

Austria

Staff information and consultation on business transfers

Phase	Employment Law Harmonisation Act (AVRAG)
Native name	Arbeitsvertragsrechts-Anpassungsgesetz (AVRAG)
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

3, 3a

Description

A business transfer as defined in the Employment Law Harmonisation Act ([AVRAG](#)) refers to the sale or lease of (parts of) the company, transfer of ownership through gift or any other form of change in the ownership, with general continuation of business activities with the previous organisational structure (including the take-over of a considerable number of employees), infrastructure and clientele. It might also be the result of a merger, joint venture or divestment. Operations that only result from the transfer of business functions (for example, splitting off of operational duties without any assets and without the transfer of more than 10% of the staff) do not qualify as 'transfer' according to the terminology of the law.

The new entrepreneur automatically becomes the employer of all staff (including apprentices and executive staff members). This means that all existing employment contracts (including fixed-term and temporary employment contracts) are maintained unchanged unless employees agree to new provisions. Changes deteriorating from the perspective of the employee affected shortly after the transfer may be declared null and void if the employee can prove that he/she was pressured into agreeing to any changes (AVRAG, §3(6)). The seller or the buyer has to inform affected staff or, if such exists, the works council in writing before realising the transfer about (AVRAG, §3a):

- the planned timing of the transfer;
- the reason for the transfer;
- the legal, economic and social consequences of the transfer for the employees;
- planned measures for the employees.

Furthermore, the seller of the company has to inform affected employees on the potential transfer of guarantees for severance payments and/or pension entitlements. The new owner has to inform the employees about changes in applicable collective agreements, changes in work agreements and any refusal to take over occupational pension or dismissal protection.

This information can also be realised through posting information in a suitable location in the company that is easily accessible for the employees (for example, a company notice board).

If there is a works council in the company, it may make recommendations on options to alleviate or avoid potential negative effects for the employees and might cooperate in establishing a social plan for affected employees.

The employees have the right to object to the transfer if:

- the new employer refuses to acknowledge special protection against dismissal as set out in the collective agreement; or
- the new employer refuses to take over the occupational pension fund.

The employees have to raise their objection within one month. If objection is granted, the employment contract with the original employer remains in place.

Commentary

When apprentices are transferred to a new employer, either the former or new employer have to inform the apprenticeship office (Lehrlingsstelle) run by the Austrian Federal Economic Chamber ([WKÖ Lehrlingsstellen](#)).

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 (2015), Austria: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Belgium

Staff information and consultation on business transfers

Phase	National and intersectoral Collective Agreement n°9 of 9 March 1972 coordinating national agreements and cross-sectoral collective agreements related to works councils, concluded in the National Work Council
Native name	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 n° 9 van 9 maart 1972 houdende ordening van de in de Nationale Arbeidsraad gesloten nationale akkoorden en collectieve arbeidsovereenkomsten betreffende de ondernemingsraden
Type	Staff information and consultation on business transfers
Added to database	26 June 2015
Access online	Click here to access online

Article

4-10 and 12

Description

The works council needs to be informed and consulted on management intentions likely to lead to substantial changes in the work organisation or in the contractual relations as well as in the economic and social context of the firm. While there are no specific regulations as regards business transfers, such are implicitly covered by the regulation.

Whereas information related to the employment structure, its evolution and forecast are provided on an annual basis and followed-up on a quarterly basis, new management policies which introduce changes in work organisation or in contractual relations are

discussed on an ad-hoc basis. In this case, the law does not define any timeline, except that unions' representatives have to be informed before the implementation of any measures or decisions. Concerning the information and consultation procedure for business transfer, the employer provides information to the works council as soon as there is an intention to proceed to it. Unions' representatives have to be the first ones to be informed about the intention to proceed to a business transfer. As soon as the unions are informed, the information and consultation procedure starts. This information and consultation procedure has no prescribed limit in time with regards to when it should be concluded.

During this procedure, unions' representatives have the possibility to ask questions, make suggestions or comments to the business transfer plan. The unions have the possibility to contest the procedure to the [Federal Public Service Employment, Labour and Social Dialogue](#) in case of irregularities.

Commentary

Several modifications or additions were made in order to better comply with the reality of the industrial relations. For instance, the cross-sector agreement n°15 (royal decree of 5 September 1974) aims at considering the case of companies which have set up plans on dealing with financial and solvency problems. Another example is the cross-sector agreement n° 37 (royal decree of 9 December 1981) which defines more precisely the information about employment issues that the management has to provide to the works council.

If no works council exists (enterprises with fewer than 100 employees), the employer has to follow the same procedure with the trade unions' delegation, if any exists. Employees have to be directly informed and consulted as well.

Moreover, several collective agreements (n°32 of 7 June 1985 and n°102 of 5 October 2011) and the law on company's continuity (31 January 2009) have been set for the particular cases of business transfers. These regulations set, among others, the framework to safeguard employees' rights during business transfer.

Additional metadata

Cost covered by None

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 (2015), Belgium: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Bulgaria

Staff information and consultation on business transfers

Phase	Labour Code
Native name	Кодекс на труда
Type	Staff information and consultation on business transfers
Added to database	14 July 2015
Access online	Click here to access online

Article

Articles 123, 130a, 130b

Description

The employer's obligations to inform and consult employees' representatives are described in the Labour Code (section II). Business transfers are also covered by the Labour Code, (Article 123) particularly related to:

- mergers and acquisitions of companies,
- distribution of business from one company to two or more,
- transfer of a separate part of a company to another,
- change of the legal form of the entity,
- change of the ownership of the enterprise or autonomous part of it,
- sublicense or transfer of activity from one company to another, including the transfer of assets.

The employer transferring the business should present the information at least 2 months before initiating a change, and in all cases at least 2 months before the employees would be directly affected by the change of working conditions and employment relations.

Commentary

There is no public information available about examples of such cases.

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 (2015), Bulgaria: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Croatia

Staff information and consultation on business transfers

Phase	Labor Act 93/2014, 127/17, 98/19, 151/22, 64/23
Native name	Zakon o radu 93/2014, 127/17, 98/19, 151/22, 64/23
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 137 (6, 7, 9)

Description

If there is a statutory business transfer, a new employer takes over all employees and their employment contracts, including all rights and obligations associated with these contracts with the previous employer. Previous employers are obliged to inform employees, the works council and the new employer of all employees' employment contracts which the new employer will take over in writing before the day of the statutory business transfer.

The notice shall contain data on:

- the date of transfer;
- reasons for transferring employment contracts;
- the impact of the transfer on legal, business and social conditions of employees;
- support measures for employees whose employment contracts are transferred.

The measures may concern training, upskilling, requalification and/or other specific measures for employees with special needs. If the business transfer is done within a bankruptcy process or business rehabilitation, employees' rights transferred to the new employer can be reduced in accordance with special regulations, collective agreements or agreements between the works council and the employer. Reducing employees' rights only

applies in special cases, that is in the event of bankruptcy and liquidation of the business activity.

Article 137, paragraph 13 of the Labor Act (OG, 93/14, 127/17 and 98/19) stipulates that if a company, a part of a company, an economic activity or a part of an economic activity is transferred to a new employer, the new employer jointly and severally with the employer who transfers the company, part of the company, performance of economic activity or part of economic activity (hereinafter, the old employer), is responsible for the obligations towards the workers incurred up to the date of transfer. Furthermore, the employer should keep the documentation about the workers that he has collected for the duration of the worker's employment contract with him in accordance with a special regulation. A special regulation, namely the Act on Archival Materials and Archives (OG 61/18 and 98/19) applies to the handling of documentation.

Bearing in mind the above, the Ministry of Labor, Pension System, Family and Social Policy issued the opinion that joint and several liability also existed in relation to the handling of documentation collected by the old employer up to the time of takeover, and it refers to the personal data of workers whose employment contracts were transferred to the new employer.

Commentary

Employees whose employment contract has been transferred retain all rights arising from the employment relationship and acquired until the date of transfer. The purpose of this provision is to preserve the continuity of employment and all employees' rights in the current employment contract, including the ban on terminating contracts due to the transfer of economic activities to a new employer.

