Collective dismissals: what you need to know about the information and consultation procedure

Introduction

In 2016, several major companies have announced their intention to proceed to collective dismissals. These announcements had the effect of a bomb for hundreds of families. Mid-March, IBM Belgium announced a collective dismissal, the company will separate from 228 workers. A memorandum of settlement has been approved to this end by IBM workers in September. This month, ING, AXA Belgium and Caterpillar also announced their intent to proceed to collective dismissals. AXA Belgium stated that 650 jobs should be cut within two years. Caterpillar announced its intention to proceed to the closing of its production facilities, which would result in the dismissal of 2200 workers, not to mention the loss of jobs among Caterpillar’s suppliers and subcontractors and last but not least, ING announced that, by 2021, no less than 3,500 jobs would disappear.

Yet Belgium is one of the member of the OECD that offers the best protection to workers in case of collective dismissal. Collective bargaining is very important in our country and is at the core of the Belgian labour legislation. However, in the current context, this legislation is challenged and some call for a reform. The Renault Act, edicted in response to Renault’s blatant non-observance of existing law at the closure of its plant in Vilvoorde in 1997, aims to establish a dialogue between the employer who intends to proceed to a collective dismissal and the workers’ representatives, to better protect the workers’ rights and involve them in the process.
In the Caterpillar’s case, the management, despite two requests, refused to appear before the Parliament, arguing that the Renault Act prevents them from doing it. In the present contribution, we will analyze whether the refusal of Caterpillar management was justified or not in the light of the Belgian legislation on collective dismissals.

In this context, it is useful to examine what is exactly provided by the Renault Act. The purpose of this contribution is to remind and focus on the employers’ obligations in terms of workers’ information and consultation in the event of projected collective dismissal. The indemnity for collective dismissal, outplacement facilities and other aspects organized by the legislation on collective dismissal will not be addressed.

**Preliminary reminder**

The employers’ obligations in case of collective dismissal apply:

- Where a certain number of redundancies (determined according to the company’s size) take effect within a 60 day period;
- When these redundancies occur on grounds independent of the individual workers but for reasons pertaining to the company (in other words, economic or technical reasons)

**Legal framework**

The employer’s obligations to inform and consult workers is rooted in article 11 of the Collective Labour Agreement (CLA) n°9 of 9 March 1972 regarding the Works Council. According to this provision, the employer must inform and consult the workers prior to any fusion, concentration, take-over, closure of other important modifications affecting the company’s structure.

The concrete expression of this obligation in case of collective dismissals is to be found in three other sources of law:

- The CLA n°24 of 2 October 1975 on the consultation and information procedure of workers representatives in case of collective dismissals;
- The Royal Decree of 24 May 1976 on collective dismissals that regulates the collective dismissals notification;
- The Articles 62 to 70 of the Act of 13 February 1998 on Promotion of Employment, called the Renault Act which also deal with the prior consultation of workers representatives in case of collective dismissals.
Furthermore, when a collective dismissal is considered, it is recommended to examine if sector-based CLA or company-level CLA do not impose particular additional obligations.

The information and consultation procedure

The information and consultation procedure is applicable to companies which have occupied on average more than 20 workers throughout the calendar year preceding the collective dismissal. This process aims at avoiding the collective dismissal and reducing the number of employees affected.

Announcement of the intention to proceed to a collective dismissal

As soon as an employer wishes to proceed to a collective dismissal, he must present a written report in which he announces its intent to:

- the works council; or if there is none,
- the union delegation; or if there is none,
- the committee for prevention and protection at work; or if none of these bodies exists,
- the workers representatives or the workers themselves.

For purposes of clarity, hereunder we will use the general terms workers representatives.

In this written report, the employer provides all relevant information and in any case:

- the reasons for the projected redundancies;
- the criteria proposed for the selection of the workers to be made redundant;
- the number and categories of workers to be made redundant;
- the number and categories of workers normally employed;
- the method of calculation envisaged for any possible redundancy indemnity which does not result from the law or a CLA;
- the period over which the redundancies are to be effected.

