

Social Protection of Employees

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Programme

- Historical backgrounds,
- Protection of employees in the event of transfer of the undertaking or part of the undertaking,
- Protection of employees in the event of their employer's insolvency,
- Protection of employees in the event of collective dismissals

Historical Backgrounds

Traditional part of the EU social policy regulated since 1970s,

Purpose – elimination of social dumping between undertakings from EU Member States based on different level of employees' protection,

Approximation of laws of EU Member States – minimum standard of protection of employees guaranteed by all national laws of EU Member States

Differences in national legislation could have a direct effect on the functioning of the internal market

Golden age of EU labour law

The protection of employees in the event of

- transfer of undertaking,
- insolvency of their employer,
- collective redundancies (dismissals)

Protection of Employees in the Event of Transfer of Undertaking or Part of the Undertaking

Secondary law - 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. (replaced the former Directive 77/187)

Purpose – to guarantee protection of employee's rights in the event of changes in structures of undertakings in all Member States

Scope of Application

1. Material scope of application - 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.

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

Exclusion from the scope of application - an administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities,

3. Local scope of application - the 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. Seagoing vessels are excluded.

Prohibition of Exclusion

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

Definitions

- 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,
- Transferor - any natural or legal person who, by reason of a transfer 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, by reason of a transfer becomes the employer in respect of the undertaking, business or part of the undertaking or business

Forms of Protection of Employees

- Safeguarding of employees' rights and duties arising from labour relations from a transferor to a transferee,
- Protection against dismissal on the grounds of transfer of the undertaking or part of the undertaking,
- Protection of position of employee's representatives existing before the date of transfer,
- The employee's right to information and consultation

Protection of Employees in the Event of their Employer's Insolvency

- Secondary law - 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)
- Purpose - to guarantee minimum standard of protection of employee's rights in the event if the employer's insolvency

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 from the Scope of Application

Prohibition of exclusion of employees with:

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

Prohibition for Member States to set a minimum duration for the contract of employment or the employment relationship in order for employees to qualify for their claims

Forms of Protection

Obligation of the Member States 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 if provided by national legislation,

Obligation of Member States to ensure that non-payment of compulsory contributions due from the employer, before the onset of his insolvency, to their insurance institutions under national statutory social security schemes does not adversely affect employees' benefit entitlement

Protection of Employees in the Event of Collective Dismissals

Secondary Law - 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,

Purpose – to approximate procedure for collective redundancies in EU Member States

Exclusion from the Scope of Application

The provisions of the Directive do not apply to:

- 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

Collective Redundancy - Definition

Possibility of a Member to define collective redundancy

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:

1. 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
2. Over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question

Forms of Protection of Employees

- The right of employee's representatives to information and consultation before the effecting the collective redundancies,
- The right of employee's representatives to information and consultation after effecting the collective redundancies,
- The obligation of an employer to inform competent public authority in writing of any projected collective redundancies,
- Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification