

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(72) 1400

Brussels, November 8, 1972

Proposal for a Council Directive  
on the harmonization of the legislation of  
the Member States relating to redundancies.

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(submitted by the Commission to the Council)

COM 72) 1400

## EXPLANATORY STATEMENT

### A. GENERAL

A comparison of the provisions in force in the Community countries on redundancies shows certain notable differences as regards conditions and procedures and the measures taken to lessen the negative consequences of dismissal for workers.

These important difference as regards protection of workers in cases of redundancies have a direct effect on the functioning of the Common Market in as far as they create disparities in conditions of competition which are likely to influence the decisions by undertakings, whether national or multinational, on the distribution of the posts they have to be filled. It must for example be expected that any firm intending to reorganize itself by a plan including the partial or total closedown of certain departments, will decide which departments to close down on the basis, at least in part, of the level of protection offered to the workers. This and other situations can exert pressure against social progress and prejudicial to a balanced overall and regional development within the Community since it creates areas of mass under employment.

In this way economic integration, and the accompanying progressive interdependence of national markets, together with increasingly tough competition at world level, the rate of technological progress and the changes (rationalization, cooperation, mergers) which firms undergo directly or indirectly as a result of the functioning of the Common Market, have profound repercussions on the security of employment for workers.

The economic changes and closures of undertakings which these can involve are however an integral part of a development towards more promising activities. It is therefore necessary not to hinder them, but to place this professional mobility within a framework of appropriate guarantees.

Moreover it is increasingly less justifiable socially to apply very different provisions which have equally different results in respect of redundancies of workers who are in comparable situations.

This inequality

- has become even more manifest as a result of the free movement of workers;
- can, when criteria are being fixed for the contributions to be paid by the European Social Fund in cases of loss of employment, cause that Community instrument to be applied differently, in particular as regards conditions, duration and amount of these contributions;
- is harmful to the functioning of the Common Market, which in accordance with Article 117 of the EEC Treaty includes the improvement in the working and living conditions of workers and their upward harmonization.

For these reasons it is necessary to eliminate known disparities by harmonizing the relevant national provisions. In that respect the Commission in no way loses sight of the fact that any rules governing redundancies can form only one special aspect of the laws on dismissal in their entirety, on which the Commission started work in its report on provisions favouring workers faced with dismissal <sup>(1)</sup> and in which it points to the direction which in its opinion should be taken by any discussion on the harmonization of the laws on dismissal.

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(1) Document No 8754/2/70 addressed to the Council on 16 May 1972.

Nevertheless the special socio-economic importance of redundancy justifies special Community rules being adopted in anticipation.

An affirmative answer to the question of whether the redundancy provisions in force in the countries of the Community should be harmonized does not imply that the autonomy of management and labour would be called in question. On the contrary: in the proposed directive, this autonomy is considered as a point of departure and creates the framework which brings the two sides to the negotiating table, clearly showing the aims of the negotiations but leaving the organization of those negotiations to the two sides.

In its draft Directive, the Commission has voluntarily restricted itself to a few essential points prompted by the thought that systematic joint action by management, the authorities and workers representatives is the best method of obtaining community rules on redundancy which will best serve their dual purpose - of providing social protection and acting as an economic regulator.

It is along these lines that the proposed directive which follows has been concerned. On the one hand it is based on provisions and procedures in force in the Member States. On the other hand it makes provision for them to be harmonized in order to eliminate consequences which are very different - indeed contradictory.

