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Romania: Obligation to consider alternatives to collective dismissals

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Romania

Phase:

Management

Type: [Obligation to consider alternatives to collective dismissals](#)

Last modified: 18 June, 2021

Native name:	Codul muncii, Legea nr. 53/2003, republicată în Monitorul Oficial nr. 345 din 18 mai 2011
English name:	Labour Code, Law no. 53/2003, republished in the Official Gazette of Romania no. 345 of 18 May 2011

Article

Article 69, paragraph 1 (a) and (b), and article 71, paragraphs 1 and 2

Description

If an employer contemplates to resort to collective dismissals (i.e. dismissal of at least 10 employees in companies with 21-99 workers, at least 10% of staff in companies with 100-299 workers or at least 30 employees in larger firms), the employer is under the obligation to initiate, in due time, for the purpose of reaching an agreement, consultations with the trade union or the employee representatives, as appropriate, with regard to the methods and the means by which collective redundancies can be avoided, or the number of redundancies can be diminished, the social measures that can be taken to reduce the social effects of the dismissals, such as the employer's support for the redundant employees' vocational requalification or retraining.

The trade union or the employee representatives may, within 10 days of the receiving date of the collective dismissal notice, propose to the employer measures to avoid collective dismissals or reduce the number of redundancies.

Within five days of the receiving date of the proposals made as above, the employer must respond in writing, and substantiate the decision.

Comments

Romanian legislation is in line with [Council Directive 98/59/EC](#) on the approximation of the laws of the Member States relating to collective redundancies.

The sanction for non-fulfilment of the obligation to consult the trade union with the purpose of identifying alternatives to the collective redundancy will nullify the decision to dismiss. In jurisprudence and doctrine, there is no unitary view in respect of the trade union having the right to be consulted in order to identify alternative measures for collective redundancies; the question of whether it is only the representative union or any union within the unit that should be consulted remains open. The question is important because in some cases the court has cancelled the decision of collective dismissal ordered without consulting all unions established in the unit, whether representative or not, and indeed, the Labour Code does not refer here to representativeness.

As a result of amendments to the Labour Code, the legal measures concerning collective redundancies are not applicable to employees of public institutions.

Cost covered by

Employer

Involved actors other than national government

Trade union

Other

Involvement others

Workers' representatives, in case there is no trade union

Thresholds


Company size by number of employees:

21

Number of affected employees:

10

Sources

 DG Employment, Social Affairs and Equal Opportunities/Héra (2011), Selected companies' legal obligations regarding restructuring

 [Labour Code](#)

 [Codul muncii](#)

 Ius Laboris (2009), Collective Redundancies Guide, Brussels

 [Council Directive 98/59/EC](#)

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