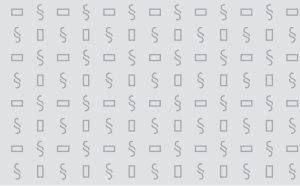




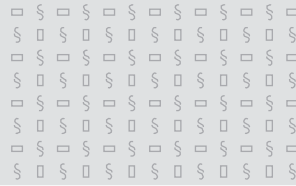
MASARYK UNIVERSITY FACULTY OF LAW

Collective Redundancies
Insolvency of the Employer
Transfer of Undertakings



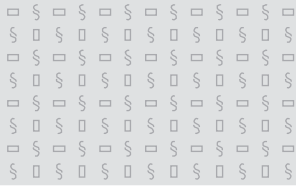
Collective Redundancies

- European Labour Law doesn't regulate termination of the employment contract.
- Provides only protection in case of collective dismissals.
- Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies



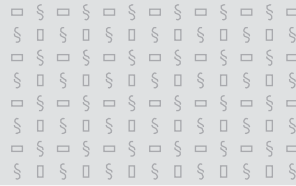
Collective Redundancies

- Collective redundancies: 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:
 - 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,
 - or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;



Collective Redundancies

- Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time with a view to reaching an agreement.
- To enable workers' representatives to make constructive proposals, the employers shall in good time during the course of the consultations:
 - supply them with all relevant information and
 - in any event notify them in writing of:
 - the reasons for the projected redundancies;
 - the number of categories of workers to be made redundant;
 - the number and categories of workers normally employed;
 - the period over which the projected redundancies are to be effected;
 - the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;
 - the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.



Collective Redundancies

- Employers shall notify the competent public authority in writing of any projected collective redundancies.
- This notification shall contain all relevant information concerning the projected collective redundancies and the consultations with workers' representatives, and particularly:
 - the reasons for the redundancies,
 - the number of workers to be made redundant,
 - the number of workers normally employed and
 - the period over which the redundancies are to be effected.
- Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days
- The period shall be used by the competent public authority to seek solutions to the problems raised by the projected collective redundancies.
- Case Law Presentation: C-229/14 Balkaya



C-229/14 Balkaya

- Is applicable EU law ... to be interpreted as precluding national legislative provisions or practices which do not take into account a member of the board of directors of a limited liability company in the calculation provided for by that provision of the number of workers employed, even where he performs his duties under the direction and subject to the supervision of another body of that company, receives remuneration in return for the performance of his duties and does not himself own any shares in the company?
- Is applicable EU law ... to be interpreted as making it mandatory also to regard as workers, in the calculation provided for by that provision of the number of workers employed, persons who, while not receiving remuneration from the employer, perform real work within the undertaking, with financial support from, and the recognition of, the public authority responsible for the promotion of employment, in order to acquire or improve skills or to complete vocational training ('trainees'), or are Member States permitted to lay down national legislative provisions or practices in that regard?'



C-229/14 Balkaya

- Article 1(1)(a) of Directive 98/59/EC of 20 July 1998, on the approximation of the laws of the Member States relating to collective redundancies, must be interpreted as meaning that **it precludes** a national law or practice that **does not take into account**, in the calculation provided for by that provision of the number of workers employed, **a member of the board of directors of a capital company, such as the director in question in the main proceedings**, who performs his duties under the direction and subject to the supervision of another body of that company, receives remuneration in return for the performance of his duties and does not himself own any shares in the company.
- Article 1(1)(a) of Directive 98/59 must be interpreted as meaning **that it is necessary to regard as a worker for the purposes of that provision a person**, such as the one in question in the main proceedings, who, while not receiving remuneration from his employer, **performs real work within the undertaking in the context of a traineeship** — with financial support from, and the recognition of, the public authority responsible for the promotion of employment — in order to acquire or improve skills or complete vocational training.



Insolvency of the Employer

- Directive 2008/94/EC of the European Parliament and of the Council on the protection of employees in the event of the insolvency of their employer
- Scope: apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency.



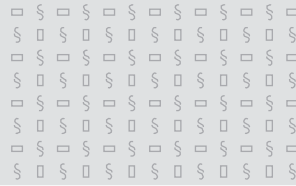
Insolvency of the Employer

- An employer shall be deemed to be in a 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:
 - either decided to open the proceedings; or
 - 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.



Insolvency of the Employer

- Member States shall take the measures necessary to ensure that guarantee institutions guarantee, payment of employees' outstanding claims resulting from contracts of employment or employment relationships, including, where provided for by national law, severance pay on termination of employment relationships.
- The claims taken over by the guarantee institution shall be the outstanding pay claims relating to a period prior to and/or, as applicable, after a given date determined by the Member States.
- Case Law Presentation: C-310/07 Svenska staten



Transfer 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
- Transfer: 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.
- Transferor: any natural or legal person who, ceases to be the employer in respect of the undertaking, business or part of the undertaking or business;
- Transferee: any natural or legal person who, becomes the employer in respect of the undertaking, business or part of the undertaking or business;



Transfer of Undertakings

- The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee.
- Following the transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.



Transfer of Undertakings

- The transferor and transferee shall be required to inform the representatives of their respective employees affected by the transfer of the following:
 - 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,
 - any measures envisaged in relation to the employees.
- The transferor must give such information to the representatives of his employees in good time, before the transfer is carried out.
- The transferee must give such information to the representatives of his employees in good time, and in any event before his employees are directly affected by the transfer as regards their conditions of work and employment.



Transfer of Undertakings

- Member States shall provide that, where there are no representatives of the employees in an undertaking or business through no fault of their own, the employees concerned must be informed in advance of:
 - the date or proposed date of the transfer,
 - the reason for the transfer,
 - the legal, economic and social implications of the transfer for the employees,
 - any measures envisaged in relation to the employees.