


# Procedure file

Basic information		
CNS - Consultation procedure Directive	1994/0203(CNS)	Procedure completed
Safeguarding of employees' rights in the event of transfers of undertakings		
Subject 4.15.05 Industrial restructuring, job losses, redundancies, relocations, Globalisation Adjustment Fund (EGF) 4.15.12 Workers protection and rights, labour law		

Key players			
European Parliament			
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy		04/11/1994
		GUE <a href="#">THEONAS Ioannis</a>	
	<b>JURI</b> Legal Affairs, Citizens' Rights		04/11/1994
		PPE <a href="#">MOSIEK-URBAHN Marlies</a>	
	<b>FEMM</b> Women's Rights		25/04/1995
Council of the European Union		PSE <a href="#">WADDINGTON Susan A.</a>	
	Council configuration	Meeting	Date
	<a href="#">General Affairs</a>	<a href="#">2111</a>	29/06/1998
	Social Affairs	<a href="#">2102</a>	04/06/1998
	Social Affairs	<a href="#">1862</a>	29/06/1995

Key events			
29/04/1994	Additional information		Summary
24/10/1994	Committee referral announced in Parliament		
29/06/1995	Debate in Council	<a href="#">1862</a>	Summary
12/11/1996	Vote in committee		Summary
12/11/1996	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0367/1996</a>	
11/12/1996	Debate in Parliament		
12/12/1996	Decision by Parliament	COM(1994)0300	Summary
16/01/1997	Decision by Parliament	T4-0012/1997	Summary

24/02/1997	Modified legislative proposal published	COM(1997)0060	Summary
29/06/1998	Act adopted by Council after consultation of Parliament		
29/06/1998	End of procedure in Parliament		
17/07/1998	Final act published in Official Journal		

### Technical information

Procedure reference	1994/0203(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC before Amsterdam E 100
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/4/06026

### Documentation gateway

Legislative proposal		COM(1994)0300 <a href="#">OJ C 274 01.10.1994, p. 0010</a>	08/09/1994	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES0317/1995</a> <a href="#">OJ C 133 31.05.1995, p. 0013</a>	29/03/1995	ESC	Summary
Committee of the Regions: opinion		<a href="#">CDR0143/1995</a> <a href="#">OJ C 100 02.04.1996, p. 0025</a>	21/04/1995	CofR	Summary
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A4-0367/1996</a> <a href="#">OJ C 380 16.12.1996, p. 0004</a>	12/11/1996	EP	
Text adopted by Parliament, 1st reading/single reading		T4-0012/1997 <a href="#">OJ C 033 03.02.1997, p. 0058-0081</a>	16/01/1997	EP	Summary
Modified legislative proposal		COM(1997)0060 <a href="#">OJ C 124 21.04.1997, p. 0048</a>	24/02/1997	EC	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
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### Final act

[Directive 1998/50](#)  
[OJ L 201 17.07.1998, p. 0088](#) Summary

## Safeguarding of employees' rights in the event of transfers of undertakings

PREVIOUS COMMUNITY LEGISLATION: The 1977 Directive obliges new owners to respect all existing employment contracts and collective agreements, and gives employee representatives prior information rights on the transfer of ownership. Dismissals may not be ordered purely as a result of the transfer, though they are permissible on economic, technical or organisational grounds. Of the three employment Directives, it is this Directive which has, by far, engendered the most litigation before the European Court of Justice. At least 12 judgments have been handed down. PREVIOUS POSITION OF EP: The EP opinion of the 1977 Directive (OJ C 95/75, p. 17) welcomed the initiative of the Commission and approved the proposal in general although EP doubted that the proposed means were sufficient. Generally, the EP would like to see high protection of workers and employees as regards regulation of working conditions in the Member States. SITUATION IN THE MEMBER STATES: Commission report to the Council on progress with regard to the implementation of Directive 77/187/EEC. The Commission draws the following conclusions: a) the legislation in the UK does not conform sufficiently with the Directive. The Commission,

therefore, brought an action against the UK (Case C-382/92) before the Court of Justice. The Commission finds that the UK legislation fails to implement the Transfers of Undertakings Directive correctly in respect of Article 6 (i) and (ii) (provision for workers' representatives and the obligations of information and consultation), limit the scope of the Directive and fail to provide effective sanctions to ensure employers fulfil their obligations under the Directive; b) the Irish legislation concerning information and consultation is unsatisfactory; c) except for minor points there is a broad degree of harmonisation between the Belgian, Danish, German and Luxembourg legislations and the main provisions of the Directive; d) for France, Greece, Portugal and Spain the basic principles are broadly in line with the Directive but some specific points are missing; e) the Netherlands and Italy have implemented the Directive only partially.