Additional metadata

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

Thresholds

Affected employees: 20

Company size: 20

Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Croatia: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin

Cyprus

Staff information and consultation on business transfers

Phase	Law on Establishing of a General Framework for Information and Consultation of Employees of 2005 (Law 78(I)/2005); Law on the Establishment of European Enterprises Councils of 2011 (Law 106(I)/2011); 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 (Law 104(I)/2000)
Native name	N. 78(I)/2005 – Ο περί της Θέσπισης Γενικού Πλαισίου Ενημέρωσης και Διαβούλευσης των Εργοδοτούμενων Νόμος του 2005; N. 106(I)/2011 - Ο Περί της Σύστασης Ευρωπαϊκών Επιτροπών Επιχειρήσεων Νόμος του 2011; 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
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

Whole Law on Establishing of a General Framework for Information and Consultation of Employees of 2005 (Law 78(I)/2005); Article 7-11 of the Law on the Establishment of European Enterprises Councils of 2011 (Law 106(I)/2011); Article 7 and 8 of the 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 (Law 104(I)/2000)

Description

Law on Establishing of a General Framework for Information and Consultation of Employees

Law 78(I)/2005 lays down a general framework for the information and consultation of employees in companies with at least 30 employees. The law covers a wide range of cases: business transfers, transfers of facilities or transfers of parts of business or facilities.

An amendment of the law in 2018 extended its application to crews of commercial vessels.

Law on the Establishment of European Enterprise Councils

Law 106(I)/2011 lays down the rules for the setting up of European councils for undertakings with at least 1,000 employees in EU Member States and 150 employees in each of at least two Member States. Furthermore, the law describes the procedure for the information of and consultation with employees. The law covers a wide range of cases for which information and consultation with employees is necessary: business transfers, transfers of facilities or transfers of parts of business or facilities.

An amendment of the law in 2018 extended its application to crews of commercial vessels.

Law on the Preservation and Protection of the Employee's Rights during the Transfer of Business, Facilities or Parts of Business or Facilities

Law 104(I)/2000 on the Preservation and Protection of the Employee's Rights during the Transfer of Business, Facilities or Parts of Business or Facilities of 2000 foresees a statutory duty of employers to inform and consult with employee representatives in the case of a business transfer. Employers should provide information on:

- the date of the proposed business transfer;
- the reasons leading to the transfer;
- the legal, financial and social consequences of the transfer on the employees;
- the foreseen measures to be taken as regards the employees.

The law is applicable both to private and public business which exercise economic activities, independently of the profit or non-for-profit nature of the enterprise. With an amendment in 2018, the coverage of the law has been extended to sea vessels, provided the headquarters of the transferor or of the transferred business, facility or the transferred part of the business or facility remain within the territorial reach of the Treaty on the functioning of the European Union.

Information and consultation in relation to decisions that fall within the framework of the Law 104(I)2000 must take place at such time and manner as to allow the worker representatives to undertake a comprehensive analysis and where necessary prepare for consultation. Consultation between employers and employee representative shall take place in time and with the target to conclude an agreement before the transfer enters into

force. In the absence of employee representatives, the above-mentioned information shall be directly provided to the employees.

Law 104(I)2000 applies to all business transfers independently of the size to the undertaking or plant, or part of the undertaking or plant.

Commentary

No information available.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Works council Other
Involvement (others)	Company
Thresholds	Affected employees: No, applicable in all circumstances Company size: 30 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Cyprus: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Czechia

Staff information and consultation on business transfers

Phase	Labour Code (Law No. 262/2006 Coll.)
Native name	Zákoník práce, zákon č. 262/2006 Sb.
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

339, 280

Description

Before the effective date of transfer of rights and obligations (arising from labour relations) from the hitherto employer (transferor) to another employer (transferee), both the transferor and the transferee shall be obliged to inform and negotiate thereof, sufficiently in advance (however, no later than 30 days before the transfer of the said rights and obligations to the transferee) the trade union organisation and the works council and consult them, with a view to reaching agreement, on:

- the determined or proposed date of transfer;
- the reasons for such transfer;
- legal, economic and social implications for the employees;
- envisaged measures relating to the employees.

Where neither a trade union organisation nor a works council operates at the enterprise of the employer, the transferor and the transferee shall inform and negotiate the employees who will be directly affected by the transfer.

Commentary

These provisions apply, in addition to transfers of entire companies, also to transfers of selected activities or tasks to another employer. The business transfer must be negotiated with employees of companies of all sizes and types.

Additional metadata

Cost covered by	None
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 (2015), Czechia: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Denmark

Staff information and consultation on business transfers

Phase	The Danish Act on Employees' Rights in the event of Transfers of Undertakings (Consolidation Act no. 710 of 22 August 2002; The Danish Act on Information and Consultation of Employees (Act no. 303 of 2 May 2005)
Native name	Bekendtgørelse af lov om lønmodtageres retsstilling ved virksomhedsoverdragelse (LBK nr 710 af 20/08/2002); Lov om information og høring af lønmodtagere (LOV nr 303 af 02/05/2005)
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

The Danish Act on Employees' Rights in the event of Transfers of Undertakings, Articles 1-4
The Danish Act on Information and Consultation of Employees, Article 4

Description

Under the Danish Act on Employees' Rights in the event of Transfers of Undertakings, the transferor must within 'reasonable time' initiate negotiations with the employees or the representatives if the transferor is contemplating measures affecting the employees.

The employer must provide, through employees' representatives, the employees with adequate information on matters which affect them, such as when he/she plans to hand over business. Further, the employer must consult the employees' representatives on these matters.

In the event of transfer of an enterprise, the acquirer immediately takes over the rights and duties that existed in the time of transfer regarding collective agreements and other

existing provisions regarding wage and working conditions.

Dismissal due to transfer of enterprise is not deemed as reasonably justified in the conditions of the enterprise, unless the dismissal is due to financial, technical, or organisational reasons that imply employment-related changes.

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	None
Involved actors other than national government	Regional/local 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 (2015), Denmark: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Estonia

Staff information and consultation on business transfers

Phase	Employment Contracts Act; Law of Obligations Act
Native name	Töölepingu seadus; Võlaõigusseadus
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

Law of Obligations Act § 180. Employment Contracts Act § 113.

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 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.

The transferor and transferee of an enterprise shall submit, in good time but not later than one month before the transfer of the enterprise, to the employees' representative or, in his or her absence, the employees, a notice in a format which can be reproduced in writing, containing at least the following information:

- the planned date of transfer of the enterprise;
- the reasons for the transfer of the enterprise;
- the legal, economic and social consequences of the transfer of the enterprise for the employees;
- the measures planned with regard to the employees.

If the transferor or the transferee of an enterprise intends, due to the transfer of the enterprise, to make changes affecting the situation of the employees, he or she shall consult the employees or their representative with the goal of reaching an agreement on the measures planned.

Upon consultation, the employees or their representative have the right to meet with the representatives of the transferor and transferee of the enterprise, including members of the directing body, and make proposals, in a format which can be reproduced in writing, relating to the measures planned with regard to the employees no later than within 15 days as of the submission of the notice unless a longer term is agreed on. The transferor and the transferee of the enterprise are obligated to justify disregard of the proposals.

Commentary

No information available.

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 (2015), Estonia: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Finland

Staff information and consultation on business transfers

Phase	Employment Contracts Act (55/2001), Co-operation Act (1333/2021), Act on Cooperation within [...] Groups of Undertakings (335/2007), Act on Cooperation within Government Agencies and Institutions (1233/2013), Act on Cooperation [...] within Municipalities (449/2007)
Native name	Työsopimuslaki (55/2001), Yhteistoimintalaki (1333/2021), Laki yhteistoiminnasta suomalaisissa ja yhteisönlajuisissa yritysryhmissä (335/2007), Laki yhteistoiminnasta valtion virastoissa ja laitoksissa (1233/2013), Laki työnantajan ja henkilöstön välisestä yhteistoiminnasta kunnissa (449/2007)
Type	Staff information and consultation on business transfers
Added to database	15 July 2015
Access online	Click here to access online

Article

55/2001: Ch. 1, Sec. 10. 1333/2021: Ch. 4. 335/2007: Ch. 4 Sec. 44. 1233/2013: Ch. 4, Sec. 17. 449/2007: Sec. 11

Description

The transferor and transferee shall inform the representatives of the personnel groups affected by the transfer of the following:

- time or intended time of transfer;
- the reasons for the transfer;
- the legal, economic and social consequences of the transfer to the employees; and
- planned measures affecting the employees.

