

Redundancy, business flexibility and workers' security: Findings of a comparative European survey

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All over Europe, the past 20 years have seen profound changes in labour markets, together with high levels of structural unemployment and growing insecurity. These developments bear witness to the persistent conflict between an economic rationale — calling for ever-greater business flexibility — and a social rationale demanding a certain degree of job security for workers.

Labour market flexibility is generally measured primarily in terms of the impact of employment protection legislation. Some authors consider that legislation hardly affects employment or unemployment in absolute terms (Freyssinet, 2000); others regard it as playing a part in inter-country disparities in these respects and emphasize the possible links between the stringency of employment protection provisions and the extent of labour turnover, on the one hand, and the average duration of unemployment, on the other (OECD, 1996). Others, again, argue in favour of rethinking the indicators used to measure the effects of employment protection legislation on levels of unemployment, in the light of enforcement procedures and the links between employment protection¹ and other labour market institutions (Bertola, Boeri and Cazes, 2000).

In exploring ways of reconciling enterprise flexibility and job security, existing work reflects an obvious dichotomy between corporate management issues — i.e. research into changes in the production system, such as corporate

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¹ Rules governing dismissal, limiting use of temporary contracts, prohibiting bargaining, and so forth.

restructuring, organizational changes and labour management methods (which depend in part on employment protection institutions) — and labour market concerns, e.g. studies of employment policies targeting the most vulnerable categories of workers and tracer studies of career paths or of the personal histories of the long-term unemployed.

Many employment policy strategies display that very same dichotomy. Very little connection is made either in law or in European national policies (as reflected in the Employment Guidelines or in the Structural Funds scheme) between corporate management decisions and the measures required to help firms adjust to a changing environment and/or to improve labour market prospects for workers.²

Yet in seeking solutions capable of achieving a balance between business flexibility and job security, attention should perhaps be given to possible linkages between policies aimed at safeguarding job stability from the corporate management perspective and employment policies targeted at the unemployed, on the general assumption that the two approaches are complementary (Bertola, Boeri and Cazes, 2000).

To verify this assumption, the first step is to analyse the growing role of employment policies in the labour market. And in this respect, all European countries are clearly moving in the same direction. The possible links between unemployment compensation schemes, job-search patterns and unemployment³ — compounded by greater budgetary constraints in funding social protection systems — have highlighted the need to combine unemployment benefits with active policies designed to increase re-hiring probabilities for the unemployed. In addition to the right to income during periods of unemployment, employment policies today specify the right to employment and to job-search assistance. The traditional distinction between active and

² The process of coordinating employment policies, decided by the European Council in Luxembourg on 20 and 21 November 1997, is based on the drafting of annual employment guidelines, which Member States must follow to establish their national action plans for employment, pursuant to the coordinated European employment strategy (Treaty of Amsterdam, Article 128). These guidelines rest on a four-pillar structure: the first pillar aims to improve employability (by preventing long-term unemployment and tackling youth unemployment, through a transition from passive to active measures); the second concerns the development of entrepreneurship and job creation; the third focuses on the adaptability of businesses (particularly in terms of work organization, forms of work and types of contract); and the fourth deals with equality of opportunity (*Guidelines for Member States' Employment Policies 2000 and Recommendations on the Implementation of Member States' Employment Policies*, Employment and social affairs, European Commission, 2001). The strategy pursued under the Structural Funds scheme, which channels European Union funding, also establishes priority objectives. Among the six objectives set for the period 1994-99, Objective 3, which concerns efforts to counter long-term unemployment, must be distinguished from Objectives 2 and 4, which are aimed at helping firms and their employees to adjust to technological change (*The European Social Fund, an overview of the programming period 1994-1999*, Employment and social affairs, European Commission, 1998).

³ Even if there appears to be no ground for the theory of correlation between generous unemployment benefits and high rates of unemployment.

passive policies is being swept aside as the idea of combining these various measures gains ground.

It is also important to reflect on possible linkages between business strategies and employment policies and hence on the division of responsibilities between the actors involved, namely enterprises, workers, trade unions and the state authorities (Bélorgey, 2000; Morin, 1999). This should be followed by a detailed analysis of corporate decision-making and of the regulatory environment.

The purpose of this article is to flesh out the debate through an empirical study of redundancy — i.e. dismissal for economic reasons — based on the results of comparative work carried out by multidisciplinary teams in four European countries (France, Germany, Italy and Spain) on “redundancy as a factor of social exclusion” (Morin and Mallet, 2000). The study examines employment protection institutions in the event of redundancy together with future prospects for dismissed workers in the light of their career paths, the circumstances under which they were dismissed and their labour market entitlements. Looking at the redundancy process as a whole offers the advantage of a broad approach to problems which are otherwise mostly dealt with individually, that is, employment protection and social protection, rules governing termination of employment, active labour market policies, and prospects for older workers and low-skilled workers.

In the countries covered, redundancies account for only a small proportion of job market entrants;⁴ yet most European countries have enacted specific legislation on redundancy. In labour law, redundancy has indeed been a major focus of employment protection standards which remain at the centre of ongoing debates and have undergone recent changes in all the countries surveyed.⁵

⁴ Measuring levels of redundancy in the various countries is difficult owing to the absence of European data and shortcomings in national information systems. Redundancies appear, however, to account for only a small share of separations from enterprises, e.g. approximately 10 per cent of all displacements from private-sector firms with more than ten employees in Germany and 4 per cent in France. The same is true of redundancy as a reason for entry into unemployment, with a proportion estimated at about 10 per cent in both France and Italy.

