



COMMISSION OF THE EUROPEAN COMMUNITIES

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MEMORANDUM FROM THE COMMISSION

on acquired rights of workers in cases of transfers of undertakings

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## MEMORANDUM FROM THE COMMISSION

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### **GUIDELINES ON THE APPLICATION OF COUNCIL DIRECTIVE 77/187/EEC OF 14 FEBRUARY 1977 BASED ON THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES**

#### **INTRODUCTION**

#### **1 SCOPE**

- 1.1 Which countries?**
- 1.2 Which undertakings?**
- 1.3 Which employees?**
- 1.4 Which operations?**
  - 1.4.1 Fundamental concept*
  - 1.4.2 Change of employer*
  - 1.4.3 Successive transfers*
  - 1.4.4 Transfer operations associated with insolvency proceedings*

#### **2 CONSEQUENCES OF TRANSFER**

- 2.1 Transfer of rights and obligations to the transferee**
- 2.2 Transfer of undertaking and collective agreement applicable**
- 2.3 Transfer of undertaking and changes in working conditions**
- 2.4 Non-entitlement to waive the rights conferred by the Directive**
- 2.5 Non-application of the Directive to benefits outside statutory social security schemes**
- 2.6 Protection against dismissal**
- 2.7 Protection of the functions of the employees' representative**

#### **3 INFORMATION AND CONSULTATION**

#### **4 CONCLUSION**

#### **ANNEXES**

##### **I - TWENTY QUESTIONS AND ANSWERS ON SAFEGUARDING YOUR RIGHTS**

##### **II - JUDGMENTS OF THE EUROPEAN COURT OF JUSTICE AND THE EFTA COURT ON TRANSFERS OF UNDERTAKINGS**

##### **III -CASES PENDING BEFORE THE EUROPEAN COURT OF JUSTICE AND THE EFTA COURT CONCERNING TRANSFERS OF UNDERTAKINGS**

##### **IV - NATIONAL PROVISIONS TRANSPOSING DIRECTIVE 77/187/EEC OF 14 FEBRUARY 1977**

# **GUIDELINES ON THE APPLICATION OF COUNCIL DIRECTIVE 77/187/EEC OF 14 FEBRUARY 1977**

## **INTRODUCTION**

According to the preamble, the aim of Council Directive 77/187/EEC of 14 February 1977 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 businesses<sup>1</sup> (subsequently referred to as the "Directive" or "Transfers Directive") is **"to provide for the protection of employees in the event of a change of employer, in particular to ensure that their rights are safeguarded"**. To this end, the Directive states that the transferor's rights and obligations arising from a contract of employment or from an employment relationship are, by reason of such transfer, transferred to the transferee. It also provides for the protection of the workers concerned against dismissal by the transferor or the transferee, but **does not stand in the way of "dismissals that may take place for economic, technical or organizational reasons entailing changes in the workforce"**. Furthermore, in accordance with Article 6 of the Directive, the transferor and transferee are required to inform and consult the representatives of the employees affected by a transfer. The essential objective of the Directive is thus to ensure that the restructuring of undertakings within the European Community does not have adverse consequences for the employees of the undertaking concerned.

Generally speaking, as far as legislation is concerned, the effectiveness in social terms of the protection afforded by the Directive is beyond dispute. The Directive has proved to be an invaluable instrument for the protection of workers in the event of the reorganisation of an undertaking, by ensuring peaceful and consensual economic and technological restructuring and providing minimum standards for promoting fair competition in the context of such changes.

The Commission, in paragraph 11.3.2 of the Medium-term Social Action Programme (1995-1997), decided to produce a memorandum on acquired rights of workers in cases of transfers of undertakings, with a view to increasing information and guidance on the application of Community law, taking into account the large number of cases which have come before the Court of Justice of the European Communities.

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<sup>1</sup> OJ No L 61/27, 5.3.1977.

## O SUBJECT

The Commission sees this Memorandum as a useful tool for a better understanding of Community law in a very complex area which is not always easy to interpret. **The main purpose of the Memorandum is make it easier for the public at large to understand Directive 77/187/EEC in the light of the criteria established by the European Court of Justice.** Hence the objective is to tell European citizens how Council Directive 77/187/EEC has been construed by the European Court of Justice. It satisfies the requirement that Community rules should be transparent by facilitating correct application of European law and serving as a guide for representatives of employees and employers on their rights and obligations in the area of transfers of undertakings.

