

The logo for Dentons, featuring the Chinese characters '大成' followed by 'DENTONS' in a white arrow-shaped box pointing to the right.

大成 DENTONS

**Global Employment Webinar Series**

# **Managing Collective Redundancies: Europe**

Thursday 17 November 2022

7am PST | 10am EST | 3pm GMT | 4pm CET | 11pm HKT

Grow | Protect | **Operate** | Finance

# Welcome

## Your speakers today



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# Agenda

## □ Introduction

## □ Key features

- Timing
- Impact of trade unions, works councils and CBAs
- Severance / redundancy payment
- Risks / penalties
- Special protection against dismissal

## □ Recent developments

- France
- Germany
- Italy
- Spain
- United Kingdom

## □ Q&A



# Key features

# Timing

	Consultation length	Start date
<b>United Kingdom</b>	<ul style="list-style-type: none"> <li>• 20 to 99 redundancies = 30 days</li> <li>• 100+ redundancies = 45 days</li> </ul>	Date written notification sent to employee representatives
<b>France</b>	<p><u>All companies</u></p> <ul style="list-style-type: none"> <li>• 2 to 9 redundancies = 1 month*</li> </ul> <p><u>Companies with less than 50 employees</u></p> <ul style="list-style-type: none"> <li>• 10+ redundancies = 1 month*</li> </ul> <p>* Unless CSE uses assistance of expert = 2 months</p> <p><u>Companies with more than 50 employees</u></p> <ul style="list-style-type: none"> <li>• 10 to 99 redundancies = 2 months</li> <li>• 100 to 249 redundancies = 3 months</li> <li>• 250+ redundancies = 4 months</li> </ul>	Date of first consultation meeting (with written record)
<b>Germany</b>	<p><u>Works Council</u></p> <ul style="list-style-type: none"> <li>• No statutory guidelines</li> <li>• Agreement without arbitration board: 2-3 months</li> <li>• An arbitration board is set up: 6-12 month*</li> </ul> <p>* Depending on whether parties can reach an agreement re the set-up of the arbitration board or whether they need to bring action to the Labor Court in order to set-up such arbitration board</p> <p><u>Economic Committee</u></p> <ul style="list-style-type: none"> <li>• No statutory guidelines</li> <li>• 2-4 weeks (parallel to works council consultation)</li> </ul>	Date of first information notification (recommended in writing)
<b>Italy</b>	<ul style="list-style-type: none"> <li>• First phase (“internal procedure”) = 45 days*</li> <li>• Second phase (“external procedure”) = 30 days</li> </ul> <p>* If parties fail to reach an agreement by this time the second phase starts</p>	Date employer sends notice letter to works council (if any) and trade unions
<b>Spain</b>	<ul style="list-style-type: none"> <li>• Employer has less than 50 employees = 15 days*</li> <li>• Employer has 50+ employees = 30 days*</li> </ul> <p>* Parties can agree to extend period in order to reach an agreement. Period can also be brought to an early end if agreement reached</p>	Date employer sends notice letter to employees’ representatives (if any) or to a Commission and to the Labour Authority

# Impact of trade unions, works councils and CBAs

<b>United Kingdom</b>	<ul style="list-style-type: none"><li>• If trade union exists = employer must consult with its representatives</li><li>• If CBA exists = potential provisions governing procedure</li></ul>
<b>France</b>	<ul style="list-style-type: none"><li>• If CSE exists = employer must inform and consult with it</li><li>• If trade union delegates exist + dismissals concern at least 10 employees in 30 days = job protection plan may be implemented through collective agreement with union delegates</li><li>• If CBA exists = potential provisions governing procedure</li></ul>
<b>Germany</b>	<ul style="list-style-type: none"><li>• Works council = key player</li><li>• Employer must consult with works council and negotiate “reconciliation of interests agreement” + agree social plan (including severance payments)</li><li>• No dismissals before ROI negotiations end (either failed or – preferably – agreement signed)</li><li>• Trade unions may increase pressure by way of industrial action for a “tariff” social plan</li><li>• Some CBAs provide for special protection against termination</li></ul>
<b>Italy</b>	<ul style="list-style-type: none"><li>• Works council (if any) and trade unions entitled to participate in the procedure for consultation and negotiation</li></ul>
<b>Spain</b>	<ul style="list-style-type: none"><li>• If trade union/employee representatives exist = employer must inform, consult and negotiate with them</li><li>• If CBA exists = potential provisions governing procedure / compensation</li></ul>

