



COMMISSION OF THE EUROPEAN COMMUNITIES

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94/0203 (CNS)

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE

AMENDING DIRECTIVE 77/187/EEC

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.**

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

Explanatory memorandum

The European Parliament, the Economic and Social Committee and the Committee of the Regions have adopted their respective opinions on the proposal for a Council Directive amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings.

The present amended proposal for a Directive, submitted in accordance with Article 189A(2) of the EC Treaty, takes into account the amendments of the European Parliament approved on 16 January 1997, the opinion of the Economic and Social Committee adopted on 30 March 1995 and the opinion of the Committee of the Regions adopted on 21 April 1995.

Several technical improvements have been made in the interests of legal certainty and consistency.

Title

In connection with the discussion of Article 1(1), second subparagraph, of the reference proposal for a Directive¹, which we shall examine below, the European Parliament had already requested, in its Resolution of 18 January 1996, that the proposal for a Directive replacing Directive 77/187/EEC be transformed into a proposal for a Directive amending Directive 77/187/EEC. The title of the present proposal takes account of the opinion of the European Parliament on this point. As soon as the amended proposal has been adopted by the Council, the Commission will initiate the codification procedure laid down in the Interinstitutional Agreement of 20 December 1994² designed to ensure that Community legislation is clear and is understood correctly. In the light of the above, the first recital has therefore been deleted, as requested by Parliament.

Article 1

¹ COM(94) 300 final, of 8.9.1994, 94/0203(CNS), OJ C 274 of 1.10.1994, p. 10

² Interinstitutional Agreement of 20.12.1994. Accelerated working method with a view to the official codification of legislative texts signed by the Commission of the European Communities, the European Parliament and the Council of the European Union.

Article 1, paragraph 1, of the Commission proposal was analysed several times in the Council's Working Party on Social Questions under both the German Presidency (second half of 1994) and the French Presidency (first half of 1995). These meetings revealed certain problems of comprehension relating to the definition of the transfer of undertakings as set out in this Article (clarification of the transfer of only an activity of the undertaking).

The Economic and Social Committee delivered an opinion on this proposal on 30 March 1995³, as did the Committee of the Regions on 21 April 1995⁴. The scope of the Directive (the transfer of only an activity of an undertaking) has always been the most controversial point. In particular, the Economic and Social Committee questioned the ability of a new Article 1, Paragraph 1, to clarify this issue and proposed a new text. The employers' group tabled an amendment designed to exclude subcontracting from the scope of the Directive. This amendment was rejected.

The European Parliament was highly critical of the concept of the transfer of undertakings, as defined in Article 1, Paragraph 1, of the proposal. The various political groups in the Parliament took the view that the proposed amendments to Article 1, Paragraph 1, did not improve legal certainty and, on the contrary, introduced new sources of uncertainty which might prove detrimental to the rights of workers and the interests of firms. A resolution was therefore adopted at the plenary sitting of 18 January 1996 with the unanimous agreement of all the political groups, calling on the Commission to propose an amended version of Directive 77/187/EEC, without replacing it by a new text, and to leave Article 1(1), second subparagraph, unchanged.

In the light of the opinions adopted by the Economic and Social Committee and the Committee of the Regions, the progress of discussions in the Council's Working Party on Social Questions, and Resolution B4-00033/96 of 18 January 1996 adopted unanimously by the European Parliament, the Commission decided on 7 February 1996⁵ to inform Parliament that it would be willing to accept amendments designed to transform its proposal for the revision of Council Directive 77/187/EEC into a Directive amending Directive 77/187/EEC and to delete the proposed amendment to Article 1(1), second subparagraph, contained in the initial proposal.

Given that Parliament proposes in its opinion that Article 1(1), second subparagraph, be deleted, and in the light of the above analysis, the Commission has amended its proposal accordingly and has deleted the seventh recital, as requested by Parliament.