The transferor shall provide the personnel representatives with the available information referred to in subsection 1 in good time before completion of the transfer.

The transferee shall provide the personnel representatives with the information referred to in subsection 1 above within a week of the completion of the transfer. The transferor and transferee may also fulfil their obligation to inform personnel representatives jointly.

If the business transfer has results falling within the scope of the negotiation obligation provided for in section 16, negotiations on changes shall be conducted on these matters in accordance with chapter 3.

After having provided the information referred to in section 26, subsection 1 to the personnel representatives, the transferee shall afford them the opportunity to ask further questions and shall answer such questions.

At the request of the personnel representatives, the employer shall present the information referred to in subsection 1 to the entire personnel.

Commentary

Trade unions find that staff information and consultation practices are often deficient in events that do not involve dismissals, including in business transfer situations. Especially the Finnish Confederation of Professionals (STTK) has promoted a reform of the acts on cooperation so as to encourage more dialogue and cooperation within companies.

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: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Finland: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin

France

Staff information and consultation on business transfers

Phase	Labour Code, Commercial Code, Law on the Modernisation of the Economy No 2008-776 of 4 August 2008
Native name	Code du travail, Code du Commerce, Loi n° 2008-776 du 4 août 2008 de modernisation de l'économie
Type	Staff information and consultation on business transfers
Added to database	16 August 2015
Access online	Click here to access online

Article

Labour Code: Article L2312-8 (transfer of undertaking) Commercial Code: Articles L23-10-1 to L23-10-6 (sale of business)

Description

Information and consultation on business transfers

There is no specific provision requiring the transferee to inform and consult the works council. The information and consultation procedure in case of transfers shall follow the general principles of information and consultation, as under French law, the employer is responsible for informing the works council.

However, the Labour Code denies information and consultation rights to the employees when no representative bodies are present within the company. In fact, the French legislation has not directly implemented article 7 § 3 of the European Directive on transfers of undertakings that states that 'the information and consultations shall cover at least the measures envisaged in relation to the employees'. In two decisions, the Social Chamber of the Supreme Court refused compensation to an employee, working in a company without an information and consultation body who had not received information from their employer in case of a transfer.

Information and consultation on sale of business

Since 2014, employers of companies employing fewer than 250 employees and with a turnover of less than €50 million (or a balance sheet total of less than €43 million), have to inform their staff about any project to sell the company, so that they are able to look for a buyer or take over their company. The information to provide to the employees' representatives or directly to the employees if there are no information and consultation bodies shall include

- a statement of the seller's wish to sell the business, and
- a statement indicating that the employees may make an offer to buy it.

The employer must provide such information by any means:

- two months before selling at the latest, in companies with fewer than 50 employees (and therefore not submitted to the commitment to set up a works' council)
- at the latest the day of the first meeting of the works council on the project to sell the company

Once the employees are informed, the employer has two years to complete the sale of the company. If he/she fails to sell within this time period, he/she will have to start a new information and consultation process (Commercial Code, [articles L23-10-1 to L23-10-6]). For companies with fewer than 50 employees, if all employees inform the employer before the end of the two months' period that they will not submit an offer to take over the company, the transaction can be completed earlier. The employer is entitled to reject the offers made by the employees as the law does not grant the employees a right of first refusal in this matter. If the employer fails to comply with these regulations (no information provided or information provided too late), employees can introduce an action before the civil court against the employer to obtain damages.

Commentary

Since 2015, no sale has been cancelled due to non-compliance with the regulations.

A [first assessment](#) on the new commitment to inform employees about a sale of the company quoted a survey launched by the data, insight and consultancy company IFOP on behalf of the employers' organisation CMPE and the consultancy firm KPMG highlighted that 64% of employers agreed with this provision. The measure has been adapted in 2015 to replace the sanction provided for in case of non-compliance with the regulations – the cancellation of the sale – by a sanction determined by the judge.

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 (2015), France: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Germany

Staff information and consultation on business transfers

Phase	Civil Code; Works Constitution Act
Native name	Bürgerliches Gesetzbuch; Betriebsverfassungsgesetz
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

613a paragraph 5 and 6 (Civil Code); 111 (Works Constitution Act)

Description

The Civil Code stipulates that if a business or a part of a business passes to another owner by legal transaction, the previous or the future employer must notify employees affected by the transfer in text form prior to 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 individual worker may object to the transfer of the employment contract to a new employer. Objections have to be voiced in written form within one month after the notification and before the takeover by the new employer.

The Works Constitution Act applies if a works council is in place.

In an establishment with a works council and with at least 21 employees with the right to elect a works council (managerial staff, hired temporary workers and contracted self-employed workers do not hold these rights) the employer shall inform the works

council in full and in good time of any proposed alterations which may entail substantial prejudice to the staff or a large sector thereof and consult the works council on the proposed alterations. In establishment that have more than 300 employees, the works council may retain a consultant to support it.

The Works Constitution Act considers the following as alterations:

- reduction of operations in or closure of the whole or important departments of the establishment;
- transfer of the whole or important departments of the establishment;
- the amalgamation with other establishments or split-up of establishments;
- important changes in the organisation, purpose or plant of the establishment;
- introduction of entirely new work methods and production processes.

The Works Constitution Act also applies to establishments with a works council and fewer than 21 employees if the establishment is a dependent business and the parent company has more than 21 employees. The number of staff of the parent company, not of the dependent business, is used as reference.

Commentary

No information available.

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 (2015), Germany: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Greece

Staff information and consultation on business transfers

Phase	<p>-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" -Law 4052/2012: Approval of the draft financing facility schemes between the European Financial Stability Facility (EFSF), the Hellenic Republic, and the Bank of Greece; of the Draft Memorandum of Understanding between the Hellenic Republic, the European Commission, and the Bank of Greece, and other urgent provisions on the reduction of public debt and the rescue of the national economy and other provisions; Presidential Decree No. 240/2006 on establishing a general framework for informing and consulting employees in the European Community, transposing Directive 2002/14/EC; Presidential Decree No. 178/2002 on measures for safeguarding employees' rights in the event of transfers of undertakings, businesses or parts of businesses, transposing Directive 98/50/EC</p>
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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" -Νόμος 4052/2012: Έγκριση των Σχεδίων Συμβάσεων Χρηματοδοτικής Διευκόλυνσης μεταξύ του Ευρωπαϊκού Ταμείου Χρηματοπιστωτικής Σταθερότητας (Ε.Τ.Χ.Σ.), της Ελληνικής Δημοκρατίας και της Τράπεζας της Ελλάδος, του Σχεδίου του Μνημονίου Συνεννόησης μεταξύ της Ελληνικής Δημοκρατίας, της Ευρωπαϊκής Επιτροπής και της Τράπεζας της Ελλάδος και άλλες επείγουσες διατάξεις για τη μείωση του δημοσίου χρέους και τη διάσωση της εθνικής οικονομίας και άλλες διατάξεις; ΠΔ 240/2006 – Περί θεσπίσεως γενικού πλαισίου ενημερώσεως και διαβουλεύσεως των εργαζομένων, σύμφωνα με την οδηγία 2002/14/ΕΚ της 11.03.2002 του Ε.Κ και του Συμβουλίου; ΠΔ 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	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

-Presidential Decree 80/2022, SECTION IV: 'Business Transfer', Article 354: 'Information and Consultation' -Chapter XII employees' rights to information and consultation in community-scale undertakings and groups of undertakings in compliance with directive 2009/38/EC/6.5.2009; Article 49 - Objective (Article 1, paragraphs 1, 2, 3, 4 and 5 of the Directive); Article 50 - Scope (Article 1, paragraphs 6 and 7 of the Directive); Article 51 - Definitions (Article 2 of the Directive); Article 52 - Controlling undertaking (Article 3 of the

Directive); Article 4 of Law 240/2006; 4 of PD 178/2002

Description

By virtue of art. 354 of the Presidential Decree 80/2022 the transferor's and the successor's employees' representatives must be informed in due time, and certainly before the employees are directly affected by the transfer, in terms of their employment and working conditions, as of:

- the realisation of the transfer;
- the exact or the eventual date of the transfer;
- the reasons for the transfer;
- the legal, financial and social consequences of the transfer as far as the employees are concerned and
- the measures to be taken regarding the employees.

