

COUNCIL DIRECTIVE

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

(77/187/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DIRECTIVE:

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

SECTION I

Scope and definitions

Having regard to the proposal from the Commission,

Article 1

Having regard to the opinion of the European Parliament ⁽¹⁾,

1. This Directive shall apply to the transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger.

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

2. This Directive shall apply where and in so far as the undertaking, business or part of the business to be transferred is situated within the territorial scope of the Treaty.

Whereas economic trends are bringing in their wake, at both national and Community level, changes in the structure of undertakings, through transfers of undertakings, businesses or parts of businesses to other employers as a result of legal transfers or mergers;

3. This Directive shall not apply to sea-going vessels.

Article 2

Whereas it is necessary to provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded;

For the purposes of this Directive:

Whereas differences still remain in the Member States as regards the extent of the protection of employees in this respect and these differences should be reduced;

(a) 'transferor' means any natural or legal person who, by reason of a transfer within the meaning of Article 1 (1), ceases to be the employer in respect of the undertaking, business or part of the business;

Whereas these differences can have a direct effect on the functioning of the common market;

(b) 'transferee' means any natural or legal person who, by reason of a transfer within the meaning of Article 1 (1), becomes the employer in respect of the undertaking, business or part of the business;

Whereas it is therefore necessary to promote the approximation of laws in this field while maintaining the improvement described in Article 117 of the Treaty,

(c) 'representatives of the employees' means the representatives of the employees provided for by the laws or practice of the Member States, with the exception of members of administrative, governing or supervisory bodies of companies who represent employees on such bodies in certain Member States.

⁽¹⁾ OJ No C 95, 28. 4. 1975, p. 17.

⁽²⁾ OJ No C 255, 7. 11. 1975, p. 25.

SECTION II

Safeguarding of employees' rights

Article 3

1. The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer within the meaning of Article 1 (1) shall, by reason of such transfer, be transferred to the transferee.

Member States may provide that, after the date of transfer within the meaning of Article 1 (1) and in addition to the transferee, the transferor shall continue to be liable in respect of obligations which arose from a contract of employment or an employment relationship.

2. Following the transfer within the meaning of Article 1 (1), the transferee shall continue to observe the terms and conditions agreed in 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 or application of another collective agreement.

Member States may limit the period for observing such terms and conditions, with the proviso that it shall not be less than one year.

3. Paragraphs 1 and 2 shall not cover employees' rights to old-age, invalidity or survivors' benefits under supplementary company or inter-company pension schemes outside the statutory social security schemes in Member States.

Member States shall adopt the measures necessary to protect the interests of employees and of persons no longer employed in the transferor's business at the time of the transfer within the meaning of Article 1 (1) in respect of rights conferring on them immediate or prospective entitlement to old-age benefits, including survivors' benefits, under supplementary schemes referred to in the first subparagraph.

Article 4

1. The transfer of an undertaking, business or part of a business shall not in itself constitute grounds for dismissal by the transferor or the transferee. This provision shall not stand in the way of dismissals that may take place for economic, technical or organizational reasons entailing changes in the workforce.

Member States may provide that the first subparagraph shall not apply to certain specific categories of employees who are not covered by the laws or practice of the Member States in respect of protection against dismissal.

2. If the contract of employment or the employment relationship is terminated because the transfer within the meaning of Article 1 (1) involves a substantial change in working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship.

Article 5

1. If the business preserves its autonomy, the status and function, as laid down by the laws, regulations or administrative provisions of the Member States, of the representatives or of the representation of the employees affected by the transfer within the meaning of Article 1 (1) shall be preserved.

The first subparagraph shall not apply if, under the laws, regulations, administrative provisions or practice of the Member States, the conditions necessary for the re-appointment of the representatives of the employees or for the reconstitution of the representation of the employees are fulfilled.

2. If the term of office of the representatives of the employees affected by a transfer within the meaning of Article 1 (1) expires as a result of the transfer, the representatives shall continue to enjoy the protection provided by the laws, regulations, administrative provisions or practice of the Member States.

SECTION III

Information and consultation

Article 6

1. The transferor and the transferee shall be required to inform the representatives of their respective employees affected by a transfer within the meaning of Article 1 (1) of the following:

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

The transferor must give such information to the representatives of his employees in good time before the transfer is carried out.

The transferee must give such information to the representatives of his employees in good time, and in any event before his employees are directly affected by the transfer as regards their conditions of work and employment.

2. If the transferor or the transferee envisages measures in relation to his employees, he shall consult his representatives of the employees in good time on such measures with a view to seeking agreement.

3. Member States whose laws, regulations or administrative provisions provide that representatives of the employees may have recourse to an arbitration board to obtain a decision on the measures to be taken in relation to employees may limit the obligations laid down in paragraphs 1 and 2 to cases where the transfer carried out gives rise to a change in the business likely to entail serious disadvantages for a considerable number of the employees.

The information and consultations shall cover at least the measures envisaged in relation to the employees.

The information must be provided and consultations take place in good time before the change in the business as referred to in the first subparagraph is effected.

4. Member States may limit the obligations laid down in paragraphs 1, 2 and 3 to undertakings or businesses which, in respect of the number of employees, fulfil the conditions for the election or designation of a collegiate body representing the employees.

5. Member States may 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 within the meaning of Article 1 (1) is about to take place.

SECTION IV

Final provisions

Article 7

This Directive shall not affect the right of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions needed to comply with this Directive within two years of its notification and shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 9

Within two years following expiry of the two-year period laid down in Article 8, Member States shall forward all relevant information to the Commission in order to enable it to draw up a report on the application of this Directive for submission to the Council.

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 14 February 1977.

For the Council

The President

J. SILKIN