Article 3

Paragraph 1, second subparagraph

Parliament calls for joint and several liability of the transferor and the transferee in respect of obligations which arise from a contract of employment. The Commission's proposal

³ CES 317/95

⁴ CdR 143/95

⁵ PV (96) 1279, pages 23 and 24

had already taken this aspect into account. Nevertheless, in order to make the wording clearer and more precise, and to avoid false interpretations, the Commission now proposes that this liability be limited to the obligations that fall due prior to the date of the transfer.

Paragraph 5 (new)

The main objective of Directive 77/187/EEC, according to its recitals, is to protect workers in the event of a change of employer, in particular to ensure that their rights are safeguarded. Consequently, any amendment which reduces the protection afforded to certain benefits connected to the transfer rule (as provided for in Articles 3 (4) and 4 (3) and (4) of the proposal for undertakings, businesses or parts of businesses transferred in the context of certain insolvency proceedings) must be examined with particular care. Accordingly, it is necessary to bolster the adoption of measures to prevent the fraudulent use of insolvency proceedings, as requested by Parliament.

Article 4

Paragraph 3

The responsibility of the employees' representatives, given that they may permit changes to the terms and conditions of employment with the agreement of the employer or his representatives, means that they must enjoy sufficient independence to be able to carry out the functions assigned to them (see Article 5 A (new)).

The Commission proposal now takes account of Parliament's amendment on this point.

Paragraph 4

The amended proposal takes into account the amendment of the European Parliament, which adds the terms "referred to in the agreement" to paragraph 4. By improving the text's clarity, this will make it easier to understand.

Paragraph 5

The powers given to the judicial authorities to terminate a contract of employment or an employment relationship may cause considerable difficulties in the national law of some Member States which do not provide for such a possibility. The Commission welcomes Parliament's comment concerning the deletion of this paragraph, and its proposal removes potential legal obstacles at a non-essential point in the text.

Article 6A (new)

In view of, *inter alia*, the powers granted in Article 4, paragraph 4, to the employees' representatives, who may, in certain cases, amend the terms and conditions of employment, it appears necessary to strengthen their role so that they enjoy sufficient independence to accomplish their tasks.

This effectively reflects the idea expressed by Parliament on this point.

Article 6

Paragraph 1

Technical improvements have been made to the text so that it is clearer and more legally precise, and hence easier to understand: when the transfer of an undertaking, business or part of a business is planned, the transferor and the transferee are obliged to inform the representatives of their respective employees affected by the transfer.

Paragraph 2

This small grammatical change ("when") makes the wording of the proposal for a Directive more precise.

Paragraph 4

The inclusion of the spirit of the European Parliament amendment improves the wording of the proposal. Accordingly, any failure to comply with the Directive's provisions on consultations, which results from the fact that the undertaking or the natural or legal person who/which took the transfer decision failed to inform the employer in due time, cannot be tolerated. Recital No 13 has been drafted in harmony with this paragraph.

Paragraph 5

Given that the adoption of minimum rules at European level on information and consultation in national undertakings could be planned under the Communication from the Commission on Worker Information and Consultation⁶, and that such rules could stipulate a minimum threshold concerning the obligation to provide for employees' representatives, it would be wise not to make any changes in this area for the time being and to leave the wording of the existing directive in its current form, as requested by Parliament.

Article 7 A (new)

To ensure that Community law is properly implemented, the Member States must provide for effective, proportionate and dissuasive sanctions in the event of failure to comply with the national provisions adopted under the Directive. Parliament's amendment adopted in the light of the case-law of the Court of Justice strengthens the Commission's text. This amendment is in keeping with the Commission's Medium-Term Social Action Programme 1995-1997⁷, point 11.1.8 of which states that "Member States' authorities must ensure that Union legislation is fully enforced through inter alia appropriate systems of control or sanctions, which are effective in practice and have a deterrent value". In the same point, the Commission also commits itself to insert in all future legislation a "standard clause" establishing an obligation for Member States to impose sanctions which are effective, proportionate and dissuasive.

Article 7 - B (new)

A clause has been inserted banning discrimination on the basis of race, sex, age, handicap, sexual orientation, skin colour, religion or nationality, which is in line with the Communication from the Commission on racism, xenophobia and anti-semitism of

⁶ COM (95) 0547

⁷ COM (95) 134

13 December 1995⁸. The Commission therefore welcomes the European Parliament's approach in this area.

Recital No 18 (new) has been drafted in line with this Article.

