



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

UEAPME reply
to the Questionnaire on the effect of the provision of Council Directive 2001/23/EC
of 12 march 2001 on the approximation of the laws of the members States relating to
the safeguarding of employee's rights in the vent of transfers of undertakings, businesses
or part of undertakings or businesses

The objective of the Commission with this questionnaire is mainly to verify if certain provisions of the directive 2001/23/EC need clarification or possible improvement.

On the basis of the replies of its national members, UEAPME considers that there is no further need for clarification or improvement, neither for possible changes.

The reply to the questionnaire shows clearly that the situation varies from country to country according to the previous legal arrangements already in place.

Reply to the questionnaire

1 - Scope and definitions

1.1

In the UK it applies to the other Member States and to the EEA countries.

In Belgium, the Collective agreement negotiated for the transposition of the directive does not mention specifically any international transfer, but since it does not exclude it either, one can consider that it is covered.

In Austria, due to the principle of territoriality, Austrian law can only be applied in Austria.

In Italy, it does not apply directly.

1.2

In the UK it does not apply to countries outside the EEA, but it applies outside the EEA for Belgium.

1.3

In the UK, theoretically it is possible for the provisions to be suitable for cross border transfers, but only if the system is implemented consistently across the EEA

Belgium considers the provisions suitable for cross-borders transfers.

1.4

In most of the countries it is not possible to reply to this question, except Italy, where they consider that the number of cross-border transfers is increasing.

1.5

No, the directive does not apply to seagoing vessels in these four countries

2 - Safeguarding of employee's rights

2.1

In the UK, like in Belgium, national obligations do not provide for joint liability from transferor and transferee in respect of obligations which arose before the date of transfer.

In the UK the new employer takes over all rights and obligations arising from the contracts of employment of all employees who were employed in the undertaking immediately before the transfer. The new employer takes all rights and obligations arising from those contracts of employment, except criminal liabilities.

In Belgium all obligations which arise from an employment contract existing on the date of the transfer are transferred from the transferor to the transferee. Obligations arising from contracts that no longer exist on the date of the transfer stay with the transferor. There is a joint liability for debts arising out of a work contract, that exist on the date of the transfer

In Austria as long as there are no other legal rules of liability, which are more favourable for the employee, the transferor and the transferee are equally liable for all claims from the employment relationship, which originated before the date of transfer. Concrete liability rules are foreseen for the rights of compensation, for company pension schemes, and accrued liabilities for compensation and pension expectancies.

In Italy, the national provisions provide for joint liability from transferor and transferee

2.2

In the UK, like in Belgium, they do not limit the period for observing the terms and conditions agreed in a collective agreement following the transfer.

The Austrian provisions determine that the employment conditions, which have been decided by a collective agreement, are not allowed to be abolished or restricted to the disadvantage of the employee for at least one year.

In Italy the limit is related to the date of expiry of the collective agreements existing at the time of the transfer.

2.3

In the UK the new employer takes over the employment contracts, except for the rights and obligations relating to provisions about benefits for old age, invalidity or survivors in employees' occupational pension schemes.

In Belgium there is no obligation for the transferee to accept the supplementary pension scheme rights, unless if this is agreed on in the transfer contract or the rights arising from a collective labour agreement.

In Austria for some types of business transfers, the buyer can forbear from certain company pension provisions, while complying with the legal requirements.

In Italy, it does not apply, although the Italian civil law is very unclear on this topic, opening a big debate between the different interpretations.

2.4

The possibility laid down in paragraph 2 of Article 4(1° has not been used in the UK, in Belgium, in Austria.)

In Belgium there is an exception for transfers of undertakings in the case of bankruptcy or judicial agreement. After bankruptcy, the transferee chooses the employees he wants to engage. In case of judicial agreement transferee and unions negotiate.

In Italy, the Italian civil law protects workers against dismissals directly caused by the transfer. However, the employer can dismiss workers if there is an objective modification (i.e. market crisis) concerning the undertaking's activities, after the transfer.

2.5

In Belgium the provisions do not apply in case of bankruptcy, but the same collective labour agreement n°32bis settles this issue in chapter III.

In Austria, the national provisions through which Art.3 and Art. 4 of the directive are transposed do not apply in the case of bankruptcy.

In Italy, bankruptcy proceedings or any analogous insolvency proceedings are outside the coverage of the transfer of undertakings' law.

2.6 and 2.7

It applies only in Belgium, where the national collective agreement strictly took up the text of Article 5 (2) of the European directive.

In Austria, this possibility has not been used, nor in Italy or UK.

2.8

No specific reply

3 - Information and consultation

3.1

It was not used in Belgium, because information and consultation was already organised according to the collective agreement n°9 and 5. The collective labour agreement n°32bis only focuses on undertakings without a formal bargaining instrument (i.e. undertakings with less than 50 employees).

The same is the case in Austria, where the obligation of information and consultation of the employees is not limited to those cases.

Neither was it used in Italy.

3.2

No this possibility has not been used in Belgium. Information and consultation was already formally organised in earlier agreement. But other enterprises are not excluded from informing their employees.

This has not been used in Austria. In Austria if there is no workers representation in a company, it is the obligation of the transferor or transferee to inform the employees, which are affected by the business transfer, in advance in written manner.

In Italy, if the undertakings have 16 employees or more, the employer is obliged to inform workers' trade unions (by letter) about the transfer (25 days in advance, at least).

4 - General

No one considers the need for clarification or improvement of certain provisions of the directive.

Brussels, 05/04/06