

Social Protection of Employees

Traditional part of the EU social policy regulated since 1970s. Most of the measures were adopted in so called golden age of the European labour law.

The protection of employees in the event of

- 1) transfer of undertaking
- 2) insolvency of their employer
- 3) collective redundancies (dismissals)

1. Transfers of Undertakings

Council Directive 2001/23/EC 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. It replaced the former Directive 77/187.

Scope of Application:

a) Material scope of application includes any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger.

Transfer - a transfer of an economic entity which retains its identity, meaning an organised grouping of resource which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

b) Personal scope of application includes public and private undertakings engaged in economic activities whether or not they are operating for gain.

The directive excludes from its scope of application an administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities,

c) Local scope of application

This Directive shall apply where and in so far as the undertaking, business or part of the undertaking or business to be transferred is situated within the territorial scope of the Treaty. It shall not apply to seagoing vessels.

Prohibition of exclusion from the scope of application on the grounds of:

- Existence of part-time contract or employment relationship
- Existence of fixed-term employment contract
- Performing of temporary work

The rights of employees arising from employment contracts or employment relationships shall be safeguarded, transference of rights and duties to another employer.

2. Employer's Insolvency

Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer replaced the previous directive (80/987)

Scope of Application:

Employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency

State of insolvency - where a request has been made for the opening of collective proceedings based on insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a Member State, and involving the partial or

total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and the authority which is competent pursuant to the said provisions has:

- (a) either decided to open the proceedings; or
- (b) established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.

Terms employer, employee, remuneration shall be defined in national law

Prohibition of exclusion of employees with:

- fixed-term contract,
- part-time contract and
- temporary contract

The Member States have obligation to establish an institution that guarantees outstanding claims of employees resulting from contracts of employment or employment relationships including severance pay on termination of employment relationship.

3. Collective Redundancies

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies replaced the Directive 75/129/EEC

Collective redundancies means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

(i) either, over a period of 30 days:

- at least 10 in establishments normally employing more than 20 and less than 100 workers,
- at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers,
- at least 30 in establishments normally employing 300 workers or more,

(ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

Exclusion from the Scope of Application

- Redundancies effected under employment contracts for fixed-term, except where such redundancies take place prior to the date of expiry or the completion of such contracts
- Employees of public authorities bodies or establishments governed by public law
- The crews of seagoing vessels

The directive lays down the procedure for consultation of workers' representatives and the procedure for information of the state authority.