### 1 SCOPE

#### 1.1 Which countries?

The Directive applies "where and insofar as the undertaking, business or part of the business to be transferred is situated within the territorial scope of the Treaty" (Article 1.2) or a member country of the European Economic Area (Norway, Iceland, Liechtenstein).

#### 1.2 Which undertakings?

The Directive applies to the transfer of any type of undertaking, business or part of a business, whether public or private, to another employer.

The fact that an undertaking is engaged in non-profit-making activities is not sufficient to remove the undertaking from the scope of the Directive<sup>2</sup>.

Only transfers involving sea-going vessels are specifically excluded by the Directive.

#### 1.3 Which employees?

The persons the Directive aims to protect are persons with a contract of employment or persons in an employment relationship as defined by the employment law of the Member States at the time of the transfer.

The Court feels that it is for the national courts to establish to what extent the persons concerned are to be regarded as employees and that, consequently, whether or not an employment contract or employment

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<sup>2</sup> CJEC, 8 June 1994, Commission v UK, paragraph 45, ECR 1994, 6-2435.

relationship exists on the date of transfer must be established on the basis of the provisions of national law<sup>3</sup>.

The Directive does not apply to the transfer of rights and obligations in respect of persons who were employed by the transferor on the date of transfer but, of their own free will, do not continue to occupy an employee's post with the transferee<sup>4</sup>.

## **1.4 Which operations?**

### *1.4.1 Fundamental concept*

First of all, it should be noted that the Court of Justice of the European Communities has ruled that the Directive applies to all transfers resulting from a contract, an administrative or legislative act, or a court decision<sup>5</sup>.

The Court has also held that the essential criterion for the recognition of a transfer is whether the transferee has received an existing undertaking so as to be able to continue its activities or, at least, activities of the same type. It follows that the decisive criterion for establishing whether there is a transfer for the purposes of the Directive is whether the economic unit retains its identity<sup>6</sup>. The assessments necessary in order to establish whether or not there is a transfer in the sense indicated are a matter for the national courts, in view of the specific interpretation factors involved:

- type of undertaking or business,
- whether or not tangible assets such as buildings and movable property are transferred,
- the value of intangible assets at the time of transfer,
- whether or not the majority of employees are taken over by the new employer,
- whether or not the customers are transferred,
- the degree of similarity between the activities carried on before and after the transfer,
- the period, if any, for which those activities were suspended.

The Court has held that these circumstances are merely single factors in the overall assessment which must be made and cannot therefore be considered in isolation<sup>7</sup>. In its opinion, the case law referred to above assumes that the transfer relates to a solidly organised economic unit,

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<sup>3</sup> CJEC, 11 July 1995, Case 105/84, A/S Danmols Inventar, ECR 1985, 2639 and 2654.

<sup>4</sup> CJEC, 7 February 1985, Case 19/83, Wendelboe, ECR 457.

<sup>5</sup> CJEC, 7 February 1985, Case 135/83, Abels, ECR 469.

<sup>6</sup> CJEC, 14 April 1994, Case C-392/92, Schmidt.

<sup>7</sup> CJEC, 18 March 1986, Case 24/85, Spijkers.

whose activities are not limited to a specific task. For a transfer of an undertaking to be covered by the Directive, it should involve the transfer of an organised set of assets by means of which the activities or certain activities of the transferor undertaking can be carried on in a solid manner<sup>8</sup>.

#### *1.4.2 Change of employer*

The Court has ruled that the Directive applies to all situations in which there is a change in the legal or natural person responsible for carrying on the business<sup>9</sup>. As soon as the economic unit continues its activity, the mere fact of the change in the natural or legal person who is responsible for carrying on the business is sufficient to make the Directive applicable, regardless of whether or not ownership of the undertaking is transferred<sup>10</sup>.

The transfer of ownership of most of the shares in a company or a change in the majority shareholder does not constitute a transfer of the undertaking, as the employer's legal personality remains the same.

#### *1.4.3 Successive transfers*

- The owner of a leased undertaking takes over its operation following a breach of the lease by the lessee:

The Directive is applicable, its purpose being to ensure, as far as possible, that the rights of employees are safeguarded in the event of a change of employer by enabling them to remain in employment with the new employer on the terms and conditions agreed with the transferor<sup>11</sup>.