⁵ In France, Act No. 75-5 of 3 January 1975 respecting dismissals for economic reasons (*Journal Officiel*, 4 January 1975) was amended in particular by Act No. 86-1320 of 30 December 1986 on dismissal procedures (*Journal Officiel*, 31 December 1986), Act No. 89-549 of 2 August 1989 on the prevention of dismissals for economic reasons and the right to retraining (*Journal Officiel*, 8 August 1989), and Act No. 93-121 of 27 January 1993 concerning various social measures (*Journal Officiel*, 30 January 1993). In Germany, the Protection against Dismissal Act (KSchG) of 1972 (*BGBI.*, part I, p. 13) was amended and supplemented in 1985 and 1996 in particular by the laws concerning smaller enterprises (*BGBI.*, part I, p. 710 and *BGBI.*, part I, p. 1476) and most recently by the Promotion of Employment Act of 1997 (*BGBI.*, part I, p. 594), which entered into force on 1 January 1998. In Spain, the system governing termination of employment was amended by the law modifying the Workers' Statute (LMET) of 19 May 1994 and the law on labour market emergency measures (LMUMT) of 26 December 1997. In Italy, Act No. 223 of 1991 was the very first comprehensive instrument to regulate dismissal for economic reasons.

The profiles of workers made redundant point to significant changes in labour management. According to the study's findings, they are mainly older, low-skilled workers with considerable length of service — a combination of factors that makes it difficult for them to find alternative employment and entails a high risk of exclusion. Particularly in France, people who have lost their jobs for economic reasons remain out of work for much longer than other jobseekers.⁶ Although redundancy figures are relatively low, the characteristics of the workers affected thus make redundancy a highly meaningful case study for examining the effectiveness of regulatory frameworks, particularly in protecting the most vulnerable categories of workers.

Indeed, these are the categories most exposed to the risk of social exclusion by dint of the destabilizing effects of job loss. Only scant attempts have been made to define the concept of social exclusion, even at the European level, but the authors of the study hold that, without necessarily equating with poverty, it results from a process of disaffiliation that gradually erodes basic social rights (Join-Lambert, 1995). In European countries, social exclusion is often linked to long-term unemployment. Though redundancy obviously implies loss of employment, however, it is not necessarily in itself the cause of social exclusion. Rather it involves destabilizing factors which may set in motion a process of marginalization depending on the circumstances of the individuals concerned and on the context and conditions in which dismissal occurs. This obviously raises the question of the responsibilities of the actors involved and that of the rights and procedures to be applied in order to forestall the risk of exclusion by securing long-term employability.

This study thus offers insights into crucial issues in the debate on flexibility versus security. On the one hand, it provides food for thought on the reconfiguration of the various actors' responsibilities towards employment. While redundancy regulation systems still vary considerably from country to country — despite some signs of convergence, especially in terms of the positioning and roles of the key actors — business practices appear to coincide on a number of significant issues. On the other hand, if one looks at the problem from the standpoint of the prospects facing dismissed workers, redundancy highlights the value of a gradual transition from thinking in terms of job security to thinking in terms of security in people's life courses. This in turn raises the question of how to develop mechanisms or appropriate combinations of active and passive measures affording workers (especially the most vulnerable) new guarantees that would secure their status beyond the loss of a particular job or job diversity in their employment records. Broadly speaking, redundancy reveals the need to evaluate the effectiveness of three types

⁶ The average duration of unemployment among redundant workers was 420 days in 1993, as compared with an average of 350 days for all jobseekers registered with the National Employment Agency (ANPE). There is also a high percentage of redundant workers among the long-term unemployed: at the end of 1993, long-term unemployment affected 37 per cent of all jobseekers, but as many as 50 per cent of those who had originally lost their jobs due to redundancy (Baktavatsalou, 1996).

of measures pertaining to the restructuring process: preventive action ahead of dismissal, monitoring at the stage of decision-making on redundancies, and support for workers once they have been dismissed.

Reconfiguring responsibilities

Developments in the positioning of key actors under different legal systems

While national systems governing dismissal on economic grounds differ from country to country, the primary purpose of Community redundancy law, which developed in the context of sweeping industrial restructuring in the 1970s and was amended in 1992,⁷ is to ensure consistency in the protection afforded to workers in the different Member States.

In stipulating the employer's obligation to inform and consult workers' representatives and to notify the competent state authority, the European directives lay greater emphasis on the prevention of dismissal than on compensation and support for dismissed workers (Couturier, 1997). Although these directives have only partly succeeded in harmonizing redundancy legislation, they do offer a common base that each country has drawn upon to establish its own regulatory regime, in accordance with its national legislation, traditions and industrial relations system.

Drawing on a comparison of French, German, Italian and Spanish legislation, this study identifies regulatory models based on a typology of the functions of the key actors (employers, workers' representatives and government authorities). Each model presents advantages and drawbacks from the point of view of establishing a system designed to ensure security in people's working lives.

However, the changes affecting all four countries have led to the legislative developments mentioned earlier and, most importantly, to convergence of national practices, especially as between France, Germany and Italy. These changes suggest the time has come to define a new framework for action to enhance people's working-life security.

Evolving regulatory models

The employer accountability model

Employer accountability encompasses the various legal obligations that limit management powers with a view to giving employers some responsibility for employment.

To the extent that it is the employer who decides to dismiss workers on economic grounds, accountability calls first for specification of admissible

⁷ Council Directive 92/56/EEC of 24 June 1992 amending Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies, in *Official Journal of the European Communities* (Luxembourg), No. L 245/3, 26 August 1992.

justifications for collective redundancies. In all the countries covered, termination of employment for economic reasons must constitute a measure of last resort, i.e. redundancies must be unavoidable (Pélissier, 1992; Waquet, 1996). Inter-country variations in interpreting the notion of “last resort” are considerable, however. German and Spanish legislation grant the employer relative freedom of action in comparison with French case-law, which adopts a far more restrictive approach in interpreting the economic causes justifying dismissal.⁸ It should also be mentioned that a great many redundancies result from judicial insolvency procedures, in which case employer accountability is not exactly of the same order.⁹

Defining the criteria for redundancy selection is another crucial component of employer accountability. While Community law stipulates certain obligations in terms of informing workers’ representatives, the legislatures of the various countries have consistently intervened in order to clarify those criteria with the twin objectives of preventing discrimination and arbitrary decisions and of protecting the most vulnerable workers. The employer’s freedom of action is restricted to varying degrees (Spain being the least stringent in this regard), as is the role played by collective bargaining (at the other end of the scale, German law prescribes the participation of workers’ representatives in the selection process). All national laws do, however, contain specific provisions for the protection of workers in light of their age, length of service in the enterprise and family responsibilities.

