

FIRST - Finding an Industrial Restructuring Strategy Together

MINI-GUIDE

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1. Introduction.

Because of the severe and somehow extraordinary crisis which has been tormenting western economies since 2008, the subjects and institutions involved in EU industrial relations are faced with unprecedented challenges.

The ultimate goal of this project was to identify an industrial restructuring strategy with a view to the future. Therefore, the aim of the research was to identify the best practices in the automotive sector at large (cars and tyres) which emerged from an analysis of the measures put in place in various countries to tackle the recent crisis.

The research work revolved around an ‘aggregating element’, namely the fact that all the trade unions involved in the project belong to EU countries (Italy, Spain, Portugal, Germany, the United Kingdom, Slovakia and Poland). For this reason it was necessary to take into account the elements of both hard and soft law in the EU legal system, in order to verify its implementation, transposition and/or impact on the thematic areas mentioned above with reference to the various countries involved.

It is worth recalling that in each country the choice of the measures to tackle the crisis reflects a complex system of national variables, which can be measured by analysing public expenditure on active and passive labour policies. The degree of relative rigidity/flexibility which, from the labour law perspective, concerns employment relationships, is also an interesting factor: protection in case of individual dismissal; type of procedure for collective dismissal; regulation and spreading of atypical and fixed-term employment relationships.

On one hand, the EU strives to act in favour of those workers (and enterprises) that are specially struck by restructuring processes. In 2010 the European Globalisation Adjustment Fund (EGF) helped 23,700 workers dismissed because of the economic crisis and of the deep structural transformations in world trade in 9 Member States (Denmark, Germany, Ireland, Lithuania, the Netherlands, Poland, Portugal, Slovenia, Spain; not Italy or the UK) for a total 83,554,141 Euro.

On the other hand, the European Institutions promote a new employment strategy, focused on the model of *flexicurity*, which has raised some doubts.

Several criticisms notwithstanding, almost all the EU Member States have implemented structural, at times very deep, reforms of their legislations regulating the labour market. In some cases, there has therefore been an extension of unemployment benefits (in terms of duration; amount; beneficiaries); a limitation on the possibility to use fixed-term contracts; a decrease in the gap between the cost of stable and instable workers; a strengthening of services for employment and lifelong learning.

At the same time, however, there have also been changes for the worse, which aimed at increasing flexibility by making it easier for employers to recruit and lay off staff. This was done by reducing the guarantees for real protection against dismissals; weakening the constraints on the use of temporary and fixed-term workers; by means of restrictions on the criteria to have access to unemployment benefits (duration; amount; beneficiaries).

2. The different approaches to the crisis. The importance of “togetherness” and best practices.

The research has shown that undertakings faced the crisis in a deeply different manner one from another. If some of them resort to a more or less gradual escape from the national collective systems of industrial relations, some other search for a new exchange with trade unions. In this case the enterprise obtains a greater management flexibility and

the union is more involved in management choices. In addition, the workers are offered a (more or less) mature corporate Welfare, while a greater management flexibility of the enterprise is recognised.

It is interesting to highlight the differences between the restructuring strategies implemented in the automotive sector by Volkswagen and Fiat. In the Volkswagen case, a participatory approach was predominant, supported by the peculiar institutional structure of company governance in the German model, which was based on the constant search for exchange with workers' representatives and an effort towards product innovation and staff training – the true drive for any real forecasting and development policy followed by a company.

In the Fiat case, on the contrary, a unilateral, authoritarian approach prevailed, with limits on union scope of action and rights.

The path of this research is characterised by the dialogue and the exchange of opinions among the different actors involved.

The use of the noun “together”, in the project title, which refers to the substantive “togetherness”, shows in fact that our goal was not to identify best practices *tout court*, but those characterised by a more or less evident sharing between social partners – employers and trade unions – on the one hand and with the involvement of local, national and regional public institutions, on the other.

The following paragraphs highlight the importance of practical applications of the “togetherness” principle to develop a common strategy that can manage and prevent crisis, paying a particular attention to some tools. The first considerations concern the different approaches to the social dialogue and the importance of its development at national and trans-national level with specific regard to: the *collective bargaining* between social partners (par. 2.1.1); the *consultation*, which involves also the institutions (par. 2.1.2); and the role of transnational agreements (par. 2.1.3). The other paragraphs concern some significant measures to anticipate (par. 2.2) and manage (par. 2.3) the crisis - by preventing or deal with redundancies - with specific regard to working time and flexible types of employment, as well as the role played by workers' representatives, and their right to information and consultation in collective dismissal procedures. Finally, a particular attention is dedicated to the role of social partners in vocational training with a specific reference to some national experiences (Italy, Uk, and Baltic countries).