- At the end of a non-transferable lease, the owner of the undertaking transfers the undertaking to a new lessee who carries on the business without interruption, with the same staff as were dismissed on expiry of the first lease:

The Directive is applicable where, on expiry of a non-transferable lease, the lessee ceases to be the employer and a third party becomes the employer under a new lease concluded with the owner. The fact that the transfer is affected in two stages does not prevent the Directive from applying, provided that the economic unit in question retains its identity. This is so in particular when the business is carried on without interruption

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<sup>8</sup> CJEC, 19 September 1995, Case C-48/94, Rygaard.

<sup>9</sup> CJEC, 15 June 1988, Case 101/87, Bork International.

<sup>10</sup> CJEC, 10 February, Case 324/86, Daddy's Dance Hall.

<sup>11</sup> CJEC, 17 December 1987, Case 287/86, Ny Mølle Kro.

by the new lessee, with the same staff as were employed in the business before the transfer<sup>12</sup>.

#### *1.4.4 Transfer operations associated with insolvency proceedings*

According to the Court of Justice the Directive does not impose on the Member States the obligation to extend the rules laid down therein to transfers taking place in the context of insolvency proceedings instituted with a view to the liquidation of the assets of the transferor, without prejudice to the national legislator's right to decide otherwise<sup>13</sup>.

The Court has also ruled that the Directive does not apply to transfers of undertakings made as part of a creditor's arrangement procedure of the kind provided for in the Italian legislation on compulsory administrative liquidation but that it does apply when, in accordance with a body of legislation such as that governing special administration for large undertakings in critical difficulties, it has been decided that the undertaking is to continue trading for as long as that decision remains in force<sup>14</sup>.

By contrast, the Directive does apply to the transfer of an undertaking, business or part of a business to another employer in the context of proceedings of the type "surséance van betaling" (suspension of payments) under Netherlands law, as such proceedings may allow the continuation of business.

The fact that the transfer of an undertaking, business or part of a business takes place after the suspension of payments by the transferor is not in itself sufficient to exclude such transfers from the scope of the Directive<sup>15</sup>. Furthermore, the Directive applies to undertakings in which a state of crisis has been recognised, as the procedure leading to identification of this state tends to favour the maintaining of the undertaking's activity with a view to a subsequent takeover<sup>16</sup>.

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<sup>12</sup> CJEC, 10 February 1988, Case 324/86, Daddy's Dance Hall.

<sup>13</sup> CJEC, 7 February 1985, Case 135/83, Abels; CJEC, 7 February 1985, Case 179/83 FNC; CJEC, 7 February 1985, Case 186/83, Botzen; CJEC, 25 July 1991, Case 362/89, d'Urso.

<sup>14</sup> CJEC, 25 July 1991, Case C-362/89, d'Urso.

<sup>15</sup> CJEC, 11 July 1985, Case 105/84, Mikkelson.

<sup>16</sup> CJEC, 7 December 1985, Case 472/93, Spano.



## 2 CONSEQUENCES OF TRANSFER

### 2.1 Transfer of rights and obligations to the transferee

In accordance with Article 3.1 of the Directive, the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer are, by reason of such transfer, transferred to the transferee. However, Member States may provide that after the date of transfer the transferor continues to be liable, side by side with the transferee, in respect of obligations arising from a contract of employment or an employment relationship.

Thus, the transferee is bound by all the transferor's obligations resulting from an employment contract or an employment relationship, including those which arose before the date of transfer. In the Court's view, the Directive refers unreservedly to the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of transfer. It is the transferee who assumes liability for bearing the burdens resulting from employees' rights existing at the time of transfer<sup>17</sup>. The objective of the Directive is to safeguard the rights of employees in the event of a change of employer by making it possible for them to continue to work for the transferee under the same conditions as those agreed with the transferor. Its purpose is not, however, to ensure that the contract with the transferor is continued where an employee does not wish to remain in the transferee's employ<sup>18</sup>.

### 2.2 Transfer of undertaking and collective agreement applicable

Article 3.2 of the Directive requires the transferee to continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.

In the Court's view, Article 3.2 of the Directive must be interpreted as obliging the transferee to continue to observe the terms and conditions agreed in any collective agreement in respect of workers who were already employed by the undertaking at the time of transfer, thus excluding those who were recruited subsequent to that date<sup>19</sup>.