The results of the consultations are recorded in minutes in which the final positions of the interested parties are formulated.

In the event that there are no employee representatives in a company or facility for reasons beyond their control, the employer is obliged to inform all employees in writing, in advance.

There is no specific timetable for the information/consultation process to take place. In general, if the employees' acquired rights are respected, the information procedure will be short (for example, 20 days is a reasonable time for the conclusion of the information process).

For each violation of the provisions of article 354 (i.e. a breach of the information/consultation process) the Law provides a separate fine on the transferor, the successor, or their representatives which can vary from €147 to €8,804/per violation.

-According to Presidential Decree No. 240/2006, both the employer transferring the business activity and the successor employer have to inform the representatives of their respective employees affected by the transfer of the following:

- 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.

The meaning of the legal term 'transfer of undertaking' is not defined in the law and it is debated in case law; however, these provisions shall apply to undertakings employing at least 50 employees and establishments employing at least 20 employees.

The transferring employer (transferor) must give that information to the representatives of the employees in good time before the transfer. Likewise, the successor employer must disclose such information to the employee representatives.

In both events, information should be provided in good time, and in any event before the employees are directly affected by the transfer as regards their conditions of work and employment. The legislation does not establish a specific time frame; instead this is defined on a case-by-case basis.

The employer is also obliged to explain the reason for the choice of a dismissals as opposed to other measures.

The consultation process should take place with the view of reaching an agreement and preparing the relevant minutes. The provision is properly implemented whenever it is established that an agreement is sought based on bona fide principles.

Consultation and information of the employee representatives is intended to contribute to the adoption of an agreement that will be 'protective' for employees during a transfer (payment of high compensation to dismissed workers, regulation of important terms and conditions of work, and maintenance of employment by placing workers in different posts, among others).

For the consultations to be effective, however, the employee representatives should be informed in good time, so that they can present constructive proposals.

Where the transferor or the successor employer intend to change the status of their employees, they must enter into early consultations on these measures with the employee representatives in order to reach an agreement. 'Good time' and 'early consultations' for information and consultation are not defined more specifically, but are assessed by the courts depending on the specific conditions of each case. In any case, there is not yet any supreme court decision ruling on reasonable time for information and consultation.

The results of the consultations are recorded in minutes where the final positions of the interested parties are set out. There are no specific provisions requiring the employer to consider the outcome, except the general legal covenant of good faith and fair dealing, which can be implied by court.

The employee representatives with whom the information and consultation take place are generally the works council. For undertakings or establishments with fewer than 50 employees, if there are no official employee representatives, the employees are represented by a three-member committee elected by them. If, for reasons beyond their control, there are no employee representatives in an undertaking or establishment, the employer must inform all employees, in writing and in advance, of the date or proposed date of the transfer; the reasons for the transfer; the legal, economic and social consequences of the transfer for the employees; and the measures envisaged in relation to the employees. The information must take place in good time and simultaneously to all employees.

According to [Law 4052/2012](#), to enhance the employees' right to information and consultation in Community-scale undertakings and groups of undertakings and in compliance with Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 (OJ L 122/28/16.5.2009) 'on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees', a European Works Council (EWC) or a procedure for informing and consulting employees is hereby set up for each Community-scale undertaking or group of undertakings. The powers of the EWC and the scope of the employees' information and consultation procedure, which are governed by this law, are limited to transnational issues. The powers and responsibilities of the EWCs and the scope of the procedures for the purposes of informing and consulting employees concern, as regards Community-scale undertakings, all establishments situated in the Member States, and as regards Community-scale groups of undertakings, all the member companies of the group located in the Member States. For the purposes of this law, the following terms shall have the meaning given below:

- 'Community-scale undertaking' means any undertaking with at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States;
- 'group of undertakings' means a group that includes a controlling undertaking and its controlled undertakings;
- 'Community-scale group of undertakings' means a group of undertakings with the following characteristics:
 - it employs at least 1,000 employees within the Member States;
 - it has at least two group undertakings in different Member States; and
 - at least one group undertaking employs at least 150 employees in one Member State and at least one other group undertaking employs at least 150 employees in another Member State.

'Controlling undertaking' means an undertaking of a group of undertakings which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation or other rights provided for in their statutes.

Commentary

The Presidential Decree, in general, provides, for the first time, codification of the legislation governing the Individual Labour Law. The codification does not bring about any modification, addition or repeal of provisions but, as it has been argued, it brings together the existing provisions as they apply, with logical and thematic continuity, in order to facilitate the search of the existing institutional framework.

Law No. 4052/2012 on European Works Councils, transposing EU Directive 2009/38/EC of 6 May 2009, mainly regulates the establishment of employee representatives: works councils have access to all workplaces at any time they see fit, in order to carry out their duties, which include mainly consultation and entering into agreements with the employer in order to improve working conditions and to cooperate with the company's existing trade unions. Moreover, they enjoy extensive information rights, before the employer proceeds with important decisions regarding the company's organisation. Works councils also decide jointly with the employer upon various matters including internal rules, health and safety regulations, ongoing education and training.

Although Presidential Decree No. 240/2006 attempts to secure the rights of employees in cases of merger, acquisition, transfer of undertakings and collective dismissals, the institutional framework is not strong enough to protect the employees from the adverse effects of continuous transformation of businesses.

The law does not define a 'transfer of undertaking', however, the provisions shall apply to undertakings employing at least 50 employees and establishments employing at least 20 employees.

A [survey](#) conducted in 2013 on trade unionists' views of the implementation of Directive 2002/14/EC (establishing a general framework for informing and consulting employees in the European Community) derived the following conclusions:

- A lack of information is observed among trade unionists on the positive applications of information and consultation at company level. The same lack of information is observed in the case of violation of information and consultation legislation.
- The penalties provided for under the national transport legislation are not considered effective, dissuasive and proportionate, as required by Directive 2002/14/EC.

- The labour inspectorates and courts can play a more active role in the proper implementation of Directive 2002/14/EC.
- Trade unionists complain about the low quality of information provided by employers, about the fact that it is provided late and after important decisions have already been taken, or about the lack of sufficient time to form a reasoned opinion to participate in the consultation.

In conclusion, trade unionists who took part in the survey said they consider that Directive 2002/14/EC is very important, especially in times of economic crisis when difficulties multiply.

The proposals and suggestions of the trade unionists who were interviewed, which in their view would improve the present situation, are:

- better information of trade unionists on the provisions of Directive 2002/14 by labour federations and confederations;
- organisation of training programmes, meetings to exchange experiences and databases of positive and negative case studies to which unions can refer if necessary;
- a database of court decisions on breaches of Directive 2002/14/EC;
- the penalties to be imposed on those in breach of Directive 2002/14/EC should be laid down in an amendment to the Directive in order to be more effective, dissuasive and proportionate and should not be left to national laws, as is currently the case, as they have proved ineffective.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Works council Other Regional/local government
Involvement (others)	Labour Inspector, Administrative Court of First Instance
Thresholds	Affected employees: 7 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Greece: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin

Hungary

Staff information and consultation on business transfers

Phase	Act I of 2012 on the Labour Code
Native name	2012. évi I. törvény a Munka Törvénykönyvéről
Type	Staff information and consultation on business transfers
Added to database	26 October 2015
Access online	Click here to access online

Article

Articles 36-41, 265 and 282

Description

In case of a transfer of an economic undertaking (defined as an organised group of material or other resources), the transferor's rights and obligations arising from the employment relationships existing on the date of the transfer are transferred to the receiving employer (transferee).

The transferor and the transferee have to inform, within 15 days prior to the effective date of the transfer, the works council on:

- the planned or envisaged date of the transfer;
- the reason for the transfer; and
- the legal, economic and social implications of the transfer for the employees.