# Severance / redundancy payment

<b>United Kingdom</b>	<ul style="list-style-type: none"><li>• Employees with less than 2 years' service = no statutory redundancy payment*</li><li>• Employees with 2 years'+ service = statutory redundancy payment calculated by reference to age, length of service and weekly pay (amount capped)*</li></ul> <p>* Employees may be entitled to enhanced redundancy payment if included in employment contract or employer policy or implied by custom and practice</p>
<b>France</b>	<ul style="list-style-type: none"><li>• Dismissal indemnity pursuant to applicable CBA or law, whichever is more favorable*</li></ul> <p>* Dismissal plan may include extra dismissal indemnity</p>
<b>Germany</b>	<ul style="list-style-type: none"><li>• Severance payments as provided by the social plan</li><li>• If no works council (and no social plan) parties may agree individual severance payments in order to avoid costs and litigation*</li></ul> <p>* Calculation of severance: years of employment x monthly salary x factor (subject to negotiation)</p>
<b>Italy</b>	<ul style="list-style-type: none"><li>• Indemnity in lieu of notice (if the notice is not worked)*</li><li>• Contribution to National Social Security Authority ("redundancy ticket")**</li></ul> <p>* Calculated considering the length of service and job level ** Calculated considering several aspects, but equal from a minimum of 1.6k to a maximum of 10k per each redundant employee</p>
<b>Spain</b>	<ul style="list-style-type: none"><li>• Statutory severance compensation = 20 days' salary per year of service up to 12 years maximum*</li></ul> <p>* Enhanced amount usually offered in the negotiation process, taking into account: (i) the severance compensation amount for unfair dismissal (45 days' salary per year of service) up to 42 months maximum for contracts entered before February 12, 2022; and (ii) 33 days' salary per year of service to termination date up to 24 months maximum for contracts entered after February 12, 2022</p>

# Risks / penalties

<b>United Kingdom</b>	<ul style="list-style-type: none"><li>• Claims for failure to inform and consult = up to 90 days' pay per employee</li><li>• Failure to submit HR1 to secretary of state = criminal offence</li><li>• Unfair dismissal claims</li></ul>
<b>France</b>	<ul style="list-style-type: none"><li>• Dismissals without prior approval of labor administration (if required) = dismissal null and void + employee entitled to reinstatement (or in some cases indemnity of 6 to 12 months' salary)</li><li>• Obstruction offences = fines (EUR 7,500)</li><li>• CSE action to request suspension of dismissal procedure</li><li>• Unfair dismissal claims</li></ul>
<b>Germany</b>	<ul style="list-style-type: none"><li>• Works council may seek injunctive relief (not available in all court districts) to block redundancies</li><li>• Failure to file valid* mass dismissal notification with Federal Employment Agency = dismissals null and void</li><li>• Claims for failure to inform and consult</li><li>• Unfair dismissal claims</li></ul> <p>* Very high standards defined by case law = formal mistakes may cause invalidity</p>
<b>Italy</b>	<ul style="list-style-type: none"><li>• Action by trade unions for anti-trade union behavior</li><li>• Claims for unfair dismissal</li></ul>
<b>Spain</b>	<ul style="list-style-type: none"><li>• Failure to inform and consult = dismissals null and void + employee entitled to reinstatement</li><li>• Unfair dismissal claims</li></ul>