2.1.1 The role of collective bargaining.

Despite a weakening of trade union with reference to membership and bargaining power, it is necessary to take into consideration the function of national industrial relations systems in Europe.

It is enough to think about the crucial role of the *collective bargaining* in the negotiated management of flexibility within companies (wages, working hours, work organisation, contract types, redundancies). Together with social protection systems, and legislation on crisis management and restructuring, it has played a crucial role in achieving a significant curb on the worst effects produced by crises and industrial restructuring processes, thus reducing their impact on employment

An ongoing trend concerns agreement decentralisation, both firm and territorial level.

Almost everywhere there is an increase in the prerogatives of sectoral bargaining as compared to those of inter-sector bargaining (Belgium; Finland) and of corporate bargaining as opposed to sector bargaining, with the possibility to implement derogatory agreements which guarantee a lower level of protection than higher level agreements (the best-known – and possibly most significant – case is that of the German "opening clauses". These are "*Company pacts for employment*", which make it possible to depart from the sector agreement in case of crisis with a view to improving competitiveness and safeguarding companies and jobs).

In the systems traditionally based on multi-level bargaining and on well-established legal guarantees over the presence of unions within companies, the enhancement of corporate bargaining of the crisis can only be considered as a best practice for the joint management of the crisis if it is properly integrated with non-corporate protection systems with which it should not collide.

To give a concrete example, in the well known case of Fiat - as it developed in Italy in 2009-2011- the bargaining of the crisis at the plant level, with all the related agreements on amendments to/derogations from the national agreements, "in order to handle moments of crisis or when there is significant investment favourable to the growth of a company from the financial and employment points of view", is part of a balanced framework in the system outlined in the agreement of 28th June – 21st September 2011 between Confindustria and Cgil, Cisl and Uil.

It has to be underlined the vagueness and lack of clarity of some legal texts, mainly when they include specific agreements that can derogate the law. This is, therefore, to alter the constitutional order and hierarchy of the sources (see, as an example, art. 8 of Leg.

Decree 138/2011, converted with amendment into law 148/2011, which has introduced the new legal category of the so-called *contratti di prossimità*).

Territorial bargaining may be another potential regulatory instrument to develop in order to prevent or manage the effects of crisis. Although it is a difficult level of bargaining to implement and sustain, there is also some good practice in this area. A good example is the Indesit/Refondolo agreement in Italy, under which, at least for some years, it was possible to effectively manage a difficult restructuring process with a serious impact on employment; more recently (May 2011) there has been a protocol in the Province of Bergamo for corporate crisis management, which was in some way a precursor of the Agreement between Confindustria and the main trade union confederations of 28/06/2011, but which avoids the use of exemption clauses in national contracts being replaced by a commitment to full use of all existing flexibility (particularly for working hours), training, and recuperation of all possible stable employment opportunities.

2.1.2 The function of consultation.

From the point of view of a multi-level dialogue among the parts, another important tool is *consultation*, which means the involvement of the public sector, especially at national or regional government level. Many tripartite social agreements have usually preceded the legislative reforms implemented in most EU countries, since the 1990s. Of particular interest and importance is the experience of the Autonomous Community of Cataluña, while on the other hand, in Italy there are new moves at regional level to manage crises jointly (e.g. Friuli Venezia Giulia, and the procedure used to create Campania Regional Law n. 14 of 2009, which establishes a territorial social plan for employment crisis management).

2.1.3 The role of trans-national agreements.

According to a trans-national perspective, one of the most recent and innovative instruments is the conclusion of real International Framework Agreements (IFAs) or European Framework Agreements (EFAs) between multinational enterprises and international or European trade unions with the specific aim of making the codes of conduct for firms more precise and binding, with the increasing inclusion of commitment to maintain employment and social rights even in connection with corporate crises. In 2010 nearly a hundred were recorded (while the previous year there had been only 72) and they affect the world's leading companies in their respective fields (GM, Ford, Daimler).

2.2 Best practices and anticipation of the crises. The measures to increase competitiveness and productivity.

In the project, the research of best practices has concerned both the measures which seem more appropriate to *prevent the onset* of a crisis and to *tackle* them responsibly. Measures to increase competitiveness and productivity of enterprises surely belong to the first group. Within this group, working time and flexible forms of employment (especially part time, fixed-term contracts and temporary agency work) have been specifically analyzed. It is extremely significant and interesting, in a future perspective, the role the EU legislation has given the social actors in the actual regulation of a few crucial aspects of temporary agency work.