If no works council exists at the transferor, or if no workers' representatives have been elected, it is the employee that has to be notified of the above, as well as any measures envisaged that might affect them (Article 265). As of January 2023, under Article 38 (1), the new employer must also 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, on the day of the transfer. The transferor and the transferee must enter into negotiations with

the works council, with the goal of reaching an agreement. Negotiations should cover any measures in relation to employees, the principles of these measures, the ways and means of avoiding or mitigating detrimental implications of the transfer.

Following the transfer, the transferee must continue to observe the terms and conditions of the collective agreement applicable to the transferor on the date of the transfer for at least a year. This period can only be shorter in case of the expiry of the collective agreement or the entry into force of another collective agreement. (Article 282) The transferor and the transferee are jointly and severally liable in respect of obligations towards employees which arose before the date of the transfer if an employee submits his/her claim within one year from the date of the transfer.

Commentary

In most aspects of working life and conditions of the work contract, a change of employers does not affect the employee. However, in areas where employers have a right to unilaterally change working conditions, such as for example daily schedules and bonuses, the change can have almost immediate effect. The employee has a right to terminate the work relationship if such a change would have a disproportionately adverse effect on their working conditions, but such a termination must be given adequate justification.

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 (2015), Hungary: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin

Ireland

Staff information and consultation on business transfers

Phase	European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003; S.I. No. 131/2003; S.I. No. 15/2018 - European Communities (Seafarers) Regulations 2018
Native name	European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003; S.I. No. 131/2003; S.I. No. 15/2018 - European Communities (Seafarers) Regulations 2018
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

S.I. No. 131/2003 article no. 8; S.I. No. 15/2018 articles no. 4-5

Description

Both the original (transferor) and new employer (transferee) has a duty to inform the employee representatives (article no.8) of the date of transfer; the reasons for the transfer; the legal implications of the transfer for the employees and a summary of any relevant economic and social implications of the transfer for them; and any measures envisaged in relation to the employees. This must be done at least 30 days in advance of the planned transfer.

If the employees do not have representatives, the transferee or transferor employer must put in place a procedure whereby employees can choose amongst themselves a person(s) to represent them. Where no representatives have been selected, all affected employees are to be informed, in writing, no less than 30 days in advance of the transfer, of the relevant aforementioned criteria.

In a transfer of undertakings scenario, existing terms and conditions of employment (except pensions) and terms of any standing collective agreement remain in place for employees, until the agreement expires or a new agreement is negotiated. There is no interruption in employment with a transfer of undertakings - the owner of the undertakings changes hands, but the employment contract is not broken with service being continuous.

Information required must also include the the number of agency workers temporarily engaged in the undertaking concerned; those parts of the undertaking in which those agency workers are, for the time being, working; and the type of work that those agency workers are engaged to do. In 2012, obligations under Regulation 8 of the Statutory Instrument were amended to incorporate agency workers.

From 2018, seafarers are no longer excluded from relevant consultation provisions.

Commentary

Additional metadata

Cost covered by	None
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 (2015), Ireland: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Italy

Staff information and consultation on business transfers

Phase	Law 29 December 1990, no. 428, Provisions for the fulfillment of obligations deriving from Italy's membership of the European Communities
Native name	Legge 29 dicembre 1990, n. 428, Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

47

Description

In the case of a transfer of business or part thereof, in companies staffed with more than 15 workers, the information and consultation procedure contained in article 47 of law no. 428/1990 should be complied with in order to protect workers' collective interests. The notice of a transfer of business or part thereof shall be provided 25 days before the legal act finalising the transfer becomes effective. It has to mention:

- the date or proposed date of the transfer;
- the reasons of the planned business transfer;
- its legal, economic, and social consequences for the workers; and
- possible measures for the benefit of the workers.

The unions are involved insofar as the company has to inform the works councils ('Rappresentanze Sindacali Unitarie', RSU) or company works councils ('Rappresentanze Sindacali Aziendali', RSA) about the transfer of business, as well as the sectorial unions that

have signed the collective labour agreement applied by the companies involved in the transfer. In case there are no RSA, the company (or its representative association) is obliged to inform the comparatively more representative sectorial unions.

Within seven days, trade unions can ask for a joint examination with the employers; consultation is considered to be concluded should an agreement not be reached within 10 days.

The law clearly states that an anti-union behaviour is to be found not only if information obligations are breached, but also if the company and the trade union have not carried out the joint assessment procedure.

Commentary

Trade unions note that, in some cases, business transfers could be used as a way to impose worse working conditions or to prepare the ground for collective dismissals of the workers being moved.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: 15 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Italy: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin

Latvia

Staff information and consultation on business transfers

Phase	Labour law
Native name	Darba likums
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

10, 11, 117, 120

Description

The transfer of an undertaking within the meaning of the labour law 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 between parties outside contractual commitments thereof, as well as a merger, division or reorganisation of commercial companies.

The law also defines that legislation is to be 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 EU, should be observed.

In the case of a transfer of an undertaking, both the transferor and the acquirer have to inform their employee representatives (or the employees if employee representatives do not exist) about the transfer date or the expected transfer date (before the transfer takes place), the reasons behind it and the consequences of the transfer, as well as the measures which will be taken with respect to employees. The transferor of an undertaking has to inform employees not later than one month before the transfer of the undertaking, while the acquirer of an undertaking not later than one month before the transfer of the

undertaking starts to directly affect the working conditions and employment provisions of the employees.

If any organisational, technological or social measures will be implemented in relation to the employees, the transferor or acquirer shall start consultations with employee representatives not later than three weeks in advance in order to reach agreement on these measures.

Employee representatives have a general right to receive timely information and consult with the employer before adoption of decisions that may affect the interests of employees, in particular their salary, working conditions and employment with the company.

The transferor and/or acquirer of an undertaking or an employer carrying out collective redundancy have to consult with their employees, but the extent to which the employer may choose any measures is not set by law.

In any case, if the employer chooses dismissal rather than other measures, it has to explain the reasons behind it.

Commentary

In practice, consultation before public announcement rarely happens. In smaller enterprises sharing of information rather than proper consultation takes place.

Within the meaning of this law, informing refers to a process in which the employer transfers information to employee representatives, allowing them to become acquainted with the relevant issue and to investigate it, and consultation means the exchange of views and dialogue between employee representatives and the employer for the purpose of achieving agreement.

Additional metadata

Cost covered by	None
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 (2015), Latvia: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin

Lithuania

Staff information and consultation on business transfers

Phase	Labour code No XII-2603
Native name	Darbo kodeksas Nr. XII-2603
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

Labour code (208, 209)

Description

According to article 208 of the labour code, before taking a decision on a business transfer, the employer must inform and hold consultations with the works council. At least five working days before the beginning of the planned consultation, the employer must provide the works council with written information on:

1. the date of transfer or the proposed date of transfer;
2. the legal basis for the transfer;
3. the legal, economic and social consequences of the transfer for the employees;
4. measures planned for the employees.

When a company does not have a works council or an employee trustee implementing the functions thereof, the employer must provide the information above to the employer-level trade union as well as to the employees, either directly or at a general meeting of the employees of the employer. The trade union is entitled to express its opinion to the employer concerning the employer's upcoming decisions. The employer must hold consultations for at least five working days from the first day of consultation, unless the works council agrees to a different term.

If an employer has violated the obligations of information and consultation, the works council or the trade union is entitled to initiate a labour dispute on rights within two months of finding out about the violation. The State Labour Inspectorate controls how employers fulfil the obligation of informing and consulting employees (article 209).

Labour relations on ships are regulated by Lithuanian labour law provisions if these ships sail under the flag of the Republic of Lithuania.

Law No XIV-453 (came into force since 15th of July, 2021) establishes that similar provisions under Article 208 of the Labour Code apply not only in the case of a transfer of a business or a part of a business, but also in the case of a restructuring case against an employer opened after 14 July 2021. The same law also adds to the Labour Code an obligation for employers to provide information to the works councils for consultation on "ways and means envisaged to avoid or mitigate negative legal, economic and social consequences for employees".