The transferee has to continue to observe the terms and conditions agreed in any collective agreement on the same terms, until the date of

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<sup>17</sup> CJEC, 7 February 1985, Case 135/83, Abels.

<sup>18</sup> CJEC, 5 May 1988, Cases 144/87 and 154/87, Berg and Busschers.

<sup>19</sup> CJEC, 17 December 1987, Case 287/86, Ny Mølle Kro.

termination or expiry of the collective agreement or the entry into force or application of another agreement. In accordance with Article 3.2 of the Directive, Member States may limit this period, provided it is not less than one year<sup>20</sup>.

### **2.3 Transfer of undertaking and changes in working conditions**

If the contract of employment or the employment relationship is terminated because the transfer within the meaning of the Directive involves a substantial change in working conditions to the detriment of the employee, the employer is regarded as having been responsible for termination of the employment contract or employment relationship (Article 4.2).

Employees' remuneration rights arising from their employment contract or employment relationship may not be changed even if the overall amount of their wages remains unchanged. However, in so far as national law makes it possible to amend an employment relationship in a way which is disadvantageous to employees, such changes are not ruled out merely because the undertaking has in the meantime been transferred. Thus, the rights and obligations may be changed vis-à-vis the transferee subject to the same restrictions as could have been applied to the transferor, assuming that the transfer in itself is not the reason for this change<sup>21</sup>.

### **2.4 Non-entitlement to waive the rights conferred by the Directive**

The Court of Justice has held that the protection conferred by the mandatory provisions of the Directive is a matter of public policy. It has ruled very clearly that an employee cannot waive the rights conferred upon him by the Directive and that these rights cannot be restricted, even with his consent and even if the disadvantages resulting from his waiver are offset by such benefits that, taking the matter as a whole, he is not placed in a worse position<sup>22</sup>.

As the Court has specified, the Directive's rules apply to all, including the employees' representatives, who may not agree different arrangements in an agreement with the transferor or the transferee.

According to the Court, it is not permissible to derogate from the rules in a manner unfavourable for the employees and hence the implementation of the rights conferred on employees may not be made subject to the consent of either the transferor or the transferee nor the consent of the employees' representatives or the employees themselves, with the sole

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<sup>20</sup> CJEC, 11 December 1992, Case 209/91, Rask and Christensen.

<sup>21</sup> CJEC, 11 December 1992, Case 209/91, Rask and Christensen.

<sup>22</sup> CJEC, 10 February 1988, Case 324/86, Daddy's Dance Hall.

reservation, as regards the workers themselves, that, following a decision freely taken by them, they are at liberty, after the transfer, not to continue the employment relationship with the new employer<sup>23</sup>. In this event it is for the Member States to determine what the fate of the employment contract or employment relationship should be. Notably, they may provide in such circumstances that the contract must be regarded as terminated either by the employee or by the employer. They may also provide that the contract be maintained with the transferor<sup>24</sup>.

## **2.5 Non-application of the Directive to benefits outside statutory social security schemes**

The transfer of rights and obligations arising from a contract of employment or an employment relationship does not cover employees' rights to old-age, invalidity or survivor's benefits under supplementary company or inter-company pension schemes outside the statutory social security schemes in Member States (Article 3.3, first paragraph).

Thus there is no transfer of the transferor's obligations based on non-statutory schemes. Nevertheless, in order to avoid the adverse consequences for employees which could result from this exclusion, Member States must adopt the measures necessary to protect the interests of employees and persons no longer employed in the transferor's business at the time of transfer (Article 3.3, second paragraph).

## **2.6 Protection against dismissal**

The transfer of an undertaking, business or part of a business **does not in itself constitute grounds for dismissal by the transferor or the transferee (Article 4.1), but this provision does not stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce.**

Thus the Directive is limited to prohibiting dismissals where the only reason is the transfer.

The Court has held that the protection afforded by the Directive against dismissal applies to any situation in which employees affected by a transfer enjoy some, albeit limited, protection against dismissal under national law, with the result that such protection may not be taken away from them or curtailed solely because of the transfer<sup>25</sup>.

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<sup>23</sup> CJEC 25 July 1991, Case 362/89, d'Urso.

<sup>24</sup> CJEC 16 December 1992, Case 132/91, Katsikas, ECR 92, I 6577.

<sup>25</sup> CJEC, 15 April 1986, Case 237/84, Commission v Belgium.

