presentazione tardiva della richiesta si applica il secondo comma del predetto art. 7. 5. L'Ufficio regionale del lavoro e della massima occupazione, sulla base degli accertamenti disposti dall'Ispettorato regionale del lavoro, esprime il parere previsto dal primo comma dell'art. 8 della legge 8 agosto 1972, n. 464, entro trenta giorni dalla data di presentazione della domanda. 6. Il Ministro del lavoro e della previdenza sociale può disporre il pagamento diretto ai lavoratori, da parte dell'INPS, del trattamento straordinario di integrazione salariale, con il connesso assegno per il nucleo

familiare, ove spettante, quando per l'impresa ricorrano comprovate difficoltà di ordine finanziario accertate dall'Ispettorato provinciale del lavoro territorialmente competente. Restano fermi gli obblighi del datore di lavoro in ordine alle comunicazioni prescritte nei confronti dell'INPS. 7. Entro trenta giorni dalla data di entrata in vigore della presente legge, con la procedura prevista dall'art. 19, comma 5, della legge 28 febbraio 1986, n. 41, viene stabilita la nuova composizione del comitato tecnico di cui all'art. 1, comma 6, della presente legge, e vengono fissati i criteri e le modalità per l'assunzione delle determinazioni riguardanti l'istruttoria tecnica selettiva. Con lo stesso decreto viene stabilita la misura del compenso da corrispondere ai componenti del comitato tecnico. Al relativo onere, valutato in lire 80 milioni in ragione d'anno a partire dal 1991, si provvede a carico del capitolo 1025 dello stato di previsione del Ministero del bilancio e della programmazione economica per l'anno 1991 e corrispondenti capitoli per gli anni successivi.

Art. 3

Intervento straordinario di integrazione salariale e procedure concorsuali

1. Il trattamento straordinario di integrazione salariale è concesso, con decreto del Ministro del lavoro e della previdenza sociale, ai lavoratori delle imprese soggette alla disciplina dell'intervento straordinario di integrazione salariale, nei casi di dichiarazione di fallimento, di omologazione del concordato preventivo consistente nella cessione dei beni, di emanazione del provvedimento di liquidazione coatta amministrativa ovvero di sottoposizione all'amministrazione straordinaria, qualora la continuazione dell'attività non sia stata disposta o sia cessata. Il trattamento viene concesso, su domanda del curatore, del liquidatore o del commissario, per un periodo non superiore a dodici mesi. 2. Entro il termine di scadenza del periodo di cui al comma 1, quando sussistano fondate prospettive di continuazione o ripresa dell'attività e di salvaguardia, anche parziale, dei livelli di occupazione tramite la cessione, a qualunque titolo, dell'azienda o di sue parti, il trattamento straordinario di integrazione salariale può essere prorogato, su domanda del curatore, del

liquidatore o del commissario, previo accertamento da parte del CIPI, per un ulteriore periodo non superiore a sei mesi. La domanda deve essere corredata da una relazione, approvata dal giudice delegato o dall'autorità che esercita il controllo, sulle prospettive di cessione dell'azienda o di sue parti e sui riflessi della cessione sull'occupazione aziendale. 3. Quando non sia possibile la continuazione dell'attività, anche tramite cessione dell'azienda o di sue parti, o quando i livelli occupazionali possano essere salvaguardati solo parzialmente, il curatore, il liquidatore o il commissario hanno facoltà di collocare in mobilità, ai sensi dell'art. 4 ovvero dell'art. 24, i lavoratori eccedenti. In tali casi il termine di cui all'art. 4, comma 6, è ridotto a trenta giorni. Il contributo a carico dell'impresa previsto dall'art. 5, comma 4, non è dovuto. 4. L'imprenditore che, a titolo di affitto, abbia assunto la gestione, anche parziale, di aziende appartenenti ad imprese assoggettate alle procedure di cui al comma 1, può esercitare il diritto di prelazione nell'acquisto delle medesime. Una volta esaurite le procedure previste dalle norme vigenti per la definitiva determinazione del prezzo di vendita dell'azienda, l'autorità che ad essa proceda provvede a comunicare entro dieci giorni il prezzo così stabilito all'imprenditore cui sia riconosciuto il diritto di prelazione. Tale diritto deve essere esercitato entro cinque giorni dal ricevimento della comunicazione. 5. Sono abrogati l'art. 2 della legge 27 luglio 1979, n. 301 e successive modificazioni, e l'art. 2 del decreto-legge 21 febbraio 1985, n. 23, convertito, con modificazioni, dalla legge 22 aprile 1985, n. 143 e successive modificazioni.

Titolo I

NORME IN MATERIA DI INTEGRAZIONE SALARIALE E DI ECCEDENZE DI PERSONALE

Capo II

Norme in materia di mobilità.

Art. 4

Procedura per la dichiarazione di mobilità

1. L'impresa che sia stata ammessa al trattamento straordinario di integrazione salariale, qualora nel corso di attuazione del programma di cui all'art. 1 ritenga di non essere in grado di garantire il reimpiego a tutti i lavoratori sospesi e di non poter ricorrere a misure alternative, ha facoltà di avviare le procedure di mobilità ai sensi del presente articolo. 2. Le imprese che intendano esercitare la facoltà di cui al comma 1 sono tenute a darne comunicazione preventiva per iscritto alle rappresentanze sindacali aziendali costituite a norma dell'art. 19 della legge 20 maggio 1970, n. 300, nonchè alle rispettive associazioni di categoria. In mancanza delle predette rappresentanze la comunicazione deve essere effettuata alle associazioni di categoria aderenti alle confederazioni maggiormente rappresentative sul piano nazionale. La comunicazione alle associazioni di categoria può essere effettuata per il tramite dell'associazione dei datori di lavoro alla quale l'impresa aderisce o conferisce mandato. 3. La comunicazione di cui al comma 2 deve contenere indicazione: dei motivi che determinano la situazione di eccedenza; dei motivi tecnici, organizzativi o produttivi, per i quali si ritiene di non poter adottare misure idonee a porre rimedio alla predetta situazione ed evitare, in tutto o in parte, la dichiarazione di mobilità; del numero, della collocazione aziendale e dei profili professionali del personale eccedente; dei tempi di attuazione del programma di mobilità; delle eventuali misure programmate per fronteggiare le conseguenze sul piano sociale della attuazione del programma medesimo. Alla comunicazione va allegata copia della ricevuta del versamento all'INPS, a titolo di anticipazione sulla somma di cui all'art. 5, comma 4, di una somma pari al trattamento massimo mensile di integrazione salariale moltiplicato per il numero dei lavoratori ritenuti eccedenti. 4. Copia della comunicazione di cui al comma 2 e della ricevuta del versamento di cui al comma 3 devono essere contestualmente inviate all'Ufficio provinciale del lavoro e della massima occupazione. 5. Entro sette giorni dalla data del ricevimento della comunicazione di cui al comma 2, a richiesta delle rappresentanze sindacali aziendali e delle rispettive associazioni

si procede ad un esame congiunto tra le parti, allo scopo di esaminare le cause che hanno contribuito a determinare l'eccedenza del personale e le possibilità di utilizzazione diversa di tale personale, o di una sua parte, nell'ambito della stessa impresa, anche mediante contratti di solidarietà e forme flessibili di gestione del tempo di lavoro. 6. La procedura di cui al comma 5 deve essere esaurita entro quarantacinque giorni dalla data del ricevimento della comunicazione dell'impresa. Quest'ultima dà all'Ufficio provinciale del lavoro e della massima occupazione comunicazione scritta sul risultato della consultazione e sui motivi del suo eventuale esito negativo. Analoga comunicazione scritta può essere inviata dalle associazioni sindacali dei lavoratori. 7. Qualora non sia stato raggiunto l'accordo, il direttore dell'Ufficio provinciale del lavoro e della massima occupazione convoca le parti al fine di un ulteriore esame delle materie di cui al comma 5, anche formulando proposte per la realizzazione di un accordo. Tale esame deve comunque esaurirsi entro trenta giorni dal ricevimento da parte dell'Ufficio provinciale del lavoro e della massima occupazione della comunicazione dell'impresa prevista al comma 6. 8. Qualora il numero dei lavoratori interessati dalla procedura di mobilità sia inferiore a dieci, i termini di cui ai commi 6 e 7 sono ridotti alla metà.

