

Austria

Employment protection in relation to business transfers

Phase	Employment Law Harmonisation Act
Native name	Arbeitsvertragsrechtsanpassungsgesetz (AVRAG)
Type	Employment protection in relation to business transfers
Added to database	19 September 2016
Access online	Click here to access online

Article

3, 4, 5

Description

Transfer of business functions ('Funktionsnachfolge') do not qualify under this legislation, as the law only applies to the change of ownership ('Betriebsübergang') of an undertaking, business or part of a business. This is usually distinguished by the transfer of licences, patents, copyright, logistics systems, specific software or the transfer of more than 10% of employees.

Austrian courts have interpreted the meaning of transfer of undertakings in accordance with the European Court of Justice and use the following indicators:

- the transfer covers an economic entity;
- the undertaking retains its identity as an economic entity following the transaction;
- tangible and/or intangible assets are transferred;
- customers are transferred;
- a significant number of employees (in number or expertise) are taken over.

According to [AVRAG](#) [§3] (AVRAG)), the new employer must take over all rights and obligations contained in each individual employment contract (including temporary and fixed-term contracts), if not indicated otherwise due to changes in the affiliation of the

collective agreement ([AVRAG § 4](#)), the occupational pension schemes ([AVRAG § 5](#)) or work agreements ([ArbVG, §§ 32, 33](#)). Any changes to an employment contract can only be enacted by mutual agreement. However, this rule is not applicable in the case of compensation, which cannot be decreased under the new contract. Any liabilities resulting from the contract are also transferred. Obligations which arise during the period prior to transfer, the transferor and the transferee are jointly responsible for. If the transferee is subject to a collective agreement, this agreement tends to take precedence over agreements to which the transferor is subject, however, if the transferee is not subject to any collective agreement, the former agreement remains applicable. If the affiliation of collective agreements is changing, the favourability principle ('Günstigkeitsprinzip') does not apply except for wages for normal working hours. If the collective or work agreement after the transfer deteriorates working conditions substantially, employees are entitled to terminate the contract within one month without losing entitlements to benefits.

If dismissals occur within 6 to 9 months of the transfer, and the employee has some evidence that the dismissal was carried out in relation to the transfer, they can bring an action for declaratory judgement that the dismissal was based on the transfer and is therefore void.

All employees are covered by the act, including apprentices and executive staff members. All government employees are excluded.

Employees can object against the transfer in two cases ([AVRAG § 3 \(4\)](#)). First, if the new owner refuses to agree to special protection against dismissal as detailed in a collective agreement that applied at the time of the transfer. Second, if the new owner refuses to take over the occupational pension fund. The employee must raise an objection within one month of such a refusal. In this case, the contract with the transferor remains intact.

The employer may refuse to take over a company pension commitment in some cases, for instance if the deal was an assets deal and not a case of universal succession. The employee is then entitled to object, and their employment contract is, in effect, not transferred.

Commentary

According to AVRAG § 3 (2), regulations for changes of ownership do not apply in cases of reorganisation procedures without self-administration ('Sanierungsverfahren ohne Eigenverwaltung') as well as bankruptcy proceedings.

Areas of legal uncertainty regarding transfers of undertakings in Austria include:

- whether certain circumstances and procedures are deemed to be transfers of undertakings which are subject to the Employment Law Harmonisation Act,
- what kinds of agreements are considered void because they bypass mandatory protection provisions.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Austria: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Belgium

Employment protection in relation to business transfers

Phase

Collective labour agreement nr. 32 bis agreed upon 7th of June 1985 in the National Labour Council, concerning the retention of employee rights in case of a change of employer due to a transfer of enterprises by force of agreement, and the establishment of employee rights for those retained in case of a take-over of assets after closure; Collective labour agreement nr. 9 with relation to the ordering of the national agreements and collective labour agreements made by the National Labour Councils concerning the Workcouncils; Collective labour agreement nr. 6 of 30th of June 1971 concerning the facilities which have to be provided to members with represent employees in the comités for safety, health and beautification of places of work.; Law of 4th of August 1996 concerning the well-being of employees during the execution of their work; Law of 5th December 1968 concerning the collective labour agreements and the joint committees.

Native name	<p>Collectieve arbeidsovereenkomst nr. 32 bis gesloten op 7 juni 1985 in de Nationale Arbeidsraad, betreffende het behoud van de rechten van de werknemers bij wijziging van werkgever ingevolge de overgang van ondernemingen krachtens overeenkomst en tot regeling van de rechten van de werknemers die overgenomen worden bij overname van activa na faillissement / Convention collective de travail No 32 BIS conclue le 7 juin 1985 au sein du Conseil national du travail, concernant le maintien des droits des travailleurs en cas de changement d'employeur du fait d'un transfert conventionnel d'entreprise et réglant les droits des travailleurs repris en cas de reprise de l'actif après faillit; Collectieve arbeidsovereenkomst nr. 9 houdende ordening van de in de Nationale Arbeidsraad gesloten nationale akkoorden en collectieve arbeidsovereenkomsten betreffende de ondernemingsraden / Convention collective de travail n° 9 du 9 mars 1972 coordonnant les accords nationaux et les conventions collectives de travail relatifs aux conseils d'entreprise conclus au sein du Conseil national du Travail; Collectieve arbeidsovereenkomst nr. 6 van 30 juni 1971 Betreffende de faciliteiten welke moeten verleend worden aan leden die de werknemers in de comités voor veiligheid, gezondheid en verfraaiing der werkplaatsen vertegenwoordigen / Convention collective de travail n° 6 du 30 juin 1971 concernant les facilités à consentir aux membres représentant les travailleurs aux comités de sécurité, d'hygiène et d'embellissement des lieux de travail ; Wet van 4 augustus 1996 betreffende het welzijn van de werknemers bij de uitvoering van hun werk / Loi du 4 Aout 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail ; Wet van 5 december 1968 betreffende de collectieve arbeidsovereenkomsten en de paritaire comités / Loi du 5 decembre 1968 sur les conventions collectives de travail et les commissions paritaires;</p>
Type	Employment protection in relation to business transfers
Added to database	21 September 2016
Access online	Click here to access online

Article

Articles 20 and 23 of CBA-Act (5 December 1968); Article 6 of CBA 32bis; Article 1 of CBA 6; Law 1996, Art. 69-76 . Koninklijk besluit waarbij algemeen verbindend wordt verklaard de collectieve arbeidsovereenkomst nr. 32/7 van 23 april 2019, gesloten in de Nationale Arbeidsraad, tot wijziging van de collectieve arbeidsovereenkomst nr. 32bis van 7 juni 1985 betreffende het behoud van de rechten van de werknemers bij wijziging van werkgever ingevolge de overgang van ondernemingen krachtens overeenkomst en tot regeling van de rechten van de werknemers die overgenomen worden bij overname van activa na faillissement (1)

Description

Under the Belgian law, a transfer of undertaking applies to a transfer of 'an economic entity which will keep its identity after the transfer' (a 'going concern'). The act provides for the transfer of employment contracts without change if the economic entity continues to exist. However, as is stated in collective agreement 32bis, the transferee does retain the right to make reasonable changes to an employment contract but may not include conditions which are to the detriment of the transferred employees without agreement.

Specific criteria determining whether an undertaking will retain its identity following a transfer include:

- The type of business or undertaking being transferred;
- Whether the transfer includes tangible assets (there is no requirement to involve the transfer of property rights);
- The value of intangible assets on the date of the transfer;
- The percentage of the staff being taken over by the transferee;
- Whether there is a transfer of customers;
- The degree of consistency in activities before and after the transfer; and
- The duration of any interruption to such activities.

The criteria mentioned above are investigated in order to evaluate to what extent they play a role in forming the identity of the company. If - considering these criteria - the company identity is deemed to remain intact after the transfer, the employment contracts can be transferred as well, without change.

Outsourced and contracted activities do not necessarily fall within the scope of the CBA no. 32bis and whether or not this is the case depends on the amount of the workforce transferred and on whether other 'identity' factors (managers, the way the business is

organised, etc.) are affected as well.

Employment benefits are fixed and cannot be changed during the course of a transfer, however an explicit exception is made in regards to extra-legal benefit schemes (including invalidity) such as occupational company pension schemes.

All employees (all people attached by way of a labour/learning agreement, as well as people who deliver work performances and are under the supervision of the transferor without a labour agreement) are protected by the transfer, including self-employed persons who are in substance employees. Moreover, the Belgian courts apply the rule of a 'suspect period' whereby employees dismissed prior or after, but in close proximity to, the transfer may also claim against the transferee or transferor as appropriate. Employees who are being dismissed in response to the transfer and are able to prove the transfer is at the base of their dismissal are protected as well.

In general, it is up to the transferee and transferor to negotiate occupational pension agreements, except when they arise from a collective bargaining agreement. The transferee is also not obliged to take over employees' pension rights relating to periods of service performed before the transfer, although the transferee is (in general) obliged to provide some compensation. Vested rights, however, will be maintained in accordance with the transferor's occupational contract.

Collective agreements are covered by article 20 of the CBA act of 1968. This act states that in a case of business transfer 'the transferee must respect the CBAs by which the former employer was bound until these CBAs cease to have effect'. This is also subject to the level at which the CBA occurs (departmental, sectoral, etc.).

If the transferee and the transferred employees reside in different technical operating units (TOU), then a union delegation remains as it was prior to the transfer until the date when the contract would have normally ended. If the transferred employees become part of the transferee's technical operating unit, the works council for the transferee will function for both companies, unless otherwise agreed, until the following social elections.

The CA of 23 April 2019 introduced some changes to the measure: To open entitlement to this bridging allowance, it is required that the takeover of the assets and takeover of the staff be done within well-defined deadlines. The deadline for taking over the assets was shortened from 6 months to 2 months. However, as part of the negotiations on the takeover, this period can be extended twice more by 2 months. In addition, the deadline for taking over the staff is changed from 6 months to 4 months from the date of taking over the assets.

Commentary

An area of legal uncertainty is the fate of a sector level CBA which has been concluded at the level of a branch of industry and is applicable to companies belonging to that branch. This situation can imply that the transferee must simultaneously adhere to the sector level CBA of two different branches of industry until the CBAs of the transferor cease to have effect. However, even if the transferee does not have to comply with the CBAs of the branch of industry to which the transferor belongs, individual normative provisions will be incorporated in the individual employment contract of the transferred employees in accordance with article 23 of the CBA Act of 5 December 1968.

Additional metadata

Cost covered by	National government
Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Belgium: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Bulgaria

Employment protection in relation to business transfers

Phase	Labour Code
Native name	Кодекс на труда
Type	Employment protection in relation to business transfers
Added to database	16 December 2016
Access online	Click here to access online

Article

Articles 123a, 130b

Description

According to Article 123 of the Labour Code, the employment relationship is protected from termination in the event of a business transfer or merger. The following is defined by this law as business transfer or merger:

- merging one enterprise into another,
- allocation of the business of one enterprise between two or more companies,
- transfer of a separate part from one enterprise to another,
- change of the legal form of the enterprise,
- change of the owner of the enterprise or a separate part of it,
- assignment or transfer of business from one enterprise to another, including the transfer of tangible assets.

The employment relationship with the employee shall also not be terminated upon the change of the employer in the case of the letting of the enterprise or of a separate part of it for rent, lease or concession. After the expiry of the term of the lease, lease or the concession contract, the employment relations with the employees will not be terminated, but pass on to their old employer (Article 123a of the Labour Code).

Article 123 explicitly specifies that in case of a company change, this does not warrant a termination of the employment relationship. Instead, the employment relationship is to be transferred to the new owner. In addition, Article 123 defines what consequences a restructuring has for any obligations towards employees (with any type of employment contract) that are a direct result of the employment relationship, given that the employment relationship was established before the restructuring.

In the event of a merger of two companies, the new company will take over such obligations. In the event of a partial business transfer, where one part of a business is transferred to another, both companies will be responsible for their own part of the business. In the event that the operations of one company are distributed amongst several other companies, the companies who take over the operations become responsible for the obligations towards the employees.

Commentary

No information available.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Bulgaria: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

Croatia

Employment protection in relation to business transfers

Phase	Labour Act 93/14, 127/17, 151/22, 64/23
Native name	Zakon o radu 93/14, 127/17, 151/22, 64/23
Type	Employment protection in relation to business transfers
Added to database	16 December 2016
Access online	Click here to access online

Article

Article 4, 137 (1, 2, 3, 12)

Description

In the event of a business transfer, all employment contracts affected by the transfer as well as the employer's obligations resulting from those employment contracts are transferred to the new employer. The transfer shall not have a negative impact on the rights employees have obtained up to the point of the transfer. In this way, the employment contract cannot be terminated on the basis of the business transfer itself (article 137 (2)).

According to the law, an employee whose employment contract has been transferred retains all the rights arising from the employment relationship and acquired until the transfer date. The new employer assumes all the rights and obligations arising from the transferred employment contracts in unaltered form and scope, as of the transfer date. The previous employer is obliged to inform the new employer in writing, fully and accurately, about the rights of employees whose employment contracts are being transferred. Failure of the previous employer to comply shall not impact the entitlements of the employees whose employment contracts are being transferred to the new employer. The previous employer shall be obliged to notify in writing, in good time and prior to the date of transfer, the works council and all affected employees about the transfer to a new employer.