Reference is to art. 5 of Directive 2008/104, which leaves a major margin for action to national collective bargaining. In fact, this Directive makes it possible to derogate from the principle of equal treatment between temporary agency workers and regular employees of the user undertaking (i.e. with regard to pay), thus outlining a model of collective autonomy, possibly supervised by the national legislation, but responsible for the final decision on derogation from the principle of equal treatment. This enables a supervised reduction of labour costs for the workers hired through job agencies, considering that pay is definitely part of working and employment conditions.

The same positive considerations on the spaces left to social partners and collective bargaining by the EU legislation also apply to working time: in fact, the Directive 2003/88, at art. 18, makes it possible to derogate from certain crucial elements of the discipline (weekly and daily rest periods, breaks, length of night work and reference periods for the application of weekly rest and maximum weekly working time) *only* by way of collective agreements concluded by the social partners at national or regional level or “in conformity with the rules laid down by them, by means of collective agreements concluded between the two sides of industry at a lower level”.

2.3 Best practices and crisis management: flexibility, redundancies and vocational training.

Measures or good practices to face the crisis caused by restructuring processes can be divided in two groups: 1) measures aiming at *preventing and avoiding* redundancies, and 2) measures aiming at *managing* redundancies.

1) With regard to the first group, reference is to the schemes providing for working time reduction with a following, although not obvious, proportional pay reduction which can sometimes be compensated for by an allowance chargeable to the public budget.

A report published in 2010 by the *European Foundation for the Improvement of Living and Working Conditions*, entitled *Extending Flexicurity – The potential of short-time working schemes*, shows that in Europe almost two million workers were affected by a reduction in working time in 2009 because of lack of work due to economic or technical reasons, and that their number was three times greater than in the previous year. Of these, 55% were concentrated in Italy and Germany.

Even if there is no specific EU regulation of working time reduction, at least not direct or binding, the conclusions of the European Council of the end of 2009 highlighted a certain support for this kind of measures, considering that, where possible, maintaining employment levels can be achieved by helping companies with alternative measures to redundancy such as flexible working patterns and the temporary reduction of working time or “other forms of internal flexibility measures”.

The FIRST project carried out some experiences concerning the reduction in working hours, i.e. the cases of Continental Toscana in Italy, Sony in Cataluña and PSA in Portugal. Internal flexibility in work organisation was chosen, instead, by Volkswagen in Wolfsburg.

These statements are evidence of the link of such schemes with the talks about *flexicurity*, which cannot only concern transitions from one job to another, but should also be seen as a tool to be used within the employment relationship, as is the case with the schemes we are discussing here. Just with reference to *flexicurity*, it was interesting to look at the role of social partners.

In times of crisis, the rapidly-achieved tripartite agreements between social partners and national governments (or regional ones: see the case of Cataluña), have view working time reduction patterns as useful temporary measures to cope with difficulties. These agreements are based on the common idea that jobs must be preserved, but at the same time companies must be supported through State aids.

Both Business Europe and the European Trade Union Confederation agree that these measures have helped companies maintain employment levels. The other element on which all the European social partners agree is the need, in the framework of these measures, to envisage training activities with the aim of encouraging a ‘sustainable’ competitiveness of firms and a professional improvement of workers.

While provisions on the use of working time reduction are often provided for in *ad hoc* agreements, sometimes anti-crisis measures are included in “traditional” collective agreements (on the subject of pay and working conditions): this is the case with the

clauses introducing greater flexibility or envisaging salaries to be fixed at decentralised level. In Germany, working time reduction schemes constitute the main contents of sector collective agreements related to the crisis.

It should also be remarked that Poland has had recourse to similar measures for the companies suffering the crisis or with temporary financial difficulties. For the purposes of our project, the interesting aspect is that these working time reductions are provided for by an agreement reached within the tripartite Commission, which includes members of the Government, of trade unions and of employers' associations – an expression of the other form of togetherness, i.e. social dialogue, which has also characterised the experience of Cataluña.

Vocational training is another tool which plays a crucial role in crisis situations, as it provides training or re-training, which the workers can use both inside and outside the company. The most recent documents of the European Union, while not mandatory, highlight the need for participation of social actors in education and vocational training (see the so-called *Europe 2020* communication of 3rd March 2010).