## Safeguarding of employees' rights in the event of transfers of undertakings

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This proposal for a directive related to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses. It repealed and replaced Directive 77/187/EEC on the transfer of undertakings whilst retaining its key aspects. The amendments involved: - the scope of Directive 77/187/EEC and its definitions: clarifying the concept of "transfer" to include all transfers carried out under contract, through a legal measure or court or administrative decision, so that the directive was not limited to "legal transfers"; - the definition of "employee representatives", which would be stipulated by the Member States; - applying the directive in cases where undertakings were insolvent (where the transferred undertaking was declared bankrupt or undergoing liquidation); - the application of the directive to all public or private undertakings whether or not they were operating for gain, sea-going vessels, part-time workers and workers employed on a temporary basis; - maintaining the rights of employees; - the directive provided Member States with the possibility of providing for joint responsibility for the transferor and transferee with regard to rights and obligations (particularly in relation to the contract or working relationship linking the employees to the employer); - it protected the status and function of employee representatives; - information and consultation of employees: the directive ensured the implementation of measures when the decision leading to the transfer was taken by an undertaking other than the employer. It also provided for the appointment of employee representatives for information and consultation purposes; - the directive contained a clause aimed at applying the more beneficial agreements in this respect where they existed but did not impose any specific sanction where the obligations laid down in the text were not fulfilled. ?

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The shortcomings and loopholes of the 1977 Directive had to be eliminated in order to address the need for high levels of employment and social protection in the EU. However, the 1977 Directive had to be revised without prejudice to workers' rights. Unfortunately, the Commission's proposals introduced a distinction between "economic entity" and the "activity" of an undertaking, which seemed highly ambiguous and would require further interpretation by the Court of Justice, notably as regards the contracting out of services. Thus the proposal could be interpreted as a step backwards compared with the 1977 Directive, since it would once again bring into question issues that seemed to have been already resolved from a legal point of view. In contrast with its declared aims (safeguarding employees' rights in the event of transfers of undertakings, businesses or parts of businesses), the proposal undermined employees' rights in this respect. As a result, the Opinion suggested specific changes concerning this vital issue.

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In its Opinion the Committee of the Regions stressed that the areas of uncertainty that still existed in the directive should be resolved and should not impose new burdens on local and regional authorities, while providing protection for employees and the consequent benefits. The Committee also called upon the Commission to examine the possibility of including in the directive the principle of safeguarding employees' entitlements to old age, invalidity or survivors' benefits on the basis of supplementary occupational or inter-occupational welfare schemes operating independently of Member States' compulsory social security systems. It called for clarification of: the scope of the directive, the distinction between bankruptcy proceedings instituted with a view to liquidation and insolvency proceedings not involving liquidation, the new provisions on joint liability for contractual obligations, and the choice of the number of employees as a criterion for determining the size of an undertaking.

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The President of the Council outlined the current situation on this matter. It will be examined further by the Permanent Representatives Committee under the incoming Spanish Presidency. The aim of the proposal is to revise Council Directive 77/187/EEC of 14 February 1977 in the light of the impact of the internal market, new tendencies in Member States' laws on the rescue of undertakings in economic difficulties, the case-law of the Court of Justice, the adopted revision of the Directive on collective redundancies and the legislation already in force in most Member States. The following are the main changes proposed by the Commission: - to clarify the application of the obligations of the Directive to transnational transfer decisions and to groups of undertakings; - to make provision for greater flexibility for transfers carried out in the context of insolvency proceedings; - to reformulate and clarify the scope and definitions of the existing Directive; - to clarify the laws on the transfer of one part of the undertaking's activity.

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The Committee on Social Affairs and Employment adopted the draft legislative resolution embodying the opinion of the European Parliament on the Commission's proposed amendment to the directive safeguarding employees' rights in the event of transfers of undertakings, businesses or parts of businesses. The rapporteur, Mr Kerr (PSE, UK), appreciated the Commission's changes to the initial proposal, especially with regard to the choice to maintain the wording of Article 1 of the 1997 directive on the definition of "transfer" in order to avoid legal uncertainty and the application of the directive in the event of insolvency. On this point, the proposed text grants employees the same

level of protection as that for which provision is made in the 1980 "insolvency" directive and, as the result of certain amendments tabled, strengthens the role of employees' representatives when agreements are concluded which change the terms of employment or make provision for redundancies in order to ensure the company's survival. In other amendments, the rapporteur has endeavoured to: include pension rights not due on the date of transfer into the terms of employment transferred to the transferee; guarantee that there is no discrimination against women; strengthen the provisions on information and consultation in the event of transfer and of sub-contracting and second generation delegation.?