In order to transfer employment contracts to a new employer, the conditions prescribed by the law must be fulfilled and in that case the business transfer is not a justified reason for termination of employment contracts and the admissibility of the dismissal can be challenged before the court.

Commentary

The purpose of this provision is to preserve the continuity of employment so that employees retain all acquired rights. An employment contract of an employee who does not work in the economic activity affected by the business transfer cannot be transferred to a new employer. The law does not provide a definition of business transfer and it does not differentiate between fixed-term and permanent employees. No issues with the implementation of the above provisions have been reported.

Additional metadata

Cost covered by	None
Involved actors other than national government	Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Croatia: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Cyprus

Employment protection in relation to business transfers

Phase	Law on the Preservation and Protection of the Employee's Rights during the Transfer of Business, Facilities or Parts of Business or Facilities of 2000-2018 (Law 104(I)/2000); Termination of Employment Law of 1967-2018 (Law 24/1967) as amended
Native name	N. 104(I)/2000 - Ο περί της Διατήρησης και Διασφάλισης των Δικαιωμάτων των Εργοδοτούμενων κατά τη Μεταβίβαση Επιχειρήσεων, Εγκαταστάσεων ή Τμημάτων Επιχειρήσεων ή Εγκαταστάσεων Νόμος του 2000-2018; N. 24/1967 - Ο περί Τερματισμού Απασχολήσεως Νόμος του 1967-2018
Type	Employment protection in relation to business transfers
Added to database	21 September 2016
Access online	Click here to access online

Article

Articles 3, 4, 5, 6, 7, 10 of the Law 104(I)/2000; Article 3, 18 of the Law 24/1967

Description

This law takes effect on the transfer of any legal entity both public and private exercising economic activities, regardless of profit or non-for-profit nature of these activities. A 'transfer' means the transfer of an economic entity which retains its identity, and which can be seen as a group of organised resources and which has the objective of pursuing an economic activity, whether or not that activity is primary or secondary (article 3).

The provisions of the law do not apply to transfers involving insolvent businesses (article 6), or the reorganisation or re-distribution of functions amongst public bodies (article 3.3). An exclusion of employees of sea vessels has been lifted with the last amendment of the law in 2018. Now crew sea vessels are equally covered, provided the headquarters of the

transferor or of the transferred business, facility or the transferred part of the business or facility remain with the territorial reach of the Treaty on the functioning of the European Union (article 3.4).

The legislation applies to all employees with indefinite contracts or apprentices (article 2). Moreover, the employment contract must remain unchanged except in cases where changes have been expressly agreed upon. These changes may not result in the worsening of conditions for the employee. Employees must be granted all rights to which they were previously entitled regarding employee benefits including old age and disability, and any rights to supplementary occupational retirement benefits. Pension entitlements also must remain unaffected and occupational pension rights are protected by social security legislation and pension trusts (article 4).

In terms of liabilities, the transferee is generally liable for all claims made by transferring employees whether made before or after the transfer. However, the two parties (transferor and transferee) may agree to joint liability to employment related claims in connection with the transfer (article 4.1).

The transfer cannot constitute reason for dismissals (article 5.1). However, dismissals may be justified, if they have been conducted due to economic, technical and organisational reasons and in line with article 18 of the Termination of Employment Law. In this case, redundant employees have the right to compensation from the Redundancy Fund. If the transferor or the transferee terminate the employment relationship of an employee, independently of economic, technical or organisational reasons, the dismissal is considered as illegal and the employee is entitled to compensations payable by the employer and calculated on the basis of length of service, applicable terms of employment prior the transfer and in line with any other respective provisions of article 3 of the Termination of Employment Law.

Commentary

According to the Labour Relations Department, a small number of complaints are addressed by trade unions in relation to the legislation, 2-3 cases per year. The department provides in this regard counselling and information. To effectively pursue their rights, complaining employees need to resort to a court by lodging a civil case against their employer.

Trade unions consider some provisions of the legislation as obscure, especially in relation with the question when a restructuring qualifies as business transfer. As a result of this, some employees remain unprotected. They also expressed doubts over the proper implementation of the legislation as regards the protection of employee's rights in

business transfers occurring in non-organised enterprises.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Cyprus: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Czechia

Employment protection in relation to business transfers

Phase	Labour Code (Act No. 262/2006 Coll.)
Native name	Zákoník práce (zákon č. 262/2006 Sb.)
Type	Employment protection in relation to business transfers
Added to database	22 September 2016
Access online	Click here to access online

Article

338, 339, 339a

Description

The rights and obligations arising from labour relations are transferred from one employer (transferor) to another employer (transferee) under the Labour Code in case of:

- transfer of the employer's activity;
- transfer of part of the employer's activity;
- transfer of employer's tasks;
- transfer of part of the employer's tasks.

In those cases where employees are transferred to a different employer, the existing employment contract is maintained unchanged, only the person of the employer changes. Therefore, the transferee (new) employer does not negotiate with the affected employees new employment contracts. The rights and obligations from a collective agreement are transferred to the transferee for a period during which the collective agreement is in effect; however, no more than until the end of the subsequent calendar year.

The transferee employer is a legal or natural person who is eligible to continue to carry out the duties or activities of the previous employer, or the activities of a similar nature. The

transferee employer is considered to be the as such regardless of the legal reason for the transfer (for instance merger, sale of the business) and regardless of whether ownership rights are transferred (for instance lease).

The transferee must assume all existing rights and obligations arising from the previous employment agreements, including all previous benefits rights. Generally, all employees (including employees on fixed-term contracts) performing duties within the transferred activities or assets are automatically transferred.

Commentary

The decision of the Supreme Court of the Czech Republic in the judgement No. 21 Cdo 4030/2009 of 9 September 2010 stated that 'the transfer of rights and obligations arising from employment relationships occurs not only in case of the sale of a business or part thereof, the lease of an enterprise or part thereof, the sale of a business in a public auction or in other cases provided for by special laws, but also when the requirements under Article 338, paragraph 2 of the Labour Code are met, that is:

- transfer of the employer's activities or tasks to another (transferee) employer, or
- transfer of part of the activities or tasks of the employer to another (transferee) employer.'

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Czechia: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

Denmark

Employment protection in relation to business transfers

Phase	The Danish Act on Employees' Rights in the event of Transfers of Undertakings (Consolidation Act no. 710 of 22 August 2002)
Native name	Bekendtgørelse af lov om lønmodtageres retsstilling ved virksomhedsoverdragelse (LBK nr 710 af 20/08/2002)
Type	Employment protection in relation to business transfers
Added to database	22 March 2017
Access online	Click here to access online

Article

Articles 2 - 7

Description

In case of business transfer the acquirer takes over directly the rights and duties that existed at the time of the business transfer regarding

- collective agreements,
- regulations about wage and working conditions, and
- individual agreements on wage and working conditions.

An acquirer must inform the relevant union(s) if the acquirer does not want to take over the agreement in force. The notification must take place within 5 weeks after he or she has been aware that the employees in the acquired enterprise are covered by a collective agreement; or 3 weeks after the transfer at the earliest. Otherwise, the acquirer is considered as having taken over the agreement.

If the acquirer does not take over the agreement in force, and if the acquirer is already covered by an agreement with another union concerning the work in question, the affected employees at the enterprise have a right, through their union, to

demand negotiations with the management of the enterprise about wage and working conditions. In case one of the parties applies for it after the negotiations have begun, the question can be taken to the Labour Court or the Industrial Arbitration Court to be resolved.

In 2021 (27/3) a minor addition was made, which states that if the transfer takes place during the reconstruction or bankruptcy period, the acquirer is only responsible for employees rights and obligations in the period after the initiation of reconstruction or bankruptcy decreed. (§2 stk. 4)

Commentary

N/A

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Employer organisation Trade union Works council Other Court
Involvement (others)	Experts
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2017), Denmark: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Estonia

Employment protection in relation to business transfers

Phase	Employment Contracts Act; Law of Obligations Act
Native name	Töölepingu seadus; Võlaõigusseadus
Type	Employment protection in relation to business transfers
Added to database	15 December 2016
Access online	Click here to access online

Article

Employment Contracts Act: paragraph 112; Law of Obligations Act: paragraphs 180-182

Description

A definition of business transfer can be found in paragraph 180 of the Law of Obligations Act, which states that the transferor of an enterprise or transfer of part of enterprise (paragraph 185) may undertake to transfer the enterprise to the transferee on the basis of a contract with the transferee. An enterprise may also be transferred pursuant to law. An enterprise comprises the things, rights and obligations relating to and in the service of the management of the enterprise, including contracts relating to the enterprise.

Paragraph 112 of the Employment Contracts Act states that in the event of a business transfer, employment contracts (permanent as well as fixed-term) shall be transferred to the new owner in their original form along with the business, as long as the business continues to operate in the same or a similar economic activity as before. Similarly, according to paragraph 182 of the Law of Obligations Act, obligations concerning the employees (with whom employment contracts have been concluded) that are laid out in the employment contracts are transferred to the new owner of the business in the event of an acquisition. Also, according to the Collective Agreements Act paragraph 11 section 4 states that upon the transfer of an enterprise or an organisationally independent part thereof from one person to another, the relevant collective agreement shall be transferred to the transferee of the enterprise. For the purposes of this Act, business entities which do

not belong to an undertaking, and authorities and other organisations are also deemed to be enterprises.

According to the Employment Contracts Act, a business transfer does not warrant sufficient cause to dismiss employees. However, this provision does not apply if the employer is in a state of insolvency.

Commentary

No information available.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Estonia: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Finland

Employment protection in relation to business transfers

Phase	Act on Cooperation (1333/2021), Employment Contracts Act (55/2001), Collective Agreements Act (436/1946)
Native name	Yhteistoimintalaki (1333/2021) Työsopimuslaki (55/2001), Työehtosopimuslaki (436/1946)
Type	Employment protection in relation to business transfers
Added to database	23 September 2016
Access online	Click here to access online

Article

55/2001: Ch.1, Sec. 10; Ch. 6, Sec. 6; Ch. 7, Sec. 5-6; Ch. 13, Sec. 4

Description

In Finland, legislation surrounding a transfer of undertaking applies during:

- the transfer of an economic entity which retains its identity after the transfer (e.g. the sale of a business or merger), and
- a 'service provision change' (i.e. outsourcing, bringing activities in-house, or a change of contractors).

The Finnish Employment Contracts Act (55/2001) does not exhaustively define the concept of a 'transfer of an undertaking' and therefore its existence will be determined on a case-by-case basis. In general, the deciding factors are:

- the legal relationship, e.g. contract for sale or statutory merger, between the transferor and the transferee (this relationship can also be implied);
- the concept of 'operative identity' of the business;
- the continuity of operations without interruption after the transfer (the business should continue without any major delay but not necessarily immediately) and

- a change of employer.

The sale or purchase of shares does not qualify. Mergers and de-mergers may be comparable to a transfer of undertaking and thus, be regulated under this legislation. However, the death of an entrepreneur or bankruptcy do not constitute transfers of undertaking.

The transferee may not dismiss an employee merely on the grounds of the transfer. In general, all affected employees (including those on fixed-term contracts) are protected by this legislation. Employees on parental (or other) leave are also transferred, however employees whose main duties and activities are outside the business or department being transferred, or those temporarily seconded to such activities will not be transferred.

The transferee must assume all rights and obligations laid out in the employees current employment contract or collective agreements. This includes the employment history of the employee so that the actual length of time in the position which they continue to fill is taken into consideration when determining benefits based on length of service. As pensions in Finland are mandatory, the employer is not required to pay any contributions to individual pension funds other than the mandatory TyEL-pension insurance to which all employers are liable. Employees also retain a special termination right which allows them to terminate the contract upon or immediately after a transfer if the conditions do not seem beneficial to them.

The transferee and transferor are jointly liable regarding employee claims that derive from the employment period up to and during the transfer.

The new employer is not entitled to make changes to general employment contracts. Explicit and informed consent by the employee can in some cases result in a change of employment contract, however if such changes are seen to be detrimental to the employee they can be considered void. Changes may be implemented in lieu of termination if grounds for termination exists.

Collective agreements are regulated by the Finnish Collective Agreements Act (436/1946) which states that the terms of a binding collective bargaining agreement supersede conflicting terms which are detrimental to the employee. In many sectors, unorganised employers are also bound by collective agreements based on the principle of general applicability of collective agreements.

Pre-existing contracts can only be terminated by the transferee or transferor according to the employers' normal right to maintain or terminate a contract. The employee has the right to terminate the contract, however if it is seen that a contract is terminated due to a substantial weakening in the contract agreed upon by the transferee, this termination can

be viewed as a result of the transfer.

