

The Effects of National Employment Legislation on Corporate Restructuring

Dana Volosevici

Petroleum-Gas University of Ploiești, Bd. București 39, Ploiești, Romania
e-mail: dana.volosevici@vplaw.ro

Abstract

The paper aims to analyse whether the employees' legal protection in case of collective redundancy could be a decision marker in corporate restructuring. Using a comparative legal approach, we demonstrate that the complexity, the duration, the costs and the risks of the collective redundancy procedure vary even in the case of legislations placed under the same regional principles, as it is the case of French and Romanian legislation. The legal analysis is overlapped on the economic context of the automotive industry. The automotive industry, significantly affected by the economic and financial crisis, should find appropriate responses, including corporate restructuring and business relocation. Our results show that the corporate restructuring generates an intra-corporate competition where the costs generated by the employees' protection in case of collective redundancy could constitute a relevant factor in the decision process.

Key words: *collective redundancy, employees' protection, offshoring*

JEL Classification: *K31, L16, L25*

Introduction

Financial crises generate economic stagnation or decline and typically lead to record levels of unemployment, bankruptcies and often inflation¹. The global economic and financial crisis had an important impact on automotive industry. In a two-year period, the global car and commercial vehicle production declined by a sharp 15.66%, from 73,266,061 units in 2006 to 61,791,868 units in 2008². At national level, the impact has been even more significant, France being a relevant example, with a drop of 35.38%, from 3,169,219 units in 2006 to 2,047,693 units in 2009. While at the global level the 2011 production was superior to the 2006 one, in France the 2011 production (2,242,928 units) represents only 70,77% of the 2006 one³. For some other countries, such as Romania, foreign investments helped the automotive production to maintain a continuous positive trend or delayed the crisis' consequences. Thus, from 213,597

¹ Hui-Mei Wang, Hongmei Huang, Pradeel Bansal, "What determined success or failure in an economic crisis? The role of MNCs' experiential knowledge and network flexibility", *Asian Pacific Journal of Management*, Vol.22 no.1/2005, pp. 89-110.

² International Organization of Motor Vehicle Manufacturers OICA, <http://oica.net/category/production-statistics/>.

³ *Ibidem*.

units produced in 2006, the Romanian automotive industry reached its peak of development in 2010, with 350,912 units.

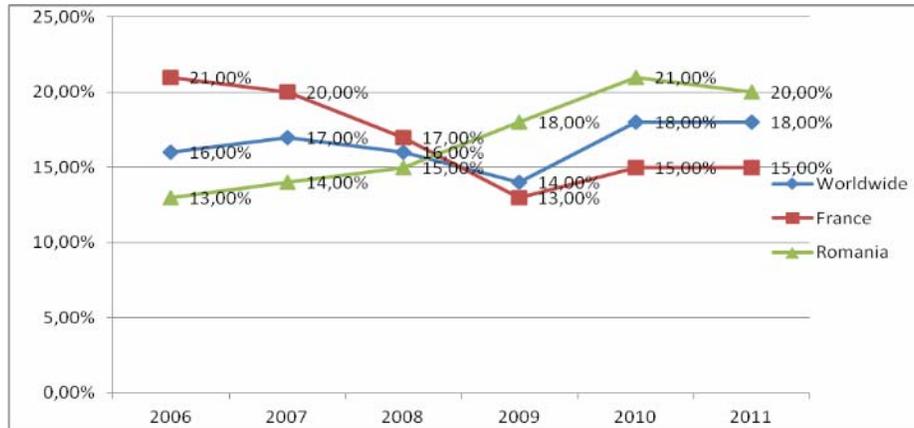


Fig. 1 Car and commercial vehicles production

Source Adapted from International Organization of Motor Vehicle Manufacturers Statistics, <http://oica.net/category/production-statistics/>.