Lastly, there are marked divergences in employer accountability when it comes to helping dismissed workers find alternative employment (out-placement) because the concept of a “social plan” or “redundancy plan” involves different requirements in this respect depending on the country (Röder and Recq, 1994). While French legislation confers primary responsibility on the employer for the redeployment of separated workers, making it mandatory (insofar as corporate resources permit) to provide alternative employment within or outside the firm, this question is given less prominence

⁸ Spanish legislation invokes economic, technical, organizational or production reasons, and case-law specifies criteria such as real, objective or sufficient grounds and a general dysfunction not entailing any risk to the viability of the enterprise (Supreme Court, Social Division, Unif.doc., 24 April 1996, *Aranzadi Social*, 5297; Basque Country Supreme Court, Social Division, País Vasco, 12 December 1995, *Aranzadi Social*, 4759). German legislation refers to imperative economic or operational reasons (para. 25.1 of the Protection against Dismissal Act; the employer retains discretionary power to terminate an employment relationship, however, the courts having no right of supervision over the decision (Federal Labour Court judgement of 30 May 1983, in *Neue Zeitschrift für das Arbeitsrecht* (NZA) 1985, p. 115; judgement of 7 June 1984, in *der Betrieb* (DB) 1985, p. 235; judgement of 26 January 1986, NZA 1986, p. 824). In France, by contrast, case-law invokes the notions of economic hardship, technological change and corporate restructuring required to maintain competitiveness, implying that termination of employment on economic grounds is not admissible as a means of enhancing the competitiveness of an undertaking (Cass. soc., 5 April 1985, two rulings, Cases *Thomson* and *Repa*, RJS 5/95, No. 497).

⁹ In France, for example, around 25 per cent of redundancies are estimated to result from such procedures, although data on the subject are far from comprehensive. The same pattern is observed in Spain.

under the German and Italian legal systems. In Germany, redundancy plans provide mainly for financial measures. Under Italian legislation, outplacement at the enterprise's expense is provided for merely as a possibility; and in Spain it is accorded only marginal importance.¹⁰ In Germany, Italy and Spain, support for dismissed workers thus falls principally to the authorities — although it must be pointed out that in both Germany and Italy workers' representatives step in prior to dismissal to help find suitable alternatives.

In spite of the discrepancies, however, there is a common focus in all countries on strengthening enterprise involvement. This is reflected in the emphasis France places on employer accountability for measures to support unemployed workers (social plan), and in the concern to transfer part of the costs of dismissal to the employer in both Italy and Spain.

The social dialogue model

Under European law, the centrepiece of worker protection in the context of corporate restructuring is consultation between employers and workers' representatives, the latter being provided with means of intervening in the process. Industrial relations systems vary from country to country, however, and this in turn influences the nature and outcome of consultations between the parties. Generally speaking, consultation with workers' representatives focuses on the social implications of redundancy rather than on the economic reasons that prompted the decision to dismiss, which remains a managerial prerogative — except, perhaps, in Italy.

In practical terms, dialogue with workers' representatives serves as an additional "screen" in the employer's decision-making process without, however, calling into question its economic rationale. In France, the framing of redeployment measures is a prerogative of the employer; the purpose of discussions with workers' representatives is then mainly to improve upon those measures, with the competent authorities or court playing a supervisory role.

In Germany, by contrast, the measures provided for under a redundancy plan stem from negotiations between the employer and the works council, and such negotiations must result in an agreement between the parties. In Italy, the redundancy plan is drawn up by the employer and subsequently examined jointly with the trade union organizations; the process must lead to an accord to protect employment by offering alternatives to dismissal. The Spanish legal system provides for consultations both on the reasons for redundancies and on such accompanying social measures as are envisaged.

Here again, convergence is under way. There is evidence from all four countries that the social partners are assuming a more prominent role in redundancy procedures as well as in handling the effects of job loss. Enterprise surveys highlight the crucial importance of the nature and extent of the involvement of workers' representatives. In Italy and Germany especially, the

¹⁰ Spanish legislation does not provide for any job-search assistance. Even the obligation for enterprises employing over 50 workers to frame a social plan is largely disregarded.

latter play a decisive part not only in averting dismissals and limiting their number but also in assisting in the redeployment of workers having lost their jobs.

The state intervention model

In the event of collective redundancy, Community law merely requires the employer to notify the competent authorities in writing of the contemplated staff reduction plan. The role of the authorities (along with their degree of involvement) varies according to the legislation and/or practice of each Member State, but it can certainly be said to have evolved, both in law and in practice. Government intervention is still patterned on two polarized models. In the first, the state administration retains supervisory power over dismissal, with the decision to cut staff being subject to its prior authorization (only Spain still fits this model) (Valdés Dal-Ré, 1994); and in the second model, the authorities have no legal power but have various other ways of influencing the employer's decision instead.

In Italy, the authorities exert their influence through conciliation or even mediation, taking on a role aimed at fostering dialogue between the social partners. In France, the requirement of prior administrative authorization was abolished in 1986, and since then the authorities have opted for a variety of measures ranging from assistance and advice in the negotiation process to more active involvement in the form of government subsidies. In Germany, the authorities still play a limited role but the gradual development of active measures to promote redeployment and retraining, which are partly funded by the Government, will presumably give them greater sway over the actions of the social partners in years to come.

Generally speaking, the state authorities now tend to encourage negotiated solutions by fostering and facilitating dialogue between the social partners (except in the funding of specific measures, over which the administration retains greater influence) rather than to exercise strict control over the outcome of negotiations, as is still the case in Spain. This does not imply government withdrawal but points to a genuine evolution in the State's mode of intervention, mainly by dint of greater involvement on the part of the other actors.