However, in the case of dismissals the Directive's scope may be curtailed by the right, recognised in the Member States, of withdrawing protection from "certain specific categories of employees who are not covered by the laws or practice of the Member States in respect of protection against dismissal"<sup>26</sup>.

## **2.7 Protection of the functions of the employees' representative**

Article 5 of the Directive aims to ensure continuity of the function of representation and protection of the persons concerned. As regards continuity of the function of representation (Article 5(1)), it should be borne in mind that if the business transferred preserves its autonomy, i.e. continues to exist as a separate operating unit rather than being absorbed by a more complex structure, the status and function of the representatives or representation of the employees affected by the transfer, as laid down by the national law of the Member States, must be preserved. However, this does not apply, if in accordance with national legislation the conditions necessary for the re-appointment of the employees' representatives are fulfilled.

The representatives of the employees affected by a transfer whose term of office expires as a result of the transfer "continue to enjoy the protection provided by the laws, regulations, administrative provisions or practice of the Member States" (Article 5.2).

## **3 INFORMATION AND CONSULTATION**

The transferor and transferee are required to inform the representatives of their respective employees affected by a transfer of the following (Article 6.1):

- the reasons for the transfer,
- the legal, economic and social implications of the transfer for the employees,
- measures envisaged in relation to the employees.

This information must be provided in good time before the transfer is carried out, and in any event before the transferee's employees are directly affected by the transfer as regards their conditions of work and employment.

Whereas the obligation to provide information is general, the consultation obligation is limited. This obligation exists when the transferor or transferee envisages measures in relation to his employees (Article 6.2), e.g. a reduction in

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<sup>26</sup> Article 4(1), sentence 2, of Council Directive 77/187/EEC of 14 February 1977.

the size of the workforce. Consultation takes place "with a view to seeking agreement". The Court of Justice has interpreted a similar provision in Directive 75/129/EEC (collective redundancies) as not creating an obligation with regard to results<sup>27</sup>. This consultation must be made "in good time" with the employees' representatives.

According to the Court, the Directive was not intended to bring about global harmonisation of the national systems of employee representation in the firm. However, the limited nature of such harmonisation should not frustrate the purpose of Article 6 of the Directive. Notably, it should not absolve Member States from their obligation to take all the necessary measures to ensure that the employees' representatives may be designated with a view to the information and consultation provided for in the Article in question. This being the case the Directive leaves it to the Member States to determine the arrangements for designating the employees' representatives<sup>28</sup>.

Member States may limit the obligations referred to above to undertakings or businesses which, in respect of the number of employees, fulfil the conditions for the election or designation of a collegial body representing the employees (Article 6.4).

They may also provide that, where there are no representatives of the employees in an undertaking or business, the employees concerned must be informed in advance when a transfer is about to take place (Article 6.5).

It must be emphasised that national law must provide for effective, proportionate and dissuasive sanctions in the event of the employer's failure to inform and consult the employee representatives<sup>29</sup>.

#### 4 CONCLUSION

The Transfers Directive has formed the basis for a large number of cases brought before the Court of Justice of the European Communities. A total of 25 judgments have been handed down, most of them in connection with references for preliminary rulings (see Annex II). At the moment there are several cases pending before the Court (see Annex III).

In its judgments, the Court has in particular clarified the concept of transfer, ruled that a contractual link is not necessary between the transferor and transferee for the Directive to apply, excluded from the scope of the Directive liquidation proceedings but not suspension of payment proceedings, clarified the meaning of

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<sup>27</sup> CJEC 12 February 1985, Case 284/83, ECR, p. 553.

<sup>28</sup> CJEC, 8 June 1984, Case 382/92, Commission v UK.

<sup>29</sup> CJEC, 8 June 1984, Case 382/92, Commission v UK.

the term "employee", and ruled that employees and their representatives cannot waive the rights conferred on them by the Directive as implemented by national legislation.

## ANNEX I

### TWENTY QUESTIONS AND ANSWERS ON SAFEGUARDING YOUR RIGHTS

#### A GUIDE FOR EMPLOYEES' AND EMPLOYERS' REPRESENTATIVES CONCERNING THEIR RIGHTS AND OBLIGATIONS IN THE FIELD OF TRANSFERS OF UNDERTAKINGS

***1) Does the Directive also apply to the transfer of an undertaking situated in the territory of a country which is not a Member State of the European Union?***

- The Directive applies to the extent that the undertaking to be transferred is within the territorial scope of the Treaty on European Union or a Member State of the European Economic Area (Norway, Iceland, Liechtenstein).

