European Working Group on Labour Law

Termination of a contract at the initiative of the employer based on economic grounds (individual and collective termination).

Italian Report:

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Questions for National Reports

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1) General legal framework:

a) Individual and collective dismissal based on organizational, technical and productive reasons; main rules, their personal scope of application and the role of the collective bargaining.

Generally speaking, statutory provisions represent the main source of regulation in case of individual or collective termination of an employment contract at the initiative of the employer.

Individual dismissal

Under the individual profiles, first of all very important are the provisions of the civil code, specifically the articles 2118 and 2119, that regulate the dismissal "*ad nutum*", i.e. without any motivation, and the dismissal for just cause.

The article 2118, until 1966 has been applied to all employees with an open – ended employment contract. From 1966 onwards, according to act 604, it only applies to home workers, domestic workers, workers in the probation period, managers and workers above 65 who fulfill the pension requirements. According to the Art. 2118 the employer may dismiss an employee without being obliged to provide any motivation, just giving her/him a dismissal notice which duration is fixed by collective agreements or determined according to custom or to equity.

On the contrary, the Art. 2119 c.c. still applies to all the workers who have a fixed term or an indefinite period contract and regulates the just cause for the dismissal, meant as a misconduct by the employee so serious that it does not allow the continuation of the employment relationship even on a temporary basis, i.e. till the notice period has expired.

Besides these rules, as additional sources of regulation very importants are some of the most relevant labor law provisions; first of all, as we will see, the provisions of the Act n. 604/1966, integrated by the Art. 18 Act n. 300/1970 (which regulates the reinstatement in the workplace in case of unjustified dismissal) modified by Act n. 108/1990 and, more recently, by Act n. 183/2010 (that regulates new term for the recurs to the Labor Court).

According to the Act n. 604/1966 an individual dismissal from an indefinite period employment contract, to be lawful, shall be justified by objective or subjective grounds (which include just cause), defined either by the law or (only in case of subjective grounds) by collective agreement.

According to art. 3 of the Act n. 604/1966, justified reasons are meant to be either a serious breach of contractual duties by the employee (so called subjective reasons) or reasons connected to the production, the organisation and to its functioning (so called objective/economic reasons).
Besides these rules, which have general applicability to all employees with an indefinite period

employment relationship, there are specific rules that forbid the dismissal of pregnant women or women in the period immediately before or after marriage or in parental leave periods and of specific categories of workers at risk discrimination.

Collective dismissal

The legal framework of the collective dismissal is, instead, the results of the implementation at national level of the European Community legislation.

The topic is regulated by the Act no 223 of the 1991, that implemented the Directive n. 75/129/EEC, then modified by the Directive n. 92/56/EEC subsequently recast in the current text of the Directive n. 98/59/EC.

The Act n. 223/1991 fulfills two aims. First of all to implement the European Community Directive and second to reorganize the national rules on the companies crisis management, the employees redundancy, the labor market and support of the employment levels and the workers income.

The national regulatory framework is very intricate, and descends from the combined provisions of the Articles 4, 24 and 5 of the Act n. 223/1991, in which the art. 4, in addition to regulate the information and consultation procedure for the workers representatives, allows the company to anticipate or not the collective dismissal by a phase of salary integrative intervention (Cassa integrazione guadagni straordinaria), while the art. 24 regulates the notion and the personal scope of the collective dismissal and the art. 5 establishes the criteria for the selection of the workers to be dismissed.

According to the Article 24, par. 1, of the Act n. 223/1991, the rules are applicable to all the companies (even non-commercial) that occupy more than 15 employees employed for an indefinite period and that as a consequence of a reduction or transformation of the production or the activity wants to dismiss at least five redundant employees with an indefinite period contract, in 120 days in each production unit (plant), or in more production units within the territory of the same province.

A very important role in the interpretation of the personal scope of the rules was played by the Labor Courts, that established the application of the rules to all the employees with an indefinite period contract including managers and workers associate in cooperative.

Under the profile of the reasons necessary for a collective dismissal, the Act. N. 223/1991, differently from the general clause of the Directive 98/59/EC (according to which *"collective redundancies means dismissals effected by an employer for one or more reasons not related to the individual workers concerned"),* this is connected to a reduction or transformation of the production or the activity.

In cases law have prevailed an extensive interpretation of the reasons for a collective dismissal asserting that the reduction or transformation of the production or the activity of the company can be *"normally induced by a decrease of the requests for goods or services offered on the market, by a crisis situation, by a transformation or a structural change of the production organization involving suppression of offices, departments, processes, or even contraction of the workforce, become redundant compared to changing business needs"*.

The role of the collective bargaining

As far as the individual dismissal for justified objective reason under which, as we will see, are included those based on economic reasons of the company, collective agreements do not play any role. They play, instead, a crucial role in case of collective dismissal, because called to individuate the mitigation measures of the social impact of the unemployment of the employees involved and the fundamental criteria for the selection of the workers to be dismissed.

2) Termination of the contract based on economic grounds:

a) The role of the Social Actors involved in the individual and collective dismissal based on organizational, technical and productive reasons and their relative functions.

Individual dismissal based on justifiable objective reason:

The main actors involved within the individual dismissal procedure are the employer, the employee and the Courts. Art. 6 par. 1 Act n. 604/1966 allows the employee to ask a trade union to challenge the dismissal on her/his behalf. No formal delegation to the trade union is required.