9. Raggiunto l'accordo sindacale ovvero esaurita la procedura di cui ai commi 6, 7 e 8, l'impresa ha facoltà di collocare in mobilità gli impiegati, gli operai e i quadri eccedenti, comunicando per iscritto a ciascuno di essi il recesso, nel rispetto dei termini di preavviso. Contestualmente, l'elenco dei lavoratori collocati in mobilità, con l'indicazione per ciascun soggetto del nominativo, del luogo di residenza, della qualifica, del livello di inquadramento, dell'età, del carico di famiglia, nonchè con puntuale indicazione delle modalità con le quali sono stati applicati i criteri di scelta di cui all'art. 5, comma 1, deve essere comunicato per iscritto all'Ufficio regionale del lavoro e della massima occupazione competente, alla Commissione regionale per l'impiego e alle associazioni di categoria di cui al comma 2. 10. Nel caso in cui l'impresa rinunci a collocare in mobilità i lavoratori o ne collochi un numero inferiore a quello risultante dalla comunicazione di cui al comma 2, la stessa procede al recupero delle somme pagate in eccedenza rispetto a quella dovuta ai sensi

dell'art. 5, comma 4, mediante conguaglio con i contributi dovuti all'INPS, da effettuarsi con il primo versamento utile successivo alla data di determinazione del numero dei lavoratori posti in mobilità. 11. Gli accordi sindacali stipulati nel corso delle procedure di cui al presente articolo, che prevedano il riassorbimento totale o parziale dei lavoratori ritenuti eccedenti, possono stabilire, anche in deroga al secondo comma dell'art. 2103 del codice civile, la loro assegnazione a mansioni diverse da quelle svolte. 12. Le comunicazioni di cui al comma 9 sono prive di efficacia ove siano state effettuate senza l'osservanza della forma scritta e delle procedure previste dal presente articolo. 13. I lavoratori ammessi al trattamento di cassa integrazione, al termine del periodo di godimento del trattamento di integrazione salariale, rientrano in azienda. 14. Il presente articolo non trova applicazione nel caso di eccedenze determinate da fine lavoro nelle imprese edili e nelle attività stagionali o saltuarie, nonchè per i lavoratori assunti con contratto di lavoro a tempo determinato. 15. Nei casi in cui l'eccedenza riguardi unità produttive ubicate in diverse province della stessa regione ovvero in più regioni, la competenza a promuovere l'accordo di cui al comma 7 spetta rispettivamente al direttore dell'Ufficio regionale del lavoro e della massima occupazione ovvero al Ministro del lavoro e della previdenza sociale. Agli stessi vanno inviate le comunicazioni previste dal comma 4. 16. Sono abrogati gli articoli 24 e 25 della legge 12 agosto 1977, n. 675, le disposizioni del decreto-legge 30 marzo 1978, n. 80, convertito, con modificazioni, dalla legge 26 maggio 1978, n. 215, ad eccezione dell'art. 4-bis, nonchè il decreto-legge 13 dicembre 1978, n. 795, convertito, con modificazioni, dalla legge 9 febbraio 1979, n. 36.

Art. 5

Criteri di scelta dei lavoratori ed oneri a carico delle imprese

1. L'individuazione dei lavoratori da collocare in mobilità deve avvenire, in relazione alle esigenze tecnico-produttive ed organizzative del complesso aziendale, nel rispetto dei criteri previsti da contratti collettivi stipulati con i sindacati di cui all'art. 4, comma 2, ovvero in mancanza di questi contratti, nel

rispetto dei seguenti criteri, in concorso tra loro: a) carichi di famiglia; b) anzianità; c) esigenze tecnico-produttive ed organizzative. 2. Nell'operare la scelta dei lavoratori da collocare in mobilità, l'impresa è tenuta al rispetto dell'art. 9, ultimo comma, del decreto-legge 29 gennaio 1983, n. 17, convertito, con modificazioni, dalla legge 25 marzo 1983, n. 79. 3. Il recesso di cui all'art. 4, comma 9, è inefficace qualora sia intimato senza l'osservanza della forma scritta o in violazione delle procedure richiamate all'art. 4, comma 12, ed è annullabile in caso di violazione dei criteri di scelta previsti dal comma 1 del presente articolo. Salvo il caso di mancata comunicazione per iscritto, il recesso può essere impugnato entro sessanta giorni dal ricevimento della comunicazione con qualsiasi atto scritto, anche extragiudiziale, idoneo a rendere nota la volontà del lavoratore anche attraverso l'intervento delle organizzazioni sindacali. Al recesso di cui all'art. 4, comma 9, del quale sia stata dichiarata l'inefficacia o l'invalidità, si applica l'art. 18 della legge 20 maggio 1970, n. 300 e successive modificazioni. 4. Per ciascun lavoratore posto in mobilità l'impresa è tenuta a versare alla gestione degli interventi assistenziali e di sostegno alle gestioni previdenziali, di cui all'art. 37 della legge 9 marzo 1989, n. 88, in trenta rate mensili, una somma pari a sei volte il trattamento mensile iniziale di mobilità spettante al lavoratore. Tale somma è ridotta alla metà quando la dichiarazione di eccedenza del personale di cui all'art. 4, comma 9, abbia formato oggetto di accordo sindacale. 5. L'impresa che, secondo le procedure determinate dalla Commissione regionale per l'impiego, procuri offerte di lavoro a tempo indeterminato aventi le caratteristiche di cui all'art. 9, comma 1, lettera b), non è tenuta al pagamento delle rimanenti rate relativamente ai lavoratori che perdano il diritto al trattamento di mobilità in conseguenza del rifiuto di tali offerte ovvero per tutto il periodo in cui essi, accettando le offerte procurate dalla impresa, abbiano prestato lavoro. 6. Qualora il lavoratore venga messo in mobilità dopo la fine del dodicesimo mese successivo a quello di emanazione del decreto di cui all'art. 2, comma 1, e la fine del dodicesimo mese successivo a quello del completamento del programma di cui all'art. 1, comma 2, nell'unità produttiva in cui il lavoratore era occupato, la somma che l'impresa è tenuta a versare ai

sensi del comma 4 del presente articolo è aumentata di cinque punti percentuali per ogni periodo di trenta giorni intercorrente tra l'inizio del tredicesimo mese e la data di completamento del programma. Nel medesimo caso non trova applicazione quanto previsto dal secondo comma dell'art. 2 della legge 8 agosto 1972, n. 464.

Art. 6

Lista di mobilità e compiti della Commissione regionale per l'impiego

1. L'Ufficio regionale del lavoro e della massima occupazione, sulla base delle direttive impartite dal Ministero del lavoro e della previdenza sociale, sentita la Commissione centrale per l'impiego, dopo un'analisi tecnica da parte dell'Agenzia per l'impiego compila una lista dei lavoratori in mobilità, sulla base di schede che contengano tutte le informazioni utili per individuare la professionalità, la preferenza per una mansione diversa da quella originaria, la disponibilità al trasferimento sul territorio; in questa lista vengono iscritti anche i lavoratori di cui agli articoli 11, comma 2, e 16, e vengono esclusi quelli che abbiano fatto richiesta dell'anticipazione di cui all'art. 7, comma 5. 2. La Commissione regionale per l'impiego approva le liste di cui al comma 1 ed inoltre; a) assume ogni iniziativa utile a favorire il reimpiego dei lavoratori iscritti nella lista di mobilità, in collaborazione con l'Agenzia per l'impiego; b) propone l'organizzazione, da parte delle Regioni, di corsi di qualificazione e di riqualificazione professionale che, tenuto conto del livello di professionalità dei lavoratori in mobilità, siano finalizzati ad agevolarne il reimpiego; i lavoratori interessati sono tenuti a parteciparvi quando le Commissioni regionali ne dispongano l'avviamento; c) promuove le iniziative di cui al comma 4; d) determina gli ambiti circoscrizionali ai fini dell'avviamento dei lavoratori in mobilità. 3. Le regioni, nell'autorizzare i progetti per l'accesso al Fondo sociale europeo e al Fondo di rotazione, ai sensi del secondo comma dell'art. 24 della legge 21 dicembre 1978, n. 845, devono dare priorità ai progetti formativi che prevedono l'assunzione di lavoratori iscritti nella lista di mobilità. 4. Su richiesta delle amministrazioni pubbliche la Commissione regionale per

l'impiego può disporre l'utilizzo temporaneo dei lavoratori iscritti nella lista di mobilità in opere o servizi di pubblica utilità, ai sensi dell'art. 1-bis del decreto-legge 28 maggio 1981, n. 244, convertito, con modificazioni, dalla legge 24 luglio 1981, n. 390, modificato dall'art. 8 della legge 28 febbraio 1986, n. 41, e dal decreto-legge 21 marzo 1988, n. 86, convertito, con modificazioni, dalla legge 20 maggio 1988, n. 160. Il secondo comma del citato art. 1-bis non si applica nei casi in cui l'amministrazione pubblica interessata utilizzi i lavoratori per un numero di ore ridotto e proporzionato ad una somma corrispondente al trattamento di mobilità spettante al lavoratore ridotta del venti per cento. 5. I lavoratori in mobilità sono compresi tra i soggetti di cui all'art. 14, comma 1, lettera a), della legge 27 febbraio 1985, n. 49.