Before drawing the conclusion that the Romanian economy was less impacted by the crisis than the French one, a second test would be relevant: passenger car registration. This latter test⁴ demonstrates that the foreign investments into the Romanian automotive industry have not produced a major improvement of the purchasing power; on the contrary, the evolution of the two indicators is different and even opposite. In parallel, despite the major decline of the French automotive industry, the car registration did not follow the sharp negative trend of the car and commercial vehicles production.

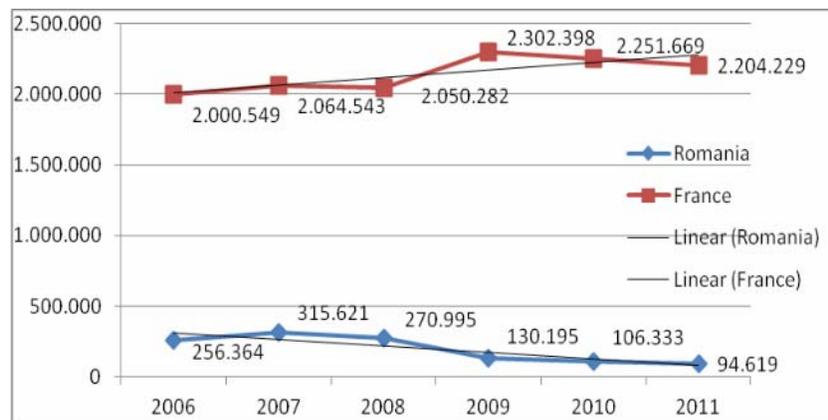


Fig. 2 Passenger car registration

Source Adapted from European Automobile Manufacturers' Association Statistics, http://www.acea.be/news/news_detail/new_vehicle_registrations_by_country/.

The decline of the volumes produced in France may therefore be the result of a business decision to favour the production in countries with lower labour costs, with a view to adapting the business to the market's constraints. We find appropriate to recall that Dacia was acquired by Renault in 1999 as part of the former CEO Louis Schweitzer's ambition to produce a 5,000 euro passenger car. Following this strategy, Dacia has become Renault's global profit machine.

⁴ European Automobile Manufacturers' Association ACEA, http://www.acea.be/news/news_detail/new_vehicle_registrations_by_country/.

Thus, while the global automotive unit in the first six months of 2012 reported an operating margin of only 0.4 percent, Morgan Stanley estimated that Dacia had an operating margin of 8 percent, which is more common for premium automakers⁵. The key of this success relies on two important issues. Firstly, M0 platform uses old Renault technology that has been fully amortized, which derives in lower costs. Secondly, M0-based vehicles are built exclusively in countries with low labour costs⁶, due to economic and historical reasons, but also to the low pressure from social partners to ensure the correlation salary-cost-price.

A Comparative Approach on Collective Redundancies Procedure

The automotive industry is an important employer, with 11.6 million people or 5% of the EU employed population working in the sector, while the 2 million jobs in automotive manufacturing represent 6% of EU's manufacturing employment⁷. Labour costs represent, therefore, an important element to be considered when building an immediate response to financial crises. The strictly economic definition of labour cost limits it at "expenditure on wages paid to those operators who are both directly and indirectly concerned with the production of the product, service, or cost unit"⁸. We aim to demonstrate that other employment related issues may be considered when companies determine their response to financial crises⁹. One of these issues may be the costs related directly or indirectly to the employees' protection in case of collective redundancies. We will compare the French and the Romanian legal procedure regarding the collective redundancies in terms of applicable procedure, duration, costs and risks.

Applicable legal procedure

Both Romania and France have transposed the European directives concerning the employees' information and consultation¹⁰, employees' protection in case of collective redundancies¹¹ and transfer of undertakings¹², and the directive on the establishment of a European Works Council¹³. Therefore, in theory, both legislations set out the main rules on the information and consultation of workers' representatives before collective redundancies are made, as well as

⁵ Luca Ciferri, „How Renault's low-cost Dacia has become a 'cash cow'. No-frills brand forces rivals to try to match its success”, *Automotive News Europe*, <http://europe.autonews.com/apps/pbcs.dll/article?AID=/20130102/ANE/312259994/0/SEARCH>.