Collective dismissal:

The Act n. 223/1991 on collective redundancies, provides for a complex and articulated procedure, whose aim is to safeguard the interests of the workers involved in the staff reduction, subordinating the concrete reduction of the employment levels to the results of a double stage of verification *ex ante*; the first step involves only the employer and the trade unions, the second one involves the public authorities as well.

The participation of the trade union, in the determination of the redundancies, guarantees a function of control and negotiation and the verify of the real existence of the reasons that have boosted the employer to decide to dismiss part of his workforce (See Court of Cassation November 11st 1998, n. 11387; Court of Cassation. October 30th 1997, n. 10716).

The participation of the trade union representatives guarantees and obliges, the actors to find alternative solutions to the staff reduction, considering the negative social consequences that a collective dismissal could produce.

The Supreme Court of Cassation stated that the procedure for the participation of the workers representatives "is an application of the art. 41, par 2 and 3, of the Constitution, given that the employer decision of reducing the workforce is indisputable in the *an* but is bound in the *quomodo* – obliging the employer to act in accordance to the principle of good faith – in this way, in order to establish if a dismissal has to be considered lawful, is relevant the respect of the procedure and not the specific reasons that have determined the redundancies of the workforce, for this reason, in case of trial dispute don't have any relevance all the censures that, without contesting specific violations of prescriptions stated by art. 4 and 5 of the Act no 223/1991 […] merely ask the Court to investigate about the effective need to reduce or transform the activity" (see, Cassation, Labour Section, October 10th 1999, n. 11455; see *ex plurimis*, Cassation, Labour Section,, September 9th 2003, n. 13196; Cassation, Labour Section, April 22th 1998, n. 4121; Cassation, Labour Section,, January 17th 1998, n. 419; Cassation, Labour Section, October 30th 1997, n. 10716; Cassation, Labour Section, July 26th 1996, n. 6759).

The art. 4, par 2, of the Act n. 223/1991 specifies in detail the subjects that have the right of information and consultation, before the collective dismissal starts, these subjects are the plant – level trade union representatives (Rsa/Rsu) that are representative in the undertaking and the other associations representing the category of employees who risk to be dismissed. If there is not any workplace trade union representative in the company, the law obliges the employer to run the procedure having as opposing party the Local Trade Union association joined to the confederation most representatives at national level.

b) Procedural requirements for a collective dismissal, functions and aims.

Individual dismissal for justifiable objective reason:

In case of individual dismissals due to reasons related to productive activity, organisation of the work and to its regular functioning, there are not procedural limits required before the communication of the dismissal.

The only employer bounds concern his duty to communicate in writing the dismissal to the employee, who can, within 15 days, ask the employer the reasons of the dismissal, on the other hand, the employer will be obliged to provide them within 7 days.

Ex art. 2 of the Act n. 604/1966 the dismissal is void if these rules are not observed.

Collective dismissal:

On the other hand, in case of collective dismissals, the law provides for important procedural requirements.

Indeed, in this case, the employer who wants to start a collective dismissal has to communicate (information phase) his intention to the subjects indicated by the law: i.e. all the Trade Union workplace representatives (RSA/RSU) and the Trade Union association of category and also the Administrative Body, "Direzione Provinciale del Lavoro" or the "Direzione Regionale del Lavoro" depending on the relevance of the dismissal (respectively provincial, regional or national).

The employer, in the information phase, has to show clearly the reasons that have made necessary the reduction of the workforce or, as an extreme case, the cessation of the activity of the company (see Cassation, Labour Section, November 11th 1997, n. 11465) and, moreover, he has to indicate "the number, the professional level and the occupational job profile of the employees in excess, as well as he has to indicate the same data about all the workforce employed in the company" (Cassation, Labour section, October 10th 1999, n. 10961). As stated by the art. 4, par. 3, Act n. 223/1991, the notice must contain all the following elements, otherwise it will be void and null:

A) The reason/s that have determined the redundancy;

B) The technical, organizational and productive reasons, that have convinced the employer of the uselessness of any measure different from the workers mobility procedure;

C) The number, the professional level and the occupational job profile of the redundant workers, as well as the same data concerning all the employed workforce in the undertaking;

D) The time needed to implement that program;

E) The eventual measures the employer has taken in order to cope the social consequences of a collective dismissal.

The written form of the notice is necessary, otherwise it will not produce any effect and the dismissal is null and void.

Since the date they received the notice, the Trade Union workplace representatives (RSA/RSU) and/or the Trade Union category association, within the next 7 days, can ask for a joint examination (consultation phase) in order to evaluate the redundancy and try to find alternative measure to the collective dismissal.

The joint examination is finalized to analyze the reasons that have determined the redundancy and to evaluate alternative measures and possibility to employ, in new and different tasks, the employees that risk to be dismissed.

The alternative measures that have to be examined, concern:

a) the possibility to use, in the same company, the employee in excess for equivalent tasks or in lower level tasks in the same plant; b) the possibility to transfer the worker in a different

productive unit belonging to the same company; c) the possibility to relocate the worker in another undertaking belonging to the same group of enterprises, or in a company linked with or controlled by the enterprise that is going to carry out the dismissal; in that case, they can be relocated as well as in a society that not have any link with the company that is going to dismiss them.

At the end of the joint examination, if any result hasn't been achieved, the Administrative Body, *Direzione provinciale del lavoro,* will convene the employer and the Trade Union workplace representatives (RSA/RSU) in a new examination, in which the public authority will take part as well.

This second step, *ex* art 4, par. 8, Act n. 223/1991, cannot have a duration more than 30 days, or 15 if the dismissal involves less than 10 employees and has the aim of verify any possibility in order to reduce the social consequences of a decrease of the employment levels.