Art. 7

Indennità di mobilità

1. I lavoratori collocati in mobilità ai sensi dell'art. 4, che siano in possesso dei requisiti di cui all'art. 16, comma 1, hanno diritto ad una indennità per un periodo massimo di dodici mesi, elevato a ventiquattro per i lavoratori che hanno compiuto i quaranta anni e a trentasei per i lavoratori che hanno compiuto i cinquanta anni. L'indennità spetta nella misura percentuale, di seguito indicata, del trattamento straordinario di integrazione salariale che hanno percepito ovvero che sarebbe loro spettato nel periodo immediatamente precedente la risoluzione del rapporto di lavoro: a) per i primi dodici mesi: cento per cento; b) dal tredicesimo al trentaseiesimo mese: ottanta per cento. 2. Nelle aree di cui al testo unico approvato con decreto del Presidente della Repubblica 6 marzo 1978, n. 218, la indennità di mobilità è corrisposta per un periodo massimo di ventiquattro mesi, elevato a trentasei per i lavoratori che hanno compiuto i quaranta anni e a quarantotto per i lavoratori che hanno compiuto i cinquanta anni. Essa spetta nella seguente misura: a) per i primi dodici mesi: cento per cento; b) dal tredicesimo al quarantottesimo mese: ottanta per cento. 3. L'indennità di mobilità è adeguata, con effetto dal 1 gennaio di ciascun anno, in misura pari all'aumento della indennità di

contingenza dei lavoratori dipendenti. Essa non è comunque corrisposta successivamente alla data del compimento dell'età pensionabile ovvero, se a questa data non è ancora maturato il diritto alla pensione di vecchiaia, successivamente alla data in cui tale diritto viene a maturazione. 4. L'indennità di mobilità non può comunque essere corrisposta per un periodo superiore all'anzianità maturata dal lavoratore alle dipendenze dell'impresa che abbia attivato la procedura di cui all'art. 4. 5. I lavoratori in mobilità che ne facciano richiesta per intraprendere un'attività autonoma o per associarsi in cooperativa in conformità alle norme vigenti possono ottenere la corresponsione anticipata dell'indennità nelle misure indicate nei commi 1 e 2, detraendone il numero di mensilità già godute. Fino al 31 dicembre 1992, per i lavoratori in mobilità delle aree di cui al comma 2 che abbiano compiuto i cinquanta anni di età, questa somma è aumentata di un importo pari a quindici mensilità dell'indennità iniziale di mobilità e comunque non superiore al numero dei mesi mancanti al compimento dei sessanta anni di età. Per questi ultimi lavoratori il requisito di anzianità aziendale di cui all'art. 16, comma 1, è elevato in misura pari al periodo trascorso tra la data di entrata in vigore della presente legge e quella del loro collocamento in mobilità. Le somme corrisposte a titolo di anticipazione dell'indennità di mobilità sono cumulabilità con il beneficio di cui all'art. 17 della legge 27 febbraio 1985, n. 49. Con decreto del Ministro del lavoro e della previdenza sociale, di concerto con il Ministro del tesoro, sono determinate le modalità e le condizioni per la corresponsione anticipata dell'indennità di mobilità, le modalità per la restituzione nel caso in cui il lavoratore, nei ventiquattro mesi successivi a quello della corresponsione, assuma una occupazione alle altrui dipendenze nel settore privato o in quello pubblico, nonché le modalità per la riscossione delle somme di cui all'art. 5, commi 4 e 6. 6. Nelle aree di cui al comma 2 nonché nell'ambito delle circoscrizioni o nel maggior ambito determinato dalla Commissione regionale per l'impiego, in cui sussista un rapporto superiore alla media nazionale tra iscritti alla prima classe della lista di collocamento e popolazione residente in età da lavoro, ai lavoratori collocati in mobilità entro la data del 31 dicembre 1992 che, al momento della cessazione del rapporto, abbiano compiuto un'età inferiore di non più di cinque

anni rispetto a quella prevista dalla legge per il pensionamento di vecchiaia, e possano far valere, nell'assicurazione generale obbligatoria per l'invalidità, la vecchiaia e i superstiti, un'anzianità contributiva non inferiore a quella minima prevista per il predetto pensionamento, diminuita del numero di settimane mancanti alla data di compimento dell'età pensionabile, l'indennità di mobilità è prolungata fino a quest'ultima data. La misura dell'indennità per i periodi successivi a quelli previsti nei commi 1 e 2 è dell'ottanta per cento. 7. Negli ambiti di cui al comma 6, ai lavoratori collocati in mobilità entro la data del 31 dicembre 1992 che, al momento della cessazione del rapporto, abbiano compiuto un'età inferiore di non più di dieci anni rispetto a quella prevista dalla legge per il pensionamento di vecchiaia e possano far valere, nell'assicurazione generale obbligatoria per l'invalidità, la vecchiaia e i superstiti, un'anzianità contributiva non inferiore a ventotto anni, l'indennità di mobilità spetta fino alla data di maturazione del diritto al pensionamento di anzianità. Per i lavoratori dipendenti anteriormente alla data del 1 gennaio 1991 dalle società non operative della Società di Gestione e Partecipazioni Industriali SpA (GEPI) e della Iniziative Sardegna SpA (INSAR) si prescinde dal requisito dell'anzianità contributiva; l'indennità di mobilità non può comunque essere corrisposta per un periodo superiore a dieci anni. 8. L'indennità di mobilità sostituisce ogni altra prestazione di disoccupazione nonché le indennità di malattia e di maternità eventualmente spettanti. 9. I periodi di godimento dell'indennità di mobilità, ad esclusione di quelli per i quali si fa luogo alla corresponsione anticipata ai sensi del comma 5, sono riconosciuti d'ufficio utili ai fini del conseguimento del diritto alla pensione e ai fini della determinazione della misura della pensione stessa. Per detti periodi il contributo figurativo è calcolato sulla base della retribuzione cui è riferito il trattamento straordinario di integrazione salariale di cui al comma 1. Le somme occorrenti per la copertura della contribuzione figurativa sono versate dalla gestione di cui al comma 11 alle gestioni pensionistiche competenti. 10. Per i periodi di godimento dell'indennità di mobilità spetta l'assegno per il nucleo familiare di cui all'art. 2 del decreto-legge 13 marzo 1988, n. 69, convertito, con modificazioni, dalla legge 13 maggio 1988, n. 153. 11. I datori di lavoro, ad

eccezione di quelli edili, rientranti nel campo di applicazione della normativa che disciplina l'intervento straordinario di integrazione salariale, versano alla gestione di cui all'art. 37 della legge 9 marzo 1989, n. 88, un contributo transitorio calcolato con riferimento alle retribuzioni assoggettate al contributo integrativo per l'assicurazione obbligatoria contro la disoccupazione involontaria, in misura pari a 0,35 punti di aliquota percentuale a decorrere dal periodo di paga in corso alla data di entrata in vigore della presente legge e fino al periodo di paga in corso al 31 dicembre 1991 ed in misura pari a 0,43 punti di aliquota percentuale a decorrere dal periodo di paga successivo a quello in corso al 31 dicembre 1991 fino a tutto il periodo di paga in corso al 31 dicembre 1992; i datori di lavoro tenuti al versamento del contributo transitorio sono esonerati, per i periodi corrispondenti e per i corrispondenti punti di aliquota percentuale, dal versamento del contributo di cui all'art. 22 della legge 11 marzo 1988, n. 67, per la parte a loro carico. 12. L'indennità prevista dal presente articolo è regolata dalla normativa che disciplina l'assicurazione obbligatoria contro la disoccupazione involontaria, in quanto applicabile, nonchè dalle disposizioni di cui all'art. 37 della legge 9 marzo 1989, n. 88. 13. Per i giornalisti l'indennità prevista dal presente articolo è a carico dell'Istituto nazionale di previdenza dei giornalisti italiani. Le somme e i contributi di cui al comma 11 e all'art. 4, comma 3, sono dovuti al predetto Istituto. Ad esso vanno inviate le comunicazioni relative alle procedure previste dall'art. 4, comma 10, nonchè le comunicazioni di cui all'art. 9, comma 3. 14. É abrogato l'art. 12 della legge 5 novembre 1968, n. 1115 e successive modificazioni.

15. In caso di squilibrio finanziario delle gestioni nei primi tre anni successivi a quello di entrata in vigore della presente legge, il Ministro del tesoro, di concerto con il Ministro del lavoro e della previdenza sociale, adegua i contributi di cui al presente articolo nella misura necessaria a ripristinare l'equilibrio di tali gestioni.