⁶ Laura Lembke, financial analyst at Morgan Stanley, *apud ibidem*.

⁷ http://www.acea.be/images/uploads/files/ACEA_POCKET_GUIDE_2012_UPDATED.pdf.

⁸ *A Dictionary of Business*, Oxford University Press, 3rd edition, 2002.

⁹ For further analysis of short-term strategic responses to financial crises, Desislava Dikova, Roger Smeets, Harry Garretsen, Hans Van Ees, „Immediate responses to financial crises: A focus on US MNE subsidiaries”, *International Business Review* No. 22/2013, pp.202-215.

¹⁰ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation, OJ L 80, 23.3.2002, pp. 29–34.

¹¹ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225, 12.8.1998, pp. 16–21.

¹² Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, pp. 16-20.

¹³ Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ L 122, 16.5.2009, pp. 28–44.

provisions on practical support for the employees who are laid off. However, important discrepancies in terms of strength and structure of the applicable procedure may be revealed.

Thus, Romanian procedure is regulated by the provisions of the articles 68 – 74 of the Labour Code, and it is structured as follows: employees' consultation, "in due time and with a view to reaching an agreement", to be fulfilled when the employer contemplates a collective redundancy; notification of the collective redundancy; employees' selection; issuance of dismissal decisions. Until 2011, the collective bargaining agreement at national level complemented and clarified the legal procedure, but the law on social dialogue¹⁴ repealed the national level of bargaining. However, collective bargaining agreements concluded at industry or company level may complement the legal regime (by explaining the notion of "good time" or by establishing criteria for employees' selection). As regards the provisions of the law establishing a general framework for informing and consulting employees¹⁵, it represents the *generalia*, therefore shall not be applicable in the special cases of collective redundancies¹⁶, since *specialia generalibus derogant*.

In France, *Cour de cassation*¹⁷ established two separate procedures that shall be jointly applicable in case of collective redundancies. On one hand, the works council shall be informed in due time on any project of restructuration and reduction of the workforce (Article 2323-56 Para. 1 of the French Labour Code), as well as on the evolution of employment and qualifications (Article 2323-56 Para. 1 point 1^o of the French Labour Code). On the other hand, when the employer contemplates a collective redundancy, consultations shall be initiated with the works council or the employees' representatives, in accordance with the law provisions or the collective bargaining agreement, as the case may be (Article 1233-8, Article 1233-21 of the French Labour Code).

The joint applicability generates further difficulties: the order of the procedures and their interdependence¹⁸. At this moment, the two procedures may be followed simultaneously, but the past legislative fluctuation¹⁹ indicates the existence of a certain risk related to the stability of the present solution. As regards the interdependence of the two procedures, it is established by jurisprudence²⁰ that the nullity of the procedure regarding the consultation on restructuration and reduction of the workforce leads to the nullity of the collective redundancy procedure. However, in order to preserve the security of the legal environment, the collective redundancy procedure shall not be declared null and void if the dismissals have been notified and the nullity of the first procedure has been pronounced after this notification.

¹⁴ Law no. 62/2011 on social dialogue, republished, Official Gazette no.625 of August 31, 2012.

¹⁵ Law no. 467/2006 establishing a framework for informing and consulting employees, Official Gazette no. 1006 of December 18, 2006.

¹⁶ Alexandru Țiclea, Concedierea colectiva, *Revista Romana de Dreptul Muncii*, No. 1/2007, pp. 27-39.

¹⁷ Cour de Cassation, Chambre sociale, 9 févr. 2000, *Travail et protection sociale* 2000, commentaire 234, observation Pierre-Yves Verkindt; Cour de Cassation, Chambre sociale, 17 juin 1997; *Travail et protection sociale* 1997, commentaire 234, observation Pierre-Yves Verkindt; *Revue de jurisprudence Sociale*, 1997, p. 592.