When the procedure comes to an end, it starts the step that is finalized to identify the employees to dismiss.

Therefore it starts the step, regulated by the art. 5 of the Act n. 223/1991, finalized to identify the workers to dismiss (as we will see in the par. 4 c).

After the end of the two steps of joint examination, and after that the actors involved in procedure have identified the criteria for choose the employees to dismiss, the employer can start to dismiss the redundant workers, communicating the dismissal to each of them respecting the period of notice.

Each violation of the procedure determines the ineffectiveness of the single act of dismissal.

3) The economic reason for the dismissal

Notion of the economic reason for an individual or a collective dismissal and limits to the jurisdictional control of the employer economic situation.

Individual dismissals for justifiable objective reason:

As provided by the art. 3 of the Act n. 604/1966, the individual dismissal, when it is not due to an unjustified breach of contract, can be done solely for reasons "connected to the productive activity, to the organization of the work and to its regular functioning" (i.e. for objective/economic reasons).

The real meaning of the notion of "objective/economic reason" has been clarified by the Judge-made law, which has focused his investigation especially on the principle that states that the dismissal can take place only when it is necessarily the only decision that the employer can operate in order to save the productive activity or the organization and to the regular functioning of the work.

In order to consider the dismissal lawful, indeed, the Court of Cassation has underlined that the employer must prove that, referring to the organization of his company at the moment of the dismissal that: a) it was not possible to employ the worker assigning him different tasks (The so-called duty of repechage); b) the employer decided to eliminate the tasks performed by the employee (see Cassation, Labour Section, March 30th 2009, n. 7706; Cassation, Labour Section, February 24th 2003, n. 2810; Cassation, Labour Section, November 4th 2004, n. 21212); c) the tasks are not more available in the company (see Cassation, Labour Section, April 11th 2003, n. 5777); d) the new workers employed have not been hired to perform the same tasks once performed by the dismissed employee (see Cassation, Labour Section, May 30th 2001, n. 7376).

In brief, the dismissal has to be considered as an *extrema ratio* (see Cassation, Labour Section, May 20th 2009, n. 11720).

In case that the dismissal is based merely on economic reasons, the jurisprudence has stated that the decision to dismiss the worker can not be finalized to increase the company profit but the dismissal has to be necessary to cut the costs, in order to cope a bad economic situation not contingent (see Cassation, Labour Section, November 11th 2010, n. 23222).

The employer is the only one who can operate this kind of choice, because it is inherent with his freedom exercise of private enterprise, safeguarded by the art. 41 of the Italian Constitution.

The Labour Court can only investigate on the effective existence of the reason indicated by the employer; as a consequence, the employer's choice to eliminate the tasks of the dismissed worker cannot be evaluate, by the judge, from the point of view of the opportunity (see, *ex plurimis*, Cassation; Labour Section, 13021/2001; 2121/2004; 21282/2008).

Collective dismissal:

As we underline, the art. 24 of the Act n. 223/1991 states that the collective dismissal is done on the strength of a “reduction or transformation of activity or work”.

Thus, the personal scope of the case in point does not embrace only the dismissals based on subjective reasons like employees behaviours and their personal conditions, such as disciplinary violations or in case the worker has become unfit for the job.

The legal clause embraces structural reduction, reorganization of the productive activity and even cases of reduction of the goods request of the company as a consequence, for instance, of reasons such the redundancy due to economical reasons and the introduction of a new technology (so-called technological dismissal).

The Court of Cassation, indeed, has stated that the reduction or the transformation of activity and work can be “generated by the reduction of the market demand of goods or services produced by the company, by a situation of crisis, by a structural transformation of the company

or by a modification of its productive organization that entail the elimination of offices, divisions, or even the simple contraction of the workforce that became redundant considering the new company requirements (see Cassation, labour Section, November 11th 1997, n. 11465; compare Cassation, Labour Section, May 3rd 2004, n. 8364 with Cassation, Labour Section, October 21st 1999, n. 11794).

The judge-made law of the Court of Cassation specified that jurisdictional syndicate can investigate only the truthfulness and the effectivity of the reasons indicated by the employer, as well as the correct execution of the collective procedure (compare, *ex pluribus*, Cassation, Labour Section, April 19th 2003, n. 6385; Cassation, Labour section, October, 21st 1999, n. 11794), thus the judge cannot evaluate the opportunity and the adequacy of the decision to dismiss the workers and it is not even possible for him to evaluate, as it happens instead in case of dismissal for justifiable objective reason, the permanent nature of staff reduction (see, among the most recent, Cassation, Labour Section, June 14th 2007, n. 13876).

4) Social and economic interests

a) The aims of the rules.

Individual dismissal for objective justifiable reason.

The main rules for dismissals "connected to the production, the organisation and to its regular functioning" established in the art. 3 Act n. 604/1966, justify the dismissal only as an *"extrema ratio"*.

So, the aim of the rule is to balance the decision of the employer to proceed a dismissal for economic, technical, organizational and productive reasons, even if leaved to the evaluation of the employer (as an expression of freedom of enterprise, preserved by the art. 41, 1° par. Const.), with the respect of the human dignity, as a fundamental personal right, according to art. 41, 2° par. Constitution, and the preservation of the employee constitutional right to the work, as stated in the art. 4 of the Italian Constitution (See Cass., Lab. Sect., 27-10-2010 n° 21967).