Art. 8

Collocamento dei lavoratori in mobilità

1. Per i lavoratori in mobilità, ai fini del collocamento, si applica il diritto di precedenza nell'assunzione di cui al sesto comma dell'art. 15 della legge 29 aprile 1949, n. 264 e successive modificazioni ed integrazioni. 2. I lavoratori in mobilità possono essere assunti con contratto di lavoro a termine di durata non superiore a dodici mesi. La quota di contribuzione a carico del datore di lavoro è pari a quella prevista per gli apprendisti dalla legge 19 gennaio 1955, n. 25 e successive modificazioni. Nel caso in cui, nel corso del suo svolgimento, il predetto contratto venga trasformato a tempo indeterminato, il beneficio contributivo spetta per ulteriori dodici mesi in aggiunta a quello previsto dal comma 4. 3. Per i lavoratori in mobilità si osservano, in materia di limiti di età, ai fini degli avviamenti di cui all'art. 16 della legge 28 febbraio 1987, n. 56 e successive modificazioni ed integrazioni, le disposizioni dell'art. 2 della legge 22 agosto 1985, n. 444. Ai fini dei predetti avviamenti le Commissioni regionali per l'impiego stabiliscono, tenendo conto anche del numero degli iscritti nelle liste di collocamento, la percentuale degli avviamenti da riservare ai lavoratori iscritti nella lista di mobilità. 4. Al datore di lavoro che, senza esservi tenuto ai sensi del comma 1, assuma a tempo pieno e indeterminato i lavoratori iscritti nella lista di mobilità è concesso, per ogni mensilità di retribuzione corrisposta al lavoratore, un contributo mensile pari al cinquanta per cento della indennità di mobilità che sarebbe stata corrisposta al lavoratore. Il predetto contributo non può essere erogato per un numero di mesi superiore a dodici e, per i lavoratori di età superiore a cinquanta anni, per un numero superiore a ventiquattro mesi, ovvero a trentasei mesi per le aree di cui all'art. 7, comma 6. Il presente comma non trova applicazione per i giornalisti. 5. Nei confronti dei lavoratori iscritti nella lista di mobilità trova applicazione quanto previsto dall'art. 27 della legge 12 agosto 1977, n. 675. 6. Il lavoratore in mobilità ha facoltà di svolgere attività di lavoro subordinato, a tempo parziale, ovvero a tempo determinato, mantenendo l'iscrizione nella lista. 7. Per le giornate di lavoro svolte ai sensi del comma 6, nonché per quelle dei periodi di prova di cui all'art. 9, comma 7, i trattamenti e le indennità di cui agli articoli 7, 11, comma 2, e 16 sono sospesi. Tali giornate non sono computate ai fini della determinazione del periodo di durata dei predetti trattamenti fino al

raggiungimento di un numero di giornate pari a quello dei giorni complessivi di spettanza del trattamento. 8. I trattamenti e i benefici di cui al presente articolo rientrano nella sfera di applicazione dell'art. 37 della legge 9 marzo 1989, n. 88

Art. 9

Cancellazione del lavoratore dalla lista di mobilità

1. Il lavoratore è cancellato dalla lista di mobilità e decade dai trattamenti e dalle indennità di cui agli articoli 7, 11, comma 2, e 16, quando: a) rifiuti di essere avviato ad un corso di formazione professionale autorizzato dalla Regione o non lo frequenti regolarmente; b) non accetti l'offerta di un lavoro che sia professionalmente equivalente ovvero, in mancanza di questo, che presenti omogeneità anche intercategoriale e che, avendo riguardo ai contratti collettivi nazionali di lavoro, sia inquadrato in un livello retributivo non inferiore del dieci per cento rispetto a quello delle mansioni di provenienza;

c) non accetti, in mancanza di un lavoro avente le caratteristiche di cui alla lettera b), di essere impiegato in opere o servizi di pubblica utilità ai sensi dell'art. 6, comma 4; d) non abbia provveduto a dare preventiva comunicazione alla competente sede dell'INPS del lavoro prestato ai sensi dell'art. 8, comma 6.

2. Le disposizioni di cui al comma 1 si applicano quando le attività lavorative o di formazione offerte al lavoratore iscritto nella lista di mobilità si svolgono in un luogo distante non più di cinquanta chilometri, o comunque raggiungibile in sessanta minuti con mezzi pubblici, dalla residenza del lavoratore. 3. La cancellazione dalla lista di mobilità ai sensi del comma 1 è dichiarata entro quindici giorni in via definitiva dalla Commissione regionale per l'impiego. Ove la Commissione non si pronunci entro tale termine, la decadenza è dichiarata dal direttore dell'Ufficio regionale del lavoro e della massima occupazione nei successivi dieci giorni. È data immediata comunicazione della decisione adottata all'INPS. 4. La Commissione regionale per l'impiego, tenuto conto delle caratteristiche del territorio e dei servizi pubblici esistenti in esso, può modificare con delibera motivata i limiti previsti al comma 2 relativi alla dislocazione geografica del posto di lavoro offerto. 5. Qualora il lavoro offerto

ai sensi del comma 1, lettera b), sia inquadrato in un livello retributivo inferiore a quello corrispondente alle mansioni di provenienza, il lavoratore che accetti tale offerta ha diritto, per un periodo massimo complessivo di dodici mesi, alla corresponsione di un assegno integrativo mensile di importo pari alla differenza tra i corrispondenti livelli retributivi previsti dai contratti collettivi nazionali di lavoro. 6. Il lavoratore è cancellato dalla lista di mobilità, oltre che nei casi di cui al comma 1, quando: a) sia stato assunto con contratto a tempo pieno ed indeterminato; b) si sia avvalso della facoltà di percepire in un'unica soluzione l'indennità di mobilità; c) sia scaduto il periodo di godimento dei trattamenti e delle indennità di cui agli articoli 7, 11, comma 2, e 16. 7. Il lavoratore assunto a tempo pieno e indeterminato, che non abbia superato il periodo di prova, viene reinscritto al massimo per due volte nella lista di mobilità. La Commissione regionale per l'impiego, con il voto favorevole dei tre quarti dei suoi componenti, può disporre in casi eccezionali la reinscrizione del lavoratore nella lista di mobilità per una terza volta. 8. Il lavoratore avviato e giudicato non idoneo alla specifica attività cui l'avviamento si riferisce, a seguito di eventuale visita medica effettuata presso strutture sanitarie pubbliche, viene reinscritto nella lista di mobilità. 9. I lavoratori di cui all'art. 7, comma 6, nel caso in cui svolgano attività di lavoro subordinato od autonomo hanno facoltà di cumulare l'indennità di mobilità nei limiti in cui sia utile a garantire la percezione di un reddito pari alla retribuzione spettante al momento della messa in mobilità, rivalutato in misura corrispondente alla variazione dell'indice del costo della vita calcolato dall'Istituto nazionale di statistica (ISTAT) ai fini della scala mobile delle retribuzioni dei lavoratori dell'industria. Ai fini della determinazione della retribuzione pensionabile, a tali lavoratori è data facoltà di far valere, in luogo della contribuzione relativa a periodi, anche parziali, di lavoro prestato successivamente alla data della messa in mobilità, la contribuzione figurativa che per gli stessi periodi sarebbe stata accreditata. 10. Il trattamento previsto dal presente articolo rientra nella sfera di applicazione dell'art. 37 della legge 9 marzo 1989, n. 88.

Titolo I

NORME IN MATERIA DI INTEGRAZIONE SALARIALE E DI ECCEDENZE DI PERSONALE

Capo III

Norme in materia di cassa integrazione e trattamenti di disoccupazione per i lavoratori del settore dell'edilizia.

Art. 10

Norme in materia di integrazione salariale per i lavoratori del settore dell'edilizia

1. Le disposizioni di cui all'art. 1 della legge 3 febbraio 1963, n. 77, si applicano anche nel caso di eventi, non imputabili al datore di lavoro o al lavoratore, connessi al mancato rispetto dei termini previsti nei contratti di appalto per la realizzazione di opere pubbliche di grandi dimensioni, alle varianti di carattere necessario apportate ai progetti originari delle predette opere, nonché ai provvedimenti dell'autorità giudiziaria emanati ai sensi della legge 31 maggio 1965, n. 575 e successive modificazioni ed integrazioni. 2. Nei casi di sospensione dal lavoro derivante dagli eventi di cui al comma 1, il trattamento ordinario di integrazione salariale è concesso, per ciascuna opera, per un periodo complessivamente non superiore a tre mesi a favore dei lavoratori per i quali siano stati versati o siano dovuti per il lavoro prestato nel settore dell'edilizia, almeno sei contributi mensili o ventisei contributi settimanali nel biennio precedente alla decorrenza del trattamento medesimo. Tale trattamento è prorogabile per periodi trimestrali, per un periodo massimo complessivamente non superiore ad un quarto della durata dei lavori necessari per il completamento dell'opera, quale risulta dalle clausole contrattuali. La concessione delle proroghe è disposta dal Ministro del lavoro e della previdenza sociale, su proposta del Ministro dei lavori pubblici, sentite le organizzazioni sindacali dei lavoratori e dei datori di lavoro, previo accertamento da parte del

CIPI della natura e della durata delle cause di interruzione, dell'eventuale esistenza di responsabilità in ordine agli eventi produttivi delle sospensioni intervenute, nonchè dell'esistenza di concrete prospettive di ripresa. Il relativo trattamento è erogato dalla gestione di cui all'art. 24 della legge 9 marzo 1989, n. 88. 3. Il periodo nel quale è concesso il trattamento di cui al comma 2 non concorre alla configurazione del limite massimo di cui all'art. 1 della legge 6 agosto 1975, n. 427. 4. L'ente appaltante o l'azienda che avrebbe potuto prevedere l'evento di cui al comma 1 con la diligenza prevista dal primo comma dell'art. 1176 del codice civile è tenuto a rimborsare alla gestione di cui al comma 2 le somme da essa erogate ai sensi del presente articolo, con rivalutazione monetaria ed interessi legali decorrenti dalla data dell'erogazione. L'INPS promuove l'azione di recupero. 5. Entro sessanta giorni dalla data di entrata in vigore della presente legge il CIPI, integrato dal Ministro dei lavori pubblici, su proposta del Ministro del lavoro e della previdenza sociale determina i criteri e le modalità di attuazione di quanto disposto dal presente articolo.