¹⁸ Jean-Pierre Aubert et Rachele Beaujolin-Bellet, « Les acteurs de l'entreprise face aux restructurations : une délicate mutation », *Travail et emploi*, 2004, n° 100, p. 99 ; Giles Auzero, « Les restructurations vues sous l'angle des prérogatives du comité d'entreprise : du légal au conventionnel », *Bulletin Joly*, 2006, p. 867, Antoine Lyon-Caen, « Le comité d'entreprise et les restructurations », *Droit social*, 2004, p.285.

¹⁹ The law on social modernization (2002-73 of January 17, 2002) reversed the jurisprudence solution regarding the simultaneity of the two procedures. This late solution was suspended in 2003, by the Law 2003-6 of January 3rd, 2003 and repealed in 2005, by the Law no. 2005-32 of January 18, 2005.

²⁰ Cour de Cassation, Chambre sociale, July 17, 1997, *Travail et protection sociale*, 1997, commentaire 234, observation Pierre-Yves Verkindt.

Duration of the collective redundancy procedure

As envisaged above, the Romanian procedure on collective redundancies is mainly regulated by the provisions of the Labour Code, therefore it is possible to set a clear time frame, as pointed out into the table below. The 76 days-period may be slightly modified by the intervention of the Labour Administration (article 72 Para. 5, Article 73 Para. 2 of the Labour Code), but this intervention cannot delay the procedure with more than 10 days. Further delays may intervene in case of intricate or complex criteria for selection of employees, but their impact shall not be longer than 15 days.

Table 1. Time frame for the Romanian collective redundancy procedure

Day 1	Day 11	Day 16	Day 46	Day 76
Notification sent to the trade union/employees' representatives and to the labour authorities.	Deadline for the trade union/employees' representatives proposals regarding the measures to avoid the dismissals or to reduce the number of dismissed employees.	Deadline for the employer's written and grounded answer to the employees' proposals. Notification of the final decision on collective redundancies.	Issuance of dismissal decisions. Starts the 20 working days notice period.	Termination of the individual employment contracts.

Source: Adapted from the Romanian Labour Code

In France, the works council must be informed and consulted prior to a decision about redundancies being taken by the employer. The two abovementioned cumulative consultation procedures should be carried out and conciliated by the employer. While there is no legal regulation regarding the number of meetings necessary for the consultation of restructuring, at least two meetings of the works council must be held in the collective redundancy procedure. The two meetings are separated by an interval which varies depending on the number of employees who may be affected by the redundancy, as follows: 10-99 dismissals – 14 days, 100-249 dismissals – 21 days, 250 and more dismissals – 28 days. The abovementioned interval shall be extended if the works council uses its right to be advised by an expert.

Where less than 100 employees are affected, it is expected to have a minimum 3 months period from the beginning of consultations until the notification of redundancies. This duration is generally extended by the legal actions of the work council, varying from labour stoppages to court action to delay, suspend or annul the procedure.

Before beginning the consultation, the employer must draft a social plan (Job Saving Plan) which consists in a package of measures accompanying proposed redundancies in a view to avoid or limit the number of redundancies and assist employees in finding new jobs. While the Romanian law and practice is to simply address these issues into the first notification, without aiming to offer tangible solutions, the French approach is rigorous and subject to the censure of the works council, employees and Local Labour Administration. As a consequence of the strict legal provisions and direct implication of the employees' representatives and of the competent authorities, the social plan shall include proposals to internally and externally redeploy the employees, to create new job positions, to reduce the working hours, and to provide training.

As finding a new job is an important part of the social plan, in firms or groups employing in Europe more than 1000 employees, the employees are entitled to up to nine months partially paid leave for seeking new jobs. In the other companies, the employer must offer a special job finding scheme run by the unemployment authorities.

The Local Labour Administration intervention in the procedure contributes to the length and the intricacy of the process. After being notified of the procedure and of the social plan, the Administration must notify the employer within 8 days if it considers the social plan to be insufficient and it is entitled to propose improvements that must be analysed by both employer and works council. After receiving the Administration's proposals, the employer must give reasoned response to both works council and Administration. The Administration has between 3 and 6 weeks to notify the employer of its remarks on the procedure. The employer shall notify the employees of their redundancies only after replying in writing to the Administration.

