

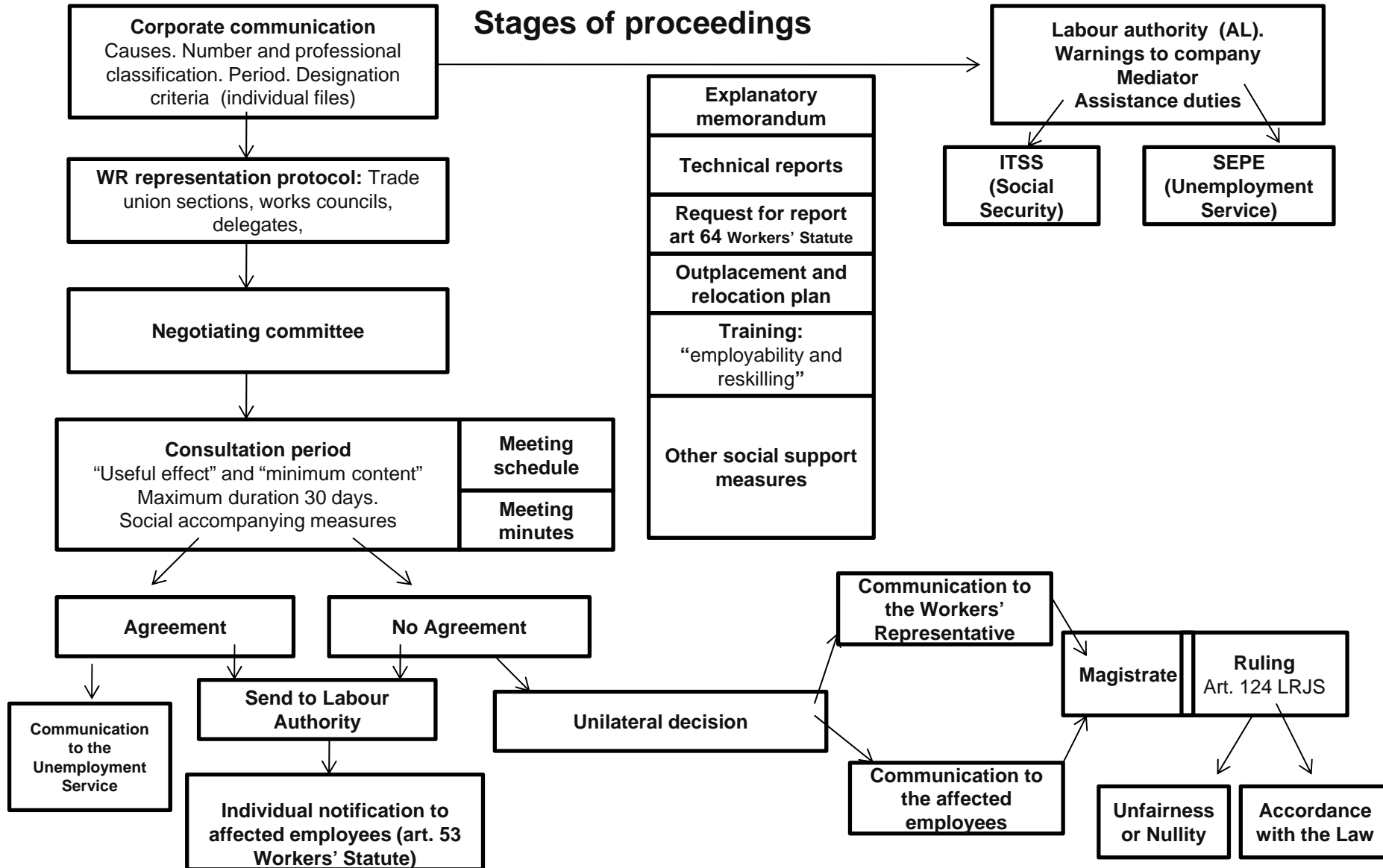
Collective redundancy in Spain

Sagardoy Abogados

Madrid, February 2016



Stages of proceedings



Planning

Phase I	Objective	Entity Responsible
Trade Unions	First contact with trade union leaders in order to inform them	SAGARDOY ABOGADOS/COMPANY
Labour authority	Communication of arguments and need for Collective redundancy	SAGARDOY ABOGADOS
External report	Preparation of the Strategic Business Plan (Technical report) and explanatory memorandum of causes.	EXTERNAL CONSULTANT
Social support measures	Study and preparation of the restructuring measures and solution for surplus workers. Outplacement and relocation plan. Costs	SAGARDOY ABOGADOS / COMPANY/OUTPLACEMENT AND RELOCATION AGENCY
Documentation Collective redundancy	Preparation and compilation of the documentation required for formalisation of collective redundancy (and, as the case may be, any other restructuring measures)	SAGARDOY ABOGADOS / COMPANY