Dismissals effected pursuant to contracts of employment for limited periods of time are not covered by this Directive.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

having regard to the proposal from the Commission,

having regard to the Opinion of the European Parliament,

having regard to the Opinion of the Economic and Social Committee,

whereas notable differences are to be found in the provisions in force in the Member States of the Community on redundancies as regards conditions and procedure and measures which have been taken to alleviate the consequences of dismissal for workers; whereas these differences have widened in the last years;

whereas these important divergences over the protection of workers in cases of redundancy have a direct effect on the functioning of the Common Market, because they create disparities in the conditions of competition which influence decisions taken by undertakings, and in particular multinational undertakings, on the distribution of the posts they have to be filled, thus creating pressures against social progress and prejudicial to a balanced overall and regional development within the Community; whereas these divergences are moreover harmful to the functioning of the market in as far as they are not compatible with the necessity of improving living and working conditions for workers to put them on an equal footing in a developing society;

whereas economic integration in the Community, ever increasing world-wide competition, the rate of technological progress, changes in the structure of demand, the rapid development of multinational undertakings and the imbalance of economic and social development in the Community are having ever widening repercussions on the security of employment for workers;

whereas moreover, the balanced economic and social development of the Community requires the provisions mentioned above to be improved and harmonized so that the process of economic integration is prevented from creating pockets of mass unemployment;

whereas it is necessary as a result to eliminate disparities on the subject and therefore to harmonize national provisions;

HAS ADOPTED THIS DIRECTIVE:

Article 1

- 1) Where an employer intends to dismiss ten or more workers for one or more reasons, and in particular for economic or technical, reasons irrespective of the individual behaviour of those workers, such intention and all relevant information such as the reasons for dismissal, the exact number of workers to be dismissed and the time over which the dismissals are to be carried out must be notified to the competent public authority of the Member State.
- 2) The results of consultations by the workers representatives provided for in Article 4 must be annexed to the notification or sent as soon as possible.

Article 2

1. Except where otherwise stated by the competent public authority, the dismissals notified to that authority shall take effect one month after such notification, without prejudice to any individual rights regarding length of notice.
2. This delay may be used by the public authority to find solutions to the problems raised by the proposed dismissals.
3. The public authority may extend this period by one month; the employer must be informed of the extension not later than three weeks after the notification.

Article 3

1. The competent public authority may refuse to authorize all or part of the dismissals notified if, after investigation, it is found that the reasons, within the meaning of Article 1, invoked by the employer are incorrect.
2. The competent public authority may suspend the dismissals if the consultation with the workers representatives provided for in Article 4, 1. and 2. has not taken place, or where appropriate, if application has been made for mediation as provided for in Article 4, 3. In such cases the competent authority may extend the period provided for in Article 2, 1. by not more than two months.

Article 4

1. If the number of dismissals referred to in Article 1 is 50 or more the employer shall consult the representatives of the workers of the undertaking in question before notifying these dismissals to the competent public authority in order to reach an agreement.

If the number of dismissals is less than 50, the competent public authority may ask the employer to consult the workers' representatives, if it considers it necessary. The representatives shall be those provided for by national procedures in force.

2. These consultations shall cover in particular:

- the possibilities of avoiding or reducing the proposed dismissals,
- what criteria to apply when deciding which workers to dismiss,
- the possibility of giving other jobs in the same undertaking to workers threatened with dismissal, whether by retraining, by transfer to another part of the undertaking or by amending their conditions of employment,
- compensation for reductions in salary and other benefits,
- measures to be taken in favour of workers to be dismissed, in particular with regard to severance grants and priority for re-employment,
- procedural details, in particular the staggering of dismissals.

To that end, the employer must supply the workers representatives mentioned above with all necessary information, in writing, and in all cases must give the information set out in Article 1, 1., so that they can put forward constructive proposals.

3. If agreement is not reached between the parties at the consultations, each may request the public authority to act as mediator.



Article 5

Within six months from the date of notification of this Directive, the Member States shall amend their legislation in accordance with preceding provisions and shall immediately inform the Commission thereof. The legislation thus amended shall be applied at the latest one year thereafter.

Article 6

Within two years from the date on which the year mentioned in Article 5 expires, the Member States shall forward all necessary information to the Commission to enable it to draw up a report for submission to the Council on the application of this Directive.

Moreover, Member States shall, from the date of notification of this Directive, inform the Commission, in good time for it to make any observations, of all later draft laws, regulations and administrative provisions which they may adopt in the field covered by this Directive.

Article 7

This Directive is addressed to the Member States.