Art. 11

Norme in materia di trattamento speciale di disoccupazione per i lavoratori licenziati da imprese edili ed affini

1. All'art. 9 della legge 6 agosto 1975, n. 427, i commi secondo e terzo sono sostituiti dal seguente: <<Hanno diritto al trattamento speciale i lavoratori di cui al primo comma per i quali, nel biennio antecedente la data di cessazione del rapporto di lavoro, siano stati versati o siano dovuti all'assicurazione obbligatoria per la disoccupazione involontaria almeno dieci contributi mensili o quarantatrè contributi settimanali per il lavoro prestato nel settore dell'edilizia>>. 2. Nelle aree nelle quali il CIPI, su proposta del Ministro del lavoro e della previdenza sociale, accerta la sussistenza di uno stato di grave crisi dell'occupazione conseguente al previsto completamento di impianti industriali o di opere pubbliche di grandi dimensioni, ai lavoratori edili che siano stati impegnati, in tali aree e nelle predette attività, per un periodo di

lavoro effettivo non inferiore a diciotto mesi e siano stati licenziati dopo che l'avanzamento dei lavori edili abbia superato il settanta per cento, il trattamento speciale di disoccupazione è corrisposto nella misura prevista dall'art. 7 e per un periodo non superiore a diciotto mesi, elevabile a ventisette nelle aree di cui al testo unico approvato con decreto del Presidente della Repubblica 6 marzo 1978, n. 218. I trattamenti di cui al presente articolo rientrano nella sfera di applicazione dell'art. 37 della legge 9 marzo 1989, n. 88.

3. I lavoratori di cui al comma 2 non residenti nell'area in cui sono completati i lavori hanno diritto al trattamento di cui al medesimo comma se residenti in circoscrizioni che presentino un rapporto superiore alla media nazionale tra iscritti alla prima classe di collocamento e popolazione residente in età da lavoro. 4. Le imprese edili impegnate in opere o in lavori finanziati, in tutto o in parte, dallo Stato, dalle Regioni o dagli enti pubblici sono tenute a riservare ai lavoratori titolari del trattamento speciale di disoccupazione, di cui ai commi 1 e 2, una percentuale delle assunzioni da effettuare in aggiunta all'organico aziendale esistente all'atto dell'affidamento dei lavori, ai fini dello svolgimento di tali opere e lavori. Tale percentuale è determinata dalla Commissione regionale per l'impiego in misura non superiore al venticinque per cento ed è comprensiva di quella prevista all'art. 25, comma 1.

Titolo I

NORME IN MATERIA DI INTEGRAZIONE SALARIALE E DI ECCEDENZE DI PERSONALE

Capo IV

Norme finali e transitorie

Art. 12

Estensione del campo di applicazione della disciplina del trattamento straordinario di integrazione salariale

1. A decorrere dal 1 aprile 1991, le disposizioni in materia disalariale straordinaria si applicano anche ai dipendenti delle imprese artigiane aventi i requisiti occupazionali di cui all'art. 1, comma 1, e che procedono alla sospensione dei lavoratori in conseguenza di sospensioni o contrazioni dell'attività dell'impresa che esercita l'influsso gestionale prevalente come definito dal comma 2 e che sia stata ammessa al trattamento straordinario in ragione di tali sospensioni o contrazioni. 2. Si ha influsso gestionale prevalente, ai fini di cui al comma 1, quando, in relazione ai contratti aventi ad oggetto l'esecuzione di opere o la prestazione di servizi o la produzione di beni o semilavorati costituenti oggetto dell'attività produttiva o commerciale dell'impresa committente, la somma dei corrispettivi risultanti dalle fatture emesse dall'impresa destinataria delle commesse nei confronti dell'impresa committente, acquirente o somministrata abbia superato, nel biennio precedente, secondo quanto emerge dall'elenco dei clienti e dei fornitori di cui all'art. 29 del decreto del Presidente della Repubblica 26 ottobre 1972, n. 633, come da ultimo sostituito dall'art. 11 del decreto del Presidente della Repubblica 30 dicembre 1980, n. 897, il cinquanta per cento del complessivo fatturato dell'impresa destinataria delle commesse. 3. Le disposizioni in materia di trattamento straordinario di integrazione salariale sono estese alle imprese esercenti attività commerciali che occupino più di duecento dipendenti.

Art. 13

Norme in materia di contratti di solidarietà

1. L'ammontare del trattamento di integrazione salariale concesso ai sensi dell'art. 1 del decreto-legge 30 ottobre 1984, n. 726, convertito, con modificazioni, dalla legge 19 dicembre 1984, n. 863, non è soggetto alla disciplina sull'importo massimo come determinato dalla legge 13 agosto 1980, n. 427, e non subisce riduzioni a seguito di eventuali successivi aumenti retributivi intervenuti in sede di contrattazione aziendale.

2. Durante il periodo di godimento del trattamento di integrazione salariale concesso ai sensi dell'art. 1 del citato decreto-legge 30 ottobre 1984, n. 726,

convertito, con modificazioni, dalla legge 19 dicembre 1984, n. 863, l'impresa non è ammessa a richiedere l'accertamento dello stato di crisi aziendale.

3. Durante il medesimo periodo, l'impresa non è ammessa a richiedere il trattamento di integrazione salariale per ristrutturazione, conversione e riorganizzazione, salvo che la richiesta sia presentata per lavoratori non interessati al trattamento concesso ai sensi dell'art. 1 del decreto-legge 30 ottobre 1984, n. 726, convertito, con modificazioni, dalla legge 19 dicembre 1984, n. 863, ovvero per esigenze intervenute successivamente alla stipula del contratto di solidarietà. La presente disposizione non si applica ai trattamenti concessi sulla base di contratti di solidarietà stipulati anteriormente alla data di pubblicazione della presente legge e alla proroga di tali trattamenti ai sensi dell'art. 7 del decreto-legge 30 dicembre 1987, n. 536, convertito, con modificazioni, dalla legge 29 febbraio 1988, n. 48.

Art. 14

Norme in materia di trattamenti di integrazione dei guadagni

1. L'ammontare dei trattamenti di integrazione salariale, compresi quelli ordinari, qualunque sia la causa di intervento, non può superare, ferme restando le disposizioni di cui all'art. 13, comma 1, l'importo massimo determinato ai sensi della legge 13 agosto 1980, n. 427. La presente disposizione non si applica nel caso di trattamento concesso per intemperie stagionali nei settori dell'edilizia e dell'agricoltura nonchè, limitatamente al trattamento ordinario di integrazione salariale, per i primi sei mesi di fruizione del trattamento medesimo.

2. Le disposizioni in materia di trattamento ordinario di integrazione salariale per gli operai dell'industria, per gli operai agricoli e per gli operai delle aziende industriali e artigiane dell'edilizia ed affini, nonchè delle aziende esercenti l'attività di escavazione di materiali lapidei sono estese ai lavoratori appartenenti alle categorie degli impiegati e dei quadri.

Art. 15

Lavoratori in cassa integrazione e opere o servizi di pubblica utilità

1. Il secondo comma dell'art. 1-bis del decreto-legge 28 maggio 1981, n. 244, convertito, con modificazioni, dalla legge 24 luglio 1981, n. 390, come sostituito dall'art. 8 della legge 28 febbraio 1986, n. 41, non si applica nei casi in cui l'amministrazione pubblica interessata utilizzi i lavoratori per un numero di ore ridotto proporzionalmente alla misura del trattamento di integrazione salariale spettante al lavoratore.

Art. 16

Indennità di mobilità per i lavoratori disoccupati in conseguenza di licenziamento per riduzione di personale

1. Nel caso di disoccupazione derivante da licenziamento per riduzione di personale ai sensi dell'art. 24 da parte delle imprese, diverse da quelle edili, rientranti nel campo di applicazione della disciplina dell'intervento straordinario di integrazione salariale il lavoratore, operaio, impiegato o quadro, qualora possa far valere una anzianità aziendale di almeno dodici mesi, di cui almeno sei di lavoro effettivamente prestato, ivi compresi i periodi di sospensione del lavoro derivanti da ferie, festività e infortuni, con un rapporto di lavoro a carattere continuativo e comunque non a termine, ha diritto alla indennità di mobilità ai sensi dell'art. 7.

2. Per le finalità del presente articolo i datori di lavoro di cui al comma 1 sono tenuti:

a) al versamento di un contributo nella misura dello 0,30 per cento delle retribuzioni assoggettate al contributo integrativo per l'assicurazione obbligatoria contro la disoccupazione involontaria;

b) al versamento della somma di cui all'art. 5, comma 4.

3. Alla corresponsione ai giornalisti dell'indennità di cui al comma 1 provvede l'Istituto nazionale di previdenza dei giornalisti italiani, al quale sono dovuti il contributo e la somma di cui al comma 2, lettere a) e b).

4. Sono abrogati l'art. 8 e il secondo e terzo comma dell'art. 9 della legge 5 novembre 1968, n. 1115. Tali disposizioni continuano ad applicarsi in via transitoria ai lavoratori il cui licenziamento sia stato intimato prima della data di entrata in vigore della presente legge.