The changing role of the State is also evident in the way it intervenes in the labour market, particularly as regards the organization of public employment services. For example, the abolition of government monopoly on job placement and the increasingly sophisticated arrangements concerning the geographical scope of interventions — especially decentralization and territorialization — are all aimed at enhancing the effectiveness of government action. Yet the most striking examples are the steps taken to promote labour mobility and employability. The employment policy focus is gradually shifting away from the traditional distinction between passive and active measures. The current trend (with Spain lagging behind to some extent) is to encourage the development of active measures — as evidenced by the re-

training agreements in France,¹¹ “mobility lists” in Italy¹² and the payment of partial unemployment benefits through the system of “employment promotion companies”¹³ in Germany.

The shift in emphasis has far-reaching implications in that it affects the very notion of job security. This no longer lies solely in the hands of institutions designed to ensure job protection and stability in the enterprise (with payment of unemployment compensation in case of job loss), but it may also embody new entitlements aimed at helping separated workers to find new employment.

Redesigning the policy framework around consultation and social dialogue

Substantive changes in the concept of job security in turn highlight the need to recast the framework in which the various actors operate. The combined efforts of the key actors in the redundancy process are directed not only at preventing dismissal and ensuring the protection of workers, but also at providing those made redundant with continuing support. A few guidelines are proposed below; they are relevant mainly within the European context in that they seek to extend the scope of Council Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies, which paved the way for workers' fundamental social right to information and consultation on decisions likely to affect them, but without defining any general framework for the process.¹⁴

By virtue of the flexibility it offers, the social dialogue model appears to offer the best prospects for achieving the above objectives. This is in fact the model advocated by European law, under which the protection of workers during restructuring hinges on mandatory consultation with their representatives. This model offers two advantages. The first is that it identifies several actors with shared responsibility, which, as in Germany for example, leads to more effective involvement of workers' representatives in negotiations (as opposed to the defensive stance observed in France in cases

¹¹ Retraining agreements provide immediate, personalized support for redundant workers over a period of six months.

¹² These lists, drawn up by the Ministry of Labour, constitute a record of all workers made redundant, entitling them to benefits and redeployment assistance but also entailing specific obligations.

¹³ An employment promotion company (*Transfergesellschaft*) acts as a kind of “surrogate employer”, to which dismissed workers agree to be transferred and which then provides for their redeployment. The exact translation of the German term would be “transfer company”, but “employment promotion company” seems more appropriate in view of the purpose for which it is designed (see Knuth and Kirsch, 2001).

¹⁴ Likewise, while the principle of sanctions is clearly laid down in Council Directive 92/56/EEC (amending Directive 75/129/EEC), its application is left to national legislation.

of corporate restructuring). The second is that it would enable all actors to monitor the implementation of planned measures, thus providing assurance that the employer has complied with the commitments made. If such a model is to become truly operational, however, it should be supplemented by a balanced quadripartite procedure. Decisions on redundancy — given their individual and collective implications — affect not only the interests of the workers who may be dismissed and therefore seek protection, but also those of the employer (seeking to improve the structure of employment by downsizing), those of the workers remaining in employment (whose future also depends on the firm's overall performance) and those of the community at large, which has to bear part of the financial burden resulting from staff reductions.

Yet none of the countries surveyed is equipped at present with a properly regulated and effective procedure for balancing the interests of all four stakeholders — one in which institutions representing the workforce would assume a key role. In some countries, balanced regulation of dismissal could be achieved by extending the mandates of certain actors: this could mean strengthening the role of government institutions in Germany, worker representation in Spanish or French firms and individual rights in Italy, for example. Exactly how this might be done would vary from one country to another, but the overall objective would be to foster agreement between the parties under the supervision of a third party.¹⁵

That being said, appraisal of the regulatory framework and any developments contemplated must take due account of business practices.

Business practices: Converging approaches to dismissal

Although each of the four countries surveyed has its own institutional context and regulatory system, business practices coincide on a number of issues.

France and Germany offer the most striking examples in this respect. Everywhere, cyclical adjustment strategies are being superseded by structural adjustment strategies. Likewise, following the principle that redundancy should be viewed as a measure of last resort, firms are taking preventive action aimed at managing surplus staffing in-house. Their methods vary depending on the country and the size of the enterprise, but the goals remain the same: to avoid separation or at least limit the number of dismissals (through non-renewal of fixed-term or temporary contracts and the insourcing of subcontracted work), or to delay redundancies (structural unem-

¹⁵ In this connection, the role of the courts is the subject of considerable discussion in France (Waquet, 1996).

ployment in Germany, use of the *Cassa integrazione guadagni straordinaria* (CIGS)¹⁶ in Italy). The leading support scheme is early retirement, at least in the larger firms. This meets with the general approval not only of the workers, who view early retirement as an opportunity to leave the labour force under favourable conditions before reaching pensionable age, but also of the trade unions and employers, in view of the low costs involved (these being borne mainly by the community at large). Such were the findings of the 1999 survey this article draws upon. However, extensive recourse to early retirement schemes obviously stands in the way of the development of active policies. Furthermore, this practice is being called into question as the financing of retirement grows increasingly problematic all over Europe. The future of older workers — particularly the low-skilled — and their employability have become burning questions, to which no satisfactory answer has yet been found, either in practice or in law. Indeed, if it were not for early retirement schemes, would the dismissal of older, low-skilled workers not increase the type of unemployment that leads to social exclusion?

Firms in all the countries surveyed are also widely taking “individualized” approaches to redundancy, which may not only jeopardize continuity in people’s career paths but also heighten the risk of social exclusion. The “individualization” process starts once a collective redundancy has been decided and the selection of individuals to be made redundant begins. As mentioned earlier, the law lays down specific criteria for selection, but in terms of the people who actually lose their job, the outcomes turn out to be the same in all countries. The rules governing selection in the event of collective dismissal are designed to protect the most vulnerable categories of workers, and yet these — namely older or low-skilled workers or individuals with considerable seniority — are precisely the ones to leave. The first explanation for this paradox lies in the contradiction between the protective aim of the law and the interest of the enterprise, which is to retain the most valued workers. But the paradox also results from the general consensus that builds up around early retirement schemes and payments in return for voluntary termination.