In the perspective of researching best practices, reference is mainly to the **Italian experience** of bilateral bodies. They are institutions – similar to unincorporated associations – which were set up freely, usually to implement provisions of national collective agreements. They are joint groups, including the same number of workers' and employers' representatives. They represent a concrete, effective type of collaboration between capital and labour, which stresses a trend to overcome the conflict-based model. The resources allocated to these bodies come partly from the companies and partly from individual workers, and are used to provide social services and benefits. They have several purposes, including: pooling of salary obligations (e.g. wage supplements, holidays) for workers who change employer quite often (e.g. in construction); vocational training; occupational safety; welfare benefits. These bodies play an important role both in terms of vocational training, and in the anti-crisis measures: on one hand, in fact, legislative decree no. 276 of 2003 makes bilateral bodies responsible for “planning training activities and organising the provision of in-company vocational training”, “managing funds for training and income support” (art. 12, para. 4); furthermore, as far as vocational training is concerned, these bodies also play an important role in designing the contents of training in apprenticeship; on the other hand, Law no. 185 of 2008 set out that the extension of a number of income support actions (short-time allowance and unemployment benefit) was to be subject to a partial integration of the benefit by the bilateral bodies envisaged in the

collective agreement. Although a following amendment (conversion Law no. 2 of 2009) stated that the benefit can be “granted also with no need for an integration by the bilateral bodies”, the legislator's intention to support the experience of bilateralism also in welfare actions remains unchanged.

The **UK experience** of *learning agreements* is also remarkable. Only in the late 1990s, thanks to the support (including economic support) of the Blair government, the unions began to introduce training activities in the framework of a specific collective agreement on the subject of training and learning. It is interesting to note that, in a full spirit of *togetherness*, cooperation between the subjects involved is the most recurring general principle in these agreements, and that the goal of two thirds of the agreements examined is the setting up of a joint committee on learning and workers' professional growth. This committee includes the same number of workers' and employers' representatives (here again we find 'sharing' and an experience that has a lot in common with Italian bilateralism) and its tasks include: identifying training needs, designing individual and company training plans and periods of rest for the training activities.

Still regarding vocational training, a study of October 2011 stated on **Baltic countries**, a group which also includes two of the countries involved in our project, namely Poland and Germany, shows that between 2004 and 2009 most of the funds (about 40-50%) spent on labour market policies in all the countries under study concerned measures for training. Interestingly, in Poland expenditure on training activities grew more than on other labour market policies between 2008 and 2009: with the anti-crisis package of July 2009, the provisions concerning vocational training – usually reserved for unemployed people – were extended also to workers at risk of unemployment and to the employees of companies at risk of bankruptcy. Furthermore, the strengthening of measures supporting vocational training also includes some disadvantaged groups, such as unemployed people under 25, subjects with no professional qualification, first-job seekers and those with no secondary school diploma. In addition, the national reform programme of 2008-2011 included, among other measures, the “generational solidarity” programme, which aims at improving the qualifications and skills of workers over 50 by means of incentives to employers to hire and/or keep in employment the subjects belonging to this group.

2) With regard to collective dismissal, the relevant data carried out by the research concern the link between the strengthening of workers' representatives right to information and consultation, on one hand, and the recourse to collective redundancy procedures, on the other. Although the involvement of social partners has been strengthened, not only

thanks to innovations in European legislation (from Dir. 75/129 to Dir. 98/59) but also to some major interventions of the Court of Justice - (see the *Junk* case, of 2005, whereby the Luxembourg judges, recalling that the consultation procedure aims at “reaching an agreement”, stated that the provisions of the directive would be useless if it were possible to resolve employment relationships before the end of consultation; and the *Agorastoudis et al.* case, of 2006, which interpreted the 1998 directive in an extensive sense, by declaring it is also applicable in case of collective dismissals caused by the termination of an establishment's activities which was decided upon by the employer of its own volition, and not as a result of a previous judicial decision. The Court has so contested the decision of the Greek courts, highlighting that the Community legal system prevails over the domestic jurisprudential interpretation, although the latter rests on constitutional guarantees) - no significant increase was recorded in the recourse to collective redundancy procedures in the countries involved in our project and in the sector under study. This data can somehow be viewed positively, because it points to a greater use of those measures which tried to maintain employment levels. With regard to involvement of social partners and the right to information and consultation, at the supranational level, a significant role is played by EWC, provided for by Directive 94/45, which exist, as known, only in the larger transnational companies (totalling 1000 employees with at least 150 in other Member States). The strengthening of these organisations would represent a good practice to develop. They basically have the right to information and consultation, but they may have an important role in the equilibrium between different geographical territorial/national locations of firms, acting as timely conveyors of information on managing crisis and the places to look for, and try to bring into play the different interests, often harrowing for the workers involved in the crisis.