The *extrema ratio* of the dismissal represents the verification of effective subsistence of an objective justificatory reason of the dismissal, balanced with the respect of other constitutional rights.

This means that, balancing equal constitutional guarantees, the judge has to establish, in practice, which guarantees prevails on the other, trough the verification of the effective circumstance that the dismissal of the employee represents the only solution for the employer.

The judicial control passes, therefore, trough the verification in practice of the following elements: a) the employer must have a change (even economic) in his activity and this change

must be real, not just declared; b) there must be a causal link between the modification and the employee tasks (i.e. must be shown that the employer's measure affects that employee because the reorganisation makes useless his tasks); c) the duty of "*repechage*" must be respected, means that it must be demonstrated by the employer that the employee cannot work with other tasks with the same professional competence.

Collective dismissal.

The rules for collective dismissal according to Act 223/1991 allow the emerging of more objectives than the individual dismissal.

The proceduralisation of the employer's power, *ex* art. 4., Act n. 223/1991, enhancing the involvement of the trade unions and administrative authority in the management of the redundancies, allows a serious and objective check of the reasons and of the need to terminate to a series of employment relationships.

The trade union intervention in "joint examination" involves a search for alternative measures compared to dismissals, allowing the trade unions to develop a function given by the legislator, in an event from which the same company workforce structure changed (Cass. Lab. Sect. 19/2/2000, n° 1923, Cass. Lab Sect. 2/10/1999, n° 10961, Cass. Lab Sect. 12/1/1999, n° 265).

b) The duty to consider all possible alternative measures to the dismissal (adaptation or reinstatement of the workers)

According to the above objectives, exist the duty of the employer to check in advance, all the possible alternative solutions to an individual or collective dismissal.

This duty is found in **individual dismissals for objective justifiable reason**, through the control of the respect of the "duty of *repechage*", *id est* demonstrating the impossibility to assign the employee to similar tasks (Cass. Lab. Sect. , n° 7717, 16/05/2003).

Furthermore, there is another verification, in a negative way, of the existence of a causal link between the decision of the employer and the position of the employee.

The employer must do a preventive analysis of his enterprise, searching for a different task of the worker in a different area: proposing an "alternative", which may also consist, agreeing with the employee, in a lower task. In case of refusal of the employee, the employer can go on with the individual dismissal and, eventually, will be opened the phase in front of the court that must check, in practice, the reason of the choice bringing the dismissal.

In collective dismissal instead, this duty comes from the joint examination of the trade union workers representatives that should result in a searching for alternative measures of the dismissals, even worse than the previous employment situation.

To this end, as seen, the duty of information, previous to the joint examination, must be performed trough the indication of technical, organizational and productive reasons, for which is believed not to adopt proper measures to remedy this situation and avoid, whole or in part, the declaration of mobility.

These informations allow the workers representatives to propose alternative measures to employees dismissal, and potentially able to avoid a reduction of the employment levels.

So, the joint examination can allow the workers representatives, intervened in the procedure, to propose alternatives to dismissal.

To mitigate the negative consequences of the redundancies, the rule expressly provides in par. 5, of art. 4, Act n. 223/1991, the possibility to assign different tasks to the employees, in the same enterprise, including the use of social-plan agreement and part-time work, and, according to art. 4, 1° par., derogating art. 2103, 2° par. of the Civil Code, assigning the redundant employees to different tasks, even lower, and assign the redundant employees in another enterprise, trough detachment or temporary command.

c) The criteria to select the redundant employees in case of individual or collective dismissal related to employer organizational, technical and productive reasons.

Even under this profile, there is the same distinction between individual dismissals for objective justifiable reason and collective dismissals.

Individual dismissal.

Criteria of selection of employees to be dismissed are provided by the law only if the dismissal falls within the definition of collective dismissal according to Act n. 223/1991. Nevertheless, case law (Cass. 21 December 2001, n. 16144; Cass. 11 June 2004, n. 11124) requires that the employer who has decided to dismiss only one or some (but not all) of the employees performing the same task(s) has to prove that the choice has been made in accordance to the principles of fairness and good faith (art. 1175 and 1375) which means, in the specific case, by applying, by analogy, the same criteria provided by the law for selecting employees in case of collective dismissal (art. 5 Act n. 223/1991), i.e. seniority within the company (last in, first out) and family burdens.

All the employees who are on pregnancy or parental leave and female employees who are going or have just married, may be dismissed only in case of closure of the company (art. 54 Legislative decree n. 151/2001; art. 35 Legislative decree n. 198/2006).

The dismissal for objective/economic reasons of an employee on sickness leave does not produce any effect before the expiry of the leave period (art. 2010 par. 2 civil code; Cass. 7 August 2008, n. 21375).

Collective dismissal.

At the end of the procedural phase, starts the phase of selection of the employees to dismiss, *ex* art. 5, Act 223/1991.

The Art. 5 of Act 223/1991, at the 1° co. states that the selection of the workers to dismiss should be *«related to technical-productive ad organizational needs of the company, respecting the criteria provided by the collective agreements […] or, in absence of these contracts, respecting the following criteria: a) family loads; b) seniority; c) technical productive and organizational needs».*

Emerges, the fundamental function devolved by the legislator to the collective autonomy, that in this case is the main source of the discipline, to allow proper identification of the employees to dismiss, and to mitigate the social impact of the dismissal, while giving effect to organizational and productive reasons and needs of the enterprise.

The legal source intervenes, therefore, only in a subsidiary and supplemental way in case of non – agreement between the social partners (See, Cass. Lab. Sect., 26/9/2002, no° 13962; Cass. Lab. Sect., 10/7/2002, no° 10058; Cass. Lab. Sect., 20/3/2000, no° 3271).