The employer sends a copy of this written notification and a fulfilled standard form to the director of the sub regional service for employment (VDAB, FOREM or ACTIRIS) and to the President of the executive committee of the Federal Public Service Employment, Labour & Social consultation.

Information and consultation

After the release of this written notification, the employer shall organize an oral presentation
during which he explains the content of this written report. Regarding its intent to proceed to a collective dismissal, the employer has to be able to prove that he brought together the workers representatives.

This information is provided to workers representatives in order to allow them to make observations and suggestions.

The workers representatives shall be consulted about the possibility of preventing or reduce the collective dismissal and about the possibility to limit its consequences. They shall have the opportunity to ask questions, raise arguments and submit counter-proposals. The proposals may concern for instance the recourse to accompanying social measures aimed at redeploying or retraining workers made redundant.

The purpose is to establish a constructive dialogue.

The employer has the obligation to examine and answer all those questions, arguments and proposals. He must be able to prove that he fulfilled its obligation; for instance by providing detailed minutes of the meeting organized to discuss the projected collective dismissal.

**Confirmation of the intention to proceed to a collective dismissal**

The information and consultation stage - strictly speaking - ends when the employer has answered all (relevant) questions.

After having terminated this procedure, the employer shall take the formal decision to proceed to a collective dismissal and inform the director of the sub regional service for employment (VDAB, FOREM or ACTIRIS) and the President of the executive committee of the Federal Public Service Employment, Labour & Social consultation about this decision. In the notification, the employer shall mention certain mandatory information and demonstrate fulfillment of the information and consultation obligations. Moreover, the same day, the employer shall send a copy to workers representatives and display one in the company. The day of the display, the employer also sends a copy by registered letter to workers who will be made redundant and whose the employment contract already terminated the day of display.

**Cooling-off period**

From the employer’s confirmation to the director of the sub regional service for employment of its intention to proceed with the collective dismissal, starts a cooling off period of 30 days (which can be extended to 60 days).
During this time, no termination of employment contract can take place. However, the employer can already negotiate the termination conditions and prepare a social plan.

Workers representatives can communicate to the employer their grievances regarding the compliance with the information and consultation procedure.

At the end of this cooling-off period, the employer may proceed with dismissals unless workers representatives have raised contestations.

**Disputes**

The compliance with the information and consultation procedure can be challenged collectively and individually.

On the one hand, if workers representatives have challenged the regularity of the procedure during the cooling-off period, the employer – if appropriate - shall regularize the procedure and fix the issues. In this case, the employer shall proceed to a new notification of confirmation. Consequently, a new cooling-off period will start.

On the other hand, a worker can contest individually the correctness of the procedure within 30 days from its dismissal or from the day that its dismissal became a collective dismissal. However, this right is recognized only if the procedure has been challenged collectively by workers representatives. If this is not the case, no individual contestation is possible. Nonetheless, the worker can still contest its individual dismissal under ordinary law and claim for damages.

Drastic sanctions are foreseen in the event of non-compliance with the information and consultation procedure, including criminal liability and financial penalties.

**Conclusion**

It is clear from the above, that Belgian legislation on collective dismissal provides for a framework to facilitate social dialogue and protect workers interests, by imposing to employers a strict information and consultation procedure in case they intent to proceed with a collective dismissal.

From a legal point of view, the legislation only contemplates the obligation for the employer to inform and consult the workers’ representatives (and to inform employment public authorities). Nothing in the legal texts impedes an employer from communicating about a project of collective dismissal with a third party (such as a parliamentary commission), provided that the information has been firstly communicated to the employee representatives. In this regard, article 11 of CLA
n° 9 provides explicitly that the workers’ representatives must be informed “prior to any release”.

Therefore, in our opinion, Caterpillar could have presented itself before the parliamentary commission and explained the projected collective dismissal, without violating any provision from the Renault Act or any other related legal texts, provided that:

- The information communicated to the parliamentary commission should have been strictly limited to the information already communicated to the worker’s representatives;
- Questions from the members of the parliamentary commission relating to elements which would not have been communicated yet to the workers’ representatives, should not have been answered by the company.