Another possible factor is evasion of collective redundancy regulations, prompted by the desire of enterprises to cut through the red tape and avoid the risks involved. Firms thus tend to dismiss staff in numbers below the statutory thresholds for collective redundancy (which all countries define in terms of enterprise size, the time frame for dismissals and the number of redundant

¹⁶ This partial unemployment compensation fund was originally intended to enable workers in enterprises affected by temporary overstaffing to draw supplementary income pending an upswing in the firm’s performance. In practice, the CIGS turned into a “dismissal concealment” set-up in that it provided financial support for workers over a number of years. Act No. 223 of 1991 seeks to limit the role of the CIGS, by laying down the obligation to make redundant those workers without re-hiring prospects (Miscione, 1991).

workers).¹⁷ To quote but a few examples, German companies resort to individual dismissals on economic grounds without corporate restructuring, whereas French firms tend to opt for successive rounds of small-scale redundancies, and Spanish enterprises invoke the concept of “dismissal for objective reasons”. The employer’s freedom of action varies from country to country.¹⁸ It is much greater in France and Spain than it is in Italy or Germany (where the “individualization” of redundancies mostly translates into voluntary terminations).

The business practices outlined above stand in the way of establishing a system to secure long-term employability and partly explains why some of the workers who are made redundant find it difficult to re-enter employment. Building security into people’s working lives depends not only on support to workers who have lost their jobs, but also on action taken ahead of and during the redundancy process — hence the case for the quadripartite procedure proposed above.

From job security to working-life security

For all redundancy casualties, dismissal constitutes a sharp and radical break in continuity, often after decades of service in the same firm, with truly precarious prospects ahead. Many of those who are made redundant succeed in re-entering employment, but those who find it hardest to secure new jobs are the oldest and low-skilled workers.

Most countries have accordingly set up schemes that provide not only compensation but also job-search assistance. The two types of measure are undoubtedly complementary, but what remains to be established is the extent of their success in helping workers with the poorest re-hiring prospects.

¹⁷ Each country has its own definition of collective redundancy: in Germany, within a given 30-day period, more than five workers in firms employing between 21 and 59 people, 10 per cent of total workforce or more than 25 workers in enterprises employing between 60 and 499 people, and more than 30 workers in businesses with more than 500 employees; in Spain, over a 90-day period, at least ten workers in firms employing fewer than 100 people, at least 10 per cent of the workforce in enterprises employing between 100 and 299 people, and at least 30 workers in those with 300 employees or more; France establishes a distinction between collective dismissals involving two to nine workers over a period of 30 days and those involving ten or more employees also over a 30-day period; in Italy, the rules apply to firms employing at least 15 people, if more than five workers are made redundant within a period of 120 days.

¹⁸ In France, enterprises with more than 50 workers announcing ten or more dismissals on economic grounds over a 30-day period are under an obligation to provide for a social plan; in Spain, the mandatory time frame is 90 days, with a number of individual dismissals that may range from 10 to 30 depending on the size of the business. In Italy, the obligation concerns firms employing more than 15 people and dismissing at least five workers.

Workers in the aftermath of redundancy: A similar pattern across countries

The exploratory surveys conducted among workers dismissed for economic reasons all reached the same conclusion: redundancy procedures determine what subsequently becomes of redundancy casualties.

In spite of their limitations,¹⁹ these surveys show that a large proportion of redundant workers who succeed in finding new jobs are placed in a far more precarious position than before — their subsequent labour market experiences ranging from alternate periods of employment and unemployment to a succession of short-term contracts or assignments. As for redundant workers who fail to find a new job despite an active search, the risk of being trapped in long-term unemployment looms large. Again, those most in jeopardy are workers with no specific skill base, aged between 40 and 50, with considerable seniority, engaged in a declining sector of activity or possessing no transferable skills.

Analysis of these workers' experiences highlights variables, common to all the countries surveyed, that play a more or less significant part in easing the path into new employment or, conversely, in impeding re-entry into employment. Three broad explanations can be put forward. The first concerns the personal characteristics of those made redundant. These workers display a number of salient features, as outlined earlier, which may all be viewed as accounting for poor employability and low rates of redeployment. These features reflect business practices in the selection of workers for redundancy. The second explanation has to do with the characteristics of enterprises or the environment in which they operate. The size of the firm is a crucial factor in determining outcomes for its workforce. Not only does it determine the incidence of redundancies, but it also affects the way in which redundant workers are treated. In smaller firms, the dismissal procedure is simplified, staff representatives play a more limited role, support schemes are not as comprehensive and compensation is less generous. The financial situation of the enterprise is also a decisive factor in that workers are affected differently according to whether the firm is restructuring or laying off staff in an emergency. In the first instance, the workers enjoy substantial support both within and outside the enterprise, whereas in the second, the dismissed are left to fend for themselves without any real support — except under the retraining

¹⁹ The chosen survey methodology was to start from enterprise level and trace workers who had been dismissed rather than to conduct a panel study of a group of unemployed persons. Two reasons prompted this decision: first, labour market indices did not permit panel-type analysis (with the exception of France); and second, this method made it easier to examine the redundancy process as a whole (from the dismissal decision point through to what ultimately became of the redundant worker). These exploratory surveys had their limitations, however: the samples were too small to be truly representative, which, coupled with the heterogeneous contexts of investigation, made it difficult to compare results, especially in quantitative terms.

agreements in France. Obviously, the likelihood of redundant workers finding new jobs largely depends on local labour market conditions as well. The third possible explanation relates to the impact of redeployment efforts. The effectiveness of job search assistance is hard to measure, however, because of the inadequacy or absence of evaluation mechanisms. Only France evaluates the impact of support schemes,²⁰ and its findings show that those receiving support under re-training agreements have better chances of securing jobs than the unemployed registered with the National Employment Agency (ANPE): indeed, an average of 50 per cent of those enrolled in out-placement programmes find new jobs within eight months²¹ (Cloarec, 1998).

