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

1994/0203(CNS) - 29/06/1998 - Final act

PURPOSE: to amend Directive 77/187/EEC on the approximation of Member States' laws relating to the safeguarding of employees' rights in the event of transfers of undertakings, in the light of the impact of the internal market (and the necessary protection of workers which this entails, as laid down in the Community Social Charter of 09/12/89), the legislative tendencies of the Member States with regard to the rescue of undertakings in economic difficulties, the case-law of the European Court of Justice, Council Directive 75/129/EEC on the approximation of Member States' laws relating to collective redundancies and the legislation already in force in most Member States.

COMMUNITY MEASURE: Council Directive 98/50/EC amending Directive 77/187/EEC 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 businesses.

CONTENT: Directive 77/187/EEC is intended to promote the harmonisation of the relevant national laws ensuring the safeguarding of the rights of employees and requiring transferors and transferees to inform and consult employees' representatives in good time. In the light of the afore-mentioned legislative developments, this directive amends Directive 77/187/EEC in the following areas:

-clarifying the legal concept of transfer as well as the concept of "employee" and to require that Directive 77/187/EEC should apply to private and public undertakings carrying out economic activities, whether or not they operate for gain;
- with a view to ensuring the survival of insolvent undertakings, expressly allowing Member States not to apply certain Articles of the amended directive to transfers effected in the framework of liquidation proceedings, permitting certain derogations from the directive's general provisions in the case of transfers effected in the context of insolvency proceedings and also allowing such derogations for one Member State which has special procedures to promote the survival of companies declared to be in a state of economic crisis;
- in order to ensure equal treatment for similar situations, ensuring that the information and consultation requirements laid down in the directive are complied with irrespective of whether the decision leading to the transfer is taken by the employer or by an undertaking controlling the employer;
- clarifying that, when Member States adopt measures to ensure that the transferee is informed of all rights and obligations to be transferred, failure to provide that information is not to affect the transfer of the rights and obligations concerned;
- clarifying the circumstances in which employees must be informed where there are no employee representatives.

ENTRY INTO FORCE: 17/07/1998.

DEADLINE FOR TRANSPOSITION: 17/07/2001.