⁸ COM (95) 653 final



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AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 77/187/EEC 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 BUSINESSES¹.

<u>TEXT OF THE INITIAL PROPOSAL²</u>	<u>TEXT OF THE AMENDED PROPOSAL</u>
<p>Proposal for a Council Directive 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.</p>	<p>Proposal for a Council Directive <u>amending Directive 77/187/EEC</u> 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.</p>
<p>THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty establishing the European Community, and in particular Article 100 thereof.</p> <p>Having regard to the Proposal from the Commission.</p> <p>Having regard to the opinion of the European Parliament.</p> <p>Having regard to the opinion of the Economic and Social Committee.</p> <p>Having regard to the opinion of the Committee of the Regions.</p>	
<p>1. Whereas Council Directive 77/187/EEC concerns 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; whereas, in the interests of clarity, rather than amend the existing Directive, it would be preferable to replace it with a new text;</p>	<p><u>Deleted</u></p>

¹ OJ No L 61, 5.3.1977.

² COM(94) 300 final, 8.9.1994, 94/0203(CNS) OJ C 274, 1.10.1994.

<p>2. Whereas the Community Charter of the Fundamental Social Rights of Workers adopted by the Heads of State or Government of eleven Member States at the Strasbourg European Council on 9 December 1989 states, at point 7, first paragraph, first sentence and second paragraph, point 17, first paragraph and point 18(ii) that:</p>	<p>Unchanged</p>
<p>"7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community.</p> <p>The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.</p>	
<p>17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.</p>	
<p>18. Such information, consultation and participation must be implemented in due time, particularly in the following cases:</p> <ul style="list-style-type: none"> - in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers;" 	

<p>3. Whereas 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 promotes the harmonisation of the relevant national laws ensuring the safeguarding of the right of transferred employees and requiring transferors and transferees to inform and consult employees' representatives in good time;</p>	<p>Unchanged</p>
<p>4. Whereas the purpose of this proposal is to amend Council Directive 77/187/EEC of 14 February 1977 in the light of the impact of the internal market, the legislative tendencies of the Member States with regard to the rescue of undertakings in economic difficulties, the case law of the European Court of Justice, the adopted revision of the Directive on collective redundancies and the legislation already in force in most Member States;</p>	<p>Unchanged</p>
<p>5. Whereas considerations of legal security and transparency require that the legal concept of transfer be clarified in the light of the case law of the European Court of Justice; whereas such a concept must cover any transfer of an undertaking, business or part of a business to another employer effected by means of contract, deed, administrative measure, judicial decision or operation of law, including mergers and divisions;</p>	<p>Unchanged</p>

<p>6. Whereas requirements of legal security and transparency also require that it be expressly provided that the Directive should apply to private or public undertakings carrying out economic activities, whether or not they operate for gain;</p>	<p>Unchanged</p>
<p>7. Whereas the principles of legal security demand that a clear distinction be made between transfers of undertakings, businesses or parts of businesses and the transfer of only an activity of an undertaking; Whereas the transfer of an activity which does not also involve the transfer of an economic entity whose identity is affected by such transfer, an economic entity being understood to consist of several parts operating autonomously and pursuing a specific objective, even if a partial one, is not covered by the Directive;</p>	<p><u>Deleted</u></p>
<p>8. Whereas considerations of flexibility justify the exclusion of sea-going vessels from the scope of Section III of the Directive, but not from its other provisions;</p>	<p>Unchanged</p>
<p>9. Whereas a minimal harmonisation of the concept of "employee" is necessary in order that there may be a uniform application of the Directive in the different Member States;</p>	<p>Unchanged</p>
<p>10. Whereas differences still remain between the Member States' legislation concerning the joint liability of the transferor and the transferee;</p>	<p>Unchanged</p>