# Special protection against dismissal <sup>1</sup>

	Pregnancy	Maternity leave	Paternity leave	Adoption leave	Disabled employees	Works council members	Trade union reps	Age	Work related sick leave	Other
<b>United Kingdom</b>	✗	✓	✗	✓	✗ <sup>2</sup>	✗	✗	✗	✗	<ul style="list-style-type: none"> <li>• Shared parental leave</li> </ul>
<b>France</b>	✓	✓	✗	✓	✗	✓	✓	✗	✓	
<b>Germany</b>	✓	✓	✓	✓	✓	✓	✗	✗ <sup>3</sup>	✗	<ul style="list-style-type: none"> <li>• Special positions (e.g.: data protection officer, immission control officer etc.)</li> <li>• Members of the election board for works council elections and candidates</li> </ul>
<b>Italy</b>	✓	✓	✓	✓	✓	✗	✗	✗	✗	
<b>Spain</b>	✓	✓	✓	✓	✗	✓ <sup>4</sup>	✓	✗ <sup>5</sup>	✓	<ul style="list-style-type: none"> <li>• Employees who have filed claims or whose fundamental rights have been breached by the employer</li> <li>• Employees who are physically or psychologically harassed by their partners</li> <li>• Employees who has requested a reduction of working time for child o relative care</li> <li>• Employees who are victims of gender</li> </ul>

1 Excluding discrimination protections generally for these purposes

2 Employer may be required to make reasonable adjustments to process (if appropriate)

3 CBAs often provide that older employees must not be terminated other than for cause, i.e. redundancy alone is not a sufficient justification

4 In the event of termination by redundancy, the legal representative enjoys a right to permanence in the Company against other ordinary employees affected by the redundancy process. If the termination is declared unfair, the legal representative is entitled to choose between being reinstated in the company on his/her job position or terminate the employment relationship receiving the statutory severance compensation.

5 Where collective redundancies affect employees aged 55+ the employer must enter into agreement with social security administration – the employer will be required to pay relevant employees' Social Security contributions from end of unemployment benefits until aged 61 or 63 (depending on dismissal grounds)



# Recent developments

# France



Recent case law - disconnect the right to launch consultation of the SEC with the prior obligation to consult the SEC on strategic orientations



Supreme Court – reminder of the impact of a SEU (UES) on potential collective redundancies



Review of measures implemented by employer - do not forget to cover environmental consequences in the Information Note

# Germany



Short terms subsidies – may contradict termination plans, which require long term lack of work



Case law - definition of the relevant establishment is crucial for valid notification



Social selection - difficulties in matrix organisations

# Italy



Corporate social responsibility trend aimed at mitigating or diluting the social impact of certain entrepreneurial decisions or business strategies



## **Preliminary procedure: Anti-delocalization Discipline**

Effective from 1 January 2022 (as further amended)

Employers with an average of at least 250 employees in the previous year and **not in a situation of economic/financial crisis** who intend to proceed with:

- I. the closure of a branch or plant in the national territory, with definitive termination of the relevant activity; and
- II. the dismissal of at least 50 employees,

are required to follow a special preliminary procedure before initiating the collective dismissal procedure.

According to this discipline, the employer must follow a complex preliminary procedure, lasting up to 255 days.

# Spain



Trend towards tougher grounds for collective dismissals

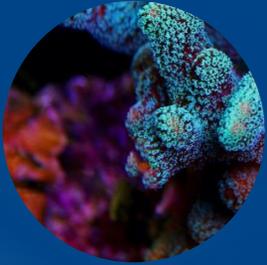


Pressure to take (and facilitation of) measures to collectively suspend employment contracts rather than dismiss



Extension of individual employee protections as a consequence of new trends in diversity, time flexibility, etc.