Commentary

No information available.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union Works council Other
Involvement (others)	The State 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 (2015), Lithuania: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin

Luxembourg

Staff information and consultation on business transfers

Phase	Labour Code
Native name	Code du travail
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

Art.L.127-6

Description

Employers of the transferred company (the 'transferor') and of the buyer company (the 'transferee') are obliged to provide employees' representatives with information (irrespective of company size) on:

- the date and the grounds of the transfer,
- the legal, economic and social consequences for the employees,
- the measures foreseen.

This information must be given by the transferor in good time before the transfer is carried out. It must also be given by the transferee in good time and in any case before the employees are directly affected by the transfer as regards their conditions of employment. Moreover, when the transferor or the transferee envisages measures in relation to the employees, they must consult their representatives in good time on such measures with a view to reaching an agreement.

In transnational restructuring processes, there must be a transnational information and consultation process when circumstances would considerably affect the interests of the workers and especially in the case of offshoring, close-down or collective redundancies.

The transferor has to inform the employees' representatives in due time to allow them to express their view in due time. If the employees' representatives give an opinion, the transferor has to give an answer with justifications in due time. If there are no employees' representatives in the company, the employees concerned by the transfer have to be informed previously and in writing on the date and the grounds of the transfer, on the legal, economic and social consequences for the employees and on the measures foreseen.

Commentary

No information available.

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 (2015), Luxembourg: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Malta

Staff information and consultation on business transfers

Phase	Transfer of Business (Protection of Employment) Regulations (Legal Notice 10 of 2006, as amended by Legal Notice 427 of 2007, 195 of 2010, 129 and 443 of 2011; 363 of 2012, 483 of 2014, 285 of 2017); Collective Redundancies (Protection of Employment) Regulations (Legal Notice 428 of 2002, as amended by Legal Notices 427 and 442 of 2004), Legal Notice 281 of 2017 Employment and Industrial Relations Act
Native name	Regolamenti dwar Harsien tal-Impiegi fit-Trasferiment ta' Negozju (Avviż Legali 10 tal-2006, kif emendat bl-Avviżi Legali 427 tal-2007, 195 tal-2010, 129 u 443 tal-2011, 363 tal-2012, 483 tal-2014 u Avviż Legali 285 ta' l-2017); Regolamenti dwar Sensji Kollektivi (Harsien ta' l-Impjiegi) (Avviż Legali 428 tal-2002 kif emendat bl-Avviżi Legali 427 u 442 tal-2004) u Avviż Legali 281 tal-2017 L-Att dwar l-Impjiegi u Relazzjonijiet Industrijal
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 3 (2) and Article 6 - Transfer of Business (Protection of Employment) Regulations, 2002 as amended by L.N. 433 of 2002 as amended by L.N. 427 of 2007; L.N. 195 of 2010; L.N. 129 of 2011; L.N. 443 of 2011; L.N. 363 of 2012; L.N. 483 of 2014; L.N. 285 of 2017; Article 36 (14) (g) and Article 2 - Collective Redundancies (Protection of Employment) Regulations (Legal Notice 428 of 2002, as amended by Legal Notices 427 and 442 of 2004), Legal Notice 281 of 2017 Article 38 of the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta)

Description

The Transfer of Business (Protection of Employment) Regulations is applicable to 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. It is also applicable in the case of a service provision change; to any undertaking engaged in economic activities whether or not that activity is central or ancillary and whether or not it is operating for gain; where and in so far as the undertaking, business or part of the undertaking or business to be transferred is situated in Malta; to a transfer of a seagoing ship that is part of a transfer of an undertaking, business or part of an undertaking or business within the meaning of this regulation. The transferee has to be situated, or the transferred undertaking, business, or part of an undertaking or business remains within Malta for the Transfer of Business (Protection of Employment) Regulations to apply.

As of October 2023, Legal Notice 273 of 2018 which included, among other things, the removal of the application of the regulation also to a change in service provision has not entered into effect due to resistance from employer bodies.

The Transfer of Business (Protection of Employment) Regulations states that employees have to be informed at least 15 working days before the business transfer is implemented or before the employees are directly affected by the transfer as regards their working and employment conditions, whichever is earlier. However the legal notice goes on to say that in those cases where the transfer includes measures affecting the conditions of employment of the transferred employees, consultations between the transferor, the transferee and the employee representatives shall begin within seven working days from the day on which the employee representatives have been notified of the intended transfer and such consultations shall cover the impact of the transfer on the employees' conditions of employment.

The legal notice on transfer of business does not mention a requirement of providing justification for the transfer. Nevertheless, in the case of collective redundancies, that is 10 employees in companies with more than 20 and fewer than 100 persons, 10% if between 100 and 300 are employed; and 30 if 300 or more are employed, the employer is obliged to supply the employee representatives with a statement in writing providing all relevant information and shall in any event supply employee representatives with the reasons for the redundancies, the number of employees intended to be made redundant, the number of employees normally employed, the criteria proposed for the selection of the employees to be made redundant, details regarding any redundancy payments obligations and the period over which redundancies are to be effected.

These regulations do not apply to an administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities.

Commentary

Labour legislation and relating amendments are discussed at formulation stage in the tripartite Employment Relations Board (ERB). Trade unions, employer associations and the government are represented on this board. On 14 August 2018, four legal notices were published in the Government Gazette without any consultation at the Employment Relations Board (as required by law). The employer bodies represented on the Employment Relations Board objected vociferously to this and the Prime Minister publicly stated that the four legal notices were being suspended until proper consultation takes place and the necessary amendments to the legal notices effected. As of 9 August 2019, the Transfer of Business (Protection of Employment) (Amendment) Regulations of 2018 are still suspended and are not yet in force.

Trade unions' concern on the term 'employee representatives' The legal term 'employee representatives' raised some concern among trade unions. They considered that it may lead to the establishment of representative bodies in which trade unions are absent which employers may recognise as proxy employee representatives. It was feared that such recognition might eventually undermine the legitimacy and activities of proper trade unions. Trade unions maintained that enforcement authorities should concentrate their efforts on non-unionised undertakings since in unionised undertakings legal matters are adequately dealt with by trade unions representatives (Baldacchino, 2009). However, it appears that over the years, the legislation did not result in tangible setbacks to the trade union movement in Malta, as trade unions kept their vital role during cases of collective dismissals.

Additional metadata

Cost covered by	None
Involved actors other than national government	Employer organisation Trade union Other
Involvement (others)	Employment Relations Board, Department of Industrial and Employment Relations
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Malta: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Netherlands

Staff information and consultation on business transfers

Phase	Works Council Act; Civil Code
Native name	Wet op de ondernemingsraden; Burgerlijk Wetboek
Type	Staff information and consultation on business transfers
Added to database	06 August 2015
Access online	Click here to access online

Article

Article 25, 26, 31, 35b, and 35c Dutch Works Council Act; Article 7:665 Civil Code

Description

All major strategic decisions with potential consequences for the employees are covered by article 25 of the Works Council Act. This article covers both restructuring and business transfers (transfer of undertaking), but also major investments, closures and mergers and acquisitions. The works council must be informed and consulted and is entitled to all relevant information and has the right to be consulted on economic, business, organisational, legal and social issues, the reasons for restructuring, possible alternatives, consequences for employees and measures taken to limit the consequences. The works council is entitled to at least one consultation meeting with the employer. In principle, a works council should be installed if there are 50 or more employees.

In case of disagreement, the employer has to postpone the decision for one month, during which the works council may decide to go to court. If the advice is not followed by the employer, the works council can challenge the restructuring decision (and possible implementation measures already undertaken). Jurisprudence over the last 35 years shows that employers that have not taken their information and consultation duties seriously run the risk that the court rules the restructuring operation invalid. However, given sufficient care, the managerial prerogative prevails.

The works council in smaller companies

In smaller companies employing between 10-50 employees, the Works Council Act obliges the employer to consult the mini works council, if it exists (the so-called personeelsvertegenwoordiging, which may be established in firms with 10-50 employees) or the staff on any decision that could lead to job loss or a significant change in the employment, labour conditions or working conditions of at least one-fourth of the persons employed in the company. Contrary to the case of works councils, decisions cannot be challenged in court.

According to article 7:665a of the Civil Code, if there is no works council or mini-works council, the employer has to inform the employees in due time about the transfer, the reasons, the timing, the consequences for the employees and possible measures to deal with these consequences.