## Safeguarding of employees' rights in the event of transfers of undertakings

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In adopting the report by Mr Hugh KERR (PSE, UK), Parliament amended the 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. Parliament called for this proposal to amend the 1977 Directive rather than replacing it with a new text as provided by the Commission in its proposal. It emphasized, in particular, the need for employees to be independent from their employer and for consultation with them before any transfer. It also required persons other than the transferor and the transferee to inform and consult the employees. It further proposed that Member States should provide for effective, proportionate and dissuasive sanctions in the case of breach of the national provisions adopted pursuant to this Directive and for the implementation of the Directive without discrimination based on sex, age, religion or nationality.?

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In its amended proposal, the Commission incorporates most of the amendments approved by the European Parliament, particularly those seeking to: - change the title of the proposal: the latter is now a proposal for a directive amending Directive 77/187/EEC, as requested by the EP, rather than a proposal for a directive to replace that directive, - delete the sub-paragraph relating to the definition of 'transfer', as that definition introduced obvious potential sources of legal uncertainty which might prove detrimental to the rights of workers and the interests of firms, - to provide for joint and several liability of the transferor and transferee in respect of obligations which arise from a contract of employment. This liability is limited to the obligations that fall due prior to the date of the transfer, - bolster the adoption of measures to prevent the fraudulent use of insolvency procedures (which have the effect of depriving employees of their rights), - guarantee the independence of employees' representatives in relation to their employer to enable them to carry out the functions assigned to them, - delete the provisions of the directive that explicitly give the Member States' judicial authorities powers to terminate a contract of employment or an employment relationship (as some Member States do not provide for such possibilities), - oblige the transferor and the transferee to inform the representatives of their respective employees as soon as a transfer is planned, - strengthen the protection afforded to workers by specifying that any failure to comply with the directives' provisions 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, - ensure that the obligation to provide information to and consult employees is not subject to a minimum threshold with regard to the size of the undertaking (50 employees at least), - provide for effective, proportionate and dissuasive sanctions in the event of failure to comply with the provisions of the directive, - insert a clause banning discrimination on the basis of race, sex, age, handicap, sexual orientation, skin colour, religion or nationality.?

## Safeguarding of employees' rights in the event of transfers of undertakings

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**PURPOSE:** to amend Directive 77/187/EEC on the approximation of Member States' laws relating to the safeguarding of employees' rights in the event of transfers of undertakings, in the light of the impact of the internal market (and the necessary protection of workers which this entails, as laid down in the Community Social Charter of 09/12/89), 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, Council Directive 75/129/EEC on the approximation of Member States' laws relating to collective redundancies and the legislation already in force in most Member States.

**COMMUNITY MEASURE:** Council Directive 98/50/EC 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.

**CONTENT:** Directive 77/187/EEC is intended to promote the harmonisation of the relevant national laws ensuring the safeguarding of the rights of employees and requiring transferors and transferees to inform and consult employees' representatives in good time. In the light of the afore-mentioned legislative developments, this directive amends Directive 77/187/EEC in the following areas:

- clarifying the legal concept of transfer as well as the concept of "employee" and to require that Directive 77/187/EEC should apply to private and public undertakings carrying out economic activities, whether or not they operate for gain;
- with a view to ensuring the survival of insolvent undertakings, expressly allowing Member States not to apply certain Articles of the amended directive to transfers effected in the framework of liquidation proceedings, permitting certain derogations from the directive's general provisions in the case of transfers effected in the context of insolvency proceedings and also allowing such derogations for one Member State which has special procedures to promote the survival of companies declared to be in a state of economic crisis;
- in order to ensure equal treatment for similar situations, ensuring that the information and consultation requirements laid down in the directive are complied with irrespective of whether the decision leading to the transfer is taken by the employer or by an undertaking controlling the employer;
- clarifying that, when Member States adopt measures to ensure that the transferee is informed of all rights and obligations to be transferred, failure to provide that information is not to affect the transfer of the rights and obligations concerned;
- clarifying the circumstances in which employees must be informed where there are no employee representatives.

**ENTRY INTO FORCE:** 17/07/1998.

**DEADLINE FOR TRANSPOSITION:** 17/07/2001.