<p>11. Whereas, with a view to ensuring the survival of insolvent undertakings, Member States should be expressly allowed not to apply Articles 3 and 4 of the Directive to transfers effected in the framework of liquidation proceedings, and certain derogations from the Directive's general provisions should be permitted in the case of transfers effected in the context of insolvency pre-liquidation proceedings; whereas such provisions constitute a measure of deregulation in comparison with the existing legal situation;</p>	<p>Unchanged</p>
<p>12. Whereas the circumstances in which the function and status of employee representatives are to be preserved should be clarified;</p>	<p>Unchanged</p>
<p>13. Whereas, in order to ensure equal treatment of similar situations, it is necessary to ensure that the information and consultation requirements laid down in Council Directive 77/187/EEC are complied with irrespective of whether the decision leading to the transfer is taken by the employer or by an undertaking controlling the employer;</p>	<p>Whereas, in order to ensure equal treatment of similar situations, it is necessary to ensure that the information and consultation requirements laid down in Council Directive 77/187/EEC are complied with irrespective of whether the decision leading to the transfer is taken by the employer <u>or by another natural or legal person;</u></p>
<p>14. Whereas the Member States' faculty not to apply the information and consultation requirements to certain undertakings on grounds of workforce size thresholds must be clarified;</p>	<p><u>Deleted</u></p>

15. Whereas it is necessary to clarify the circumstances in which employees must be informed where there are no employee representatives;	Unchanged
16. Whereas considerations of efficacy require that the Member States take appropriate measures in the event of failure to comply with this Directive;	Unchanged
17. Whereas the present Directive shall be without prejudice to the Member States' obligations concerning the deadline for transposal of Directive 77/187/EEC indicated in Annex I;	<u>Deleted</u>
	18. (new) <u>Whereas, when the Member States apply the provisions contained in this Directive, they may under no circumstances introduce discrimination on the basis of race, sex, age, handicap, sexual orientation, colour, religion or nationality.</u>
<p>HAS ADOPTED THIS DIRECTIVE:</p> <p style="text-align: center;">Section I</p> <p style="text-align: center;">Scope and definitions</p> <p style="text-align: center;"><i>Article 1</i></p>	<p style="text-align: center;">Section I</p> <p style="text-align: center;">Scope and definitions</p> <p style="text-align: center;"><i>Article 1</i></p>
1. This Directive shall apply to the transfer of an undertaking, business or part of a business to another employer effected by contract or by some other disposition or operation of law, judicial decision or administrative measure.	Unchanged

<p>The transfer of an activity which is accompanied by the transfer of an economic entity which retains its identity shall be deemed to be a transfer within the meaning of the Directive. The transfer of only an activity of an undertaking, business or part of a business, whether or not it was previously carried out directly, does not in itself constitute a transfer of an undertaking within the meaning of the Directive.</p>	<p><u>Deleted</u></p>
<p>2. This Directive shall apply where and insofar as the undertaking, business or part of the business to be transferred is situated within the territorial scope of the Treaty.</p>	<p>Unchanged</p>
<p>3. This Directive shall apply to public or private undertakings engaged in economic activities whether or not they are operating for gain.</p>	<p>Unchanged</p>
<p>4. Member States need not apply Section III of this Directive to sea-going vessels.</p>	<p>Unchanged</p>
<p>5. The Member States need not apply Articles 3 (1, 2 and 3) and 4 (1 and 2) of this Directive in cases where the undertaking, business or part of a business being transferred is the subject of bankruptcy proceedings or any other analogous proceedings instituted with a view to the liquidation of the assets of a natural or legal person and under the supervision of a competent public authority.</p>	<p>Unchanged</p>
<p style="text-align: center;"><i>Article 2</i></p> <p>1. For the purposes of this Directive:</p>	<p><i>Article 2</i></p> <p>Unchanged</p>

