

In the face of Artificial Intelligence: Italy keeps the Human in HR Management

In recent months a great concern has evolved as the news media regularly reports on **mass redundancies** being made by multi-nationals as they seek to reduce their workforces in a very short time frame. Of particular note is the **Artificial Intelligence systems** being used by some of the US headquartered Big Tech companies to identify business units and employees for redundancy processes. Would this be legal in Italy?

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In recent months a great concern has evolved as the news media regularly reports on mass redundancies being made by multi-nationals as they seek to reduce their workforces in a very short time frame (hundreds of thousands of employees worldwide have recently lost their jobs due to mass redundancies). Of particular note is the **Artificial Intelligence systems** being used by some of the US headquartered **Big Tech companies** such as Meta, Google, Amazon, Microsoft, Twitter and Netflix among others to identify business units and employees for redundancy processes.

In Europe, this news was also closely followed by the decision of a well-known Swedish fashion company to use Artificial Intelligence to manage the preliminary phase of the redundancy plan impacting its Business Tech division. It was required, just like many of the multinational Big Techs, by the need to overhaul its organizational structure - most likely due to an overall rethink of their workplace model and use of office space in this current post-pandemic period. In this specific case the Swedish group subjected their employees (estimated at around 1,500 people according to public sources) to intelligence test(s) - in order to provide managers with evaluation parameters for deciding which staff members would be included in the programmed redundancy plan.

Would this be legal in Italy?

No. By law it is not possible to use Artificial Intelligence in the assessment of whether an employee should be made redundant or not in a restructuring procedure. Italian Law No. 223/91, which also integrates EU Directives on this subject, is very clear in establishing specific rules to ensure that the human side of human resource management is protected on this front.

In addition, the Italian Budget Law for 2022 introduced additional and more complex procedures into the Italian legal system that are mandatory to follow before proceeding with any **collective redundancies** which would impact more than 250 employees - from the closure of a head office, a plant, a branch of business, an office or an autonomous department located in Italy.

Saving Jobs

The purpose of this new regulation introduced in the 2022 Italian Budget Law was to avert, as the pandemic subsided, the closure or transfer of entire companies overseas. If this was allowed to occur on a large scale it could risk the creation of possible traumatic employment consequences, as well as economic ones, in local communities where the impacted businesses operate(d). This law created a new discipline that provides for a new procedure prior to any collective dismissal - which overlaps with similar redundancy regulations contained in Law 223/1991.

The Italian government is very keen to "ensure the safeguarding of employment and production" (as per Art. 1, c. 224 L. no. 234/2021) within its borders. Hence companies with operations in Italy must think long and hard before beginning any actions which would threaten these two points.

Redundancies in Italy – What Employers Need to Know

Italian regulations dictate 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 – then the employers are obliged **to prepare a communication** addressed to specific institutional subjects prior to any formal action being taken on this front. Of note, the communication must indicate 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 notice communication, 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 this is taking place well before any possibility of initiating a collective dismissal procedure can take place.

In more detail, the advanced notice communication 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 Ministry of Economic Development
- The National Agency for Active Employment Policies (ANPAL).

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

- the economic, financial, technical or organizational reasons for the closure
- the number and type of professional profiles of the personnel employed in the entire company or business unit;
- the deadline within which the closure of the activity is envisaged.

Further, 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 it (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 and Social Policy, the Ministry of Economic Development and ANPAL.

The plan cannot last more than 12 months and must indicate (as per Article 1, c. 228 L. No. 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 wage supplementation 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 late point is referred to as the workers' buyout hypothesis - which has received considerable development in Italy in recent years and 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).

In this article we have provided just one example of some of the many complexities companies in Italy must confront to ensure compliance with the national legal system. The delicacy of the implications arising from the management of a redundancy plan in Italy concerns not only the hypothesis of collective redundancy but, as seen, may also include the application of additional regulations rules which multinationals companies should be aware of. In summary, Italy, with all of its complexities – legal and

otherwise - is often referred to as the 'Old Country' stemming from the days of the mass migration of its citizens to other parts of the world in search of work. It is also known as the 'Bel Paese' (the Beautiful Country) due not only to the natural beauty of its land, its food, its fashion and its cultural heritage – but also for its strong social fabric created with its roots in the thousands of medieval villages which permeates its landscape. Combine these two and one finds a historic sensibility to job loss intertwined with centuries of human connects, family connects and community connects with its roots in 'village life' and perhaps here we can see why in Italy it is so important to always keep the 'human' in human resource management.

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