The notice period is another factor to be considered when analysing the duration of the procedure. While in Romania the length of the notice period is 20 working days, in France it is usually between 1 and 3 months and it shall start only after the end of a certain period of time, which varies depending on the number of redundancies (from 30 days to 60 days, starting from the date of notification to the Labour Administration).

The complexity of the procedure corroborated with the active intervention of the works council and the Labour Administration extend the redundancies' duration, which results in generating supplementary costs in an already costly procedure.

Direct costs related to the collective redundancy procedure

Under Romanian law, the direct costs related to the collective redundancy procedure are limited to the compensations due to the redundant employees. The compensations' structure shall be established by consultation between the employers and the employees' representatives, unless otherwise provided by the collective bargaining agreements concluded at industry or company level. Therefore, the redundant employees shall receive a complex salary package. On one hand, during the entire consultation period up to the moment of the termination of employment contracts, the employees shall receive the contractual salary as well as the salary related rights. On the other hand, the employees are entitled to the compensations related to the collective redundancy procedure, whose amount is strictly subject to negotiation between the employees' representatives and the employer, since the law does not provide a minimum amount.

Under the French law, the direct costs related to the collective redundancy procedure are generated by the multi-level protection granted to the employees. Thus, the employer shall finance the employees' job finding scheme, by paying to the labour authorities 2 months' salary for each redundant employee. Furthermore, if the redundancies significantly affect the local employment situation, the employer must take steps to facilitate the job creation in the affected area. Moreover, the employer has financial liabilities under the social plan, the amount being subject to negotiation with the employees' representatives. The resulting amount shall be used to cover the outplacement costs or other measures envisaged to support the employees in finding new jobs. Each redundant employee shall have the right to receive the salary during the entire redundancy procedure, as well as the benefits for the notice period (usually between 1 to 3 months). The compensations shall be subject to negotiation, but the law imposes a minimum amount for the employees having at least 1 year of seniority - 1/5 of the monthly salary for each year of service, plus 2/15 of the monthly salary for each year exceeding 10 years of seniority.

Risks of the collective redundancy procedure

The Romanian law gives right only to the redundant employees to challenge the legality of the collective redundancy procedure. The legal action shall be brought to court within 45 days as from the date when the dismissal decision has been communicated to the employee. The employee may apply for reemployment and back payment of the salary as from the date of the termination until reemployment, or for patrimonial and moral damages for unfair dismissal. The law does not provide any minimum amount for the abovementioned remedies.

Under French law, the risk is significantly increased by the fact that the social plan can be challenged by the unions, the works council or by the individual employees. The action can be brought in the following 12 months after the last works council meeting (for the union or works council) or after notification of the redundancies (as regards the employees' action). The court will analyse both the illegality and the insufficiency of the plan. Therefore, not only the breach of legal provisions, but also a disproportion between the employer's resources and the proposed measures may be invoked by the plaintiff.

Putting in parallel of the two legal procedures demonstrates that even if both legislations follow the main principles of the European law, the French legislation ensures a stronger protection for the employees. The legal provisions should be corroborated with the practice of unions, works councils and Labour Administration. As a consequence, the French employer faces a procedure which is more intricate, longer, more expensive and with higher risks than the Romanian one.

Proposal for a Business Decision's Marker

The companies operating in the automotive industry have a complex organisational structure, conceived to ensure both the competitiveness and the business flexibility. Thus, the manufacturing division of Renault Group has 38 industrial sites in 17 countries, while the engineering division is structured in five centres: Technocentre (France), Renault Technologies Americas (entities in Brazil, Argentina, Mexico, Chile and Colombia), Renault Technologies Romania (entities in Romania, Turkey, Russia, Slovenia and Morocco), Renault Technologies Spain (entities in Spain and Portugal), The Renault Samsung Technical Center in South Korea. Moreover, the Group's present major projects of development are located in Russia, a partnership signed with the AvtoVAZ automaker and Morocco, where Renault builds a new industrial complex in Tangiers²¹.