The limits for the collective bargaining in the determination of the selection criteria of the employees to dismiss, have been clearly described by the ruling of the Constitutional Court no° 268, 30/06/1994.

For the Constitutional Court, the contractual determination of the selection criteria, fulfilling a regulatory function delegated by the law, must respect not only the principle of not discrimination according to art. 3 of the Constitution and to art. 15, Act 300/1970, but also the principle of rationality, so the agreed criteria must have the characters of objectivity and generality, providing an objective justified evaluation to control the choice of withdraw, not connected to factors like the personal status of the employee.

In absence of contractual determinations, detect, however, the legal selection criteria as provided in the art. 5, 1° par., Act n. 223/1991, *id est*: a) family loads (social selection); b) service seniority (last in – first out); c) technical-productive and organizational needs.

These criteria are based only on an evaluation on the necessity of the enterprise (technical, organizational and productive needs), and on the socio – economic effect on the employee (family load), or alternatively, on the seniority, excluding criteria that promote the shortest redeployment of the dismissed employers.

d) The limits for the hire of new employees after an individual or collective dismissal related to employer organizational, technical and productive reasons.

In Italian law there is not an absolute prohibition to proceed on new hire after individual dismissals for objective justifiable reason.

The only prohibitions are indicated in the art. 3, par. 1, lect. B), Act 368/2001, for fixed – term employment, and in the art. 20, par. 5, lect. B), Act 276/2003 for temporary agency work.

These forecasts do not allow to fix a term to the duration of an employment contract or to conclude a fixed – term temporary agency work contract, unless otherwise provisions determined by trade union, in enterprises that, in the previous six months, there was a collective dismissal according to art. 4 and 24 of the Act n. 223/1991, for the same tasks as said in the contract of employment or temporary agency work contract, unless the contract is: - made to replace absent workers; - concluded with the workers collectively dismissed; - had a duration that is less than three months.

In absence of specific prohibitions, there is a subjective right to precedence in hiring in the same enterprise, for the employee(s) dismissed, as stated by the art. 15, par. 6, Act 264/1949 “the workers dismissed for staff cuts take precedence in reinstatement in the same enterprise within six months”.

This disposition is applied, for expressed reference to art. 8, co. 1, Act 233/1991, to staff cuts based on collective dismissal and individual dismissal for objective justifiable reason, and as well, according to the interpretation of the Court of Cassation (see Cass., Lab. Sec., n. 723/1991), to plural individual dismissals.

In case of refusal by the employee that has the right of precedence, or after six months from the dismissal, the employer can hire new employees without any particular obligations.

e) Guarantees for the employees prior to individual or collective dismissals.

There are two principal means of income support prior to dismissal in Italian law: a) the *Cassa integrazione guadagni ordinaria* (Ordinary Wages Guarantee Fund or CIGO); b) the *Cassa integrazione guadagni straordinaria* (Extraordinary Wages Guarantee Fund or CIGS).

The CIGO is an intervention to support enterprises in difficulty, which employs more than 5 employees (art. 7, par. 6, Act 236/1993), and provides a replacement income to the employee.

The treatment is for the employees, excluding apprentices and executives, in case of reduction or contraction of production due to: a) temporary events not attributable to the employer or the employees; b) temporary market situations.

The amount of CIGO is the 80% of total wage that would be paid for the hours not worked and cannot exceed a monthly maximum limit established year to year (currently at € 886,31, increased to € 1.065,26 in case of monthly salary exceeding € 1.917,48).

The CIGS, instead, is an intervention to support companies in crisis, which provides a replacement income to the employee.

The treatment is for the employees, in case of restructuring, reorganization, conversion, economic crisis and bankruptcy, of: - enterprises with more than 15 employees in the six months preceding the request; - enterprises commercial, shipping, transportation and travel with more than 50 employees, excluding the apprentices and the workers combined training and work; - private police enterprises.

The extraordinary intervention is not allowed in production units in which is been asked, in the same period, the intervention of the CIGO.

The amount of CIGS is the 80% of total remuneration that would be responsible for the hours not worked and cannot exceed a monthly maximum limit established year to year (currently at € 886,31, increased to € 1.065,26 in case of monthly salary exceeding € 1.917,48).

The CIGS has a maximum duration of 12 months, in case of corporate crisis, and 24 months in case of reorganization, restructuring and conversion of the company, and 18 months in case of bankruptcy procedures.

5) Consequences of dismissal based on economic grounds and access to the Court.

a) Consequences of a lawful dismissal related to employer organizational, technical and productive reasons.

Dismissed employees, whatever the motivation, have the right to the so called TFR – *Trattamento di fine rapporto* (end-of-service allowance), i.e. a sum of money calculated by dividing the annual wage by 13,5 and multiplying the result obtained for the years of work performed within the company.

TFR is subjected to a special and more favourable taxation regime (11%) and has no relationship with the unemployment benefits.

In case of employer insolvency, the amounts of the TFR earned by the employee is paid by a special national fund created by the INPS.

Besides this fixed sum earned during the employment relationship, depending on whether it is an individual or a collective dismissal, dismissed employees have the right to the follow treatments of income protection.

Individual dismissal

In case of individual dismissal, the employee, registered to the INPS (acronym of the national institute for social security) since not less than two years and with at least 52 weeks of paid contributions for the unemployment benefit during the two-years period prior the end of the employment relationship, is entitled to the ordinary unemployment allowance, that has 8 months duration or 12 months for employees older than 50.