Commentary

The main act for informing and consulting employees is the Works Councils Act. Compared to most other EU countries, works council rights are strong in the Netherlands.

The obligation to consult the works council is a generally uncontested aspect of collective dismissal (if an employer intends to dismiss/dismisses at least 20 employees in one or more locations of the same company within one and the same region of the public employment service within 3 months due to reorganisation for economic reasons), as is the waiting period of 1 month if the council disagrees with the decision to dismiss. Employer organisations do stress the importance of a simple and speedy process of collective dismissal in order for small and medium enterprises to continue their business, even in poor economic conditions. The regulation is of limited relevance for business transfers as the combination with collective dismissals is rare.

In addition to legal rules, the Social Economic Council (unions, employer organisations, independent members) reached an agreement called Merger Behaviour Rules (fusiegedragsregels), which was last updated in 2015.

The Merger Behaviour Rules protect the interests of companies active in a proposed merger. They aim to ensure that when considering a merger, attention is paid to the interests of employees active in the company. The Merger Behaviour Rules apply to proposed mergers and acquisitions in business. Mergers (some cases) and acquisitions (always) are both relevant in the context of transfers. Importantly, the term 'business life' is explained broadly, so that the merger rules also apply to government, non-profit and free trade.

Notification of proposed merger to unions and public announcement

The core of the Merger Behaviour Rules is that the merger parties inform the unions in good time, provide information and give the opportunity to judge from the point of view of the company's employees. 'Timely' refers to before a merger agreement is reached. The merger parties should implement this in such a way that the unions' opinion can actually influence the merger or modification of the merger and its modalities. The merger parties ensure that the relevant works councils have the opportunity to take note of the unions' judgement, so that it may be taken into account in the advice according to article 25 of the Works Council Act. In addition, the merger parties must inform the trade unions about their content before submitting a public notice on the preparation of the merger or of the merger.

Notification of proposed merger at the SER (Social Economic Council) Secretariat

At the time the trade unions are informed of the proposed merger, merger parties must notify the SER Secretariat of the merger being in preparation. The parties can easily do this notification by means of the notification form. Learn more [here](#).

Disputes Committee Merger Rules and conciliation

If trade unions or merger parties have a complaint about non-compliance or limited compliance with the Merger Behaviour Rules, they can file this complaint with the Disputes Committee on Merger Behaviour. The parties may also choose to use the possibility of mediation.

Merger notifications for the period 2016-2020 are as follows:

Year	Notifications
2022	869
2020	892
2020	633
2019	701
2018	655
2017	588

2016

523

As of the end of June 2023, the merger notifications are 353 in total.

Additional metadata

Cost covered by	Companies Employer
Involved actors other than national government	Employer organisation Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: 10 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Netherlands: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Norway

Staff information and consultation on business transfers

Phase	Working Environment Act
Native name	Arbeidsmiljøloven
Type	Staff information and consultation on business transfers
Added to database	29 June 2015
Access online	Click here to access online

Article

16-5

Description

The definition of the term 'undertaking' (or part thereof) is defined 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 an independent economic unit. The basic requirements are a minimum of organisational independence, while being comprised of 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.

The regulation lays down an obligation for the former and new employer to provide information concerning the transfer and discuss it with the employees' elected representatives. If this obligation is not met, the employer may see a sanction. The act does not specify whom to consult if there is no elected representatives, but most companies will have one as they are obliged to elect a safety deputy in all companies with at least 10 employees. This shall be done as early as possible. The information shall cover:

- the reason for the transfer,
- the agreed or proposed date for the transfer,
- the legal, economic and social implications of the transfer for the employees,
- changes in circumstances relating to collective agreements,
- measures planned in relation to the employees,
- rights of reservation, that is to stay with the former employer. This will, however, imply a risk of being redundant.

If the previous or new owner is planning measures (not further specified in the act) in relation to their respective employees, they shall consult with the elected representatives as early as possible on the measures with a view to reaching agreement.

Commentary

The purpose of the regulation is partly to give employees access to information about what is going to happen, and what kind of consequences this will have for them, and partly to give the elected representatives a possibility to influence the decisions that are taken. The representative shall be informed before the employees in order to be able to influence the decision.

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 (2015), Norway: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin

Poland

Staff information and consultation on business transfers

Phase	Act of 26.06.1974 - Labour Code; Act of 23.05.1991 on trade unions; Act of 23.04.1964 - Civil Code
Native name	Ustawa z dnia 26.06.1974 r. - Kodeks pracy; Ustawa z dnia 23.05.1991 o związkach zawodowych; Ustawa z dnia 23.04.1964 r. -Kodeks cywilny
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 23 (1), Article 300 of the Act of 26.06.1974 - Labour Code; Article 26 (1) of the Act of 23.05.1991 on trade unions; Article 471 of the Act of 23.04.1964 - Civil Code

Description

Employees must be informed 30 days in advance about a business transfer. Such transfer can be a result of sale, leasing, hiring, tenancy or any other commercial contract. Information must be provided by the former and the new employer.

The information about business transfer should be provided to employees in writing and must include the expected date of the business transfer, the reason of the transfer, the legal, economic and social consequences of the transfer for the employees, the intentions concerning the employment conditions of employees (their employment contracts are not subject to change due to the transfer) and, in particular, remuneration and training conditions. The information can include explanations about the specific measures to alleviate some negative consequences but this is not obligatory.

A written notification should be also provided to trade unions and should include the same information as mentioned above.

If the negotiations with trade unions result in an agreement concerning the transfer of undertaking it is treated as an autonomous source of labour law according to Article 9 of the Labour Code - verdict of Supreme Court (SN 2009 02 25 II PK 184/08). This means that an individual employee can submit a claim to the labour court based on such agreement.

Commentary

Section 3 of article 23 (1) of the Labour Code does not lay down sanctions for infringement of this provision.

In the event of non-compliance or improper compliance of the information obligation imposed on the employer, in order to enforce labour rights, appropriate civil liability provisions should be used, namely article 471 of the Civil Code in connection with article 300 of the Labour Code.

According to the general principles of burden of proof-sharing, the burden of proof that employees have suffered detriment as a result of lack of relevant information lies with him/her. In other words, the only system of penalties can be found in article 35 of the Trade Unions Act. Article 35 point 4 indicates that any person who in connection with their position or function held fails to perform obligations specified in article 26 (1), (33 (1) and 34 (1) shall be liable to a fine or freedom restriction. It means that there is no specific system of sanction which is connected with non-compliance with employer transfer obligations.

Literature (Twardoch-Medrek, 2011) points out that because of this, one can doubt the full, correct implementation of the Directive (Directive 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 Supreme Court (SN) points out in its ruling of 15 September 2006 (I PK 75/06) that the current employer's failure to consult the trade unions in the event of the transfer of a part of the establishment does not result in the the transfer being void and it does not prevent the new employer from taking over the business.

Additional metadata

Cost covered by None

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 (2015), Poland: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Portugal

Staff information and consultation on business transfers

Phase	Labour Code (Law 7/2009 of 12 February) - updated version
Native name	Código do Trabalho (Lei 7/2009 de 12 de Fevereiro) - versão atualizada
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

286, 423, 427 and 429, 554 and 555.

Description

The transferor and the transferee must inform the workers' representatives (or the employees themselves if there is no works council) about the date and grounds for business transfer, its legal, economic and social consequences for workers and the planned measures regarding workers. This information must be provided in writing before the business transfer in a timely manner, at least 10 days prior to the consultation (article 286).

The transferor and the transferee shall consult the workers' representatives before the business transfer takes place, in order to reach an agreement on the measures they intend to apply to workers as a result of the business transfer (article 286).

The works council shall request to the management, in writing, the information due. This shall be provided, also in writing, within eight days, unless due to its complexity a longer period is justified (this cannot exceed 15 days). The works council has the right to participate in the restructuring processes. In case of restructuring of the majority of the companies which works councils are coordinated by a coordination council, this also has the right to participate in the restructuring processes (article 427).

Both councils have the right to be consulted and to issue a prior opinion. They should be informed on the evolution of the subsequent actions and on the final restructuring instruments before their approval. They also have the right to meet the company's unit responsible and to present suggestions, claims or criticism to the competent company's bodies (article 429).