# United Kingdom



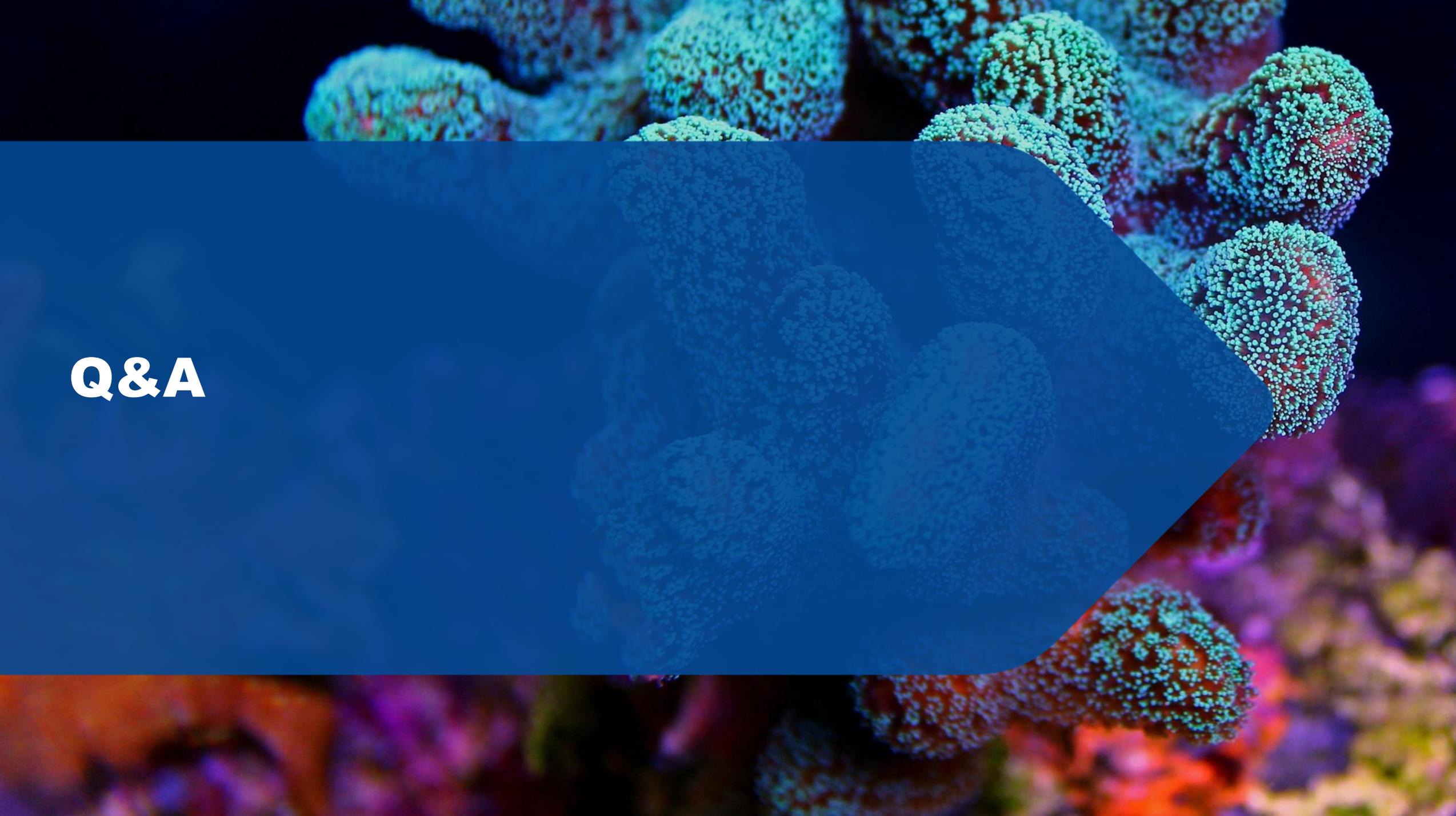
Pregnant workers – potential extension of protection



“Fire and re-hire” – using collective dismissals to change terms and conditions



Vanishing act – Retained EU Law (Revocation and Reform) Bill



**Q&A**

# How can Dentons help?

Experience in conducting global projects across multiple jurisdictions



**Strategic advice on  
how to operate for  
the best outcomes**



**Global footprint with  
immediate access to  
intimate knowledge  
of local law  
requirements, rules  
and practices**



**Strong project  
management  
delivery skills and  
track record**

# Value added services at your disposal

## Collective redundancy hub

This new web site section contains updates on recent developments from our global teams.

In particular, the **interactive tracker** provides quick and easy access to summaries of collective dismissal and redundancy rules; it now covers over 60 jurisdictions around the world.