The sum is calculated as a percentage of the employees wage in his last three months of service.

It covers the 60% of the wage for the first 6 months, the 50% for the 7th and the 8th months and the 40 % for the other months of duration for employees older than 50; the unemployment benefit has a maximum threshold.

Collective dismissal

In case of collective dismissal, the employees have the right to the *indennità di mobilità*, i.e. an unemployment allowance for a certain period of time, regulated by the art. 7 of the Act n. 223/1991.

It is, therefore, an allowance for the employees who were placed in mobility from their company as a result of: a) the end of the extraordinary economic treatment; b) dismissal for staff reduction or transformation of the production or the activity; c) dismissal for the termination of the activity of the company.

The economic treatment belongs to employees and executive with a contract of indefinite period and with seniority in the company of at least 12 months

The maximum limit for the duration of the treatment is fixed by the law in 12 months, elevated to 24 months for the employees older than 40 years e to 36 months for the older than 50. such limits are elevated for the employees employed in the company located in disadvantaged areas of the south of Italy.

The amount of the income is the 80% of the global wage that the worker would have been entitled for the first 12 months and the 60% for the other months.

b) Unlawful individual or collective dismissal related to employer organizational, technical and productive reasons (access to the Courts, bourden of proof and judicial remedies for the employee(s) involved).

In Italy both the individual (for objective justifiable reason) and the collective dismissal can be freely contested, by the employee, in respect of terms provided by law in front of the Labour Court where the contract was execute.

According to art. 6 of the Act 604/1966, recently amended by art. 32 of the Act 183/010, individual dismissal must be contested within 60 days from when he/she has received the act of dismissal or from he/she has received the communication of the motivations, if not already provided within the act. The employee can oppose to the dismissal with a written communication sent directly to the employer.

Such a communication has to be followed, within 270 days, by the start of a court procedure against the employer.

The burden of proof lies on the employer as far as the existence of the objective/economic reason of the dismissal is concerned (art. 5 Act n. 604/1966).

Consequences of the unlawful dismissal are highly differentiated depending upon the regime the dismissal falls under.

A) Unlawful dismissal according to Act 604/1966 adopted by an employer who employs less than 60 workers overall or less than 15 workers in an independent productive unit of the company.

If the employee falls within the personal scope of application of Act 604/1966 (see 1.1.1) and the relevant employer employs less than 60 workers overall or less than 15 workers in an independent productive unit of the company (art. 35 Act n. 300/1970), in case of dismissal declared unlawful (unjustified) by the judge, the employer may choose between signing a new contract of employment within 3 days or paying to the employee a compensation (or better an indemnity). The employee too has the right to choose between signing a new contract of employment or getting the indemnity.

The amount of the indemnity may vary from a minimum of 2,5 months of wage to a maximum of 6 months depending upon (a) the number of employees employed within the company, (b) the size of the business, (c) the seniority of the dismissed employee, (d) the behaviours and the conditions of the parties involved (art. 8 Act n. 604/1966). Further requirements to be taken into account by the judge in fixing the amount of the indemnity have been introduced by art. 30 par. 3 Act n. 183/2010 and are (e) the economic conditions of the company and (f) the situation of the labour market at local level. In case of employers

employing more than 15 workers overall but less than 60 and in case the dismissed workers has more than 10 years of seniority the maximum amount of the indemnity may be increased up to 10 months of the wage (14 months in case the dismissed workers has more than 20 years of seniority).

B) **Unlawful dismissal according to Act 604/1966 adopted by an employer who employs more than 60 workers overall or more than 15 workers in an independent productive unit of the company.**

If the employee falls within the personal scope of application of Act 604/1966 (see 1.1.1) and the relevant employer employs more than 60 workers overall or more than 15 workers in an independent productive unit of the company, in case of dismissal declared unlawful (unjustified) by the judge, the dismissal is deemed not to have produced any effect. Therefore, the employer has to reinstate the employee in the same job s/he has performed until the dismissal (art. 18 par. 1 Act n. 300/1970).

Moreover, the employer has to pay 5 months indemnity of the same amount of the last wage. A monthly indemnity of the same amount is due by the employer to the employee for the period which goes from the fifth months after the dismissal (already covered by the above mentioned 5 months indemnity) to the moment when the judge of first instance declares the dismissal unlawful and the employer has to reinstate the employee. The employer is also obliged to pay social security contribution during this period (art. 18 par. 4 Act n. 300/1970).

Indeed, according to Italian law, even if the succumbent has been condemned to act or behave in a certain way, s/he cannot be forced to do so. In exceptional cases only, the law provides for penal sanctions in case the succument does not respect the court decision. This is not the case of the court decision ordering to the employer to reinstate the employee according to art. 18 Act n. 300/1970.

Therefore, art. 18 provides that the employer who refuses to reinstate the employee has to pay her/him the same monthly indemnity due for the period between the dismissal and the court decision, until s/he decide to reinstate the employee. If the employer proves that the employee has earned money from a job that s/he could not have performed if the terminated employment contract was still in force, the indemnity can be reduced accordingly (so called *aliunde perceptum*; Cass. 12 April 2005, n. 7453; Cass. 16 April 2007, n. 9072). The 5 months indemnity can never be reduced.

The employee, within 30 days from the court decision, may ask to the employer, instead of being reinstated, the payment of a substitutive indemnity of 15 months of wage (art. 18 par. 5 Act n. 300/1970). This has to be seen as a favourable solution for the employee, above all in

cases in which the employee knows or fears that the employer is not going to pay spontaneously the monthly indemnity, therefore obliging the employee to ask, every month, for a court injunction in order to get paid.

6) Draft legislation

Economic crisis and new legislative suggestions on individual or collective dismissals related to employer's economic grounds.

At the moment, in Italy Government and Trade Unions are having many consultation in order to reform the labour rules in various aspects. One of the main aspect in discussion concerns the introduction, in our system, of a legal framework and a definition of dismissal for economic reasons. At the moment they did not get any agreement yet, but the Trade Union Cisl, that made one of the suggestion, proposed to apply the procedure of the art. 4 of Act n. 223/1991, even in case of individual dismissal for economic reasons. In this way, it will be possible to ensure to the worker undergoing an individual dismissal for economic reason, the same protection that the law provides in case of collective dismissal: the dismissed worked would benefit of two years of labour mobility allowance and, moreover, during this period he would receive adequate training and the support from the employment agencies in order to give him good opportunity of getting a new job within the end of the period covered by the allowance.

ANNEX A
REGIONAL MAP OF THE ECONOMIC CRISIS IN ITALY
Source: Cgil / Ministero dello Sviluppo Economico

ABRUZZO		
A.T.R.	Number of employees: 800	Redundant employees: 524
ABB	Number of employees: 80	Redundant employees: 80
AIR ONE TECHNICH	Number of employees: 60	Redundant employees: 60
BIANCHI VENDING GROUP	Number of employees: 300	Redundant employees: 70
CERAMICHE SABA	Number of employees: 70	Redundant employees: 70
PIERBURG	Number of employees: 200	Redundant employees: 40
RITEL	Number of employees: 350	Redundant employees: 100
SITINDUSTRIE	Number of employees: 80	Redundant employees: 80
VIBAC	Number of employees: 140	Redundant employees: 140
BASILICATA		
FIREMA	Number of employees: 600	Redundant employees: 600
NICOLETTI	Number of employees: 600	Redundant employees: 600
PFIZER	Number of employees: 40	Redundant employees: 40
TI AUTOMOTIVE GROUP	Number of employees: 300	Redundant employees: 50
VIBAC	Number of employees: 140	Redundant employees: 140
CALABRIA		
AGILE EX EUTELIA	Number of employees: 1.900	Redundant employees: 1.500
CAMPANIA		
ALCATEL LUCENT	Number of employees: 2.200	Redundant employees: 150
CENTRO SVILUPPO MATERIALI	Number of employees: 300	Redundant employees: 40
FINCANTIERI	Number of employees: 9200	Redundant employees: 3670
FIREMA	Number of employees: 600	Redundant employees: 600
FORMENTI SELECO	Number of employees: 300	Redundant employees: 300
ILMAS	Number of employees: 350	Redundant employees: 200
IRISBUS	Number of employees: 1.500	Redundant employees: 1.500
JABIL CIRCUIT	Number of employees: 1.350	Redundant employees: 350
POLO TESSILE DI AIROLA	Number of employees: 400	Redundant employees: 400
SELFIN	Number of employees: 140	Redundant employees: 73
AGILE EX EUTELIA	Number of employees: 1.900	Redundant employees: 1.500
EMILIA ROMAGNA		
GOLDEN LADY – OMSA	Number of employees: 3.500	Redundant employees: 350
MARIELLA BURANI	Number of employees: 1.500	Redundant employees: 1.200
NUOVA PANSAC	Number of employees: 850	Redundant employees: 400
OERLIKON GRAZIANO	Number of employees: 2.300	Redundant employees: 1.200
FRIULI VENEZIA GIULIA		
CAFFARO (EX SNIA)	Number of employees: 350	Redundant employees: 200
ELECTROLUX	Number of employees: 7.000	Redundant employees: 900
IDEAL STANDARD	Number of employees: 1.750	Redundant employees: 500
LUCCHINI / SEVERSTAL	Number of employees: 2.800	Redundant employees: 500
LAZIO		
AGILE EX EUTELIA	Number of employees: 1.900	Redundant employees: 1.500
ALCATEL LUCENT	Number of employees: 2.200	Redundant employees: 150
ALSTOM	Number of employees: 180	Redundant employees: 110
CENTRO SVILUPPO MATERIALI	Number of employees: 300	Redundant employees: 40

