

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

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 COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Whereas:

- (1) Council Directive 77/187/EEC of 14 February 1977 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<sup>(3)</sup> has been substantially amended<sup>(4)</sup>. In the interests of clarity and rationality, it should therefore be codified.
- (2) Economic trends are bringing in their wake, at both national and Community level, changes in the structure of undertakings, through transfers of undertakings, businesses or parts of undertakings or businesses to other employers as a result of legal transfers or mergers.
- (3) It is necessary to provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded.
- (4) Differences still remain in the Member States as regards the extent of the protection of employees in this respect and these differences should be reduced.
- (5) The Community Charter of the Fundamental Social Rights of Workers adopted on 9 December 1989 ('Social Charter') states, in points 7, 17 and 18 in particular that: 'The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practice in force in the various Member States. Such information, consultation and participation must be implemented in due time,

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particularly in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers’.

- (6) In 1977 the Council adopted Directive 77/187/EEC to promote the harmonisation of the relevant national laws ensuring the safeguarding of the rights of employees and requiring transferors and transferees to inform and consult employees' representatives in good time.
- (7) That Directive was subsequently amended in the light of the impact of the internal market, the legislative tendencies of the Member States with regard to the rescue of undertakings in economic difficulties, the case-law of the Court of Justice of the European Communities, Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies<sup>(5)</sup> and the legislation already in force in most Member States.
- (8) Considerations of legal security and transparency required that the legal concept of transfer be clarified in the light of the case-law of the Court of Justice. Such clarification has not altered the scope of Directive 77/187/EEC as interpreted by the Court of Justice.
- (9) The Social Charter recognises the importance of the fight against all forms of discrimination, especially based on sex, colour, race, opinion and creed.
- (10) This Directive should be without prejudice to the time limits set out in Annex I Part B within which the Member States are to comply with Directive 77/187/EEC, and the act amending it,

HAS ADOPTED THIS DIRECTIVE:

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- (1) Opinion delivered on 25 October 2000 (not yet published in the Official Journal).
- (2) [OJ C 367, 20.12.2000, p. 21.](#)
- (3) [OJ L 61, 5.3.1977, p. 26.](#)
- (4) See Annex I, Part A.
- (5) [OJ L 48, 22.2.1975, p. 29.](#) Directive replaced by Directive 98/59/EC ([OJ L 225, 12.8.1998, p. 16.](#)).