In Italy, analysis of details regarding the outflow of workers from the “mobility lists” scheme is perfunctory. It nevertheless emerges that close to 50 per cent of those registered are struck from the lists as a result of the expiry of their period of entitlement, without any improvement in their situation. The unemployed are those who face the greatest risk of exclusion. This calls for taking a mixed view of the Italian scheme, made up of measures that appear to be more passive than active, contrary to its initial objective.

In Germany, strategies aimed at encouraging enterprises to plan active measures in the framework of redundancy plans are too recent for any judgement on their effectiveness. An initial survey of 50 workers has nevertheless revealed a 76-per-cent rate of redeployment, despite that fact that those involved were older, low-skilled workers.

Developing active support for the unemployed

Although further research is needed to appreciate the effectiveness of support measures, the development of active measures appears to be crucial to ensuring greater security in people’s working lives.

Community strategies²² promote the adoption of active measures, although their content is nowhere clearly specified. In France, renewal of the unemployment insurance agreement of the National Union for Employment in Industry and Commerce (UNEDIC) and the establishment of the so-called Return-to-work Assistance Plan (PARE) — an idea derived from the

²⁰ Evaluation procedure depends on what the scheme involves. Evaluations are carried out systematically in the case of retraining agreements and on an ad hoc basis in respect of redeployment units, which are in charge of informing and counselling the unemployed in their search for new jobs, advising them of possible job openings and offering training opportunities.

²¹ Ministry of Employment and Solidarity (ed.): “Les dispositifs d’accompagnement des restructurations en 1998”, in *Premières informations et Premières synthèses* (Paris), 1999.09, No. 38.1.

²² Both the European Directives cited in note 7 and the national action plans for employment. See also *Joint Employment Report 2000* and *Joint Employment Report 1999*, respectively COM (2000) 551 and COM (1999) 442 (see http://europa.eu.int/eur-lex/en/com/availability/en_availability_2000_1.html).

retraining agreements²³ — point to the liveliness of the debate both on the framing of active measures and on their combination with compensation schemes. To clarify matters, it is necessary to understand what these different mechanisms actually involve. A distinction should be made between those aimed at guaranteeing income and maintaining social protection, on the one hand, and those affording workers guidance and support in the labour market, on the other. The former seek to secure a basic income, while the latter are designed to speed up workers' redeployment through measures more closely geared to individual requirements. As this distinction suggests, an approach aimed at ensuring security in people's working lives should preferably view active and passive measures as complementary (Evans-Klock et al., 1999) — particularly in the light of the broad variety of job-search support schemes currently in operation. All the countries surveyed (with the exception of Spain, which is treading more carefully) are in the process of developing this type of support, which is consistently gaining ground over early retirement and disability pension schemes.

- *Measures to guarantee income and maintain social protection* can be divided into the following four main clusters:
 - Unemployment compensation schemes providing for income replacement (Daniel and Tuschizer, 1999). These are generally supplemented by specific measures for workers dismissed on economic grounds, which, as mentioned earlier, reflect the will to increase employer responsibility. The question is: to what extent should compensation be conditional on the jobseeker's compliance with the requirements of job-search support programmes?²⁴
 - Schemes permitting early exit from the labour market with a guaranteed income, under which older workers enjoy special status and are entitled to replacement income until they reach pensionable age. Such schemes have been applied in all the countries, though in different forms and to varying degrees (extensively in both France and Germany). Failing suitable solutions for maintaining older workers in the labour market, they have so far proved one of the most effective means of preventing their social exclusion.

²³ With effect from 2001, the PARE (*Plan d'aide au retour à l'emploi*) is available to every jobseeker having paid contributions over a period of at least four months in the course of the previous 14 months (see the Agreement of 1 January 2001 on assistance for re-employment and unemployment compensation, and its accompanying regulations, in *Liaisons sociales* (Paris), 21 December 2000, No. 8131, D4). The PARE offers a "personalized plan of action" based on an assessment of skills. Jobseekers involved in the programme draw a flat-rate benefit over a period of six months, on the agreement that any job offers made (which must fulfil certain requirements) will not be turned down. The PARE derives from the retraining agreements in the sense that it makes job-search assistance available to every unemployed worker on a personalized basis.

²⁴ This issue has given rise to a debate in France in connection with the establishment of the PARE.

- Disability pensions, particularly in Germany and Italy, provide both an alternative to unemployment registration and a pathway into early retirement. The practice is receding, however, because of the increasing strictness of eligibility criteria.
- Statutory or negotiated severance pay, which may serve as replacement income. It is vital in situations where job-search support for those made redundant is weak or non-existent (in Spain and Italy, for example). As mentioned earlier, securing entitlement to severance pay is one way to increase employer accountability.
- *Measures to provide support in the labour market* reflect the tendency in all the countries surveyed except Spain to develop mechanisms specifically geared to the needs of workers made redundant.

In France, retraining agreements are the main vehicle for this type of support. Redeployment units also play a vital, though less prominent, part in job-search assistance (Enclos, 1996; see also note 20 above).

While Germany's basic redundancy plans still essentially provide for severance pay, active measures have recently been put into place.²⁵ Two courses of action are now possible: either workers threatened with redundancy benefit from such measures within the period of notice of dismissal, or the duration of their employment is extended beyond the expiry of that period through use of the partial unemployment compensation mechanism, in exchange for which they must agree to be transferred to an alternative employer, represented by an "employment promotion company" (*Transfergesellschaft*). While the benefits provided within the context of such a company closely match those available to French workers covered by a retraining agreement, the distinctive feature of the German scheme is a transitional contract of employment that is binding upon the different actors. Maintenance of this contractual relationship — unlike the retraining agreements system, which does not involve any such employment relationship — probably plays a decisive part in assuring redeployment. Moreover, the responsibility of the original employer differs completely as between the two systems. In France, the retraining agreement concept presupposes separation from the initial employer, with the ensuing costs being covered by unemployment insurance. In Germany, by contrast, even though the employment promotion company becomes the new employer, the existing employment relationship remains unsevered — albeit for a limited period — since the worker's income continues to be funded on a part-time basis by the original employer, as well as by the partial unemployment benefits paid by the government employment service. This system effectively amounts to active management — under the responsibility of all the actors involved — of the transitional phase between redundancy and new employment.

²⁵ The Promotion of Employment Act (*BGBI*, part I, p. 594) entered into force in 1998.

In Italy, workers dismissed for economic reasons are registered on the “mobility lists”, which entitles them to rights and benefits designed to ease re-entry into employment. In exchange, the redundant workers undertake to participate in redeployment programmes, generally run by government employment services at the local level. At present, however, the scheme appears to yield no more than middling results.

In the move to develop support measures granting workers specific entitlements in a variety of legal frameworks (contracts of employment, re-training agreements), care must be taken to factor in converging business practices, especially as regards dismissal of the most vulnerable workers. Though a combination of active measures and compensation mechanisms may well increase labour mobility during a period of employment growth, the combination might have to be adjusted to the particular circumstances of this category of workers.

Specific protection for the most vulnerable

The measures outlined above appear ill-suited to averting the risks of job loss or difficulties in redeployment when such risks stem from ageing, low skills or an enterprise's particular situation (as determined by workforce size or economic circumstances). Here again, a few guidelines are suggested — each combining job protection within the enterprise and labour market policy, and involving all the actors concerned.

Workers over 50

The problem of older workers forced out of employment is evidently a major challenge in each of the countries surveyed, not only because of the difficulties they face in finding new jobs, but also on account of the general decline of policies that promote early exit from the labour force. The situation of these workers calls both for preventive action and for adequate support when they find themselves in search of new employment.

The preventive approach requires maintaining the employability of older workers through the development of life-long training. Enterprises need to assume greater responsibility in this sphere, as emphasized by the High-level Group of Experts on the Economic and Social Implications of Industrial Change set up by the Commission of the European Communities at the request of the special session of the European Council held in Luxembourg in 1997. Prevention also implies extending the duration of labour force participation. This has translated into a reorientation of government policy, observed in most European countries, towards restricting access to schemes providing for early withdrawal from the labour force, under combined economic and political pressures. Enterprises could also be encouraged, or possibly even required, to change their attitudes towards older workers (bearing in mind, however, the possible perverse effects of such a requirement).

The preventive approach must be accompanied by effective measures aimed at supporting dismissed workers in their search for new employment

rather than at easing their transition into retirement, as is generally the case today. In their June 1995 Resolution on the employment of older persons, the European Council and the representatives of the Governments of the Member States laid emphasis, for the very first time at European level, on the need for special action in aid of older workers. The European Commission's Communication of 21 May 1999, entitled "Towards a Europe of All Ages — Promoting Prosperity and Intergenerational Solidarity", bears further witness to the topical importance of the debate, in view of the population trends and costs involved in funding retirement schemes.

Low-skilled workers

Dismissed low-skilled workers also encounter considerable difficulties in finding new employment. Providing vocational training for such workers is a crucial problem, since a huge investment is often required to develop the skills they need for occupations with favourable employment prospects or to retrain them for entry into sectors likely to offer openings. The fact that many of the low-skilled are also older workers further adds to the complexity of the problem.

Workers in small enterprises

Workers dismissed from small firms (the technical threshold depends on the country) invariably find themselves at a disadvantage, either because they are excluded from the scope of redundancy regulations or because dismissal procedures in small-scale enterprises are less stringent in practice if not in law. It is important to ensure equity among workers dismissed on economic grounds and to guarantee equal rights and equal opportunities of re-entering employment for all, irrespective of the size of the firm. In this respect, local labour-market organization might be an interesting avenue to explore, particularly in light of the quadripartite consultation procedure outlined above.

Workers dismissed by firms in financial difficulty

The scope of measures to support separated workers largely depends on the enterprise's economic circumstances. This is recognized by French case-law, which establishes the principle of proportionality between the measures set forth in the social plan and the resources of the firm.²⁶

Workers dismissed from ailing firms are entitled to no more than the measures provided for under ordinary law, such as the retraining agreements in France. Firms taken into receivership give the greatest cause for concern, since staff redeployment is then no longer the priority. A new trend is nevertheless emerging in both France and Germany, where receivers in bankruptcy appear to be devoting closer attention to redundancy

²⁶ Cass. soc., 30 September 1997, Broussaud, JSL (Paris, éditions Lamy SA), No. 1, p. 9.

casualties and seeking to ensure that they receive support following dismissal.²⁷ Such efforts must be encouraged and the social responsibility of judicial administrators and liquidators enhanced.

Integrating safeguards for workers throughout the restructuring process

Moving away from the notion of job security and reasoning instead in terms of working-life security means establishing various mechanisms at three stages in the redundancy process, i.e. ahead of, during, and after dismissal. To ensure continuity in people's working lives and avert the risk of exclusion looming over the most vulnerable, the first step is to define the safeguards applicable at each of those stages so as to determine the responsibilities devolving on the various actors and the terms on which the threat to employment is to be managed.

Action ahead of dismissal

Policies aimed at preventing dismissal could be developed along three main lines, which are — to varying degrees — already discernible in the countries surveyed:

- The first is to *maintain and develop employability*. Although the right to vocational training is everywhere written into national law as one of the fundamental rights of workers, the same cannot be said of the obligation to ensure that workers keep up with the changing demands of their jobs. Only Germany and France recognize a general and permanent obligation in this regard; it is very limited in Spain and non-existent in Italy.
- The second is to *promote job management planning*. Job and human resource management planning is enshrined in French law,²⁸ but despite strong incentives coupled with government aid, its practice is still confined to the country's larger firms. Moreover, vocational training programmes are targeted at specific occupational categories (managerial staff and skilled workers), and career paths can vary widely within any given firm (Beffa, Boyer and Touffut, 1999). Similar though less formal provisions exist in Germany, whereas Spain and Italy still lag far behind in this respect. The development of job management planning for the least-skilled workers will undoubtedly prove a challenging task.
- The third is to *strengthen the obligation to redeploy workers internally*. Here too, firms in both Germany and France are required to redeploy redundant workers internally before envisaging any staff reductions, although the two countries apply different penalties for non-compliance.

²⁷ In this connection, see Morin and Mallet (2000), and particularly the sections dealing with the findings of surveys conducted in firms undergoing compulsory liquidation (pp. 49 and 98).

²⁸ See Act No. 89-549 of 2 August 1989 on the prevention of dismissals for economic reasons and the right to retraining (with comments by Jean-Pierre Soisson), in *Droit social* (Paris) No. 9/10, Sept.-Oct. 1989, p. 621.

The notion of priority to internal redeployment is admittedly recognized in Spain (without, however, constituting a formal obligation) and Italy (within the context of individual redundancies), but employer accountability in this area definitely needs to be strengthened and underpinned by penalties for non-compliance in these countries.

Action at the point of decision-making on redundancies

Two crucial issues must be addressed to ensure proper monitoring of the redundancy decision-making process:

- The first concerns *the grounds for redundancies and their supervision*. The admissibility of economic grounds for dismissal varies from country to country, as does the scope of the supervisory process. These issues are central to the debate on the following questions: Are staff reductions aimed at improving a firm's market performance admissible as "redundancies"? Is subsequent verification of the legitimacy of redundancy sufficient? Should sanctions and fines be imposed on firms that lay off staff for economic reasons? These fundamental questions highlight the complexity of striking a balance between the interests of the enterprise and those of its workforce.
- The second issue concerns *monitoring of the terms of individualization of redundancies*. As pointed out earlier, an "individualized" approach is fraught with risks for the people involved, faced as they may be with the prospect of precarious employment without protection, individually negotiated arrangements or small-scale redundancies aimed at evading the burdensome regulations governing collective dismissals. Under such arrangements, redundant workers are left to fend for themselves — sometimes without any source of income — in their search for new jobs. One way of increasing employer accountability in this regard would be to apply a system of premiums and surcharges on unemployment insurance contributions, reflecting each firm's human resources management policy (Dayan, 2000; Théry, 2000).²⁹ Closer involvement of workers' representatives in the framework of the quadripartite procedure outlined above might also facilitate the monitoring process.

Action following dismissal

When redundancy is unavoidable and there are no opportunities for internal redeployment, workers who lose their jobs need assistance in finding employment elsewhere. The preference now being given to active support measures over guaranteed income schemes is a step towards ensuring greater continuity in people's working lives. That being said, both types of scheme

²⁹ A differential scheme of this type was established in the United States in the 1980s. According to some evaluations, this lowered unemployment levels — with unemployment becoming less sensitive to the economic cycle — and promoted hiring by firms that were stabilizing their workforce.

must be maintained in order to ensure that all those dismissed — especially the most vulnerable, such as older workers and individuals with little creditable service³⁰ — are assured of a continuing source of income.

The following improvements would increase the effectiveness of support measures:

- *Early implementation.* Taking advantage of the notice period — i.e. ahead of actual termination of employment — to set support mechanisms in motion, as is done in Germany, appears to yield promising results in promoting swift redeployment of dismissed workers.
- *Redeployment as the principal thrust of active measures.* In practice, many of these measures have shifted away from their original objective, i.e. redeployment. For example, when “employment promotion companies” in Germany, retraining agreements in France and “mobility lists” in Italy deal with older workers, they turn into mere tideover arrangements pending retirement.
- *Enrolment of dismissed workers in transitional schemes based on a contractual relationship that maintains participation in a collective mechanism,* rather than in support schemes that increase the individualization of workers' cases.³¹ The example offered by Germany's employment promotion companies is an interesting one, and close attention should be paid to developments in this regard (Knuth and Kirsch, 2001).
- *Psychological support,* which is one of the crucial components of assistance for those who have lost their jobs. Dismissal is a traumatic experience for most, one which hampers speedy and effective redeployment.
- *A more suitable operational framework for the public authorities.* A proliferation of governmental and para-statal institutions responsible for the placement of — or payment of compensation to — dismissed workers (in Spain and France) tends to impair efficiency. The provision of these services by a single body — as in Germany — leads to a more harmonious combination of passive and active measures and enhances the effectiveness of government action. The organization of local labour markets through networks linking local firms, institutional actors and non-profit organizations could prove extremely useful in assisting the redeployment of dismissed workers.

³⁰ Creditable service may be defined as periods of employment during which contributions were paid towards entitlement to a replacement income.

³¹ This is one of the main points at issue in the debate on the PARE in France, the more so since individualization under the terms of individual arrangements is also reflected in applicable sanctions. Under the German employment promotion company scheme, a transferred contract of employment gives rise to rights and obligations as well, but the sanctions remain those applicable to an ordinary contract of employment.

Concluding remarks

This comparative discussion of redundancy demonstrates that — insofar as employment is held to be a public good, a guarantee of people's economic security — job security in today's increasingly flexible markets hinges upon a close linkage between labour market policies and the institutions responsible for protecting employment relationships within enterprises.

Reconciling the need for enterprise flexibility and workers' need for job security thus requires simultaneous implementation of employment protection legislation and of labour market policies so as to combine income maintenance and social protection with job-search support for dismissed workers.

The case study of redundancy makes a good illustration of the complexity of the problem. Comparative work on this subject shows that European countries are beginning to move away from the rationale of job security towards that of ensuring security and continuity in people's working lives. Such work also identifies the operating procedures of the different actors and schemes that provide workers with new safeguards. However, widespread shortcomings in labour market monitoring mechanisms — especially as regards evaluation of procedures applicable to redundancies — make it extremely difficult to measure the effectiveness of such safeguards.

Similarly, there is a dearth of theoretical and empirical work for assessing the extent to which flexibility-driven business practices influence — or perhaps even cause — rising unemployment, job insecurity and social exclusion (Bélorgey, 2000). Yet, research of this kind would provide valuable insights into how corporate policy and labour market policies might be combined to ensure greater security in people's working lives.

Such an undertaking would involve looking beyond the case of redundancy and engaging in a review of the entire range of processes leading to job loss.

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