***1) For the Directive to be applicable, must the undertaking exercise its activity with a view to making a profit?***

- The fact that an undertaking is engaged in non-profit-making activities is not sufficient to remove the undertaking from the scope of the Directive.

***3) Which operations are excluded from the scope of the Directive?***

- The Directive specifically excludes operations involving sea-going vessels. However, France, Germany, Italy, Portugal and Spain have applied the principles of the Directive to sea-going vessels.

***4) Who is covered by the Directive?***

- Anyone with a contract of employment or in an employment relationship on the date of a transfer.  
Public service employees are not covered by the directive insofar as they are not subject to the labour law in force in the Member States.

***5) Who decides whether a person has a contract of employment or is an employment relationship on the date of a transfer?***

- This question is subject to the jurisdiction of each Member State and the provisions of national law.

***6) Does the Directive apply to employees who have left the undertaking by the date of transfer?***

- No, the provisions of the directive cover only employees in the service of the undertaking on the date of transfer.

**7) After a transfer, who is responsible for existing obligations, the transferor or the transferee?**

- The transferee is liable for all the transferor's obligations, including those arising prior to the date of transfer.

Except where national legislation provides for joint liability of the transferor and transferee after the transfer, the consequence of the transfer is to release the transferor from his obligations.

Joint responsibility has been adopted by France, Germany, Greece, Italy, the Netherlands, Portugal and Spain.

**8) Where an undertaking is transferred, which collective agreement applies, the transferor's or the transferee's?**

- The Directive requires the transferee to continue to observe the terms and conditions of any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force of another collective agreement.

However, Member States may limit this period, provided it is not less than one year.

**9) May conditions of employment be changed following the transfer of an undertaking?**

- The rights of employees arising from a contract of employment or employment relationship may not be changed because of a transfer.

However, rights and obligations may be changed vis-à-vis the transferee subject to the same restrictions as applied to the transferor, provided that the transfer in itself is not the reason for the change.

**10) May employees waive the rights accorded by the Directive?**

- No. Employees may not waive the rights conferred on them by the Directive, and those rights may not be restricted even with their consent and even if the disadvantages resulting from the waiver are offset by similar benefits.

**11) Does the protection given by the Directive apply to benefits under non-statutory social security schemes?**

- No. The transfer of rights and obligations arising from an employment contract or employment relationship does not cover employees' rights to old-age, invalidity or survivor's benefits under supplementary company or inter-company pension schemes outside the statutory social security schemes in Member States. However, Member States must adopt the measures necessary to protect the rights acquired



or being acquired by employees and persons no longer employed in the business at the time of transfer.

***12) May dismissals for economic, technical or organisational reasons take place on the transfer of an undertaking?***

- Yes. The Directive is limited to prohibiting dismissals where the only reason is the transfer.

***13) What are the rights of the representatives of employees affected by a transfer whose term of office expires as a result of the transfer?***

- They continue to enjoy the protection provided by the laws, regulations, administrative provisions or practice of the Member States.

***14) What are the transferor's and transferee's obligations as regards providing information for the representatives of their respective workers?***

- They must provide information on the following points:

- the reasons for the transfer,
- the legal, economic and social implications of the transfer for the employees,
- measures envisaged in relation to the employees.

***15) Is it compulsory to consult the employees' representatives in the event of the transfer of an undertaking?***

- Such an obligation exists if the transferor or transferee envisages measures in relation to their respective employees, e.g. a reduction in the size of the workforce.

***16) At which point in time must they be informed and consulted?***

- The employees' representatives must be informed and consulted "in good time" and in any event before the transferee's employees are directly affected by the transfer as regards their conditions of work and employment.

***17) Are there any derogations from the principles of informing and consulting employees' representatives?***

- Yes. Member States may limit these obligations to undertakings or businesses which, in respect of the number of employees, fulfil the conditions for the election or designation of a collegial body representing the employees.

***18) Does the Directive require Member States to provide for systems of employee representation even if there is no such representation in the undertaking under national law?***

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Yes. Member States must adopt all necessary measures for designating the employees' representatives who have to be informed and consulted pursuant to Article 6 of the Directive. It is for the Member States to determine the arrangements for designating the employees' representatives.