The automotive suppliers follow the organizational approach of the automakers. Valeo Group is a relevant example. This French automotive supplier operates in 29 countries, on 125 production sites and 12 distribution platforms²². The firm's response to industry decline relies both on a portfolio of innovative products and the expansion of the business in Asia and emerging countries²³.

This complex corporate structure enables firms to take effective actions in response to financial crises, such as switching markets across the international network of subsidiaries²⁴. The Renault production figures²⁵ in the five main regions demonstrate the existence of a certain transfer of volumes from a region to another.

²¹ Data available on the official website of Renault Group, <http://www.renault.com/en/groupe/renault-dans-le-monde/pages/fabrication.aspx>.

²² Data available on the official website of Valeo Group, <http://www.valeo.com/en/the-group/valeo-worldwide.html>.

²³ Jacques Aschenbroich, Valeo's Chief Executive Officer, <http://www.valeo.com/en/journalists/news/sales-up-8-2-year-on-year-to-11-8-billion-euros-and-operating-margin-up-3-to-725-million-euros-450.html>.

²⁴ Desislava Dikova, Roger Smeets, Harry Garretsen, Hans Van Ees, op.cit., p.203; Brigitte Groggaard, Alignment of strategy and structure in international firms: An empirical examination, *International Business Review*, No. 21/2012, pp.397-407.

²⁵ Renault Atlas, March 2013, <http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%20Atlas%20-%20en%20-%20march13.pdf>.

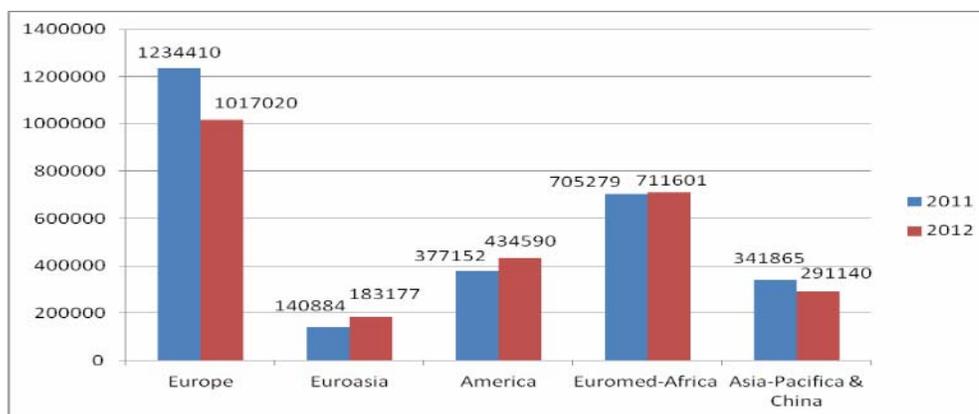


Fig.3 Renault Group Production by region

Source: Adapted from Renault Atlas, March 2013,

<http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%20Atlas%20-%20en%20-%20march13.pdf>.

In general, the switching involves a partial or total cessation of an activity within a subsidiary and a transfer of that activity to one or several of existing foreign subsidiaries. The business decision shall be taken by the parent company, therefore outside the country where the subsidiary activates and the transfer operates to another country or countries, worldwide. The complexity of this operation makes difficult to prove the existence of a “transfer of undertakings” in the sense of the Directive 2001/23/EC. Therefore, the employees’ protection in the country of the affected subsidiary shall be ensured only by the legal provisions applicable in case of collective redundancies. Or, we have envisaged above that the national legal provisions may significantly vary in terms of complexity, duration, costs and risks of the collective redundancy procedure.