Art. 17

Reintegrazione dei lavoratori e procedure di mobilità

1. Qualora i lavoratori il cui rapporto sia risolto ai sensi degli articoli 4, comma 9, e 24 vengano reintegrati a norma dell'art. 18 della legge 20 maggio 1970, n. 300 e successive modificazioni, l'impresa, sempre nel rispetto dei criteri di scelta di cui all'art.5, comma 1, può procedere alla risoluzione del rapporto di lavoro di un numero di lavoratori pari a quello dei lavoratori reintegrati senza dover esperire una nuova procedura, dandone previa comunicazione alle rappresentanze sindacali aziendali.

Art. 18

Norme in materia di contributi associativi

1. Il diritto di avvalersi del sistema delle trattenute per il versamento dei contributi associativi, previsto dall'art. 2 della legge 27 dicembre 1973, n. 852, è esteso ai beneficiari dell'indennità di mobilità, dei trattamenti di disoccupazione ordinari e speciali e dei trattamenti ordinari e straordinari di integrazione salariale nel caso di pagamento diretto di questi ultimi da parte dell'INPS.

2. Il secondo comma dell'art. 26 della legge 20 maggio 1970, n. 300, è sostituito dal seguente:

<<Le associazioni sindacali dei lavoratori hanno diritto di percepire, tramite ritenuta sul salario nonché sulle prestazioni erogate per conto degli enti previdenziali, i contributi sindacali che i lavoratori intendono loro versare, con modalità stabilite dai contratti collettivi di lavoro, che garantiscono la segretezza del versamento effettuato dal lavoratore a ciascuna associazione sindacale>>.

3. Nei casi di pagamento diretto dei trattamenti di integrazione salariale, il datore di lavoro è tenuto a dare comunicazione all'INPS dell'avvenuto rilascio della delega secondo le modalità previste dalla legge, a conservare tale delega ai fini di eventuali verifiche ed a fornire ogni altro elemento che dovesse rendersi necessario per l'effettuazione del servizio.

Art. 19

Lavoro a tempo parziale e anticipazione del pensionamento

1. Nel caso di imprese beneficiarie da ventiquattro mesi dell'intervento straordinario di integrazione salariale, quando il contratto collettivo aziendale stipulato con i sindacati dei lavoratori aderenti alle confederazioni maggiormente rappresentative sul piano nazionale preveda il ricorso al lavoro a tempo parziale, al fine di evitare, in tutto o in parte, la riduzione del personale, ovvero al fine di consentire l'assunzione di nuovo personale, ai lavoratori dipendenti da tali imprese, che abbiano una età inferiore di non più di sessanta mesi rispetto a quella prevista per la pensione di vecchiaia e una anzianità contributiva non inferiore a quindici anni, qualora essi convengano con il datore di lavoro, ai sensi di tale contratto collettivo, il passaggio al tempo parziale per un orario non inferiore a diciotto ore settimanali è riconosciuto a domanda, previa autorizzazione dell'Ufficio regionale del lavoro e della massima occupazione, con decorrenza dal mese successivo a quello della sua presentazione, il diritto alla pensione di vecchiaia.

2. L'impresa che si avvale della facoltà di ricorso al lavoro a tempo parziale di cui al comma 1 deve dare comunicazione all'INPS e all'Ispettorato del lavoro della stipulazione dei contratti e della loro cessazione.

3. Agli effetti del cumulo del trattamento di pensione di cui al comma 1 con la retribuzione, si applicano le norme relative alla pensione di anzianità di cui all'art. 22 della legge 30 aprile 1969, n. 153, con eccezione della retribuzione percepita durante il periodo di anticipazione del trattamento di pensione, per il rapporto di lavoro trasformato in rapporto a tempo parziale. In tal caso la pensione è cumulabile entro i limiti della mancata retribuzione corrispondente alle ore prestate in meno a seguito della trasformazione del rapporto.

4. In caso di risoluzione del rapporto di lavoro a tempo parziale, ovvero del ripristino nell'ambito della stessa impresa del rapporto di lavoro a tempo pieno, gli interessati sono tenuti a darne immediata comunicazione all'INPS, ai fini della conseguente revoca del trattamento pensionistico, con decorrenza dal mese successivo a quello in cui si è verificata la predetta risoluzione o il ripristino del rapporto originario.

5. Per i lavoratori che, sul presupposto del contratto collettivo previsto dal comma 1, abbiano convenuto con il datore di lavoro il passaggio al tempo parziale per un orario inferiore alla metà di quello praticato in azienda, la retribuzione da assumere quale base di calcolo per la determinazione della pensione è, ove più favorevole, quella dei periodi antecedenti la trasformazione del rapporto da tempo pieno a tempo parziale. La medesima disposizione si applica ai lavoratori che, pur trovandosi nelle condizioni previste dal comma 1, non abbiano presentato domanda per la liquidazione anticipata della pensione di vecchiaia.

Art. 20

Contratti di reinserimento dei lavoratori disoccupati

1. I lavoratori che fruiscono da almeno dodici mesi del trattamento speciale di disoccupazione, nonché quelli che fruiscono dal medesimo termine del trattamento straordinario di integrazione salariale, possono essere assunti nominativamente mediante chiamata dalle liste di cui all'art. 8, comma 9, della legge 29 dicembre 1990, n. 407, con contratto di reinserimento da datori di

lavoro che, al momento dell'instaurazione del rapporto di lavoro, non abbiano nell'azienda sospensioni dal lavoro in atto ai sensi dell'art. 2 della legge 12 agosto 1977, n. 675, ovvero non abbiano proceduto a riduzione di personale nei dodici mesi precedenti, salvo che l'assunzione non avvenga ai fini di acquisire professionalità sostanzialmente diverse da quelle dei lavoratori interessati alle predette riduzioni o sospensioni di personale.

2. Ai lavoratori assunti con contratto di reinserimento, di cui al comma 1, si applica, sulle correnti aliquote dei contributi previdenziali ed assistenziali dovuti dai datori di lavoro e ferma restando la contribuzione a carico del lavoratore nelle misure previste per la generalità dei lavoratori, una riduzione nella misura del settantacinque per cento per i primi dodici mesi nell'ipotesi di effettiva disoccupazione del lavoratore per un periodo inferiore a due anni, per i primi ventiquattro mesi nell'ipotesi di effettiva disoccupazione del lavoratore per un periodo superiore a due anni e inferiore a tre anni, per i primi trentasei mesi nell'ipotesi di effettiva disoccupazione del lavoratore per un periodo superiore a tre anni.

3. Il datore di lavoro ha facoltà di optare per l'esonero dall'obbligo del versamento delle quote di contribuzione a proprio carico nei limiti del cinquanta per cento della misura di cui al comma 2 per un periodo pari al doppio di quello di effettiva disoccupazione e non superiore, in ogni caso, a settantadue mesi.

4. I lavoratori assunti con contratto di reinserimento sono esclusi dal computo dei limiti numerici previsti da leggi e contratti collettivi per l'applicazione di particolari normative ed istituti.

5. Il contratto di lavoro di reinserimento deve essere stipulato per iscritto. Copia del contratto deve essere inviata entro trenta giorni al competente Ispettorato provinciale del lavoro ed alla sede provinciale dell'INPS.

Art. 21

Norme in materia di trattamenti per i lavoratori appartenenti al settore dell'agricoltura

1. Gli impiegati ed operai agricoli con contratto a tempo indeterminato hanno diritto al trattamento di integrazione salariale di cui all'art. 8 della legge 8 agosto 1972, n. 457, anche nei casi di sospensioni operate per esigenze di riconversione e ristrutturazione aziendale da imprese che occupino almeno sei lavoratori con contratto a tempo indeterminato, ovvero che ne occupino quattro con contratto a tempo indeterminato, e nell'anno precedente abbiano impiegato manodopera agricola per un numero di giornate non inferiore a milleottanta. Le predette esigenze devono essere previamente accertate dal Ministro del lavoro e della previdenza sociale su proposta del comitato amministratore della gestione prestazioni temporanee ai lavoratori dipendenti di cui all'art. 25 della legge 9 marzo 1989, n. 88.

2. I lavoratori con contratto a tempo indeterminato che vengano licenziati durante il periodo di godimento del trattamento di integrazione salariale corrisposto ai sensi del comma 1 hanno diritto al trattamento ordinario di disoccupazione nella misura del quaranta per cento della retribuzione.

3. Il trattamento concesso ai sensi del comma 1 può essere corrisposto per una durata massima di novanta giorni. Le imprese che si avvalgono di tale trattamento sono tenute a versare alla gestione di cui all'art. 24 della legge 9 marzo 1989, n. 88, in aggiunta al contributo di cui all'art. 19 della legge 8 agosto 1972, n. 457, un contributo nella misura del quattro per cento dell'integrazione salariale corrisposta ai propri dipendenti ai sensi del comma 1.

