



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
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**UEAPME 's reply to the first phase of consultation
concerning cross border transfers of undertakings**

On 20th June 2007 the European Commission launched the first phase of consultation of European Social partners under Article 138(2) of the EC treaty concerning cross-border transfers of undertakings, businesses or parts of undertakings or businesses.

Reply to the various questions:

UEAPME considers that it is in the interests of both employers and workers to eliminate as far as possible any legal uncertainties concerning the transfer of undertakings, notably because of the steadily increasing number of transfers.

This phenomenon has been particularly encouraged by the various new EU directives in particular on the Societas Europaea, on the European Cooperative companies and on the cross-border merger of limited liability companies. However each of these directives foresees a specific regulation of the employees' participation.

a) Do the social partners agree with the above analysis on the issue of cross-border transfers?

UEAPME can only partially agree with the current analysis developed by the European Commission.

On the scope and definition of cross border transfers:

The current definition of cross border transfers is relatively unclear. The Commission has the tendency to amalgamate the cross border transfer of undertakings within the European Union and outside of the EU. A more precise delimitation of the scope and definition of cross border transfer of undertakings would be desirable.

On the change in the place of work:

1 - In the case of a change of workplace within the EU the transfer directive does not define any explicit regulation concerning the further application of collective agreements. Therefore the conditions described in Article 3.3 could also apply in a similar way as it currently stands in the directive.

“Conditions agreed in collective agreement are valid until the date of termination or expiry of the collective agreement or the entry into force of another collective agreement”.

The workers are covered at least for one year by the old collective agreement, as far as they were covered by such an agreement before the transfer.

Concerning the worker's representation, the current directive offers a good solution. According to paragraph 1 "status and function of the representatives or of the representation of the employees affected by the transfer shall be preserved on the same terms and subject to the same conditions as existed before the date of the transfer..."

The reconstitution or reappointment of the representation of employees will take place in accordance with national law and practices. Therefore it will be evaluated on a case by case basis if the applicable right foresees similar conditions for the reconstitution of employee's representation or not.

If this is the case", then the old employee's representation can pursue its activities. If not, it will be necessary to apply Article 6.2 of the directive.

2 – In the case of change of workplace outside the EU (or the EEA), we don't see the problem mentioned by the European Commission.

It is obvious that the European Union regulation can only cover the EU territory. Therefore in this case the question of whether or not the identity of the economic entity is maintained is not relevant because the Transfer Directive does not in no case apply.

b) Is it necessary or advisable to amend Directive 2001/23/EC in order to deal with the issue of cross-border transfers with a change in the place of work?

On the basis of the arguments presented in the precedent question, we don't see any need for changing directive 2001/23/EC.

c) Is any other type of Community action in this field necessary or advisable?

It would be useful if the Commission would prepare a Communication with the aim of giving clearer information and for further precisions on the scope of the transfer directive in the case of cross border transfers,

d) Should the collective aspects and the individual aspects of the employment relationship be treated separately?

We don't see any need for such a request.

e) Should cross-border transfers with a change in the place of work outside the EEA be subject to specific treatment?

Since the EU legislation is limited to the EU Member States and EEA countries in terms of territorial coverage, we don't see any competence or necessity for such a proposal.

Brussels, 01/08/07