The Act on Cooperation (1333/2021, fin. yhteistoimintalaki), the applicability of which is limited to companies regularly employing 20 or more employees, imposes an obligation on workplaces to maintain a continuous dialogue between the employer and its personnel. The employer must have a regular dialogue with the employee representative to develop the company's operations and the work community. The dialogue must take place at least 2-4 times a year, depending on the number of personnel, unless the employer and the personnel representative agree otherwise. For example, in the absence of a staff representative, the dialogue can be carried out by dealing with the issues that are the subject of the dialogue at a joint event organized annually.

How dialogue is organized in the workplace must be agreed upon separately at the workplace. The dialogue is basically carried out in meetings between the employer and the personnel representative. Dialogues should be organized even if the company has no organizational changes planned.

Commentary

The legislation related to business transfers is considered to be rather difficult. Especially the local government sector, where privatisations, corporatisations and tendering procedures frequently reshuffle the service structure, is often affected, and the Trade Union for Public and Welfare Sectors (JHL) claims that employment protection disputes related to public sector business transfers are relatively frequent. However, the Local Government Employers (KT) argues that considering the size of the local government sector (nearly half a million employees), and the 250-300 dismissals annually, the phenomenon is rather insignificant.

Additional metadata

Cost covered by	None
Involved actors other than national government	National government
Involvement (others)	None

Thresholds

Affected employees: No, applicable in all circumstances

Company size: No, applicable in all circumstances

Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Finland: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

France

Employment protection in relation to business transfers

Phase	Labour Code
Native name	Labour Code
Type	Employment protection in relation to business transfers
Added to database	23 September 2016
Access online	Click here to access online

Article

L.1224-1 to 1224-3-2; L. 2261-14

Description

French legislation (Labor code, Article L. 1224-1) defines a transfer of undertaking as 'a change in the legal status of the employer, including without limitation through inheritance, sale, transformation of the business, or creation of a company', however this list is not exhaustive and courts will examine the circumstances as a whole to determine if a transfer of economic entity has occurred. Transfer of a company's ownership of the assets is not required; a lease of the business ('location-gerance') can constitute a transfer. In general, a transfer refers to the change in management of an autonomous legal entity (or part therefore) where the activity is continued and retains its own identity.

According to case-law, the provisions of Article L. 1224-1 of the French Labour Code are a matter of public policy. Thus, any clause in an agreement for the transfer of an autonomous economic entity that provides for the takeover of only part of the workforce is deemed to be unwritten.

However, a transfer does not apply during the taking over of an undertaking in financial difficulties by its former employees. Furthermore, since December 2016, in the framework of an employment security plan designed in a company with at least 1,000 employees, the previous employer can be allowed to dismiss employees before the transfer. The new

employer is then committed to only takeover the employees figuring on the payroll on the day of the transfer (Labour Code, [article L. 1233-6](#)).

As the transfer of an undertaking is an effect of the law, the employer is not obliged to notify the employee. Article 7(6) of the Directive of 12 March 2001, which provides for employees to be informed in advance of the transfer of an undertaking in the absence of staff representatives, has not been transposed into national law, so that it cannot create an obligation on the part of the outgoing employer.

All employment contracts (short-term and permanent contracts; work-study and apprenticeship contract, full-time or part-time) in force at the time of such an event are considered to be transferred to the transferee, and changes cannot be made to such contracts outside of normal operational law. The transferee takes over all such elements of the individual employment contract including:

- Length of service with the previous employer,
- the amounts and types of remuneration and their method of calculation,
- position, classification, place of work etc.

Although contracts terminated prior to the transfer are not transferred, some rights and obligations concerning previously dismissed employees may be transferred including:

- The rights and obligations under a non-competition undertaking
- the right of a redundant employee to priority for rehiring
- the right to reinstatement of a 'protected' employee in the event that his or her dismissal is found to be void.

Salaried employees shall also continue to receive all benefits provided by the previous employer, including profit sharing benefits

The state pension system is not affected by a transfer. However, the complementary pension system must also be maintained, with the new employer (transferee) paying the same contributions as the previous employer (transferor).

If the employees are covered by a collective agreement, and no change in main activity occurs, there will be no change to the collective bargaining agreement (CBA) as it will apply to all companies in the same sector.

However, if the main activity changes, the CBA still remains active until the signature of a new collective agreement, or at least for a period of 15 months after the collective agreement has been terminated. If no agreement has been reached after that time, the previous agreement expires. After this period, the employees of the transferred company

will be able to avail themselves of the benefits arising from the old collective agreements' provisions only if they have benefited from them. These are individually acquired benefits, which will be included in the employment contract of the employees concerned. Therefore, different working conditions may exist between old and new employees.

A specific provision (Labour Code, [article L. 1224-3](#)) applies if the previous employer is a private employer and the transferee a public body. In that case, the public body has to take over the employees under a public employment contract of the length of the previous employment contract (permanent or short-term contract).

Commentary

Both the employees and the employer are bound by the terms of [article L.1224-1](#) of the Labour Code. This means that if an employee refuses the transfer even though the transferee complies with the current legislation, this refusal is considered a resignation. Any attempt by the previous employer to make the employees redundant before going through the transfer process is deemed unlawful and likely to trigger financial compensation if the employee brings the case to court.

Additional metadata

Cost covered by	None
Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No threshold applies. The rule that employment contracts must be maintained in the event of a company transfer applies regardless of the size of the company.

Sources

Citation

Eurofound (2016), France: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

Germany

Employment protection in relation to business transfers

Phase	Civil Code
Native name	Bürgerliches Gesetzbuch
Type	Employment protection in relation to business transfers
Added to database	23 September 2016
Access online	Click here to access online

Article

Civil Code, §613a

Description

Under the Civil Code, in the case a business or part of a business passes to another owner by legal transaction, the latter succeeds to the rights and duties under the employment relationships existing at the time of transfer. Collectively agreed rights and duties such as wages and wage rises, working time, working conditions or occupational pensions - agreed by either a collective agreement or a works agreement - transfer from the old to the new employer and have to be fully implemented by the new employer if no other collective agreements or wage agreements are in place. This regulation is independent of whether or not the new employer is a member of the employer organisation which signed the agreement. The transfer of the collectively agreed rights to the new employer cannot be amended to the disadvantage of the employee for at least one year after the date of the business transfer.

One year after the date of transfer, the agreed rights and duties stated in the employment contract may be changed if the collective agreement or the works agreement no longer applies or if the application of another collective agreement is agreed between the new employer and the employee.

Neither the previous nor the new employer are entitled to terminate the employment relationship of an employee because of the business transfer. The right to terminate the employment relationship for other reasons is unaffected.

The previous employer or the new employer must notify employees affected by a transfer in text form prior to the transfer of:

1. the date or planned date of transfer,
2. the reason for the transfer,
3. the legal, economic and social consequences of the transfer for the employees, and
4. measures that are being considered with regard to the employees.

The employee may object in writing to the transfer of the employment relationship within one month of receipt of notification. The objection may be addressed to the previous employer or to the new employer.

Commentary

On 27 April 2017 the European Court of Justice ruled that in case national laws provide for the possibility to transfer collectively or individually agreed rights to the new owner, collective agreements in force on the date of transfer, but also agreements subsequent to the transfer which supplement, replace or amend the previous agreement are transferable and shall be applied by the new owner.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Germany: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

Greece

Employment protection in relation to business transfers

Phase

-Presidential Decree 80/2022 (Official Government Gazette A' 222/04.12.2022), "Individual Labour Law Code", as amended by Law 5053/2023 (Official Government Gazette A' 158/26.09.2023), "To strengthen work - Integration of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 - Simplification of digital processes and strengthening of the Work Card - Upgrading the operational function of the Ministry of Labour and Social Security and the Labour Inspectorate" -Circular: 58455/2017: Measures concerning the protection of employees' rights in the event of transfers of undertakings, establishments or parts of establishments or undertakings, labour inspectorate, 15 March 2017; Presidential Decree 178/2002 Measures relating to the protection of workers' rights in the event of transfers of undertakings, establishments or parts of businesses or businesses, in conformity with Council Directive 98/50/EC

Native name	<p>-Προεδρικό Διάταγμα 80/2022 (ΦΕΚ Α' 222/04.12.2022), "Κώδικας Ατομικού Εργατικού Δικαίου", όπως τροποποιήθηκε από το Νόμο 5053/2023 (ΦΕΚ Α' 158.09.2023), "Για την ενίσχυση της εργασίας - Ενσωμάτωση της Οδηγίας (ΕΕ) 2019/1152 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 20ής Ιουνίου 2019 - Απλοποίηση ψηφιακών διαδικασιών και ενίσχυση της Κάρτας Εργασίας - Αναβάθμιση της επιχειρησιακής λειτουργίας του Υπουργείου Εργασίας και Κοινωνικής Ασφάλισης και της Επιθεώρησης Εργασίας"</p> <p>-Εγκύκλιος: 58455/ 2017: Μέτρα σχετικά με την προστασία των δικαιωμάτων των εργαζομένων σε περίπτωση μεταβίβασης επιχειρήσεων, εγκαταστάσεων ή τμημάτων εγκαταστάσεων η επιχειρήσεων, Σώμα Επιθεώρησης Εργασίας, 15 Μαρτίου 2017; Προεδρικό Διάταγμα 178/2002 Μέτρα σχετικά με την προστασία των δικαιωμάτων των εργαζομένων σε περίπτωση μεταβίβασης επιχειρήσεων, εγκαταστάσεων ή τμημάτων εγκαταστάσεων ή επιχειρήσεων, σε συμμόρφωση προς την Οδηγία 98/50/ΕΚ του Συμβουλίου</p>
Type	Employment protection in relation to business transfers
Added to database	26 September 2016
Access online	Click here to access online

Article

-Presidential Decree 80/2022, Section IV, 'Business Transfer', Articles: 350, 'Maintaining Employees' Rights' and 351: 'Modification of terms and termination of employment relationship', as amended by Law 5053/2023 -Circular: 58455/2017, whole (explanatory circular); Presidential Decree 178/2002 articles 1-12

Description

-Presidential Decree 80/2022 is the most recent statute regulating the rights of employees in case of business transfer, codifying the respective legal provisions, including the provisions of the P.D. 178/2002, and harmonizing the Transfers of Undertakings Directive 2001/23/EC. As such, by virtue of art. 350 (Maintaining Employees' Rights): through the transfer and from the date thereof, all the existing rights and obligations that the

transferor has from a contract or employment relationship are transferred to the successor. The transferor is jointly and severally liable with the successor for the obligations arising from the contract or employment relationship until the time the successor takes over. following the transfer, the successor shall continue to observe the terms of employment provided for by the collective labour agreement, arbitration decision, regulation or individual labour contract. *with regard to the rights from any existing professional or inter-professional insurance systems, either in the form of a group plan in an insurance company, of an account operating within the context of the transferred business, or in the form of a group plan in a private pension fund, in the event of a business transfer, the following shall apply: a) If the successor accepts the continuation of the insurance contract under the same conditions that applied to the transferor, the insurance contract is renewed. If an insurance company or a private pension fund intervenes, the successor renews the insurance contract with these, as well. b) If the successor accepts the continuation of the insurance contract, with terms different from those that applied to the transferor, they inform employees' representatives for the change in terms, consult with them and the transferor, and draw up a new insurance contract. If an insurance company or a private pension fund mediates, either a representative of the insurance company or the trustee of the private pension fund participates in the consultations in order to submit new proposals, for drawing up a new insurance contract, taking into account the existing numerical stock, or the existing credit balance of the pension funds management account. c) If the successor, prior to the transfer, refuses the continuation of the insurance contract either in the form of a group plan in an insurance company, (or) in the form of an account operating within the transferred business, or in the form of a group plan in a private pension fund, the relevant funds in the form of either a numerical stock or a retirement fund account, belong to the employees. In this case, the acquired rights of the employees, as well as, the rights of expectation for periodic or one-off benefits of the employees, whose employment relationship was terminated at the time of the business transfer, are ensured as follows: i. in the case of a group plan in an insurance company or in a private pension fund, the relevant funds that have been collected are cleared by the transferor and the employees' representatives, and distributed to the employees either on the basis of the numerical stock, in the case of guaranteed group schemes {guaranteed technical (discount) rate, guaranteed benefit}; or on the basis of the accumulated net contribution (case of defined contribution schemes); or on the basis of the accrued benefit; or the present value of future benefit (project benefit) (case of defined benefit plans). ii) In the case of an account operating under the transferred business, the relevant funds are cleared by the transferor and the employees' representatives, and distributed to the employees either on the basis of the accumulated net contribution (case of defined contribution plans), or on the basis of the accrued benefit or the present value of a future benefit (case of defined benefit plans). d) if there are no workers' councils in the company a three-member committee, elected by

the workers by direct, secret and universal suffrage, participates in the consultation, liquidation and distribution, in an assembly convened by the trade union that has the most members in the enterprise. e) Objections against the distribution board are heard by the Single-Member Court of First Instance during the interim measures procedure. f) Existing rights for periodic or one-off employee benefits, including employees whose employment relationship was terminated at the time of the business transfer (survivor benefits) are not affected, and are taken into account during the distribution process of c), d), and e) as above.