Planning (II)

Phase II	Objective	Entity Responsible
NEGOTIATION OF COLLECTIVE REDUNDANCY	<p>Formalization of the start of the consultation period established for collective redundancy procedures, with a maximum duration of 30 days, concurrently trying other provisional restructuring measures (geographical mobility, substantial modification of terms, contract suspensions or reductions).</p> <p>After receiving the communication, the labor authority shall inform the entity managing unemployment benefits and shall obligatorily obtain a report from the Inspection of Labor and Social Security on the development of the consultation period. The report must be issued within a non-extendable period of 15 days as of notification to the labor authority of the end of the proceedings.</p>	SAGARDOY ABOGADOS / COMPANY

Planning (II)

Phase II	Objective	Entity Responsible
NEGOTIATION OF COLLECTIVE REDUNDANCY	<p>Formalisation of the start of the consultation period established for collective redundancy proceedings, of no more than 30 calendar days. Try to commence other provisional restructuring processes.</p> <ul style="list-style-type: none"> ▪ Minimum number of meetings: 3. ▪ Minimum and maximum intervals between meetings: 4 and 9 days, respectively. <p>The consultation period may be deemed to have concluded in any event when the parties reach and agreement or when the parties, by mutual agreement, should deem it concluded due to failure to reach an agreement, with express communication thereof to the labor authority.</p>	SAGARDOY ABOGADOS / COMPANY

Planning (II)

Phase II	Objective	Entity Responsible
<p>NEGOTIATION OF COLLECTIVE REDUNDANCY</p>	<p>Minutes must be drawn up of all the meetings held during the consultation period, which must be signed by all attendees.</p> <p>The aim of the consultation period is to reach an agreement between the company and the workers' representatives. It must at least consider the possibilities of avoiding or reducing collective redundancies and mitigating its consequences by using social support measures, such as outplacement and relocation measures or training and professional reskilling actions.</p> <p>At the start of the consultation period a schedule of meetings shall be established. Unless otherwise agreed, the first meeting in the consultation period shall be held within no less than three days as of the date of presentation of the communication of commencement of proceedings.</p>	<p>SAGARDOY ABOGADOS / COMPANY</p>

Planning (III)

Phase III	Objective	Entity Responsible
END OF THE CONSULTATION PERIOD	<p>Upon conclusion of the consultation period, the Company shall inform the labor authority of the result thereof. If an agreement has been reached, a full copy thereof shall be provided. Otherwise, the final decision of dismissal reached and the terms thereof shall be sent to the workers' representatives and to the labor authority, updating, as the case may be, any details contained in the communication sent at the beginning of the period.</p>	SAGARDOY ABOGADOS / COMPANY
APPLICATION	<p>Once the decision has been communicated to the workers' representatives, the Company shall individually inform the affected employees with a fifteen day notice period. Notwithstanding the foregoing, a minimum of 30 days must have lapsed between the date of communication to the labor authority of the start of the consultation period and the effective date of dismissal.</p> <p>In the event of a disagreement on the part of the employees with regards to the redundancy payment or the grounds for dismissal, they can present a claim, either collective or individual. The lodging of a collective appeal shall put a stop on all individual actions brought, until the former is resolved.</p>	SAGARDOY ABOGADOS / COMPANY

Causes

- Economic: when the results of the company show a negative economic situation, in cases such as the existence of current or forecast losses, or the persistent reduction in ordinary income or sales. In any event, the reduction shall be understood to be persistent if the level of ordinary income or sales of each quarter over 3 consecutive quarters is lower than that recorded for the same quarter the year before.
- Technical: changes, among others, in the area of means or instruments of production.
- Organizational: changes, among others, in the area of personnel working systems and methods or the way the production is organized.
- Productive: changes, among others, in the demand for products or services which the company offers to the market.

