Safeguarding of employees' rights in the event of transfers of undertakings

1994/0203(CNS) - 24/02/1997 - Modified legislative proposal

In its amended proposal, the Commission incorporates most of the amendments approved by the European Parliament, particularly those seeking to: - change the title of the proposal: the latter is now a proposal for a directive amending Directive 77/187/EEC, as requested by the EP, rather than a proposal for a directive to replace that directive, - delete the sub-paragraph relating to the definition of 'transfer', as that definition introduced obvious potential sources of legal uncertainty which might prove detrimental to the rights of workers and the interests of firms, - to provide for joint and several liability of the transferor and transferee in respect of obligations which arise from a contract of employment. This liability is limited to the obligations that fall due prior to the date of the transfer, - bolster the adoption of measures to prevent the fraudulent use of insolvency procedures (which have the effect of depriving employees of their rights), - guarantee the independence of employees' representatives in relation to their employer to enable them to carry out the functions assigned to them, - delete the provisions of the directive that explicitly give the Member States' judicial authorities powers to terminate a contract of employment or an employment relationship (as some Member States do not provide for such possibilities), - oblige the transferor and the transferee to inform the representatives of their respective employees as soon as a transfer is planned, - strengthen the protection afforded to workers by specifying that any failure to comply with the directives' provisions which results from the fact that the undertaking or the natural or legal person who/which took the transfer decision failed to inform the employer in due time cannot be tolerated, - ensure that the obligation to provide information to and consult employees is not subject to a minimum threshold with regard to the size of the undertaking (50 employees at least), - provide for effective, proportionate and dissuasive sanctions in the event of failure to comply with the provisions of the directive, - insert a clause banning discrimination on the basis of race, sex, age, handicap, sexual orientation, skin colour, religion or nationality.