By virtue of art. 351 of Presidential Decree 80/2022: the transfer of a business, establishment, or part of a business or establishment does not in itself constitute a reason for the employees' dismissal. Provision of previous paragraph does not prevent, subject to the relevant provisions on layoffs, these dismissals that may occur for economic, technical or organizational reasons that entail changes in the workforce. If the employment contract or the employment relationship is terminated due to the fact that the transfer involves a substantial change in the working conditions to the detriment of the employee, the termination of the employment contract or of the employment relationship is considered to have been caused by the employer.

Articles 350 and 351 do not apply to the transfer of an undertaking, establishment or part of an undertaking or establishment, when the transferor is in bankruptcy proceedings, or in any other similar insolvency proceedings.

Any intention, by the transferor or the successor, to take measures towards changing the employees' status is subject to timely consultations with employees' representatives who are informed on: the date and the reason (s) of the transfer; the legal, economic, and social consequences for employees, and the measures envisaged with regard to them. In the absence of employee representatives for reasons beyond the employees' control, the employer provides the above mentioned information in writing and in advance to all employees. As employees representatives, eligible to participate in consultation procedures, are those of the Union with a membership of at least 70% of the employees, and a majority of the dismissed employees.

-Since many regional offices of the labour inspectorate's employment relations inspectorate have received reports or complaints concerning the circumvention of employees' rights in the event of transfers of undertakings, establishments or parts of establishments or undertakings, as defined by Presidential Decree 178/2002, to provide a uniform way of dealing with this issue the labour inspectorate issued an explanatory circular ([Circular: 58455/2017](#)), according to which the transfer of an undertaking means the transfer of an entity retaining its identity, which is understood to mean a set of organised resources aimed at pursuing an economic activity, either primary or secondary.

The different title, form or transformation of the legal entity occurring upon the dissolution of the transferor and the constitution of the successor have no influence. The same applies even if the new employer (the successor) uses new offices, new premises and equipment, and when it has been agreed with the employee representatives that the contracts of the personnel which, either in whole or in part, has been placed in the same positions shall continue in force. Thus, there is no need for a legal link between the transferor and the successor. The retention of the unit's identity is mainly determined by elements such as the similarity of the pre- and post-transfer activities; the transfer or not of goodwill and clientele; the transfer of part or all of the tangible or intangible assets of the former undertaking to the successor at the time of the transfer, and so on.

In the case of the transfer of an undertaking under PD 178/2002, the successor employer automatically assumes the obligations of the former (transferring) employer arising from the active contracts vis-à-vis the employees of the undertaking, given that such obligations are regarded as an integral part of the undertaking and are also borne by the new employer. It should be emphasised that, even after the transfer, the transferring employer is jointly and severally liable with the successor for the obligations arising out of the employment contract or relationship up to the time when the successor takes over. Furthermore, under article 8 of the Presidential Decree, both the transferor and the successor employer are required to inform the representatives of their employees who are affected by the transfer about certain critical points relating to the individual terms and conditions of the transfer. In the absence of employee representatives, for reasons beyond their control, the employer is obliged to inform all employees in writing, in a timely manner, at the same time, and in advance.

The provisions of Presidential Decree 178/2002 are mandatory rules, applying regardless of the will of the parties involved. Consequently, any agreement between an employer and an employee on the non-application of such protective provisions, and an agreement with another object, which leads to or has the same effect, are null and void. Therefore, even if they both consent, they cannot decide that, upon the transfer of the undertaking, the obligations and rights deriving from the contracts of the former employer will not be assumed by the successor, and thus the employees will be deprived of the protection and their acquired rights in general.

The Greek law applies to every contractual or mandatory business transfer, merger, takeover or acquisition of a company or of its business facilities or any part from one employer to another. While the law applies to transfers from the private to the public sector, article 2.1 of Presidential Decree 178/2002 stipulates that the law does not cover 'the administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities'.

A unit which retains its identity is defined as 'the sum of organised resources whose purpose is the exercise of either primary or secondary activities' (please note that some legal uncertainty exists regarding the definition of an economic entity and when it is considered to be continuing its primary or secondary economic activities). The law protects all of the transferors' employees with a legal employment contract in force at the date of the transfer. This covers:

- employment contracts or employment relationships regardless of the number of hours worked or to be worked;
- employment relationships governed by a fixed-term contract of employment, in accordance with the provisions laid down in article 1(1) of Directive 91/383/EEC;
- temporary employment relationships in accordance with the provisions laid down in article 1(2) of Directive 91/383/EEC.

The employee's consent is not a prerequisite for a transfer, and employees are obliged to offer their services to the transferee. If employees object to the transfer, they are entitled to terminate their contracts with appropriate notice.

The transferee is permitted to refuse to continue an insurance agreement (including pension agreements) if the costs would substantially impede the transfer. All other rights agreed upon by the previous employer, including those made through collective agreement or company by-laws, must remain unchanged. Specifically, this includes:

- the total salary and how it is apportioned;
- the duties and tasks performed by the employee;
- institutional issues such as annual leave, working time, recognition of previous employment, and so on;
- the terms of the employment contract.

Moreover, the time spent while employed by the transferor should be regarded as continuous employment for the purpose of calculating salary, benefits, redundancies compensation, etc. Conditions which have been agreed by collective agreement may be renegotiated by the transferee and employees after the transfer, however until an appropriate replacement is agreed upon the previous conditions apply.

There is no specific timeline regulating when employees may be dismissed following a transfer, however, it is stipulated that the transfer must not be the sole reason for such dismissal. Under the labour law, there is no obligation on the employer to explain the reasoning behind dismissal, therefore the onus is on the employee to prove that their dismissal was in direct relation to the transfer. If it is found that the transferee has unlawfully disregarded the prohibition of dismissal in regard to a transfer, the dismissals

will be regarded as unlawful and the transferee will be liable for reemployment and wages paid for the period that the employees did not work.

Commentary

-The Presidential Decree provides for the (first time) codification of the legislation governing individual labour law. According to experts, the codification does not bring about any modification, addition or repeal of provisions, but brings together the existing provisions as they apply, with logical and thematic continuity in order to facilitate the search of the existing institutional framework.

-There are many judicial decisions on the implementation of Presidential Decree 178/2002. Under settled case law, if the identity of the business and its economic activity are retained, a change of employer, regardless of the legal issue and the form of the transfer, involves automatic substitution of the new employer in the existing employment relationships and the exemption of the previous employer, with the result that the consent of the employees is not required. An employer who succeeds or substitutes the original employer in any way and any legal form in a business assumes the obligations of the original employer regarding the staff of the business. For these consequences to occur, it is necessary (and sufficient) for the business to actually continue its operation as an economic unit without interruption regardless of whether the change of operator of the business is combined with a change of title, legal form or other changes.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	National government Court Works council Trade union
Involvement (others)	First Court of Instance
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Greece: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

Hungary

Employment protection in relation to business transfers

Phase	Act I of 2012 on the Labour Code; Act V of 2013 on the Civil Code; Act CLXXVI of 2013 on the Transformation, Merger and Demerger of Legal Entities (Transformation Act)
Native name	2012. évi I. törvény a Munka Törvénykönyvről; 2013. évi V. törvény a Polgári Törvénykönyvről; 2013. évi CLXXVI. törvény az egyes jogi személyek átalakulásáról, egyesüléséről, szétválásáról
Type	Employment protection in relation to business transfers
Added to database	26 September 2016
Access online	Click here to access online

Article

Article 36-40 and 264(1) and (2) of the Labour Code; Article 3:39-3:47 of the Civil Code; Article 14,18 of Transformation Act

Description

Under Hungarian law, a transfer of undertakings occurs if:

- a legal succession takes place by operation of law ('universal succession'); or
- an independent unit (such as a strategic business unit, plant, shop, division, workplace, or any part of these) or the tangible or intangible assets of the employer are transferred by agreement to an organisation or person ('business transfer').

The universal succession is regulated by Chapter 13 of Act 5/2013 on the Civil Code. For a universal succession, the change is automatic and employment contracts are taken over by the new entity with a continuation of the provisions of the contract. Examples of such are transformations, mergers, demergers and 100% changes of ownership.

As of January 2022, under Article 3:43 of Act 5/2013 on the Civil Code, the transferor must publish two statements, instead of the earlier one, following the approval of the transformation plan. If the transferor has any debt outstanding to creditors prior to the publication of the first notice, the creditor may require guarantees for their payment within 30 days of the publication of the second notice, if the transformation should endanger that debt obligations are met.

Individual transfers, or the transfer of partial assets of the company, by contrast, require an agreement between the transferor and the transferee. Act I of 2012 on the Labor Code (Mt.), Articles 36-40, contains provisions under the heading 'Changes in the person of the employer', regulating legal succession based on an agreement.

As of January 2023, under Article 38 (1), the new employer must provide notification in writing to the employee of the transfer and the identity of the new employer as well as any change in the conditions of work.

According to the Council Directive 2001/23/EC, this refers to 'a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary'. This directive has been implemented in the Hungarian law.

Although public sector jobs are not explicitly exempted, other more specific rules may apply in these cases as they are regulated by conditions other than the labour code.

All employees whose employment relationship is in force at the time of the transfer including 'inactive' employees (those on sick or maternity leave at the time of the transfer) are covered by the regulation.

On organisational changes in sole proprietorships, Act CXV of 2009 on the sole proprietor and the sole proprietorship applies. If the sole proprietor operates as a sole proprietorship, this law applies to them, and the sole proprietorship may be transformed into a company by applying the provisions of the Civil Code.

Employment contracts (both permanent and fixed-term contracts) in force at the time of the transfer must remain unchanged when taken up by the transferee. After the transfer, transferees are allowed to make suggestions in regard to changes to individual contracts, particularly in regard to changes of workplace or position. However, the employee is entitled to refuse such suggestions and the employer may not terminate their contract as a result.

Employees are not at liberty to refuse the transfer as a whole, but they can ask to be 'relieved from work duty', which effectively means they are initiating the termination of the

employment. Such can be seen as a ground for dismissal.

Employees' benefits must also remain unchanged for a period of at least one year after the transfer has occurred. Mandatory personal pension contributions and private pension benefits will automatically transfer, meaning that time spent in employment with the transferor must be counted as continuing employment by the transferee.

In terms of liabilities, the general rule is that all rights and obligations arising from employment relationships will be transferred to the transferee at the time of transfer. However, both parties are jointly liable for claims arising prior to transfer, provided they were made within one year.

Employers are also not allowed to dismiss an employee as a direct consequence of the transfer.

Commentary

An important rule has been in force in the Labour Code since 2012, which, following the German example, allows the employee to terminate the employment relationship if a change in the identity of the employer has significantly and adversely changed their working conditions and would result in disproportionate harm or an impossibility of maintaining employment.

The termination must be filed within 30 days, in writing and with reasons. In this case, the employee is entitled to as much notice and severance pay as they would have received if the employment had been terminated by the employer. The works council may exercise the right to comment on the employer's decisions concerning the reorganisation, transformation, transformation of an organisational unit into an independent organisation, in such a way that at least 15 days prior to an employer decision the employer asks the work council to comment on the measure affecting a larger group of employees (Labour Code, Article 264 (1) and (2) (a)).

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Employer organisation Works council

Involvement (others) None

Thresholds Affected employees: No, applicable in all circumstances
Company size: No, applicable in all circumstances
Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Hungary: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Ireland

Employment protection in relation to business transfers

Phase	The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003; S.I. No. 15/2018 - European Communities (Seafarers) Regulations 2018
Native name	The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003; S.I. No. 15/2018 - European Communities (Seafarers) Regulations 2018
Type	Employment protection in relation to business transfers
Added to database	26 September 2016
Access online	Click here to access online

Article

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003; S.I. No. 15/2018 - European Communities (Seafarers) Regulations 2018. Citation 1. These Regulations may be cited as the European Communities (Seafarers) Regulations 2018. Interpretation 2. (1) In these Regulations— “Act of 1977” means the Protection of Employment Act 1977 (No. 7 of 1977); “Directive” means Directive 2015/1794 of the European Parliament and of the Council of 6 October 2015¹. (2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive. Amendment of section 17 of Transnational Information and Consultation of Employees Act 1996 3. Section 17 of the Transnational Information and Consultation of Employees Act 1996 (No. 20 of 1996) is amended by the insertion of the following subsections after subsection (4): “(4A) An employees’ representative, or an alternate of that representative, who is a member of the crew of a seagoing vessel, shall be entitled to participate in— (a) a meeting of the Special Negotiating Body or of the European Works Council, or (b) any other meeting within the framework of an agreement referred to in section 11(1), where that employees’ representative, or that alternate, is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place. (4B) A meeting referred to in subsection (4A) shall, where practicable,

be scheduled to facilitate the participation of an employees' representative, or an alternate of that representative, who is a member of the crew of a seagoing vessel. (4C) Where an employees' representative, or an alternate of that representative, who is a member of the crew of a seagoing vessel, is unable to attend a meeting, the possibility of using, where possible, new information and communications technologies shall be considered."