4. Agli impiegati ed operai agricoli con contratto di lavoro a tempo indeterminato dipendenti da imprese site in comuni dichiarati colpiti da eccezionali calamità o avversità atmosferiche ai sensi dell'art. 4 della legge 15 ottobre 1981, n. 590, può essere concesso il trattamento di cui all'art. 8 della legge 8 agosto 1972, n. 457, per un periodo non superiore a novanta giorni.

5. Il trattamento di integrazione salariale di cui ai commi 1 e 4 può essere erogato, anche in mancanza dei requisiti di cui al terzo comma dell'art. 8 della legge 8 agosto 1972, n. 457, ai lavoratori che sono alle dipendenze dell'impresa da più di un anno. I periodi di corresponsione del predetto trattamento non concorrono alla configurazione del limite massimo di durata previsto dal primo comma dell'art. 8 della legge 8 agosto 1972, n. 457, e costituiscono periodi lavorativi ai fini del requisito di cui al terzo comma dell'art. 8 della legge medesima.

6. Nel caso in cui gli operai agricoli a tempo determinato iscritti negli elenchi anagrafici dei comuni dichiarati colpiti da eccezionale calamità o avversità atmosferica ai sensi dell'art. 4 della legge 15 ottobre 1981, n. 590, siano rimasti privi di occupazione in conseguenza degli eventi medesimi, è ad essi riconosciuto, ai fini previdenziali e assistenziali, in aggiunta alle giornate di lavoro prestate, il numero di giornate necessarie al raggiungimento del numero di giornate riconosciute nell'anno precedente. Tale beneficio viene concesso a condizione che i destinatari abbiano prestato nell'anno interessato alla provvidenza almeno cinque giornate di lavoro. Lo stesso diritto alle prestazioni previdenziali ed assistenziali è esteso a favore dei piccoli coloni e compartecipanti familiari delle aziende colpite dalle predette avversità.

7. I benefici di cui ai commi 4 e 6 si applicano a decorrere dall'anno 1991.

8. Per i trattamenti di cui ai commi 4, 5 e 6, ivi compresi quelli relativi alla mancata copertura assicurativa, si applicano le disposizioni dell'art. 37 della legge 9 marzo 1989, n. 88.

Art. 22

Disciplina transitoria

1. I provvedimenti di prima concessione del trattamento straordinario di integrazione salariale richiesti con domande presentate anteriormente alla data di pubblicazione della presente legge, sono assunti secondo la previgente

normativa ed il trattamento può essere concesso per un periodo la cui scadenza non superi il centottantesimo giorno dalla data di entrata in vigore della presente legge.

2. I provvedimenti relativi alle domande di proroga di trattamento, che scada prima della data di entrata in vigore della presente legge o che sia in corso alla data medesima, sono assunti secondo la previgente normativa nei limiti temporali determinati dal CIPI in sede di accertamento delle cause di intervento, o per un periodo la cui scadenza non superi i sei mesi dalla data del decreto di concessione dei trattamenti concessi ai sensi dell'art. 2 del decreto-legge 21 febbraio 1985, n. 23, convertito, con modificazioni, dalla legge 22 aprile 1985, n. 143 e successive modificazioni, e dell'art. 2 della legge 27 luglio 1979, n. 301 e successive modificazioni.

3. L'art. 1, comma 1, e l'art. 2, comma 6, non si applicano ai trattamenti di integrazione salariale concessi precedentemente alla data di entrata in vigore della presente legge nonchè per quelli concessi ai sensi dei commi 1 e 2 del presente articolo.

4. L'art. 1, commi 4 e 5, si applica ai trattamenti di integrazione salariale concessi dopo l'entrata in vigore della presente legge, fatta eccezione per quelli concessi ai sensi dei commi 1 e 2 del presente articolo, e con riferimento ai periodi di integrazione salariale successivi alla data stessa. L'art. 14 si applica ai trattamenti di integrazione salariale ordinaria concessi in base a domanda presentata dopo la data di entrata in vigore della presente legge.

5. Ai fini dell'applicazione dell'art. 1, comma 9, devono essere computati i periodi di trattamento di integrazione salariale anteriori alla data di entrata in vigore della presente legge limitatamente a quelli compresi nei trecentosessantacinque giorni anteriori alla data stessa.

6. Continuano a beneficiare del trattamento di integrazione salariale, fino a centottanta giorni successivi alla data di entrata in vigore della presente legge, i lavoratori che risultino beneficiarne alla data del 31 dicembre 1988 in quanto

dipendenti dalle società non operative costituite dalla GEPI sulla base della normativa vigente, ed aventi ad oggetto la promozione di iniziative idonee a consentirne il reimpiego, ovvero che risultino beneficiare ai sensi delle seguenti leggi: art. 1 del decreto-legge 10 giugno 1977, n. 291, convertito, con modificazioni, dalla legge 8 agosto 1977, n. 501 e successive modificazioni; art. 5 del decreto-legge 9 dicembre 1981, n. 721, convertito, con modificazioni, dalla legge 5 febbraio 1982, n. 25; art. 6, comma 6, del decreto-legge 30 dicembre 1987, n. 536, convertito, con modificazioni, dalla legge 29 febbraio 1988, n. 48. Tale periodo è elevato ad un anno per le imprese ubicate nei territori di cui al testo unico approvato con decreto del Presidente della Repubblica 6 marzo 1978, n. 218. Durante questo periodo le imprese, previo esame congiunto con le organizzazioni sindacali dei lavoratori, da esaurire non prima di trenta giorni, collocano in mobilità i predetti lavoratori dando le comunicazioni previste dall'art. 4, comma 9; in questo caso le imprese non sono tenute al pagamento della somma prevista dall'art. 5, comma 4. I lavoratori collocati in mobilità ai sensi del presente comma sono iscritti nella lista di mobilità ed hanno diritto all'indennità di mobilità di cui all'art. 7. Ad essi non si applica quanto previsto dall'art. 7, comma 4. A decorrere dalla data di entrata in vigore della presente legge i lavoratori di cui al presente comma hanno facoltà di richiedere la corresponsione anticipata dell'indennità, prevista dall'art. 7, comma 5. In questo caso la somma è aumentata in misura pari al trattamento di integrazione salariale non ancora goduto.

7.I lavoratori che, alla data di entrata in vigore della presente legge, hanno titolo al trattamento speciale di disoccupazione di cui alla legge 5 novembre 1968, n. 1115, e che si trovano in aree in crisi economica settoriale o locale, ai sensi dell'art. 4 della legge 8 agosto 1972, n. 464, o che sono stati licenziati da imprese per le quali è già intervenuto l'accertamento da parte del CIPI della situazione di crisi aziendale ovvero che sono stati licenziati nelle aree del Mezzogiorno di cui al testo unico approvato con decreto del Presidente della Repubblica 6 marzo 1978, n. 218, cessano di beneficiare di tale trattamento e sono iscritti nelle liste di mobilità, con il diritto alla indennità di mobilità nella misura iniziale pari al trattamento speciale di disoccupazione da essi

precedentemente percepito, per un periodo pari a quello previsto nell'art. 7, ridotto del numero dei giorni, comunque non superiore a centottanta, per i quali è stato percepito il trattamento speciale di disoccupazione.

8. I lavoratori che, alla data di entrata in vigore della presente legge, hanno diritto al trattamento speciale di disoccupazione di cui all'art. 12 della legge 6 agosto 1975, n. 427, continuano a beneficiarne, per un periodo pari a quello previsto dall'art. 11, comma 2, ridotto del numero di giorni, comunque non superiore a centottanta, per i quali il trattamento speciale di disoccupazione è stato percepito. Essi sono iscritti nelle liste di mobilità e possono beneficiare, ricorrendone i presupposti, delle misure previste dall'art. 7, commi 5 e 6.

9. Sono abrogati: il terzo comma dell'art. 12 della legge 6 agosto 1975, n. 427; il primo comma dell'art. 4 della legge 8 agosto 1972, n. 464; l'art. 4-ter del decreto-legge 30 marzo 1978, n. 80, convertito, con modificazioni, dalla legge 26 maggio 1978, n. 215.

10. Per i lavoratori sospesi dal lavoro che, alla data di entrata in vigore della presente legge, abbiano esercitato la facoltà di chiedere l'iscrizione nella lista di collocamento, ai sensi dell'art. 4, comma 5, del decreto-legge 21 marzo 1988, n. 86, convertito, con modificazioni, dalla legge 20 maggio 1988, n. 160, resta ferma tale iscrizione.

Art. 23

Reimpiego presso GEPI SpA e INSAR SpA

1. Restano fermi, nei confronti dei lavoratori di cui all'art. 22, comma 6, i compiti di reimpiego svolti dalla GEPI SpA e dall'INSAR SpA in base alle vigenti leggi.