***19) Are the obligations to inform and consult employees' representatives binding?***

- National law must provide for effective sanctions in the event of the employer's failure to inform and consult employees' representatives.

***20) Is the protection accorded by the Directive the upper limit?***

- No. The Directive does not affect the right of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

## ANNEX II

### **JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES AND THE EFTA COURT RELATING TO TRANSFERS OF UNDERTAKINGS - COUNCIL DIRECTIVE 77/187/EEC OF 14 FEBRUARY 1977**

- Wendelboe, Case 19/83, 7 February 1985, ECR 1985, p. 457  
Abels, Case 135/83, 7 February 1985, ECR 1985, p. 479  
Industriebond FNV, Case 179/83 7 February 1985, ECR 1985, pp. 511 and 517  
Botzen, Case 186/83, 7 February 1985, ECR 1985, pp. 520 and 523  
A/S Danmols Inventar, Case 105/84 11 July 1985, ECR 1985, pp. 2639 and 2654  
Republic of Italy, Case 235/84 10 July 1986, ECR 1986, pp. 2291 and 2304  
Kingdom of Belgium, Case 237/84, 15 April 1986, ECR 1986, pp. 1247 and 1257  
Spijkers, Case 24/85, 18 March 1986, ECR 1986, pp. 1119 and 1130  
Ny Mølle Kro, Case 287/86, 17 December 1987, ECR 1987, p. 5465  
Daddy's Dance Hall, Case 324/86, 10 February 1988, ECR 1988, p. 739  
Bork, Case 101/87, 15 June 1988, ECR 1988, p. 3057  
Berg and Busschers, Cases 144 and 145/87, 5 May 1988, ECR 1988, p. 2559  
D'Urso, Case 362/89, 25 July 1991, CJEC,91, I-4105  
Redmond Stichting, Case 29/91, 19 May 1992, CJEC 92, I-3189  
Anne Watsen, Case 209/91, 12 November 1992, CJEC 92, I-5755  
Schmidt, Case 392/92, 14 April 1994, CJEC 94, I-1311.  
Commission v United Kingdom, Case 382/92, 8 June 1994, CJEC 94, I-2435  
Rygaard, Case 48/94, 19 September 1995.  
Luigi Spano, Case 472/93, 7 December 1995.  
Merckx et Neuhuys, Cases 171/94 and 172/94, 7 March 1996.  
Eilert Eidesund v Stavanger Catering A.s., Case E - 2/95. Judgment of the EFTA Court of 25 September 1996.  
Torgier Langeland v Norske Falnicorn A.S., Case E-3/95.  
Judgment of the EFTA Court of 25 September 1996.  
Annette Henke v Gemeinde Schierke and Verwaltungsgemeinschat "Brocken".- Case C-298/94, 15.10.96.  
Claude Rotsart de Hertains v. S.A. J. Benoit in receivership and I.G.C. Housing Service Case C - 305/94, 14.11.96.

### ANNEX III

#### **CASES PENDING BEFORE THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES AND THE EFTA COURT RELATING TO COUNCIL DIRECTIVE 77/187/EEC OF 14 FEBRUARY 1977**

- Case C-319/94, Jules Dethier Equipment v Jules Dassy, Sprl Sovam in receivership.
- Case C-13/95, Ayse Süzen v Zehnacker Gebäudereinigung GmbH.
- Case C-229/95, Simone Moll v Berhane Mesghena.
- Case C-336/95, Pedro Burdalo v Fondo de Garantia Salarial.
- Case E-2/95, Eilert Eidesund v Stavanger Catering A.S.
- Case E-3/95, Torgeir Langeband v Norske Falnicorn A.S.
- Case C-336/95 Pedro Burdalo v Fondo de Garantia Salarial.
- Case E-2/96 J. Ulstein & P.Otto Røiseng v A. Møller.
- Case E-3/96 Tor A. Ask v ABB AS and AKER AS.
- Case C-121/96 Sultan Bulut v Deutsche Bundespost.
- Case C-127/96 Prudencia Gómez Perez v Contrtas y Limpiensas S.L. and F. Hernandez Vidal S.A.
- Case C-173/96 Francisco Hidalgo v Asociación de Servicios ASER and Sociedad Cooperativa Minerva.
- Case C-204/96 E.f. Liebelt GmbH v Marianne Seidel.
- Case C-229/96 F. Santner v Hoechts A.g.
- Case C-247/96 H. Ziemann v Fa Ziemann Sicherheit GmbH and Fa H. Bohn Sicherheitsdienst.
- Case C-277/96 H. J.Dick v EB - Schulungs GmbH i.L.