Amendment of Act of 1977 4. (1) Section 7 of the Act of 1977 is amended in subsection (2) by the deletion of paragraph (d) . (2) Section 12 of the Act of 1977 is amended by the insertion of the following subsection after subsection (4): "(5)Where the proposal to create collective redundancies concerns members of the crew of a seagoing vessel, the employer shall— (a) where the vessel flies the Irish flag, notify the Minister in accordance with subsection (1), or (b) where the vessel flies the flag of another State, notify the competent authority of that other State.". Amendment of European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 5. Regulation 3 of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) is amended— (a) by the substitution of the following paragraph for paragraph (5): "(5) These Regulations shall, subject to paragraph (6), apply to a transfer of a seagoing vessel that is part of a transfer of an undertaking, business, or part of an undertaking or business within the meaning of this Regulation, if the transferee is situated, or the transferred undertaking, business, or part of an undertaking or business remains, within the territorial scope of the Treaty.", and (b) by the insertion of the following paragraph after paragraph (5): "(6)These Regulations shall not apply to a transfer which consists exclusively of one or more seagoing vessels."

Description

Irish law has defined transfers of undertakings as defined by the European Court of Justice and requires the transfer of an economic entity which retains its identity after transfer. The term 'economic entity' is defined as 'an organised grouping of resources which has the objective of pursuing an economic activity whether or not that activity is for profit or whether it is central or ancillary to another economic or administrative entity'. The central question as to whether a transfer of undertakings has occurred will be to establish what the principle or most significant assets in the operation of a business are, and to establish whether they have been transferred. In deciding whether or not the business has retained its identity, only large-scale changes should be taken into account. Small changes (or changes which do not amount to a change in the entire operations) are not considered sufficient to constitute a change in identity. The regulations do not apply to businesses which are purely transient.

The regulation may also not be applicable in cases where the transferee refuses to take on contracted services because they already have enough personnel or assets to fulfil the

contracted services on their own. However, in such cases all other factors would be examined to determine whether such is sufficient to be considered a transfer.

Employees (both permanent and fixed-term staff) who are employed by, or working in the affected department or business at the date of the transfer will be subject to employment protection. Employees partially employed by the affected department may also be covered, depending on the percentage of their work life spent in such a role.

Employees are entitled to object to the transfer. In such cases the transferor must provide alternative employment, and if no such employment is available, the employee would be made redundant.

The provisions laid out in the employment contract agreed upon by the transferor and employee will be transferred as stated to the transferee. This includes salary and accumulated benefits. The exception to this rule is the case of pension rights. In general, these are occupational pension schemes which are tax exempt and are usually characterised as defined benefit or defined contribution. Personal Retirement Savings Accounts are also regulated by the Pensions Acts 1990-2008.

All obligations arising from a contract of employment will transfer, including accrued service. Moreover, the transferee must continue to observe the terms and conditions of any collective agreement on the same terms applicable to the transferor until the date of termination or expiry, or until another collective agreement is entered into force.

For the employer to make changes to individual contracts or the transferred workforce (through dismissals), they must be able to prove that such changes were not in relation to the transfer itself, and must not decrease the employees' overall benefits or position within the company. Such changes must be explicitly agreed upon by the new employer and employee as stipulated in a normal employment relationship.

Any changes or dismissals which do not meet these criteria will be deemed to be invalid.

Trade unions are generally involved in the transfer process at firms that have collective agreements in place. Works councils can have a consultative role during the transfer process. Trade union involvement is more common.

In 2018, secondary legislation (Statutory Instrument 15 of 2018) removed the exclusion of seafarers from the TUPE Regulations. Seafarers on fishing vessels that fly the Irish flag are now within the scope of the TUPE protections.

Commentary

Though it is not explicit in the Regulations, TUPE (transfer of undertakings under the EC Regulations 2003) can apply in outsourcing scenarios: the McDowell Purcell law firm note that the Court of Justice of the EU and the Employment Appeals Tribunal have determined in several cases that the regulations can apply where there is a change in the provider of a service.

Two tests for whether a TUPE applies are:

- a transfer of significant tangible or intangible assets; or
- the taking over of the majority of the workforce in terms of numbers and skills.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Ireland: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Italy

Employment protection in relation to business transfers

Phase	Civil Code; Civil Procedure Code; Law 29 December 1990, no.428, Provisions for the fulfillment of obligations deriving from Italy's membership of the European Communities; Legislative Decree of 10 September 2003, no. 276, Implementation of provisions concerning employment and labour market, mandated by Law of 14 February 2003, no. 30; Legislative Decree no. 251 of 6 October 2004, Provisions amending Legislative Decree of 10 September 2003, no. 2765, concerning employment and the labour market; Law No. 87 of July 12, 2018, Urgent Provisions for the Dignity of Workers and Businesses; Law No. 234 of December 30, 2021 State Budget for the Financial Year 2022 and Multi-Year Budget for the Three-Year Period 2022-2024
Native name	Codice civile; Codice di Procedura Civile; Legge 29 Dicembre 1990, n. 428, Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee; Decreto Legislativo 10 Settembre 2003, n. 276, Attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30; Decreto Legislativo 6 Ottobre 2004, n. 251, Disposizioni correttive del decreto legislativo 10 settembre 2003, n. 276, in materia di occupazione e mercato del lavoro; Legge 12 luglio 2018, n. 87, Disposizioni urgenti per la dignità dei lavoratori e delle imprese; Legge 30 dicembre 2021, n. 234 Bilancio di previsione dello Stato per l'anno finanziario 2022 e bilancio pluriennale per il triennio 2022-2024.
Type	Employment protection in relation to business transfers
Added to database	26 September 2016
Access online	Click here to access online

Article

Civil Code, paragraph 5 article 2112; Civil Procedure Code, articles 410 and 411; Law no. 428/1990, article 47; Legislative Decree no. 276/2003, articles 31 and 32; Legislative Decree no. 251/2004, article 9; Law No. 87 of July 12, 2018, Chapter II, Article 5; Law No. 234 of December 30, 2021, paragraphs 224-236

Description

Under the Italian law, a transfer is defined as any operation which transfers the ownership of an undertaking or a part thereof, 'regardless of the type of legal procedure or legal act by which the transfer is made, including 'usufruct' or lease of the undertaking'. An undertaking itself is defined as 'an organised economic activity, with or without the aim of profit, which pre-exists the transfer and conserves its identity upon the transfer'.

The Italian Civil Code does not cover the transfer of shares, or cases where the transfer involves an undertaking or part of one which is in a state of financial crisis.

The Civil Code provides some protection to the employees involved in business transfers including apprentices and executives. However, consultants and self-employed people are not included. In particular:

- The transferee must apply collective agreements in force at the transferor on the day of the transfer until they expire or are replaced by new agreements applying to the transferor. This includes employment conditions and wage levels.
- The transfer cannot constitute itself a justified reason for dismissal.
- The involved employees can legitimately terminate the employment relationship if there is a substantial modification of the working conditions over the three months following the transfer.
- Joint liability between the transferor and the transferee apply in regards to debts existing at the time of the transfer, including wage and social security contributions. The liability is extended in case a subcontracting agreement is entered between the two entities up to two years following the termination thereof in line with the rules governing subcontracting. However, the transferred employee may release the transferor from obligations under the employment contract by applying settlement procedures set out in articles 410 and 411 of the Civil Procedure Code.

In addition, article 47 of law no. 428/1990 grants unions information and consultation rights in case of business transfer and sets out that workers who do not become employees of the transferee have a priority right in the case of new hiring by the transferee within one year from the date of the transfer, or any longer time span as set out in collective agreements.

Law No. 87 of July 12, 2018, places restrictions on companies that relocate after receiving state aid, requiring repayment of the aid with fines if operations are moved outside the EU within five years. Law 234 of December 30, 2021, introduces additional regulations for larger companies that plan significant layoffs due to relocation, necessitating advanced notification and the creation of a post-relocation plan to mitigate job and economic losses, with failure to comply resulting in penalties.

Commentary

According to law studies, there might be inconsistencies between the Italian provisions and Directive no. 2001/23/EC, especially insofar the former allows the modification of employment conditions by means of collective agreement whereas the transferor is in a state of crisis, without entailing any judicial supervision.

In addition, criticisms have been raised also concerning the absence of provisions limiting the possibility for companies to transfer workers without their consensus.

Additional metadata

Cost covered by	Companies
Involved actors other than national government	National government Trade union Employer organisation
Involvement (others)	(ANPAL) National Agency for Active Employment Policies, INPS (National Social Security Institute)
Thresholds	Affected employees: 250 Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Italy: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

Latvia

Employment protection in relation to business transfers

Phase	Labour law
Native name	Darba Likums
Type	Employment protection in relation to business transfers
Added to database	26 September 2016
Access online	Click here to access online

Article

117, 118

Description

According to the Labour law the transfer of an undertaking means the transfer of an undertaking or its unaffiliated, identifiable part (economic unit) to another person on the basis of an agreement, administrative or normative act, judgement of a court or another basis arisen between the parties outside contractual commitments thereof, as well as a merger, division or reorganisation of commercial companies.

The legislation does not apply to state administrative institutions or local governments or their functions.

The legislation is applied to the transfer of ownership of a sea vessel if it is a part of an enterprise, but not separately for the transfer of ownership of one or more sea vessels. The rule that the acquirer should be located in EU, or that the undertaking remains in the EU, should be observed.

The law prescribes that rights and duties of the transferor of an undertaking that arise from employment legal relationships applicable at the moment of transfer of the undertaking will devolve to the acquirer of the undertaking.

After transfer of an undertaking the acquirer must continue to comply with the provisions of the collective agreement previously in place and applicable at the moment of the transfer up to the moment of termination of such collective agreement, or until the moment a new collective agreement enters into effect, or until the moment of application of the provisions of another collective agreement. Within a one-year period from the transfer of the undertaking, the provisions of the collective agreement can not be amended to the detriment of employees.

Transfer of an undertaking may not form the basis for a notice of termination of an employment contract. The acquirer has the right to give a notice of termination of an employment contract based on the performance of economic, organisational, technological or similar measures in the undertaking.

The terminology employed by the EU directive regarding an economic entity has not been transposed. In order to help providing clarity as to when a transfer of undertaking has occurred, Latvian courts use the criteria defined by the European Court of Justice as follows:

- the nature of the undertaking;
- whether there is a transfer of tangible or intangible assets;
- the value of the intangible assets at the time of the transfer;
- whether the new employer takes over most of the employees,
- whether clients or customers are taken over;
- the nature of the activity before and after the transfer;
- the period of time for which operations were interrupted.

Commentary

No information available.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	National government
Involvement (others)	None

Thresholds

Affected employees: No, applicable in all circumstances

Company size: No, applicable in all circumstances

Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Latvia: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

Lithuania

Employment protection in relation to business transfers

Phase	Labour code No XII-2603
Native name	Darbo kodeksas Nr. XII-2603
Type	Employment protection in relation to business transfers
Added to database	15 December 2016
Access online	Click here to access online

Article

Labour code (51)

Description

The labour code provides that a business transfer is not a sufficient cause for terminating an employment relationship. If a business or any part thereof is transferred, employment relationships with the transferee, that is the new employer, continue under the same conditions irrespective of the legal basis for the transfer. It means that the transferee, as the new employer, acquires rights and obligations that exist at the moment of the transfer from the transferor. If the transferee fails to fulfil the mentioned obligations, the transferor bears joint and several liability for fulfilment of employees' rights that arose before the transfer. Joint and several liability applies for one year after the business transfer. The transferee and the transferor may agree on compensation for the transferee regarding transfer of rights and obligations acquired by an employee while working for the transferor: for example, unused leave and outstanding monetary claims.

It is prohibited to change terms of employment or terminate employment contracts as a result of the business transfer. If a valid collective agreement is in place, conditions set therein need to be satisfied for 2 consequent years, unless the agreement expires earlier. The law does not differentiate between fixed-term and permanent employees, meaning that this provision equally applies to both fixed-term and open-ended employment contracts. This allows the labour code to safeguard employment relationships in the event

of a business transfer.

The Labour Code provides as well that the transferor must give advance written notice to an employee about the impending business transfer at least 10 working days in advance, indicating the legal basis for the transfer, the effective date of the transfer, as well as the economic and social consequences for the employee and the measures taken in these regards. If, within five working days of receipt of the notice, an employee does not agree in writing to the continuity of employment relations, the transferor shall terminate the employment contract with the employee on the initiative of the employer without any fault on the part of the employee.

Article 51 of the Labour Code has been supplemented by law No XIV-1189 which came into force on the 1st of August 2022 providing that all above mentioned requirements are to be applied also in cases of restructuring of the employer and in case of transfer of its functions.

Commentary

No information available.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Lithuania: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

Luxembourg

Employment protection in relation to business transfers

Phase	Labour code
Native name	Code du travail
Type	Employment protection in relation to business transfers
Added to database	27 September 2016
Access online	Click here to access online

Article

Art.L. 125-1 (1) and Art.L-127-1 to L. 127-6

Description

The legislation on transfer of undertaking is applicable to private or public companies which are being transferred within the territory of the Grand-Duchy of Luxembourg. According to the national Labour Code (which comprises all labour laws), a transfer must involve an economic entity which transfers sufficient numbers of staff or technical means required to form its establishment, or at least a unit or centre of activities (whether a central or ancillary activity), and which maintains its identity after the transfer. In particular, a legal transfer, merger, succession or sale all constitute a transfer, however, this list is not exhaustive. The acquisition of interest or shares in a company is not enough to warrant a transfer.

All employees (except civil servants) are covered by the labour legislation. An 'employee' is a person who works for an employer in a relationship of subordination and is remunerated for that work. This includes secondees and apprentices. All obligations arising from an employment contract (fixed-term or permanent contract) are automatically transferred to the transferee. This includes pension rights and liabilities. However, the transferor and transferee may be jointly liable for claims arising within one year of the transfer. Collective agreements are also transferred on as-is basis, and must remain intact until their expiry or until a new agreement is concluded. Employees continue to benefit by

the collective labour agreement. Employee benefits are also transferred, however if the transferee is unable to provide the equivalent benefits as agreed upon by the transferor, small amendments to the contract are permitted with the agreement of the employee.

Although employers retain the right to modify employment contracts in the normal course of business, any substantial modification found to be in direct relation to the transfer will be considered invalid. Similarly, employers retain the right to dismiss employees on economic or performance grounds. However, if such actions are found to be in relation to the transfer, they are considered invalid and the employer may be liable to compensate for the unfair dismissal or changes to employment. Only modifications which are seen to benefit the employee will be excepted from this rule.

The transferee or the transferor may, together with the representatives of the employees and the national representative trade unions, agree to modify, to the extent that the current legislation or practice allows it, the working conditions of the employee to safeguard employment by the survival of the enterprise, establishment or part of the undertaking. If a transfer occurs within three months of, or in relation to insolvency proceedings, any contracts which were terminated in relation to such proceedings will be automatically renewed. An employee is not entitled to refuse a transfer. If an employee chooses to oppose a transfer, the employee must decide to terminate the contract.

Commentary

Collective labour market agreements may add additional agreements to the legal framework in place. For example, the collective labour market agreement in the finance sector (2021-2023) prevents employee dismissals on the grounds of restructuring or reorganisation, or any change of the employment contract (unless the staff delegation agrees) for a period of two years after the transferral.

Additional metadata

Cost covered by	Companies
Involved actors other than national government	National government Works council

Involvement (others) The national government stipulated the legal framework. The 2015 law on social dialogue in Luxembourg has suppressed the company works council and only staff delegations are in place at the company level. In the finance sector's collective labour market agreement, for example, the staff delegation has an important role to play during the transferral procedure. It is stipulated that an employment contract must not be amended (in the case of a reorganisation or restructuring in a transferral procedure), unless there is an agreement by the staff delegation.

Thresholds Affected employees: No, applicable in all circumstances
Company size: No, applicable in all circumstances
Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Luxembourg: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Malta

Employment protection in relation to business transfers

Phase	Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta); Transfer of Business (Protection of Employment) Regulations Legal Notice 433 of 2002 amended by L.N. 427 of 2007; L.N. 195 of 2010; L.N. 129 of 2011; L.N. 443 and 443 of 2011; L.N. 363 of 2012; L.N. 483 of 2014; L.N. 285 of 2017
Native name	Att dwar L-Impiegi u r-Relazzjonijiet Industrijali (Kap 452 tal-Ligijiet ta' Malta); Regolamenti dwar Trasferiment Avviz Legali 433 tal-2002, kif emendat bl-Avviżi Legali 427 tal-2007, 195 tal-2010, 129 u 443 u 467 tal-2011, 363 tal-2012, 483 tal-2014, u 285 tal-2017
Type	Employment protection in relation to business transfers
Added to database	05 December 2016
Access online	Click here to access online

Article

Article 38 of the Employment and Industrial Relations Act; Transfer of Business (Protection of Employment) Regulations, Legal Notice 433 of 2002 as amended by Legal Notices 427 of 2007, 195 of 2010, 129 and 443 of 2011, 363 and 467 of 2012, 483 of 2014, and 285 of 2017 - whole regulation

Description

Article 38 of the Employment and Industrial Relations Act stipulates that the transferor and the transferee shall inform the employee representatives of their respective employees affected by the transfer with:

- the date or proposed date of the transfer;
- the reasons for the transfer;
- the legal, economic and social implications of the transfer for the employees; and

- the measures envisaged in relation to the employees.

In the Transfer of Business (Protection of Employment) Regulations, the term 'transfer' is defined as a transfer of an undertaking which retains its identity as an organised group of resources but includes a change in service provision. Outsourcing of activities, insourcing of activities as well as a change in the contractor who carries out the previously outsourced activities of the business constitute a change in service provision.

Legal Notice 433 of 2002 as amended defines the transferee as the natural or legal person which becomes the employer in the event of a transfer, while the transferor refers to any natural or legal person which ceases to be the employer in the event of a transfer. Thus, the undertaking is transferred from the transferor to the transferee in the event of a transfer.

After a transfer, the contract of employment of each person employed by the transferor shall have effect as if originally made between the person so employed and the transferee. On the completion of a transfer, all the transferor's rights powers, obligations and liabilities under or in connection with any contract of employment shall be transferred to the transferee.

The Regulation (Legal Notice 433 of 2002) provides protection for the employees transferred by stipulating that the transferor shall effect payment and settle any dues owed to the employees affected by the transfer in relation to the employment relationship with the transferor in respect of any wages, pro rata bonuses and weekly allowances due up to the end of the relationship with the transferor, by the next pay date falling immediately after the transfer of the undertaking or part of the undertaking which would have been the next pay date had the employees concerned been still in an employment relationship with the transferor.

Legal Notice 433 of 2002 states that article 38 of the Employment and Industrial Relations Act applies to both partial and whole business transfers, providing that the economic entity being transferred retains its identity, with the objective of pursuing an economic activity.

However, article 38 only applies to businesses that employ more than 20 employees. Both full-time and part-time employees are factored in. The Employment and Industrial Relations Act defines an employee as 'any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or service performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service'.

As stated in Legal Notice 433, the transfer of the business, whether partial or whole, does not constitute sufficient grounds for either the transferor or the transferee to make employees redundant. According to article 38 of the Employment and Industrial Relations Act, in the event of a business transfer, a previously agreed upon collective agreement still remains valid and in force until its expiry or until a new collective agreement is made with the transferee. Thereby, the terms and conditions set out in the collective agreement concerning the employment relationship still apply after the transfer. This does not apply, however, if the transferor is in a state of insolvency.

According to Legal Notice 433, after the transfer, employment contracts made between the previous employer, the transferor, and the employees shall be upheld in their original form with the new employer, the transferee. The Legal Notice does not distinguish between permanent and fixed-term contracts. When the transfer is completed, the transferor's rights, powers, obligations and liabilities related to any employment contract are passed on to the transferee. In addition, the transferee is obliged to re-employ employees that were made redundant prior to the transfer, if their previous posts become available within one year from the notice of redundancy. This applies if their still being employed at the time of the transfer would have led to them being transferred into the employment of the transferee. In such cases, the re-employment should be enacted with the same conditions of employment that the employees enjoyed in their previous posts.

Commentary

Legal Notice 273 of 2018, which was published on 14 August 2018 and which included a provision specifying that the employment conditions of an undertaking's affected employees shall remain unchanged in the course of transfer negotiations, has not as yet entered into effect because it was suspended by the Prime Minister given strong contestation by employers. This legal notice (which proposed amendments to the principal regulations discussed above: the Transfer of Business (Protection of Employment) Regulations), together with another three, were not put forward to the Employment Relations Board for discussion as per law but were published without any consultation whatsoever. Discussions on amendments to Legal Notice 273 of 2018 were still ongoing at the Employment Relations Board as of 9 August 2019. As of December 2023, it is still not in force.

Additional metadata

Cost covered by None

Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: 21 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Malta: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Netherlands

Employment protection in relation to business transfers

Phase	Law on business transfers in civil code; Collective labour agreements act; Works council act; Act on declaring a collective agreement binding
Native name	Wet Overgang Ondernemingen in Burgerlijk Wetboek; Wet op de collective arbeidsovereenkomst; Wet op de Ondernemingsraad; Wet op de Algemeen Verbindend Verklaring
Type	Employment protection in relation to business transfers
Added to database	27 September 2016
Access online	Click here to access online

Article

Section 7: 662-665, 6:248, 6:258 of the Civil code; article 14a of the Collective labour agreements act; article 25, 26, 31, 35 of the Works council act; article 2a of the Act on declaring a collective agreement binding

Description

Business transfers in Dutch law

The Dutch legislation on business transfers is based on the EC Directive PbEg 5 March 1977/L61/26), replaced by Directive 2001/23 of 12 March 2001. These directives concern the maintenance of the rights and obligations arising from the employment contract at the time of the transition. From that moment on, the previous employer is jointly liable for one year. The Dutch legislation on business transfers also concerns the rights and obligations arising from company-related employment conditions and the Collective labour agreement (CAO in Dutch).

Dutch law defines a transfer of undertaking in line with decisions of the European Court of Justice (ECJ) and of the Dutch courts. In the *Spijkers/Bendik/Abattoir* case in 1986, the ECJ held that the identity of the enterprise must be preserved for a transfer of undertaking to have occurred. Dutch case law states that at least the main activities of the undertaking should be transferred, and the seven principles outlined by the ECJ shall be utilised to determine, if an enterprise has retained its identity. Moreover, the determination of what is considered an 'economic entity' is aided by an examination of the following elements:

- the enterprise must be an organised whole consisting of persons and business assets which have the objective of pursuing an economic activity;
- entrepreneurs who are engaged in a joint activity may be regarded as an economic entity even if the enterprise has no significant assets (e.g. not-for-profit organisations);
- the relevant provisions of the Civil code do not apply if a single activity of the business is continued without any of the employees and/or assets being transferred;
- if all the employees of an enterprise who independently perform a specific activity, for example, cleaning or kitchen staff, are transferred, this can constitute a transfer of undertaking under certain circumstances;
- if a substantial proportion, in size and expertise, of the staff was hired by the transferor for a specific activity and this group carried out this shared activity over a period of time, the transfer of this activity may constitute the transfer of an undertaking, even without the transfer of assets.

The transfer of stock alone will not count as a transfer of undertakings. Moreover, insolvent companies are also exempt from such obligations. Since the ruling of the ECJ of 22 June 2017 on *FNV/Smallsteps* about the pre-pack system, companies agreeing on business transfer prior to being declared bankrupt should be considered not-bankrupt in the context of employee protection (see also comments under '[Rescue procedures in insolvency](#)'). From 10 October 2017 and onwards, seagoing vessels that are part of the transition of a company are no longer excluded.

Partially transferring businesses and employee's rights

The main objective of the Law on business transfers is to protect the position of employees when the enterprise in which they work is transferred to another owner or entrepreneur. As a rule, changing the terms of employment requires the employee's consent. The law is also applicable if not the whole company, but just one or more departments are transferred. A condition for the applicability of the law when a component of an enterprise is transferred is that it has to be determined that 'durable economic activity is being transferred'. Relevant factors in determining the applicability in these cases are:

- the nature of the activities that are to be transferred;

- whether or not material assets have been transferred;
- the value of any immaterial assets that are being transferred;
- whether or not the transferred activities are the same before and after the transfer;
- whether or not the activities have been interrupted due to the transfer and, if so, the length of the interruption.

These factors cannot be seen independently but are rather judged as a whole in determining whether a company's component has been transferred in such a way that activities can be continued.

Employee's rights

Whenever the Law on business transfers is applicable, it entails that employees retain their rights and duties when they work for their new employer after the business is transferred. As mentioned, changing the terms of employment requires the employee's consent. There is some room for unilateral amendment clauses. Furthermore, the standards set by Civil code 7: 611 for good working practices for employers and employees should be considered. Finally, the Civil code sets (general) limits regarding reasonability and fairness and unforeseen circumstances.

Under article 25 of the Works council act, an employer is obliged to give the works council the opportunity to advise on each proposed decision concerning, for example, a significant change in the organisation, a change in the allocation of internal powers, or a transfer of control of part of the enterprise or a part of it. If the employer does not follow the advice given by the works council, it must suspend the implementation of the proposed plan for a month or until the works council has agreed to the measures. Furthermore, the Works council act sets rules on information provision and the possibility for a works council to go to court.

All employees are considered to be protected in the transfer, including those on leave or currently inactive. However, civil servants, former employees, and temporary or contracted workers are not considered employees for the purpose of this regulation. If a single department of a company is transferred, only the employees whose primary activities are performed within that department will be considered.

Employees are not obliged to agree to the transfer, however, if they object, it will be considered as a notice of employment termination by the employee.

All terms and obligations included in the employment contracts agreed upon by the employee and transferor must carry over to the transferee. This includes most benefits. However, the transferee can argue that justifiable conditions prevent certain

benefits from transferring. Dutch law allows minor amendments to be made to employment contracts, but only with the express agreement of the employee. If negotiations in this regard result in the employee accepting a contract which is less beneficial than what was offered by their previous employer, the onus is on the transferee to prove that no pressure was placed on the employee. In all other circumstances changes to the employment contract will be void.