<p>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;</p>	<p>Unchanged</p>
<p>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;</p>	<p>Unchanged</p>
<p>c) "representatives of the employees" means the representatives of the employees provided for by the laws or practice of the Member States.</p>	<p>Unchanged</p>
<p>2. This Directive is without prejudice to national law as regards the definition of contract of employment or employment relationship. However, Member States shall not exclude from the scope of this Directive contracts of employment or employment relationships solely because:</p>	<p>Unchanged</p>
<p>a) of the number of working hours performed or to be performed, or</p>	<p>Unchanged</p>
<p>b) they are employment relationships governed by a fixed-duration contract of employment within the meaning of Article 1(1) of Council Directive 91/383/EEC, aimed at encouraging improvements in the safety and health of workers with a fixed-duration employment relationship or a temporary employment relationship;</p>	<p>Unchanged</p>

<p>c) they are temporary employment relationships within the meaning of Article 1(2) of Council Directive 91/383/EEC.</p>	<p>Unchanged</p>
<p style="text-align: center;">Section II</p> <p style="text-align: center;">Safeguarding of employees' rights</p> <p style="text-align: center;"><i>Article 3</i></p>	<p style="text-align: center;">Section II</p> <p style="text-align: center;">Safeguarding of employees' rights</p> <p style="text-align: center;"><i>Article 3</i></p>
<p>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.</p>	<p>Unchanged</p>
<p>Member States shall 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 employment relationship. However, in respect of obligations that fall due after the date of transfer, the transferor shall be liable only to the extent corresponding to the portion of the relevant period which expired on the date of the transfer. Member States may limit the transferor's joint liability to those obligations which arose before the date of the transfer and fall due within the first year following that date.</p>	<p>Member States shall <u>provide</u> that, after the date of transfer within the meaning of Article 1(1), the transferor and the transferee <u>shall be jointly and severally liable</u> in respect of obligations which arose from a contract of employment or an employment relationship and fell due before <u>the date of transfer</u>.</p>

<p>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.</p>	<p>Unchanged</p>
<p>Member States may limit the period for observing such terms and conditions with the proviso that it shall not be less than one year.</p>	<p>Unchanged</p>
<p>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.</p>	<p>Unchanged</p>
<p>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 in 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.</p>	<p>Unchanged</p>

<p>4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the laws of the Member States may provide that the transferor's debts - arising from a contract of employment or an employment relationship - due before the transfer or before the opening of insolvency proceedings, shall not be transferred to the transferee in cases of transfers effected in the context of insolvency proceedings other than the proceedings mentioned in Article 1(5), such as administration or judicial arrangements, compositions, suspension of payments, or other analogous non-liquidation proceedings, provided that such proceedings:</p>	<p>Unchanged</p>
<p>(a) are conducted under the supervision of a competent public authority, which may be an insolvency practitioner authorised by a competent public authority, and,</p>	<p>Unchanged</p>
<p>(b) give rise, according to the legislation of the Member State in question, to the protection laid down by its national law, ensuring a level of protection at least equivalent to that provided for by Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.</p>	<p>Unchanged</p>
	<p>5. <u>Member States shall provide for the necessary measures to ban the use of fraudulent insolvency proceedings intended to deprive employees of the rights laid down in this Directive.</u></p>

<i>Article 4</i>	<i>Article 4</i>
<p>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 organisational reasons entailing changes in the workforce.</p>	<p>Unchanged</p>
<p>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.</p>	<p>Unchanged</p>
<p>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.</p>	<p>Unchanged</p>