Link to the Hub: [Dentons - Collective redundancy hub](#)

Link to Tracker: [Dentons - Global collective redundancy tracker](#)

The screenshot displays the Dentons Collective Redundancy Hub website. At the top, there is a navigation bar with the Dentons logo and links for 'Global solutions', 'Featured insights', and 'Client experience'. Below this, a breadcrumb trail reads 'Home > Services and solutions > Digital solutions > All knowledge hubs > Collective redundancy hub'. The main content area features three tabs: 'Grow', 'Protect', and 'Operate', with 'Protect' being the active tab. The 'Collective redundancy hub' section includes a brief description: 'Managing a global workforce reduction programme while navigating local law requirements can be a complex process. Leveraging our global legal knowledge from over 80 countries, and the experience of around 450 professionals operating throughout the world, we are perfectly placed to provide you with tools and insight which are truly global in scope.'

Below the hub description are two featured articles:

- Global employment webinar series: managing collective redundancies** (dated September 28, 2022). Description: 'In this series, our Dentons Global Employment and Labor team offers practical advice and guidance to help employers manage collective redundancy exercises across numerous regions.'
- Global collective redundancy tracker** (dated April 14, 2022). Description: 'This interactive tool provides quick and easy access to summaries of collective dismissal and redundancy rules in over 60 countries around the world.'

The 'Spotlight on:' section features two articles:

- Stricter measures to prevent company closures and collective dismissals (in** (dated September 28, 2022).
- Collective redundancies and the P&O Ferries debacle** (dated April 14, 2022).

On the right side of the screenshot, a detailed view of the 'Collective Redundancy' tracker is shown. It has a header 'Collective Redundancy' with the subtitle 'Laws, rules and procedures relating to reductions in work force.' and the Dentons logo. Below the header, there is a paragraph explaining the tool's purpose: 'Managing a global workforce reduction programme while navigating local law requirements can be a complex process. This Dentons Collective Redundancy tracker provides quick and easy access to summaries of the collective dismissal and redundancy rules in more than 60 countries.' It also includes a disclaimer and supported browsers (Google Chrome, Mozilla Firefox, Microsoft Edge, Apple Safari).

The tracker interface includes a form to 'Select a location (country, state, etc.) or compare up to 3 different locations:'. Three dropdown menus are visible, with 'France', 'Germany', and 'United Kingdom' selected. Below the form, there is a 'Go' button and a 'Reset' button. A note states: 'If you want to get information about more locations, this is currently available through generating a printable PDF.' Below the form, there is a 'Select key points (optional)' dropdown menu.

The tracker displays a table with columns for 'France', 'Germany', and 'United Kingdom'. The table has two main sections: 'Overview' and 'Details'. The 'Overview' section contains two rows of questions:

	France	Germany	United Kingdom
1. Are there specific rules that govern collective dismissals or reductions in force?	Yes	Yes	Yes
2. When would these rules apply?	Collective redundancy rules apply when an employer is proposing to make redundant 2 or more employees in the company. These rules are reinforced in case of contemplated dismissals of at least 10 employees over a 30-day period in companies having at least 50 employees.	In general, the collective redundancy rules apply if an employer: 1. has between 20 and 60 employees and dismisses more than 5 employees within a period of 30 days; 2. has between 60 and 500 employees and dismisses 10% or more of the establishment within a 90-day period.	Collective redundancy rules apply when an employer is proposing to make redundant 20 or more employees in one 'establishment' over a 90-day period.  There are specific rules about the meaning of an 'establishment'. However, it usually refers to an individual branch, store or office location.

# We are where you need us

**82**  
Countries

**+200**  
Offices

**+12,200**  
Lawyers



- Locations in purple represent Dentons offices.
- Locations in blue represent associate firms, offices or special alliances as required by law or regulation.
- Locations in green represent approved combinations that have not yet been formalized.
- Locations in gray represent Brazil Strategic Alliance.
- Locations in brown represent offices from which Dentons is separating.

# Thank you!



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