Accumulated pension rights and business transfers Under section 7: 664 of the Civil code, existing pension schemes must remain in force after a transfer of undertaking. However, the following situations can occur:

- The transferor's enterprise does not have a pension scheme and the transferee's does. In that case, the pension scheme of the transferee automatically applies to the transferred employees.
- The transferor's enterprise has a pension scheme, and the transferee's does not. In that case, the transferee is obliged to continue with the pension scheme of the transferor, but only for employees who were transferred.
- The transferor's and the transferee's enterprises both have a pension scheme in place. If the transferee offers the transferred employees the same pension scheme as it has offered to its own employees before the transfer, the transferee's pension scheme applies to all employees, regardless of the possibility that the former pension scheme was more beneficial.

The transferee and transferor are jointly liable for all rights and obligations arising from employment contracts for a period of one year following the transfer. The transferor is relieved of such obligations following this period. According to article 14a of the Collective labour agreements act, all rights and obligations pursuant to a Collective labour agreement (CLA) are transferred until the date of its expiry. However, if the transferee enters into a new CLA prior to this date, or if the CLA is declared 'generally binding' by the Minister of Social Affairs, then the CLA of the transferee will apply to the transferred employees.

Commentary

The Law on business transfers is seen, by some employer organisations, as hampering economic activities, as business transfers are made significantly more difficult when employers are bound to evaluate the risk of taking on new employees and their contractual conditions. This regulation is said to be conducive to bankruptcies, especially in cases in which businesses are transferred from a failing company to a more successful enterprise.

As included in '[Rescue procedures in insolvency](#)', the ECJ ruling on FNV/Smallsteps creates a rather unclear situation for business using pre-packs and for businesses that did so in the past.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Employer organisation Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Netherlands: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Norway

Employment protection in relation to business transfers

Phase	Working Environment Act
Native name	Arbeidsmiljøloven
Type	Employment protection in relation to business transfers
Added to database	27 September 2016
Access online	Click here to access online

Article

16-1 to 16-7

Description

The definition of the term 'undertaking' (or part thereof) is in line with that of the European Court of Justice (ECJ). This means that in order for Norwegian legislation to apply, the unit being transferred must be independent from an economic and organisational point of view. This implies an organised group of people and assets which enable the unit to be involved in economic activities. Moreover, Norwegian law uses the seven indicators as defined by the ECJ to decide whether a transfer of undertaking has occurred. These are:

- whether tangible assets have been transferred,
- the type of business or undertaking concerned,
- the value of intangible assets at the time of the transfer,
- whether the majority of employees are retained,
- whether customers are transferred,
- the similarity between the activities,
- the duration of any interruption in the performance of the activities.

These rules do not apply in cases of the purchase of insolvent enterprises or if a change in stocks or shares equate to a technical change in ownership.

All employees (both those on permanent and fixed-term contracts, including those inactive through sickness or maternity leave) are covered by the legislation. However, the employment relationship must be fixed, and therefore consultants and subcontractors are not covered. The existence of an employment relationship is settled in accordance with §1-8 of the Working Environment Act, which states that a person who performs work in the service of another is an employee and thereby covered by the act. Further criteria are developed through case law and suggest that the person must be in a subordinate position, or otherwise owe a personal obligation to work. In cases where only a section or part of an enterprise will be transferred, those employees who are necessary to keep the transferring business operational will transfer.

Employees are entitled to invoke their 'right of reservation' and object to the transfer, however they must do so in writing within a time limit set by the employer. The time limit cannot be shorter than 14 days after the employer has informed their employees of the transfer. In some cases, if the transfer leads to 'not insignificant' negative changes for the employee, he/she may also choose to stay with the former employer. Invoking this right will, however, imply a risk of being redundant if there are no positions available. If an employee has worked a total of at least 12 months during the two years prior to the transfer, he/she has a preferential right to a new appointment with the transferor should such a position become available within one year of the transfer.

All rights and obligations involved in the employment agreement between the transferor and transferee must be upheld after the transfer. This includes benefits and pension rights.

Collective agreements are also transferred. If the company wishes to change such rights it must inform the unions no later than three weeks after the transfer. If the collective agreement is not transferred, the employees have the right to retain their individual rights following from the collective agreement until the agreement expires or another collective agreement is concluded.

All other changes to individual employment contracts, including potential dismissal, must not be made in connection with the transfer. If such changes can be proved to be in direct relation to such, the changes and/or dismissal will be considered invalid and the employer will be liable for damages owed as well as renewal of any contracts which were illegally dismissed.

Commentary

In order to decide whether a transfer is covered by these regulations, European Court of Justice (ECJ) case law will be of great importance. However, it is worth noting that case law

to a certain degree gives the employees stronger protection than stated in the EU legislation, as the employee in certain situation may have the right to stay with the former employer.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Norway: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Poland

Employment protection in relation to business transfers

Phase	Act of 26.06.1974 -Labour Code; Act of 23.05.1991 on Trade Unions; Act of 5 July 2018 on the succession management of a natural person enterprise
Native name	Ustawa z 26.06.1974 -Kodeks Pracy; Ustawa z dnia 23.05.1991 o związkach zawodowych; Ustawa z dnia 5 lipca 2018 r. o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej
Type	Employment protection in relation to business transfers
Added to database	27 September 2016
Access online	Click here to access online

Article

Article 23(1) of the Labour Code; Article 26(1) of the Act on Trade Unions; Article 31 of the Act on the succession management of a natural person enterprise

Description

There is no formal definition of a transfer, however, it has been developed by case law and the understanding is that a transfer occurs when, as a result of certain legal actions, tasks and/or assets are taken over by another entity. An undertaking (or part thereof) is understood as a place of work for the employee. When ownership has changed by a sale of shares alone, this will not be considered a transfer, according to the law.

The law protects all persons considered 'employees' without difference between those on permanent contracts and fixed-term contracts, including those inactive due to maternity or sick leave. However, those persons who work for a company de facto but are employed by another entity are not covered (e.g. temporary workers, seconded staff etc.).

As a result of the transfer, the transferee becomes, by operation of law, a party to the employment contracts made between the transferor and employee. Moreover, the

transferee must also agree to all obligations agreed to in collective agreements (for a period of one year), and agreements regarding employee benefits. Although there has yet to be a case to establish formal precedence, it is understood that pension obligations are also transferred.

The transferee also becomes responsible for all liabilities concerning employment, or in the case of partial transfers, for the liabilities arising from the staff which were involved in the transfer. In both cases, however, the transferor remains jointly liable for obligations which arose prior to the transfer.

If the transferee wishes to make amendments to individual or collective employment contracts, they must initiate the 'notice of alteration of terms of employment' as regulated in law. However, in no circumstances can the transfer alone be sufficient reason to change the terms outlined in the contracts.

The situation of employees in an enterprise owned by an entrepreneur - a natural person - after the death of the owner can be considered as a specific kind of business transfer. In the past, the death of the owner led to automatic termination of the enterprise, including expiration of contract with all employees. Under the new legislation (the act came into force on 25 November 2018), it is possible for the enterprise to continue its existence, for example by introduction of temporary transition-period management. Also the rights of the spouse and/or heirs of the deceased entrepreneur are strengthened. The new act allows to use the legal company name with the addition of 'inheritance' by heirs of the owner from the day of opening the legacy to the day of division of legacy. As a result, this indirectly improves the situation of workers as regards possibility to continue working.

Commentary

Since 1 March 2017, a new technical identicode '800' (to be sent by the employer to the Social Insurance Institution - ZUS) has been introduced which should be used when an employer decides to terminate a worker's social security due to a transfer. This will allow the Social Insurance Institution to be aware of the transfer, to monitor the movement of workers and to keep up with the regularity of payers' duties. It is too early to assess the effectiveness of introducing this identicode in light of employees' rights.

Additional metadata

Cost covered by

Not available

Involved actors other than national government	Other
Involvement (others)	Social Insurance Institution (ZUS)
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Poland: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Portugal

Employment protection in relation to business transfers

Phase	Labour code (transfer of undertaking) amended by Law 14/2018 of 20 March (Changes the legal regime applicable to the transfer of business or establishment and reinforces the rights of workers, making the 13th amendment to the Labour Code)
Native name	Código do Trabalho (Transmissão de empresa ou estabelecimento), alterado pela Lei 14/2018 de 20 de março (Altera o regime jurídico aplicável à transmissão de empresa ou estabelecimento e reforça os direitos dos trabalhadores, procedendo à décima terceira alteração ao Código do Trabalho)
Type	Employment protection in relation to business transfers
Added to database	27 September 2016
Access online	Click here to access online

Article

Labour Code - Articles 285, 286, 287, 394, 498

Description

According to the Labour Code, a transfer includes any change of ownership of a company, undertaking or part of an undertaking that constitutes an economic unit. An assignment or even a re-assignment back to the transferor of the company's activities (or of the undertaking or the economic unit activities) is also considered to be a transfer.

Upon transfer, the transferee becomes the employer and all rights and obligations under the employment contract transfer to the new employer, including the responsibility for the payment of fines for breach of regulations of the labour code, as well as any obligations that have become due up to the date of the transfer.

The legal provisions related to transfers of undertakings protect employees. However, they do not apply to employees who have already been moved or are to be moved prior to the transfer date to another undertaking or part of the undertaking that is considered to be a separate economic unit. These employees will continue to be deemed employees of the transferor.

Rights and obligations under any applicable collective agreement transfer in the same way as described above. If the transferred employees are covered by a collective labour agreement (CLA), this must be adopted and remain in place for a minimum of one year after the transfer, or until expiry of the contract. An employer cannot unilaterally alter the terms of such an agreement, and if the employer wishes to make changes it must be agreed upon with trade unions through normal procedures.

The transferor and the transferee shall inform the respective worker representatives or, in their absence, the workers themselves on the date and reasons of the transfer, its juridical, economical and social consequences for the workers and the planned measures. This information must be provided in written form before the transfer in due time, at least ten days prior to the consultation of the worker representatives.

The transferor and the transferee shall consult the respective worker representatives, before the transfer, in order to get an agreement on the measures to be applied to the workers following the transfer.

On 20 March 2018, Law No. 14/2018 entered into force and amended Portuguese regulations on transfers of undertakings (articles 285-287, 394 and 498 of the labour code). The most significant changes are the following:

- The right to oppose changing of employers. The worker is free to choose between the termination of his/her employment contract with just cause and the right to compensation (similar to the one established for collective dismissals) or to maintain the employment contract with the transferee. The employee shall justify his/her decision on a serious harm, for example, an evident lack of solvency or the difficult financial situation of the transferee, or the lack of trust in the transferee's work organisation policy. This is likely to increase labour litigation. This may also entail some disruptions in the purchase and sale of economic units, because it will be difficult to define which workers will be transferred to the new owner or manager of the economic unit.
- The obligation to disclose the content of the transfer contract between the transferor and the transferee to the labour inspectorate, to the employee representatives and the affected workers.

- In the absence of employee representatives, the affected workers may appoint an ad-hoc commission to intervene in the transfer of undertaking procedure for information and consultation.
- For a 2-year period following the transfer of undertaking, the transferor is jointly liable for any labour-related entitlement past due up to the transfer of the undertaking.
- In the absence of a new collective labour agreement applicable to the transferee, the effects of the former collective labour agreement will be maintained.

Commentary

No information available.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union Works council Other Employer organisation
Involvement (others)	Labour inspectorate
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Portugal: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Romania**Employment protection in relation to business transfers**

Phase	Law no. 67/2006 regarding the transfer of undertakings, businesses, or parts of undertakings or businesses, published in the Official Gazette of Romania, no. 276 of 28 March 2006
Native name	Legea nr. 67/2006 privind protectia drepturilor salariatilor in cazul transferului intreprinderii, al unitatii sau al unor parti ale acestora, publicata in Monitorul Oficial al Romaniei, nr. 276 din 28 martie 2006
Type	Employment protection in relation to business transfers
Added to database	16 December 2016
Access online	Click here to access online

Article

5, 7, 9

Description

According to the Law no. 67/2006 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, all the rights and obligations resulting from the employment contracts and the collective agreement are transferred to the new employer in the event of a business transfer. All employees benefit from this rule, regardless of whether they have a fixed-term or an open-ended employment contract.

The law defines a business transfer as the transfer of an undertaking, business or parts thereof from the ownership of the transferor to the ownership of the transferee, with the aim of continuing the main or ancillary activity, whether or not they are operating for gain. However, this does not apply if the former employer is in a state of insolvency.

A business transfer, whether it is a part of or the whole business that is being transferred, does not warrant grounds for dismissal of employees (i.e. persons employed on an individual employment contract) neither from the side of the former, nor of the new employer. As such, the simple fact that the company has changed its owner does not justify dismissals being made, either before or after the transfer. The law does not prohibit dismissal by reference to a specific period of time, but instead by reference to the reason of the dismissal: the reason cannot be the transfer itself. Certainly, dismissals can be made, but only on other grounds, namely one of the reasons for dismissal related to the individual employee.