<p>3. Notwithstanding Article 3(1, 2 and 3), the laws of the Member States may allow the employer or the person or persons exercising the employer's powers, on the one hand, and the employees' representatives, on the other hand, to change the terms and conditions of employment by an agreement concluded as a means of ensuring the survival of an undertaking, business or part of a business transferred in the context of the proceedings referred to in Article 3(4). Such an agreement may also determine whether and to what extent dismissals may take place for economic, technical or organisational reasons entailing changes in the workforce.</p>	<p>3. Notwithstanding <u>Article 3(1 and 2)</u>, the laws of the Member States may allow the employer or the person or persons exercising the employer's powers, on the one hand, and the employees' representatives, on the other hand, <u>insofar as they enjoy sufficient independence to carry out the functions assigned to them</u>, to change the terms and conditions of employment by an agreement concluded as a means of ensuring the survival of an undertaking, business or part of a business transferred in the context of the proceedings referred to in Article 3(4). Such an agreement may also determine whether and to what extent dismissals may take place for economic, technical or organisational reasons entailing changes in the workforce.</p>
<p>4. Without prejudice to paragraph 2 of this Article, where the agreement referred to in paragraph 3 is concluded, it shall be presumed, unless proved to the contrary, that the alteration of the terms and conditions of employment is made as a means of ensuring the survival of the transferred undertaking, business or part of a business and that the dismissals concerned are effected for economic, technical and organisational reasons, entailing changes in the work force.</p>	<p>4. Without prejudice to paragraph 2 of this Article, where the agreement referred to in paragraph 3 is concluded, it shall be presumed, unless proved to the contrary, that the alteration of the terms and conditions of employment <u>referred to in the agreement</u> is made as a means of ensuring the survival of the transferred undertaking, business or part of a business and that the dismissals <u>referred to in the agreement</u> are effected for economic, technical and organisational reasons, entailing changes in the work force.</p>
<p>5. The Member States may confer on the competent judicial authorities the power to alter or terminate contracts of employment or employment relationships existing on the date of a transfer effected in the framework of insolvency proceedings referred to in Article 3(4) to ensure the survival of the undertaking, business or part of a business.</p>	<p><u>Deleted</u></p>

<i>Article 5</i>	<i>Article 5</i>
<p>1. If the business preserves its autonomy, the status and function of the representatives or of the representation of the employees affected by a transfer within the meaning of Article 1 shall be preserved on the same terms and subject to the same conditions as existed before the date of the transfer by virtue of law, regulation, administrative provision or agreement, provided that the conditions necessary for the constitution of the employees' representation are fulfilled.</p>	<p>Unchanged</p>
<p>The first subparagraph shall not apply if, under the laws, regulations, administrative provisions or practice in the Member States, or by agreement with the representatives of the employees, the conditions necessary for the reappointment of the representatives of the employees or for the reconstitution of the representation of the employees are fulfilled.</p>	<p>Unchanged</p>
<p>If the business does not preserve its autonomy and provided that the conditions necessary for the constitution of the representation of the employees are fulfilled, the Member States shall take the necessary measures to ensure that the employees transferred, who were represented before the transfer, continue to be properly represented during the period prior to the reconstitution or reappointment of the representation of employees.</p>	<p>Unchanged</p>

<p>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.</p>	<p>Unchanged</p>
<p style="text-align: center;">Section III</p> <p style="text-align: center;">Information and consultation</p>	<p style="text-align: center;">Section III</p> <p style="text-align: center;">Information and consultation</p>
<p style="text-align: center;"><i>Article 6</i></p>	<p style="text-align: center;"><i>Article 6</i></p>
<p>1. The transferor and the transferee shall be required to inform the representatives of employees affected by a transfer within the meaning of Article 1(1) of the following:</p>	<p>1. <u>When the transferor and transferee envisage a transfer within the meaning of Article 1(1), they shall be required to inform the representatives of their respective employees affected by the transfer of the following:</u></p>
<ul style="list-style-type: none"> - the reason for the transfer, - the legal, economic and social implications of the transfer for the employees, - any measures envisaged in relation to the employees. 	<p>Unchanged</p> <p>Unchanged</p> <p>Unchanged</p>
<p>The transferor must give such information to the representatives of his employees in good time before the transfer is carried out.</p>	<p>Unchanged</p>

<p>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.</p>	<p>Unchanged</p>
<p>2. If the transferor or the transferee envisages measures in relation to his employees, he shall consult the representatives of his employees in good time on such measures with a view to reaching an agreement.</p>	<p><u>When</u> the transferor or the transferee envisages measures in relation to his employees, he shall consult the representatives of his employees in good time on such measures with a view to reaching an agreement.</p>
<p>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.</p>	<p>Unchanged</p>
<p>The information and consultations shall cover at least the measures envisaged in relation to the employees.</p>	<p>Unchanged</p>
<p>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.</p>	<p>Unchanged</p>