## ANNEX IV

### NATIONAL PROVISIONS TRANSPOSING DIRECTIVE 77/187/EEC OF 14 FEBRUARY 1977

National provisions communicated by the Member States with reference to Council Directive 77/187/EEC of 14 February 1977 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 businesses:

- Austria :** Arbeitsvertragsrechts-Anpassungsgesetz - Avrag, BGBl Nr 459/1993
- Belgium :** Arrêté Royal du 19/04/78, Moniteur Belge du 25/08/78  
Arrêté Royal du 31/10/78, Moniteur Belge du 31/10/78  
Convention collective n°32 bis du 7 juin 1985 modifiée par la  
Convention n°32ter du 2 décembre 1986.
- Denmark :** Lov af 21/03/79, Lovtidende à NR.11 AF 21/03/79 p. 326
- Finland :** Act on contracts of Employment 320/70 as amended by Act 235/93  
Act on Co-determination in Companies 725/78 as amended by Act 236/93
- France :** Code du Travail (Art. 122-12, 122-12.1, 132-8, 412-16, 412-18)  
Circulaire n°27/75 du 02/07/75  
Arrêté Ministériel du 27/03/62  
Accord Convention Collective National Retraite Prévoyance Cadres du 14/03/47  
Loi n°82-915; Journal Officiel du 29/10/82  
Loi n°83-528, Journal Officiel du 29/06/83
- Germany:** Gesetz vom 25/08/69, Bundesgesetzblatt (Teile I, II, III) I, Nr. 83 vom 27/08/69 p. 1317  
Gesetz vom 15/01/72, Bundesgesetzblatt (Teile I, II, III) I Nr. 48 vom 20/08/80 p. 1308
- Grand Duchy of Luxembourg :** Règlement Grand-Ducal du 19/06/70, Memorial A n°35 du 30/06/70.  
Loi du 24/06/70, Memorial A n°35 du 30/06/70  
Règlement Grand Ducal du 27/06/70, Memorial A n°35 du 30/06/70.  
Loi du 12/11/71. Loi du 18/03/81, Memorial A n° 16 du 26/03/81.
- Greece :** Presidential Decree No 572 of 01/12/88, FEK AN. 269 of 06/12/88 p. 4099

- Ireland :** E.C. Safeguarding of Employees on Transfer of Undertaking, Statutory Instruments n°306 of 10/10/1980
- Italy :** Code Civile (Art.2112)  
Legge N°675 del 12/08/77, Gazzetta Ufficiale  
le n. 243 del 07/09/77 p. 6257  
Legge N.215 del 26/05/78, Gazzetta Ufficiale N. 145 del 07/05/78  
P.38.03  
Legge N.428 del 29 dicembre 1990, Gazzetta Ufficiale n°10 del  
12/01/1991
- Netherlands :** Wet van 15/07/79, Staatsblad nr 1979/448 van 31/08/79.  
Ministeriele Verordening van 30/01/81, Staatsblad nr. 1981/18 van  
15/02/81.  
Wet van 15/05/81, Staatsblad nr. 1981/400 van 07/07/81.  
Wet van 22/05/81, Staatsblad Nr 1981/416 van 14/07/81.
- Portugal :** Decreto - Lei N 49/408, 24/11/69  
Decreto-Lei N°519C/79, 29/12/79  
Lei n°46/79, 12/09/79  
Lei n°68/79, 09/10/79
- Spain :** Ley N. 8/80 de 10/03/80, (Boletin Oficial del Estado de 14/03/80).  
Decreto N. 2065/74 de 30/05/74, (Boletin Oficial del Estado de  
30/07/80).
- Sweden :** Act. 1982/80 on Security of Employment, section 4,7 and 25-27  
Act.1976/58 on Co-Determination at Work, section 6, 10-22 and 28  
Annual Leave Act. 1977/480, section 31  
Act 1974/358 on the Position of a Trade-Union Representative at  
the Work Place  
Act 1967/531 on Safeguarding Pension Commitments.
- United Kingdom :** Regulations 1981, Statutory Instruments n° 1794 of 14/12/81.  
Trade Union Reform and Employment Rights Act, 1993  
Terms and conditions of employment. Regulations, 1995 - N°  
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