2. Per ciascun lavoratore di cui all'art. 22, comma 6, assunto con contratto di lavoro a tempo indeterminato nell'ambito di iniziative produttive che la GEPI SpA e l'INSAR SpA realizzino o concorrano a realizzare, ovvero sviluppino o concorrano a sviluppare successivamente alla data di entrata in vigore della

presente legge, le predette società subentrano nel diritto del lavoratore al trattamento nella misura pari al cinquanta per cento del residuo trattamento che sarebbe spettato, ai sensi della presente legge, al lavoratore assunto. Tale importo viene corrisposto alle predette società quando il lavoratore stesso abbia superato il periodo di prova. 3. Qualora l'occupazione dei lavoratori di cui all'art. 22, comma 6, venga promossa presso datori di lavoro non soggetti alla disciplina sui licenziamenti individuali, l'importo previsto dal comma 2 del presente articolo viene corrisposto al termine del periodo per il quale il lavoratore assunto avrebbe potuto continuare a godere dell'indennità di mobilità e sempre che nello stesso periodo il lavoratore non sia stato reinscritto nella lista di mobilità in applicazione dell'art. 9, comma 7.

4. Con decreto del Ministro del lavoro e della previdenza sociale, di concerto con il Ministro del tesoro, sono determinate le modalità e le condizioni per la corresponsione degli importi di cui ai commi 2 e 3. Tali importi sono utilizzati dalla GEPI SpA e dalla INSAR SpA per il finanziamento delle iniziative di reimpiego di cui al comma 1, ivi comprese le convenzioni con soggetti pubblici o privati dirette a favorire lo sviluppo di nuova occupazione, nonché il reimpiego o la mobilità dei lavoratori di imprese interessate a processi di crisi industriale.

Art. 24

Norme in materia di riduzione del personale

1. Le disposizioni di cui all'art. 4, commi da 2 a 12, e all'art. 5, commi da 1 a 5, si applicano alle imprese che occupino più di quindici dipendenti e che, in conseguenza di una riduzione o trasformazione di attività o di lavoro, intendano effettuare almeno cinque licenziamenti, nell'arco di centoventi giorni, in ciascuna unità produttiva, o in più unità produttive nell'ambito del territorio di una stessa provincia. Tali disposizioni si applicano per tutti i licenziamenti che, nello stesso arco di tempo e nello stesso ambito, siano comunque riconducibili alla medesima riduzione o trasformazione.

2. Le disposizioni richiamate nel comma 1 si applicano anche quando le imprese di cui al medesimo comma intendano cessare l'attività.

3. Quanto previsto all'art. 4, commi 3, ultimo periodo, e 10, e all'art. 5, commi 4 e 5, si applica solo alle imprese di cui all'art. 16, comma 1.

4. Le disposizioni di cui al presente articolo non si applicano nei casi di scadenza dei rapporti di lavoro a termine, di fine lavoro nelle costruzioni edili e nei casi di attività stagionali o saltuarie.

5. La materia dei licenziamenti collettivi per riduzione di personale di cui al primo comma dell'art. 11 della legge 15 luglio 1966, n. 604, come modificato dall'art. 6 della legge 11 maggio 1990, n. 108, è disciplinata dal presente articolo.

6. Il presente articolo non si applica ai licenziamenti intimati prima della data di entrata in vigore della presente legge.

Bibliography

- **BARNARD** “*EC EMPLOYMENT LAW third edition*” (OXFORD). Council directive 75/129/EEC of 17 February 1975 on the Approximation of the Laws of the Member States Relating to Collective Redundancies(OJ 1975 L48/29).
- **BLANPAIN** “*Labour Law and Industrial Relations of the European Community*”(Kluwer,Deventer,1991)153.
- **BOURN**, “*Amending the Collective Dismissals directive :a case of Rearranging the Deckchairs*”1993 Int.Comp.LLIR 227,234.
- **CESTER C.** ‘*I licenziamenti dopo la legge n. 92 del 2012*’CEDAM 2013
- **DALY B./DOHERTY M.**“*Principles of Irish Employment Law*” (CLARUS press).
- **DELOITTE HASKINS+SELLS** “*Employment Regulations in Europe*”.
- **DOBBINS T.**‘*Irish Ferries dispute finally resolved after bitter stand-off*’ Industrial Relations News 21-12-2005.
- **DOBBINS T.** “*Ireland: 2010 Annual Review*” Galway,NUI 12-10-2011.

- **FARRELLY R.** ‘*MTL dispute - first Court opinion under “Irish Ferries” legislation*’ IRN:Industrial relations news 01/07/2009.
- **FORDE M.** “*Employment Law*” RHP.
- **GALATINO L.** ‘*Diritto del lavoro*’ Giappichelli 2012
- **HASTINGS, T.** (ed.), *The state of the unions: Challenges facing organised labour in Ireland*, Dublin, The Liffey Press, 2008.
- **MARANO A.** ‘*Il licenziamento dopo la riforma Fornero. Manuale teorico-pratico con ampia casistica giurisprudenziale e formulario.*’ Edizioni Giuridiche Simone 2012
- **MEENAN,** ‘*Exceptional collective redundancies*’ I.E.L.J. (Irish Employment Law Journal)2007, 4(3), 74-79 (the westlaw.ie database).
- **PERSIANI-PROIA** ‘*Contratto e rapporto di lavoro*’ CEDAM, Padova, ultima edizione
- **PASSARELLI S.** ‘*Diritto del Lavoro*’ sezione II “*La Cassa integrazioni guadagni e i licenziamenti collettivi*”. Giappichelli Editore

- **PASSARELLI S.** *‘Diritto dei lavori. Diritto sindacale e rapporti di lavoro’* Giappichelli Editore 2013
- **PESSI R.** *‘Lezioni di diritto del lavoro’* Giappichelli Editore-Torino 2012
- **ROTONDI F.** *‘Licenziamenti collettivi’* Ipsoa 2012
- **SANZ S.** *‘Agreement signed on redundancies at Telecom Italia’* Eurofound 19-10-2010.
- **SHEEHAN B.** *‘Dell to transfer 1,900 jobs to Poland’* IRN Publishing 23-02-2009.
- **STAIANO ROCCHINA** *‘Cassa integrazione e licenziamento’* Maggioli Editore 2012
- **TATARELLI M.** *‘Il licenziamento individuale e collettivo. Lavoro privato e pubblico’* CEDAM 2012
- **TROWERS & HAMLINS** *“European Employment Law”* (PITMAN).
- **VALLEBONA A.,** *‘Breviario di diritto del lavoro’,* Giappichelli, Torino, ultima edizione.

- **VALLEBONA A.**, *Istituzioni del diritto del lavoro*, II, *Il rapporto di lavoro*, Padova, ultima edizione
- **VISSER J.**, ‘*The quality of industrial relations and the Lisbon Strategy*’, in European Commission, *Industrial relations in Europe 2008*, Luxembourg, Office for the Official Publications of the European Commission, Luxembourg, 2008.
- **VON PRONDZYNSKI and McCARTHY** “*Employment Law in Ireland*” (Sweet & Maxwell).
- **ZAMBELLI A.** ‘*Guida pratica licenziamenti e sanzioni disciplinari*’ Il Sole 24 Ore 2012
- Case 115/83 *Commission v. Belgium* 1985 ECR i-1039, PARA.2. Case (C-493/09).
- OJ 1992 /245/3
- OJ 1998/225/16
- Case (C-55/02) 2004 ECR I-9387.
- AG Tizzano in Case C-55/02 *Commission v. Portugal* 2004 ECR I-9387.
- Commission Report to Council, SEC (91) 1639 final, Brussels 13 September 1991, 11.

- Case C-32/02 *Commission v. Italy* 2003 ECR I-12063.
- AG Tizzano 's Opinion in Case C-188/03 *Junk* 2005 ECR-I 000.
- Ninth recital to the Dir. and Case C-55/02 *Commission v. Portugal* 2004 ECR I-9387.
- ILO Convention 158 and Art.2 of the Additional Protocol to the Social Charter
- Case C-188/03 *Junk v. Kuhnel* 2005 ECR I-000.
- Cass.19 dicembre 2006 ,n.27101,in *Rep.Forò it.*,2006,voce *Lavoro(rapporto)*,n.1614
- Cass.19 maggio 2006 n.11886,in *Rep.Forò it.*,voce *Lavoro(rapporto)*,n. 1625
- *Obiter dicta* of Glidewell LJ in *R v. British Coal Corporation and Secretary of State for Trade and Indutry ,ex parte Vardy* 1993 IRLR 104.
- Case C-188/03 *Junk v. Kuhnel* 2005 ECR I-000.
- Case C-188/03 *Junk* 2005 ECR I-000.
- Added by Dir.92/56 .

- AG Tizzano's Opinion in Case C-188/03 *Junk* 2005 ECR I-000.
- Part I.Article 6.point 3. of The Protection of Employment Act 1977.
- www.williamfry.ie/Libraries/test “*Overview of Redundancy Procedure in Ireland*”
- art.24 and 4 L.223/1991
- Employment Rights Compliance Bill 2008,Part.2.
- Riforma Monti-Fornero L.92/2012
- Industrial Relations News (IRN).European Industrial Relations Observatory (EIRO).
- IRN:Industrial relations news‘*Dell backed in consultation case, workers plan appeal*’. (NEWS FEATURE - IRN 27)
11/07/2012
- Full text of Directive 98/59 EEC.
- Full text of The Protection of Employment Act 1977.

- Full text of The Protection of Employment Act (EXCEPTIONAL COLLECTIVE REDUNDANCIES AND RELATED MATTERS) 2007.
- Full text of L.223/1991.