

### All clear for “should contain” information in collective redundancy notifications

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In the judgment dated 19 May 2022 the Federal Labour Court (Bundesarbeitsgericht, BAG) slightly eased the validity requirements for collective redundancy notifications as per [section 17 German Protection Against Unfair Dismissal Act \(Kündigungsschutzgesetz, KSchG\)](#) (cf. [Federal Labour Court Press Release dated 19 May 2022 \(German only\) - Collective redundancy notifications - Missing “should contain” information](#)).

If an employer

- in an establishment which normally employs more than 20 and less than 60 employees dismisses more than 5 employees,
- in an establishment which normally employs more than 60 and less than 500 employees dismisses 10% of the employees normally employed by the establishment or more than 25 employees,
- in an establishment which normally employs more than 500 employees dismisses at least 30 employees

within 30 calendar days, the employer is obligated pursuant to [section 17 KSchG](#) to notify the responsible Federal Employment Agency (Agentur für Arbeit) of the redundancies before notice of termination is given. If the employer does not give proper notification of collective redundancies this may result in the dismissals being invalid.

Pursuant to [section 17 \(3\) sentence 4 KSchG](#) the notification must include information regarding the name of the employer, the place of the establishment's registered office and the type of establishment, plus the reasons for the planned redundancies, the number and occupational groups of the employees to be made redundant, the number and occupational groups of employees normally employed, the time period in which the redundancies are intended to be carried out and the envisaged criteria for selecting the employees who

are to be made redundant. Pursuant to [section 17 \(3\) sentence 5 KSchG](#) the notification should also include information regarding the gender, age, occupation and nationality of the employees to be made redundant to assist the Federal Employment Agency with suggesting job vacancies.

Contrary to the wording of [section 17 \(3\) sentence 5 KSchG](#), which makes it clear that the information listed there is only information that should be provided but is not mandatory, the Hesse Regional Labour Court (Landesarbeitsgericht, LAG) held last year that this information is a mandatory part of collective redundancy notifications as it deals with relevant information within the meaning of the EU Collective Redundancies Directive (MERL) (cf. [Hesse LAG 25 June 2021 – 14 Sa 1225/20](#)). This was the conclusion to be drawn from interpreting the provision in conformity with the Directive. [Art. 3 \(1\) para 3 of MERL](#) requires all relevant information to be included. The Collective Redundancies Directive does not differentiate between such information that must be included in all cases and such information that may be relevant but nevertheless is not necessary.

The BAG has now clearly rejected the LAG's position and provided employers with more legal certainty to some extent with regard to preparing collective redundancy notifications. The BAG held that the omission of the “should contain” information does not result in the invalidity of the collective redundancy notification and the resulting redundancies as the legislature differentiated between “must contain” and “should contain” information in [section 17 KSchG](#). The BAG also stated that an interpretation of the provision in conformity with the Directive was not required as the jurisprudence of the Court of Justice of the European Union (CJEU) had already clarified that the Collective Redundancies Directive did not impose any obligation to include the “should contain” information as per [section 17 \(3\) sentence 5 KSchG](#) in collective redundancy notifications.

## Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Pia Pracht on +49 221 33660-524 or by email to ppracht@goerg.de. For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

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