<p>4. The obligations laid down in this Article shall apply irrespective of whether the decision leading the transfer is taken by the employer or by an undertaking controlling the employer. In considering alleged breaches of the information and consultation requirements laid down by this Directive, the argument that such breach occurred because the information has not been provided by the undertaking which took the decision leading to the transfer shall not be accepted as an excuse.</p>	<p>4. The obligations laid down in this Article shall apply irrespective of whether the decision <u>resulting in the transfer</u> is taken by <u>a natural person or a legal person other than the employer</u>. In considering alleged breaches of the information and consultation requirements laid down by this Directive, the argument that such breach occurred because the information has not been provided by the <u>natural or legal person who/which</u> took the decision leading to the transfer shall not be accepted as an excuse.</p>
<p>5. The Member States may limit the obligations laid down in paragraphs 1, 2 and 3 to undertakings or businesses which normally employ 50 or more employees or which, if employing less than 50 employees, fulfil the workforce size thresholds for the election or nomination of a collegiate body representing the employees.</p>	<p>5. <u>The Member States may limit the obligations laid down in paragraphs 1, 2 and 3 to undertakings or businesses which, in terms of the number of employees, meet the conditions for the election or nomination of a collegiate body representing the employees.</u></p>
<p>6. Member States shall 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.</p>	<p>Unchanged</p>
	<p style="text-align: center;"><i>Article 6A</i></p> <p>1. <u>For the purposes of the information and consultation requirements laid down in this Directive, the Member States shall provide for employee representatives who enjoy the necessary independence to carry out the functions assigned to them.</u></p>
<p style="text-align: center;">Section IV Final provisions <i>Article 7</i></p>	<p style="text-align: center;">Section IV Final provisions <i>Article 7</i></p>

<p>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 or to promote or permit collective agreements or agreements between social partners more favourable to employees.</p>	<p>Unchanged</p>
	<p><i>Article 7-A</i></p>
	<p><u>Member States shall provide for sanctions in the event of failure to comply with the national provisions adopted under this Directive and shall take the necessary measures to ensure that these sanctions are enforced. These sanctions shall be effective, proportionate and dissuasive.</u></p>
	<p><i>Article 7-B</i></p>
	<p><u>When the Member States apply the provisions contained in this Directive, they may under no circumstances introduce discrimination on the basis of race, sex, age, handicap, sexual orientation, colour, religion or nationality.</u></p>
<p><i>Article 8</i></p>	<p><i>Article 8</i></p>
<p>Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process after possible recourse to other competent authorities.</p>	<p>Unchanged</p>
<p>This Article shall also apply to employees' representatives in respect of their rights under Articles 4(3, 4 and 5), 5 and 6.</p>	<p>This Article shall also apply to employees' representatives in respect of their rights under Articles 4(3 and 4), 5 and 6.</p>

<i>Article 9</i>	<i>Article 9</i>
<p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 18 months at the latest from the date of its adoption or shall ensure, that, at that date at the latest, the employers' and employees' representatives - have introduced the required provisions by means of agreement, the Member States being obliged to take the necessary steps enabling them at all times to guarantee the results imposed by this Directive</p>	<p>Unchanged</p>
<p>2. When Member States adopt the measures referred to in paragraph 1, such measures shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.</p>	<p>Unchanged</p>
<p>Member States shall inform the Commission immediately of the measures they take to implement this directive.</p>	<p>Unchanged</p>
<i>Article 10</i>	<i>Article 10</i>
<p>Directive 77/187/EEC is repealed with effect from the date of transposal of the present Directive, without prejudice to the Member States' obligations with regard to the deadline for transposal of Directive 77/187/EEC, indicated in Annex I.</p>	<p><u>Deleted</u></p>
<p>Any references made to the repealed Directive are understood as being made to the present Directive within the meaning of Article 9(1), and are to be interpreted on the basis of the Comparative Table in Annex II.</p>	<p><u>Deleted</u></p>
<i>Article 11</i>	<i>Article 11</i>

This directive is addressed to the Member States.	Unchanged
This directive shall enter into force 20 days after its publication in the Official Journal of the European Communities.	Unchanged

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