Articles 554 and 555 of the Labour Code establishes the consequences in case of non-compliance. The Labour Code states that a variable fine is applied in conformity with the scale of seriousness of the administrative offences in the field of labour and according to the firm's volume of business and the degree of the law-breaker's culpability. The fine may vary between 2 and 600 Units of Account (UC). Since 2009, the value of UC has been maintained at €102.

Commentary

No information available.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union Works council Other
Involvement (others)	Coordination council
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 (2015), Portugal: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Romania

Staff information and consultation on 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	Staff information and consultation on business transfers
Added to database	15 July 2015
Access online	Click here to access online

Article

11, 12, 15

Description

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.

The transferor and transferee shall inform in writing their employees' representatives or, if they are not set up or appointed, their employees at least 30 days before the date of transfer of:

- the date or proposed date of the transfer;
- the reasons for the transfer;
- the legal, economic and social implications of the transfer for employees;
- the measures envisaged in relation to employees;

- conditions of work and employment.

The obligations shall apply irrespective of whether the decision resulting in the transfer is taken by the employer or an undertaking controlling the employer. Where the transferor or the transferee envisages measures in relation to his or her employees, he or she shall consult the representatives of the employees, with a view to reaching an agreement, at least 30 days before the date of transfer.

In the event of failure by the transferor or the transferee to comply with the obligations laid out in the law, the employees or representatives of the employees affected by the transfer may address the competent court for resolution of the labour disputes, according to the law.

Commentary

This law 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.

In some respects, the Romanian law establishes a legal regime which is more favourable to workers than the Directive, e.g. by providing narrower exceptions or by not using the possibility afforded by the Directive not to apply certain provisions to certain specific categories of employees or undertakings.

However, 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.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union Other

Involvement (others) representatives of the employees (where there is no trade union)

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 (2015), Romania: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Slovakia

Staff information and consultation on business transfers

Phase	Labour Code
Native name	Zákonník práce
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

27-31

Description

If a business unit (a company or a part of a company) or a task or activity of the company or part thereof is transferred to another employer (company), the rights and obligations arising from the relationships governed by labour law with the transferred employee shall be transferred to the transferee employer.

At least one month before the transfer of an undertaking the employer is obliged to inform employees' representatives (or the employees directly if there are no representatives at the employer) and consult with them regarding relevant issues (the date of transfer, its reasons, the implications of the transfer to employees and projected measures). The National Labour Inspectorate can impose a penalty on the employer if they fail to do this.

If a transfer results in significant changes in an employee's working conditions and the employee does not agree with the change, employment shall be deemed terminated by agreement and the employee is entitled to severance payment.

The new employer is obliged to adhere to the collective agreement as agreed upon by the preceding employer, and the legal position and function of employees' representatives shall be retained until the termination of their function period.

Commentary

According to the trade unions, some practical problem emerges when the business transfer concerns more than one company, e.g. several companies are taken over by the new owner. If there were several collective agreements valid in the concerned companies, the legislation does not specify which of the agreements should be applied in the new company.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union Works council Other
Involvement (others)	Employees, if there are no employees' representatives at the 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 (2015), Slovakia: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Slovenia

Staff information and consultation on business transfers

Phase	Employment Relationship Act (ZDR-1); Worker Participation in Management Act (ZSDU); Trade Secrets Act (ZPosS)
Native name	Zakon o delovnih razmerjih (ZDR-1); Zakon o sodelovanju delavcev pri upravljanju (ZSDU); Zakon o poslovni skrivnosti (ZPosS)
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 76 of the Employment Relationship Act (ZDR-1); Articles 91, 92 and 93 of the Worker Participation in Management Act (ZSDU); Articles 4 and 7 of the Trade Secrets Act

Description

The transferor and the transferee employer, at least 30 days prior to the transfer, must inform the trade unions, the works council or a labour representative (if applicable) about the date or the proposed date of the transfer of the company or major parts of it, the reasons for the transfer, the legal, economic and social implications of the transfer for workers, and the measures envisaged for workers at least 30 days prior to the decision.

The transferor employer and the transferee employer, with the intention of achieving an agreement, must consult the trade unions at least 15 days prior to the transfer about the legal, economic and social implications of the transfer and about the envisaged measures for workers. If there is no trade union present at the workplace, the workers affected by the transfer must be informed in a manner customary to the employer on the circumstances of the transfer. However, the employer is not required to take explicit account of workers' views.

The Trade Secrets Act stipulates that trade secrets disclosed during the obligatory consultations with the trade union, works council or labour representative are legally obtained. It is also not unlawful disclosure of trade secrets if a worker gives information to his or her representative for protecting the interests of worker(s). The exemption applies to the exercise of workers' rights, which must follow the rules on the activities and protection of trade union representatives.

Commentary

No information available.

Additional metadata

Cost covered by	None
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 (2015), Slovenia: Staff information and consultation on business transfers, Restructuring legislation database, Dublin

Spain

Staff information and consultation on business transfers

Phase	Law 12/2001 of 9 July on urgent measures to reform the labour market
Native name	Ley 12/2001, de 9 de Julio, de medidas urgentes para reformar el mercado de trabajo
Type	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

44

Description

Information and consultation rights in the event of transfers of undertakings are exercised by workers' delegates and workers' committees. These rights are guaranteed in enterprises with more than 5 employees.

The law 12/2001 literally reproduced the definition of transfer included in the 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 transfer of undertaking, business or parts of undertakings of business. Thus, it is stated that 'there is a transfer when the transmission affects 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'.

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.

Transferor and transferee are required to inform the employees' representatives of the following issues:

- 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.

This information must be provided in good time (before the change of the business takes place). If there are no employees' representatives, transferor and transferee must give such information to the workers affected.

When the transferor or transferee envisages implementing substantial changes in the employment and working conditions, a consultation process must be opened with the employees' representatives which will not be longer than 15 days. The parties must negotiate with a view to reaching an agreement.

Commentary

Before transposition of the Directive 98/50/EC, Spanish legislation only established the obligation of notifying the transfer to the employees' representatives. Currently, numbers 6 to 9 of article 44 (Statute of Worker's Rights) contain a more complete regulation. The Directive 2001/23/EC was transposed to the Spanish legislation by means of the law 12/2001 of 9 July.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: 6 Company size: 6 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Spain: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin

Sweden

Staff information and consultation on 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	Staff information and consultation on business transfers
Added to database	08 May 2015
Access online	Click here to access online

Article

6b, 7 and 25 of the Employment protection act; 28 of the Co-determination act

Description

In the framework of a transfer of an economic entity or part of an economic entity (including public sector and seagoing vessels) which retains its identity (for example, the sale of the business) the transferee has to take over all employment contracts without changing any rights and obligations of the workers for one year following the transfer. However, contracts can only be transferred with the consent of the employee in question. Employees have a right to object to being transferred within reasonable time. In this case, these employees remain in the employment of the transferor.

Both the transferor and the transferee have to inform and consult with the employee organisations before a decision to realise a transfer of undertaking is taken. If there is a collective agreement at the workplace, the trade union representatives bound by the collective agreement are to be informed and consulted. If there is no collective agreement, every trade union that has members that will be affected by the transfer need to be informed and consulted.

The consultation procedure has no fixed length, and the employee organisation does not have the right to declare void any decision of the employer.

Commentary

The legislation does not specify which information needs to be provided, but in practice this should include detailed information about the transfer and any potential restructuring of the company, including potential consequences for the employees. Collective agreements may contain additional provisions that need to be observed.

Regarding 'retention of identity after transfer', the Swedish labour court decided that necessary criteria are:

- the type of business or undertaking concerned;
- the similarity between the activities;
- whether customers are transferred;
- the duration of any interruption in the performance of the activities;

and sufficient criteria are:

- whether tangible or intangible assets have been transferred;
- whether the majority of employees are retained.

To qualify as a transfer of undertaking, all of the necessary and at least one of the sufficient criteria must be met.

The reform of the Employment protection act did not affect the employer's obligation to keep staff and trade unions informed in the case of business transfers.

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 (2015), Sweden: Staff information and consultation on business transfers,
Restructuring legislation database, Dublin