QuotidianoPIÙ

Lunedì 28/10/2024 • 06:00

LAVORO ENGLISH VERSION

Partial closure or relocation of a production site based in Italy: a complex procedure

One of the hazards of partial closure or relocation of a production site procedure is the potential, and also sometimes concrete, duplication of the burdens and obligations put on employers.

di Luca Failla - Avvocato - Managing Partner studio boutique Failla & Partners

di Paola Salazar - Avvocato in Milano

There is a notable employment lawmatter that has impacted employees, employers and public institutions in the Port of Trieste for over two years. Here we are speaking of the events which have led up to the acquisition, by a well-known multinational based in Finland, of an important production site in Trieste, Italy. This new acquisition, which was finalized in the summer of 2024, included a provision for the reconversion of the site.

It all started in 2022 with a decision by the Court of Trieste which denounced the owners for anti-union conduct – more specifically for a violation of a complex and mandatory procedure (introduced by the 2021 Italian Budget Law) which is required prior to a collective dismissal (this Court decision, taken on September 22nd, 2022, can be found under reference RG 362/2022). As a consequence of the violation of the first step of the procedure a discussion was started - within the framework of the same procedure - which also involved local Public institutions. It concluded in December 2023 with no concrete decisions or agreements being made.

These inconclusive discussions then opened up the ability to prepare for a collective dismissal procedure which would have been finalized by Summer 2024. This was made possible because the mandatory procedure, indicated above, which tried to find a solution to save jobs had concluded. However, at the same time, these inconclusive discussions also gave rise, to further negotiations with local public institutions resulting in the signing of a new Program Agreement in July 2024 at the headquarters of the MIMIT (Ministry of Business and Made in Italy). This allowed for the transfer of the production site's activities to a new company (recognized as a world leader in the logistics and maritime transport sector) and hence jobs were ultimately saved.

As part of the Program Agreement, the new owners have committed to the reconversion of the plant and the implementation of a complex industrial plan through the establishment of a new company where the workers which were previously made redundant, due to the old procedure, will soon be reabsorbed.

Regardless of the merits of this complex matter (the next few months and the next two years will be decisive in understanding its true success), what has emerged very clearly in recent years is the great complexity and length of this procedure. To be sure it certainly has not helped either the people involved or industrial relations - so much so that it has led to the need for the intervention of a new institutional body (MIMIT - the Ministry of Business and Made in Italy). This is very different from the third parties which are normally involved in this procedure introduced in 2021 by Italian Law No. 234/2021.

It is therefore useful to briefly retrace the most relevant steps of this procedure.

Of note, is that this special procedure (in Italian "*Delocalizzazioni e chiusura di stabilimenti*") primarily intended for large companies and employers who, in the previous year, have employed on average at least 250 employees under subordinate employment contracts - including apprentices and managers, is a preliminary and obligatory step before any employer can initiate a collective dismissal procedure. One of the hazards of this procedure is the potential (and also sometimes concrete) duplication of the burdens and obligations put on employers - as highlighted in the case cited above.

The Italian law against the delocalization of a business activity

In order to reduce delocalization assets and workforce layoffs, Italian regulations - which entered in force in 2021 (see Article 1, c. 228 Italian Law. No. 234/2021) - dictate, as above specified, that companies that have employed an average of at least 250 employees with proper contracts (including apprentice and executive contracts) in the previous 12 months - and intend to proceed

with the closure of an office, factory, branch of business, autonomous office or department with a definitive cessation of the relative activity and with the redundancy of 50+ workers, are prohibited from dismissing workers before having started a preliminary negotiation/information procedure with the local Italian Trade Unions and the relevant national political parties and authorities. The purpose is to avoid (!) dismissals.

More specifically employers in this situation are obliged to prepare a communication addressed to specific institutional subjects prior to any formal action being taken on the dismissals front. Of note, the communication must outline the specifically prepared plan aimed at limiting the occupational and economic fallout of any forthcoming redundancies.

(Note: When speaking of the delocalization of the workplace – these new regulations on mass redundancies would only enter into discussion if the parameters indicated above – 250+ employees, more than 50 being let go etc etc falls into play.)

On the back of this advance communication notice, employers would then be required to hold talks on the actual carrying out of any redundancy plan with the relevant Italian Trade Unions for their sector. All of this is taking place well before any possibility of initiating a collective dismissal procedure can take place (otherwise the dismissals will be null and void).

In more detail, the advanced communication notice must occur 90 days before the start of any collective dismissal procedure – and needs to be sent to:

- The company trade union representatives or to the unitary trade union representation
- The territorial branches of the trade union associations that are comparatively more representative at national level
- The Regions concerned
- The Italian Ministry of Labor and Social Policies
- The Italian Ministry of Economic Development

The communication may also be made through the employers' association that the company belongs to or which mandates it. Communications to these organizations must indicate:

- the economic, financial, technical or organizational reasons for the closure
- the number and type of professional profiles of the personnel employed throughout the entire company or business unit;
- the deadline by which the industrial / manufacturing plant or site is expected to close.

Furthermore, within 60 days of the communication being sent to the relevant parties, the employer must draw up a plan to limit the employment and economic fallout from the closure and must submit the plan (with a view to discussing it within a defined timeframe) to the trade union representatives - and at the same time send it to the Regions concerned, the Italian Ministry of Labour & Social Policy, and the Italian Ministry of Economic Development.

The plan – which cannot have a duration of more than 12 months – must indicate (according to Art. 1, c. 228 L. n. 234/2021):

1. the actions planned to safeguard employment levels and the actions for the non-traumatic management of possible redundancies, such as recourse to social shock absorbers, outplacement with another employer and redundancy incentive measures. (For employers to access to social shock absorbers, the law expressly provides for the application of the social security wage treatment provided for in employment transition agreements - as per Article 22-ter L.D. No. 148/2015);
2. the actions aimed at reemployment or self-employment, such as training and vocational retraining, also using interprofessional funds. These actions can be co-financed by the Regions within the respective active labor policy measures;
3. the prospects for the sale of the company or business branches with a view to the continuation of the activity, also through the sale of the company, or its branches, to the workers or to cooperatives set up by them. This last point is referred to as the Workers' Buyout Hypothesis - which is managed with the assistance of the Italian Ministry for Economic Development (MiSE);
4. any projects for the reconversion of the production site - also in reference to socio-cultural purposes in favor of the area concerned;
5. the timing and implementation methods of the planned actions.

In essence, any intention to close a company - which is not already in crisis or in a situation of asset imbalance - is still not only bound to provide prior notification of any redundancies but is also required to prepare a complex and articulated business plan - the soundness and subsequent implementation of which will be subject to careful monitoring. The monitoring here will be entrusted to either the so called Structure for Business Crises (as per Art. 1, c. 852 L. No. 296/2006) or to the employer which will be required to report monthly, to the same entities which received the initial communication (as per Art. 1, c. 224 L. No. 234/2021), on the state of the implementation of the plan – also providing evidence of the timing and manner of implementation and actions taken (as per Art. 1, c. 235 L. No. 234/2021).

It should also be noted that, in the event that the closure of an establishment and the definitive cessation of an activity is foreseen – Italian law enforces an obligation on employers to return any subsidies, contributions, or financial and economic assistance that they have received which have been paid by the public finances in the ten years preceding the start of the procedure itself.

The impossibility of reaching an agreement on the development of the industrial plan also due to the risks associated with the length of the procedure, **as in the case indicated** above, ends up nullifying the very purpose of this complex procedure and making it excessively burdensome for the workers involved as well as for any investor interested in planning industrial reconversion projects. This is also true even in cases where the transfer of activities outside of national borders is not envisaged (Note: This was actually the original reason why legislators introduced this complex procedure – to safeguard jobs in Italy).

The procedure expressly enforces that before the conclusion of the examination of a reconversion plan and its possible signature, an employer *cannot* start a collective dismissal procedure (as referred to in Italian Law no. 223/1991) or order individual dismissals for justified objective reasons.

It is well known otherwise that with collective dismissal procedures the agreement phase is where the speed of decision-making, together with the competence of all of the parties involved, can really make the difference in terms of effectiveness and, above all, the safeguarding of employment (as this case has verified).

It is an instrument that, as we see in the case indicated above, has shown all of its structural and procedural difficulties - so much so as requiring a complete revision of the original industrial plan (with the involvement of a new public institutional body -the MIMIT) – which is not actually foreseen in the legislation defining the specific procedure).

Even though the objective of safeguarding employment in this specific case has been achieved - it does not appear to be the result of making the complex system of rules and procedures provided by law transparent - and also at the same time intelligible to any foreign interlocutors. Regardless, here the successful management of the industrial reconversion plan has been achieved.

The successful management of this kind of procedure no longer only means that the only outcome will be a collective dismissal – but instead the procedure can also include additional rules which can lead to better outcomes. It is important that these options are also made known outside of the Italian legal system so that foreign investors and multinational companies can not only see potential solutions for otherwise complex problems – but also, more importantly, they can better understand how to keep Italian workforces at work!