Summary table of employer obligations in the presentation of a collective redundancy proceeding

1. Corporate communication to WR (Workers' representatives) and LA (Labor Authorities) simultaneously (minimum content) (Art 2 and 3 of Regulations). Must include designation criteria but not the list of workers
2. Request for written report from WR (Art. 64.5.a) WS- Workers' Statute).
3. Explanatory memorandum on causes (Art 4.1 and 5.1. of Regulations)
4. Technical report on magnitude and permanent or temporary nature of losses. (Art. 4.3 of Regulations) .
5. Technical reports providing proof of technical, organizational or productive causes (Art. 5.2. of Regulations).
6. Financial Statements of the last 2 full financial years (economic cause) (Art. 4.2. of Regulations).
7. Tax or accounting documentation containing evidence of persistent reduction in ordinary income or sales over three consecutive quarters (Art. 4.4 of Regulations).
8. Duly audited consolidated financial statements and management report of the parent company of the Group in the event of debit or credit balances with the company commencing the proceedings (Art. 4.5 of Regulations).
9. Audited financial statements of the other companies in the Group (if there is not obligation to present consolidated financial statements) (Art. 4.5 of Regulations).
10. Information on the composition of the representation and the negotiating committee. Special attention to composition of negotiation committees. Weighted voting.
11. Setting meeting schedule, duration of consultation period and obligatory minutes (Art. 7 Regulations)
12. "Optional" – "to be considered" (preventive and redressing) social support measures and "obligatory" Relocation Plan – "must include in any event" in the event of dismissals of employees over the age of 50 – mention name of company and have a period of validity of at least 6 months -(Arts 8 and 9 of Regulations).
13. Special Social Security agreements (51.9 WS). Funding of non-mutual employees over the age of 55.
14. Individual notification of dismissals (ex art.14) Must wait for a period of 30 days as of CP and under the terms of 53.1 WS).

Documentation to be provided (common, irrespective of cause)

- ✓ Specification of the causes for collective redundancy.
- ✓ Number of professional classification of workers affected by the redundancy. If it affects more than one work centre, this information must be broken down by work centre and, as the case may be, by province and Autonomous Community.
- ✓ Number and professional classification of the workers habitually employed over the last year. If it affects more than one work centre, this information must be broken down by work centre and, as the case may be, by province and Autonomous Community.
- ✓ Period established for dismissals to be carried out.
- ✓ Criteria considered for designation of the workers affected by the dismissals.
- ✓ Explanatory memorandum on the causes for collective redundancy and all other related aspects, as well as, as the case may be, the outplacement and relocation plan required by art. 51 when the redundancy affects more than 50 workers.
- ✓ Simultaneous to the presentation of documentation to WR, the employer shall request in writing the issue of the report art. 64.5.a) WS.

Documentation to be provided (economic cause)

✓ In order to provide evidence of the alleged results, the employer may provide all documentation which may be lawfully appropriate and, specifically, he shall provide the financial statements of the last two full financial years, comprising: the balance sheet, the income statement, the statement of changes in net equity, the cash flow statement and the notes and management report or, as the case may be, the abbreviated income statement and balance sheet and the abbreviated statement of changes in net equity.

The financial statements shall be duly audited in the case of companies obliged to perform audits. In the event of a company not under the obligation to perform an accounts audit, a statement issued by company representatives on the exemption from audit must be provided. Provisional accounts at the start of the proceedings must also be provided, signed by the administrators or representatives of the company bringing the proceedings.

✓ Loss forecast: criteria used to estimate losses and “technical report” on the magnitude and permanent or temporary nature of such a forecast based on data obtained via annual accounts, data from the sector to which the company belongs, on market performance and the position of the company therein and any other which may help to prove the forecast.

Documentation to be provided (economic cause, II)

✓If the alleged negative situation consists of the persistent reduction in income or sales, the employer must also provide the tax or accounting documentation that proves said persistent drop in the level of ordinary income or sales over, at least, the three consecutive quarters immediately previous to the date of communication of the start of collective redundancy proceedings, as well as the tax or accounting documentation that prove the ordinary income or sales recorded in the same quarters of the immediately previous year.

✓If the company commencing the proceedings forms part of a group of companies that is obliged to present consolidated financial statements, the duly audited (for those companies obliged to audit accounts) consolidated financial statements and management report for the last two full financial years must be attached, whenever there are debit or credit balances with the company commencing the proceedings.

Should there be no obligation to consolidated accounts, the duly audited financial statements of all other companies in the group must be provided, so long as:

- Such companies have their corporate address in Spain
- They carry on the same activity or belong to the same business sector and
- They have debit or credit balances with the company bringing the proceedings.

Documentation to be provided (technical, organisational or productive causes)

✓ Technical reports which provide evidence, as the case may be, of occurrence of technical causes (arising from changes, among others in means and instruments of production), of organizational causes (arising from changes, among others, in the area of personnel working systems or methods of ways of organizing production) or productive causes (arising from changes, among others, in the demand for products and services which the company aims to offer in the market).



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