The variety of levels of employees’ protection generates a variety of costs related to the collective redundancies, the costs being one of the factors underlying the business decision. Thus, when a multinational company decides to respond to financial crisis by transferring production from a region to another, it shall choose which of the subsidiaries of the affected region shall be totally or partially concerned by the transfer. The subsidiaries of the affected region shall therefore enter into an intra-corporate competition. Industrial factors, such as productivity, efficiency, labour flexibility generated by the absence of trade unions, shall be combined with factors directly related to the transfer. In case of equivalent or quasi-equivalent industrial factors, the complexity, the duration, the costs and the risks of the collective redundancy procedure may constitute an important decision marker. The subsidiary located in the country having the simplest and the least expensive procedure would be considered as the first choice for being closed, in the view of lowering the risks and the direct and indirect costs related to the transfer of activity.

Conclusion

Our analysis emphasises that the nation states should adapt their social policies to the strategies of multinational companies and to their responses to the financial crisis. The employees’ protection in case of collective redundancy is not only a matter of social balance and human rights, but it may constitute an element of national industry protection. We have demonstrated above that the complexity, the duration, the costs and the risks of the national collective redundancy procedure is a decision maker in the intra-corporate competition in case of transfer of activity. Thus, when defining the degree of employees’ protection, the states shall take into consideration the constraints of national and international economic environment, in order to

ensure the reconciliation of social and economic interests. A higher level of employees' protection in case of collective redundancies may determine a multinational company to close a subsidiary located in another country, with a more manageable procedure.

Furthermore, the multinational companies should include the level of employees' protection in case of collective redundancies into the specific criteria involved in the evaluation of business relocation. While a country may offer competitive circumstances for running an economic activity, it may impose burdensome condition at market exit. Or, the financial crisis imposes rapid and flexible responses, incompatible with long and risky legal procedures.

Our work implies several suggestions for future studies. The theoretical hypotheses could be tested on a sample of representative automotive firms which responded to financial crisis by transferring business from a subsidiary to another, especially on different regions. The economic findings may be coordinated with an enhanced legal analysis of different procedures concerning the employees' protection. This would shed more light on the level of influence that the employees' protection has on the automotive multinational firms' strategy.

References

1. Andersson, U., Forsgren, M., Holm, U., The strategic impact of external networks: Subsidiary performance and competence development in multinational corporation, *Strategic Management Journal*, Vol. 23, No. 11/2002, pp. 979-996.
2. Aubert, J.-P., Beaujolin-Bellet, R., Les acteurs de l'entreprise face aux restructurations : une délicate mutation, *Travail et emploi*, 2004, n° 100, p. 99.
3. Auzero, G., Les restructurations vues sous l'angle des prérogatives du comité d'entreprise : du légal au conventionnel, *Bulletin Joly*, 2006, p. 867.
4. Dikova, D., Smeets, R., Garretsen, H., Van Ees, H., „Immediate responses to financial crises: A focus on US MNE subsidiaries”, *International Business Review*, No. 22/2013, pp.202-215.
5. Groggaard, B., Alignment of strategy and structure in international firms: An empirical examination, *International Business Review*, No. 21/2012, pp.397-407.
6. Jarillo, J.C., Martinez, J.I., Different roles for subsidiaries: The case of multinational corporations in Spain, *Strategic Management Journal*, Vol. 11, No. 7/1990, pp. 501-512.
7. Lyon-Caen, A., Le comité d'entreprise et les restructurations, *Droit social*, 2004, p.285.
8. Organization for Economic Co-operation and Development, Offshoring and employment. Trends and impacts, OECD, 2007.
9. Ravenhill, J., *Global Political Economy*, Oxford University Press, 3rd edition, 2011.
10. Ticlea, Al., Concedierea colectiva, *Revista Romana de Dreptul Muncii*, No. 1/2007, pp. 27-39.
11. Wang, H.M., Huang, H., Bansal, P., What determined success or failure in an economic crisis? The role of MNCs' experiential knowledge and network flexibility, *Asian Pacific Journal of Management*, Vol.22 no.1/2005, pp. 89-110.