CORDEN PHARMA	Number of employees: 1.500	Redundant employees: 100
EVOTAPE	Number of employees: 280	Redundant employees: 280
IDEAL STANDARD	Number of employees: 1.750	Redundant employees: 500
LIGHTING ITALIA	Number of employees: 54	Redundant employees: 54
NEXANS	Number of employees: 350	Redundant employees: 180
SCHNEIDER ELECTRIC	Number of employees: 450	Redundant employees: 30
TELEPERFORMANCE	Number of employees: 3.000	Redundant employees: 900
TRIBUTI ITALIA	Number of employees: 700	Redundant employees: 700
VIDEOCON	Number of employees: 1.350	Redundant employees: 850
LIGURIA		
ALCATEL LUCENT	Number of employees: 2.200	Redundant employees: 150
FERRANIA	Number of employees: 400	Redundant employees: 300
FINCANTIERI	Number of employees: 9200	Redundant employees: 3670
TI AUTOMOTIVE GROUP	Number of employees: 300	Redundant employees: 50
TRIBUTI ITALIA	Number of employees: 700	Redundant employees: 700
LOMBARDIA		
AGILE EX EUTELIA	Number of employees: 1.900	Redundant employees: 1.500
CAFFARO (EX SNIA)	Number of employees: 350	Redundant employees: 200
CANDY	Number of employees: 3.500	Redundant employees: 202
CENTRO SVILUPPO MATERIALI	Number of employees: 300	Redundant employees: 40
CNH	Number of employees: 530	Redundant employees: 118
CORDEN PHARMA	Number of employees: 1.500	Redundant employees: 100
F.TOSI	Number of employees: 600	Redundant employees: 550
GOLDEN LADY - OMSA	Number of employees: 3.500	Redundant employees: 350
IDEAL STANDARD	Number of employees: 1.750	Redundant employees: 500
JABIL CIRCUIT	Number of employees: 1.350	Redundant employees: 350
LIVINGSTON	Number of employees: 500	Redundant employees: 500
MAFLOW	Number of employees: 300	Redundant employees: 120
MARIELLA BURANI	Number of employees: 1.500	Redundant employees: 1.200
MERIDIANA FLY	Number of employees: 2.300	Redundant employees: 930
NUOVA PANSAC	Number of employees: 850	Redundant employees: 400
RSI	Number of employees: 270	Redundant employees: 150
SIEMENS-NOKIA	Number of employees: 1.200	Redundant employees: 150
SILTAL	Number of employees: 900	Redundant employees: 900
TAMOIL	Number of employees: 600	Redundant employees: 300
MARCHE		
A.MERLONI	Number of employees: 3.500	Redundant employees: 2.300
AHLSTROM	Number of employees: 150	Redundant employees: 150
MANULI	Number of employees: 800	Redundant employees: 650
MOLISE		
ITIERRE	Number of employees: 800	Redundant employees: 250
VIBAC	Number of employees: 140	Redundant employees: 140
PIEMONTE		
AGILE EX EUTELIA	Number of employees: 1.900	Redundant employees: 1.500
EVOTAPE	Number of employees: 280	Redundant employees: 280
FERRANIA	Number of employees: 400	Redundant employees: 300
IDEAL STANDARD	Number of employees: 1.750	Redundant employees: 500
ILMAS	Number of employees: 350	Redundant employees: 200
LOQUENDO	Number of employees: 100	Redundant employees: 100

SILTAL	Number of employees: 900	Redundant employees: 900
VIBAC	Number of employees: 140	Redundant employees: 140
PUGLIA		
AGILE EX EUTELIA	Number of employees: 1.900	Redundant employees: 1.500
ALCATEL LUCENT	Number of employees: 2.200	Redundant employees: 150
ADP TESS. ABBIGL. CALZAT (TAC)	Number of employees: 400	Redundant employees: 400
BRITISH AMERICAN TOBACCO	Number of employees: 400	Redundant employees: 400
FRANZONI	Number of employees: 140	Redundant employees: 140
LUCCHINI / SEVERSTAL	Number of employees: 2.800	Redundant employees: 500
MIROGLIO	Number of employees: 250	Redundant employees: 250
NATUZZI	Number of employees: 2.940	Redundant employees: 1.276
O. M. CARRELLI	Number of employees: 300	Redundant employees: 300
TELEPERFORMANCE	Number of employees: 3.000	Redundant employees: 900
TI AUTOMOTIVE GROUP	Number of employees: 300	Redundant employees: 50
TRIBUTI ITALIA	Number of employees: 700	Redundant employees: 700
SARDEGNA		
EURALLUMINA	Number of employees: 400	Redundant employees: 400
KELLER	Number of employees: 520	Redundant employees: 200
MERIDIANA FLY	Number of employees: 2.300	Redundant employees: 930
PORTOVESME S.R.L.	Number of employees: 720	Redundant employees: 150
TIRRENIA	Number of employees: 1.334	Redundant employees: 200
VYNILS	Number of employees: 650	Redundant employees: 200
SICILIA		
AGILE EX EUTELIA	Number of employees: 1.900	Redundant employees: 1.500
CESAME	Number of employees: 150	Redundant employees: 150
FIAT TERMINI IMERESE	Number of employees: 1.300	Redundant employees: 1.300
KELLER	Number of employees: 520	Redundant employees: 200
TRIBUTI ITALIA	Number of employees: 700	Redundant employees: 700
TOSCANA		
AGILE EX EUTELIA	Number of employees: 1.900	Redundant employees: 1.500
CENTRO SVILUPPO MATERIALI	Number of employees: 300	Redundant employees: 40
LUCCHINI / SEVERSTAL	Number of employees: 2.800	Redundant employees: 500
UMBRIA		
A.MERLONI	Number of employees: 3.500	Redundant employees: 2.300
BASELL	Number of employees: 100	Redundant employees: 100
MERAKLON	Number of employees: 150	Redundant employees: 150
APTUIT (EX GLAXO)	Number of employees: 600	Redundant employees: 100
VENETO		
DATALOGIC	Number of employees: 145	Redundant employees: 145
DEXION	Number of employees: 65	Redundant employees: 65
ELECTROLUX	Number of employees: 7.000	Redundant employees: 900
GRIMECA	Number of employees: 850	Redundant employees: 470
IDEAL STANDARD	Number of employees: 1.750	Redundant employees: 500
MONTEFIBRE	Number of employees: 300	Redundant employees: 250
NUOVA PANSAC	Number of employees: 850	Redundant employees: 400
SILTAL	Number of employees: 900	Redundant employees: 900
SPEEDLINE	Number of employees: 550	Redundant employees: 100

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