The transferee has the obligation to observe the provisions of the collective agreement applicable at the date of the transfer, until the date of termination or expiry of the collective agreement. By agreement between the transferor and the representatives of employees, the terms and conditions of the collective agreement in force at the time of the transfer may be renegotiated, but not earlier than one year from the date of the transfer. In the event that, following the transfer, the undertaking, business or parts thereof do not preserve their autonomy and the collective agreement applicable at the level of the transferee is more favourable, the more favourable collective agreement shall be applied to the transferred employees. This is the only case in Romanian legislation when two collective agreements may be in force simultaneously at the same undertaking.

Commentary

Law no. 67/2006 transposes the [Council Directive 2001/23/EC](#) of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

The Romanian law defines the transfer as a change in ownership from the hands of the transferor to those of the transferee. The reference to 'ownership' may be regarded as restrictive in relation to the definition in the Directive, since the transfer of an undertaking to another employer would not necessarily also mean a transfer of ownership. Indeed, although an agreement for transferring the ownership is the most common reason for the transfer of an undertaking, there exist other contracts (for example lease agreements), which could establish such a transfer and render the protective rules laid down in the Directive applicable.

Additional metadata

Cost covered by Not available

Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Romania: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Slovakia

Employment protection in relation to business transfers

Phase	Labour Code
Native name	Zákonník práce
Type	Employment protection in relation to business transfers
Added to database	27 September 2016
Access online	Click here to access online

Article

27, 28, 29, 29a and 31

Description

Under [Slovak law](#) a transfer legislation applies when there is a transfer of:

- an economic unit
- an employer's task or activity or part thereof.

An 'economic unit' is defined as a 'unit which retains its identity as an organised configuration of resources (tangible, intangible and human resources) and that performs economic activities, regardless of whether these activities are significant or ancillary'. The main characteristic of an economic unit is that it is able to continue to perform the activity after it has been transferred to another employer. This definition reflects that of the case law of the European Court of Justice. When deciding whether a transfer has occurred, all circumstances indicating business continuation must be taken into account: the transfer of assets, customers and contracts, the activity performed (or part of any of the above, if they are capable of independent activity) and so on.

Slovak law provides protection for all employees of the transferor at the time of the transfer, or those employees employed by the transferor who are affected by the transfer (in the case of a partial transfer). The protection does not extend to those temporarily

seconded to the transferor. Although there is no specific sanction for a failure to consult; if any of the rights and obligations outlined in the Labour Code are breached, the Work Inspectorate can impose a fine of up to €33,193.92.

Employees are not entitled to object to their transfer, so long as the obligations by both transferor and transferee were met. The employee is also not obliged to continue to work for the transferee, and may resign as stipulated in normal practice.

The transferee assumes all rights and responsibilities in regards to employment contracts agreed upon by the transferor and employees. If the transfer causes unavoidable changes to the working environment, and the employees do not agree to such change, their employment must be terminated. In such cases the employee is entitled to severance pay (equal to two or three months salary depending on the duration of service as carried forward from the previous employer).

Pension rights and other benefits are also transferred by way of the transfer. If the transferee cannot provide the benefits previously agreed upon, then it is recommended that commensurate compensation should be provided to the transferred employees, however this is not subject to sanction.

The rights and obligations arising from collective agreements will also be assumed by the transferee for its full duration. Such agreements cannot be unilaterally changed and both parties must agree to any changes.

Commentary

Though the legislation requires to keep the employment relationships and working conditions, according to the trade unions, some employers try to avoid this in practice by encouraging employees to sign new employment contracts with modified terms of employment.

Additional metadata

Cost covered by	None
Involved actors other than national government	National government
Involvement (others)	None

Thresholds

Affected employees: No, applicable in all circumstances

Company size: No, applicable in all circumstances

Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Slovakia: Employment protection in relation to business transfers,
Restructuring legislation database, Dublin

Slovenia

Employment protection in relation to business transfers

Phase	Employment Relationship Act (ZDR-1)
Native name	Zakon o delovnih razmerjih (ZDR-1)
Type	Employment protection in relation to business transfers
Added to database	16 December 2016
Access online	Click here to access online

Article

75 and 76

Description

In the event of a business transfer the rights and obligations arising from the employment contracts (both permanent and fixed-term contracts) with the transferor employer will be transferred to the new employer (transferee employer), whether the business transfers concerns a part of a company or a whole company. A business transfer is a 'legal transfer of an undertaking or part of an undertaking carried out on the basis of an act, another regulation, a legal transaction and/or a final court decision, or due to a merger or division' (ZDR-1, article 75, paragraph 1).

The collective agreement established prior to the business transfer will continue to apply for at least one year after the transfer, unless the collective agreement is set to expire before that, or if a new collective agreement is drawn up before the one-year mark.

An employee is defined as 'any natural person who has entered into an employment relationship on the basis of a concluded contract of employment' (ZDR-1, article 5). If the rights of the employees are weakened, or if the working conditions are significantly altered within two years of the transfer and the employee for this reason chooses to terminate the employment relationship, the employee is entitled to the same rights as if the employer had dismissed the employee for business reasons. This includes the notice period, the

right to severance pay and other rights associated with seniority of the position. In this case the years of service with the transferor employer and the transferee employer have to be taken into account and the transferor employer and the transferee employer are jointly liable for claims of these employees.

The majority owner of the transferor employer (holding more than a 25% share of the company's capital or at least 25% of voting rights) is jointly liable for claims of workers in the event of bankruptcy or compulsory winding-up of the transferee if this is initiated within two years after the transfer. The transferor employer's liability correlates with the years of service of a particular worker with the transferor employer. Other non-majority owners are subsidiarily liable for the claims of the transferred workers.

If an employee refuses to be transferred to the transferee employer, the transferor employer may extraordinarily cancel the employment contract. In this case the employee has no right to a notice period, severance pay, and unemployment benefits.

The transferor employer and the transferee employer are obliged to inform the trade union (or all workers if there is no company trade union) at the employer at least 30 days prior to a transfer of the following:

- the date or the proposed date of the transfer,
- the reasons for the transfer,
- the legal, economic and social implications of the transfer for workers, and
- the measures envisaged for workers.

The both have to consult the trade union about the third and fourth issue with the intention of achieving an agreement.

Commentary

According to the Parliamentary Committee, the ability to change of employer turned out to be a tool for various misuses: workers were transferred from the primary company to a so called 'letterbox company' without assets with the purpose of evading employer's liabilities towards employees. After the completion of the transfer, the letterbox company went bankrupt and workers were left without wages and severance pay because the company had no assets they could sell that would enable them to pay off the claims of the employees. Transferred workers were often old and/or disabled workers with large claims due to their seniority status. Trade unions and media significantly contributed to raising public awareness on this issue. The extension of rights of transferred employees (the right to terminate the employment contract if working conditions were significantly altered within the period of two years) and the joint liability of the transferor employer and the

transferee employer in 2013 successfully terminated such practices.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union Other
Involvement (others)	Transferor employer, transferee employer
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Slovenia: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Spain

Employment protection in relation to business transfers

Phase	The Spanish 'Workers Statute' / Law 12/2001 on urgent measures to reform the labour market for increasing employment levels and the improvement of the quality of work
Native name	Estatuto de los Trabajadores / Ley 12/2001, de 9 de julio, de medidas urgentes de reforma del mercado de trabajo para el incremento del empleo y la mejora de su calidad
Type	Employment protection in relation to business transfers
Added to database	27 September 2016
Access online	Click here to access online

Article

Article 44 of the Spanish 'Workers Statute' modified by article 2 of Law 12/2001 for the improvement of the quality of work

Description

Spanish legislation only applies to transfer of undertakings if the transfer affects an economic entity that retains its own identity and autonomy. Accordingly, a change of ownership (e.g. merger) which changes the employer's legal entity does not fall within the definition of business transfer. Outsourcing is also excluded from the framework of transfers of undertaking, except in instances where the new employer acquires the basic infrastructure.

The economic entity must consist of an organised group of means aiming to carry out an economic activity, whether essential or auxiliary, and must have autonomy in terms of conducting its own activities. Under Spanish law, two specific factors must be shown in order to trigger such rules. These are:

- the objective factor: the tangible delivery of all the elements which are essential to enable the undertaking to continue to operate, and
- the subjective factor: the substitution of the old employer for the new one. It is not necessary that there is a contractual relationship between them.

If the transfer involves the transfer of labour contracts alone, the rules will not apply. In such cases the explicit consent of the employees is required, not of their representatives.

In general, all employees are covered under the legislation. According to the Statute of Workers, employees are 'employed workers that carry out a voluntary and remunerated labour activity within an organisation and under the direction of another (natural or legal) person, named employer'. However, it is unclear if this extends to apprentices and seconded employees.

All obligations enshrined in the employment contract (both permanent and fixed-term contracts) are transferred to the new employer without change, including benefits and pension contributions as agreed. Employees on temporary contracts are entitled to the same rights and benefits as permanent employees. Moreover, the transferee is also liable for all debts incurred by the previous owner, particularly those arising from employment claims.

If the employees are covered by a collective agreement, this agreement will remain in place until it expires, or until a new agreement can be reached with unions.

Commentary

Article 44 of Spanish Workers Statute transposed the European Directive 2001/23/EC. It provides that, in case of transfer of undertaking, the contract will not be cancelled and the new employer will be liable with regard to the contractual obligations. Moreover, if employees are covered by a collective agreement, this agreement will remain in place until it expires, or until a new agreement can be reached with unions.

In the pre-crisis period, most juridical and case law debates focused on those cases where it was needed to analyse if the undertaking, business or part of an undertaking preserved its autonomy, as a result of the different implications provided in the law and the Directive 2001/23/EC. If autonomy is preserved, the status and function of the representatives or of the representation of the employees affected by the transfer shall be preserved on the same terms and subject to the same conditions as existed before (Article 44.5 Spanish Workers Statute).

During the Great Recession, however, common transfers of undertakings were replaced by transfers involving companies facing economic problems. Due to those circumstances, in recent years the courts have detected cases whereby transfers of undertakings were declared void for being assessed as fraudulent transfers aiming to reduce the workforce. In some cases, the courts have declared void collective dismissals implemented before the transfer. In other cases, the courts declared void the dismissals or modification of working conditions implemented after the transfer.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Spain: Employment protection in relation to business transfers, Restructuring legislation database, Dublin

Sweden

Employment protection in relation to business transfers

Phase	Employment protection act (1982:80); Co-determination act (1976:580)
Native name	Lag (1982:80) om anställningsskydd; Lag (1976:580) om medbestämmande i arbetslivet
Type	Employment protection in relation to business transfers
Added to database	27 September 2016
Access online	Click here to access online

Article

6b in the Employment protection act; 28 in the Co-determination act

Description

When transferring a business, the rights and obligations stipulated in the employment contract applicable at the time of transition are also transferred to the new employer. The rules apply in case of:

- a transfer of an economic entity or part of an economic entity which retains its identity (e.g. the sale of a business), or
- a 'service provision change' (such as contracting activities out, bringing them in-house, or a change of contractors).

Swedish law uses the seven indicators identified by the European Court of Justice to determine when a retention of identity has taken place. These are:

- whether the majority of the employees have been maintained (employees are defined as all workers who have some form of employment contract with an employer, regardless of whether it is a public-sector or a private-sector employer),
- the type of business or undertaking concerned,

- the similarity between the activities (retention of identity),
- whether customs are transferred,
- the duration of any interruption in the performance of the activities,
- whether tangible assets have been transferred, and
- whether intangible assets have been transferred.

Sweden expands the commonplace understanding to include public bodies and government services.

In terms of service provision change, the legislation applies if, before the change, there is an organised grouping of employees with the purpose of carrying on the activities. A single employee may constitute such a grouping. Activities not normally included are 'one-off' buying-in of services, a contract for short-term services, and activities mainly related to the supply of goods to the business.

The legislation protects all employees (including those on temporary contracts) employed by the undertaking that is being transferred. The rights and obligations provided for in their employment contracts are also transferred. This includes accrued benefits but not pension rights, unless agreed upon by a collective agreement. The basic rule is that no detrimental changes may be made to the position of the employee. However, minor changes to individual contracts may be made, given the consent of the employee.

An employee has the right to object to a transfer and must then inform the transferor in writing. If the employee objects, he or she will remain in contractual agreement with the transferor. If the transferor can no longer provide the employee with employment, then the transferor must initiate dismissal measures as standard.

If the transferor is bound by a collective agreement and the transferee is not, the terms of such agreement will be applicable for the whole of the transferee's enterprise. However, if the transferee is already subject to a collective agreement, then it is this agreement that will apply to the employees, subject to a probationary period of one year or until its expiry.

Commentary

Collective agreements are also transferred to the new employer, unless the employer is already bound by a collective agreement.

Additional metadata

Cost covered by None

Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2016), Sweden: Employment protection in relation to business transfers, Restructuring legislation database, Dublin