



European Commission
Employment, Social Affairs
and Equal Opportunities

Community Labour Law

Jonas Alberg

Dimitris Dimitriou

European Commission

**DG EMPL Unit D/2 (Labour Law and Work
Organisation)**





Contents

- Directive 94/33/EC (young people)
- Directive 91/533/EEC (written statement)
- Directive 1999/70/EC (fixed-term work)
- Directive 97/81/EC (part-time work)
- Directive 91/383/EEC (health and safety in fixed term and temporary employment)
- Directive 96/71/EC (posting of workers)
- Directive 2002/74/EC (employer insolvency)
- Directive 98/59/EC (collective redundancies)
- Directive 2001/23/EC (transfers of undertakings)





1. Protection of young people at work (94/33/EC)

OBJECTIVES

- Prohibit work by children
- Strictly regulate and protect young people at work
- Ensure that employers guarantee young people working conditions suitable to their age
- Protection against economic exploitation and work harmful to safety and health, development or education

KEY PROVISIONS

- Personal scope: Applicable to all young workers (<18) having an employment contract with only limited exemptions for occasional or short-term work in private households or family undertakings





Directive 94/33/EC

(continued)

- Prohibition of work by children: Children (<15 or still in school) should not work with limited exemptions for a) training contracts (<14) or light work (<13) with special rules on working time, night work, rest periods, annual rests and breaks, and b) cultural, artistic, sporting or advertising activities in which case there shall be regulation at national level as well as national procedure of individual prior authorization unless in case of children older than 13.
- Obligations on employers: Assessment of hazards before work or before major changes in work taking into account i.a. substances, work processes and organisation and level of training and experience; free and regular health assessments; information about risks to young workers and the legal representatives of children; involvement of the protective and preventive services required under the general health and safety directive





Directive 94/33/EC

(continued)

- Regulation and protection of young workers (<18): Protection against risks and prohibition of employment for dangerous works with limited exemptions for training contracts if supervision by a competent person (dangerous works = beyond physical or psychological capacities, involving dangerous chemicals substances and processes exposure to radiation, extreme cold or heat or noise or vibration etc as listed in the Directive and the Annex)





Directive 94/33/EC

(continued)

- Special rules on working time for adolescents between 15-18 if not in school and with a general exemption only for force majeure if compensatory rest : a) maximum daily and weekly working hours in principle 8 hours per day and 40 hours per week regardless of the number of employers and if the work is training b) Night work in principle not allowed for any 8 consecutive hours during 10 pm to 7 am with limited exemptions if supervision or in certain sectors if objective grounds and compensatory rest as well as free and regular health assessments c) minimum daily and weekly rests in principle 12 and 36 consecutive hours with limited exemptions in case of work split up over the day or of short duration or in certain sectors if objective grounds and compensatory rest d) breaks of at least 30 minutes, consecutive if possible, if daily work exceeds 4.5 hours





Directive 94/33/EC

(continued)

- Sanctions: Effective and proportionate sanctions to secure enforcement and application of prohibition of work, employers' obligations, protective regulations and prohibitions of work as well as working time rules
- Non reduction: transposition not valid ground for lowering the level of protection





Protection of young people at work (*Recommendations*)

- 67/125/EEC Commission Recommendation of 31 January 1967 to the Member States on the protection of young workers
- 2000/581/EEC Commission Recommendation of 15 September 2000 on the ratification of International Labour Organisation (ILO) Convention 182 of 17 June 1999 concerning the prohibition and immediate action for the elimination of the worst forms of child labour





2. *Directive 91/533/EEC (written statement)*

OBJECTIVES

- Provide employees with written information about the essential aspects of the employment contract or employment relationship

KEY PROVISIONS

- Personal scope: All paid employees with exception only for certain short-term, part-time or casual contracts
- Written information from employers by means of a contract, letter of engagement or a written contract within two months from the commencement of work or within one month after any changes covering all essential elements of the contract or employment relationship including but not limited to : the parties, the place of work, the work tasks, beginning and duration of the contract or the work relationship, pay, paid leave, notice periods, length of daily and weekly working time, applicable collective agreements.





Directive 91/533/EEC

(continued)

- Special written information to expatriate employees, if employed outside the country for more than one month, covering : duration abroad, currency used for payment of remuneration, benefits whilst abroad and conditions governing repatriation
- Provision of the above information before the posting or within one month of any changes





Directive 91/533/EEC

(continued)

KEY ELEMENTS FOR TRANSPOSITION

- Put the rules in place and make sure there are effective sanctions. Tackle the situation where work starts without a written contract. Note that the information should cover all essential elements and not only the list in the Directive

IMPORTANT CASE LAW

- C-350/99 Lange





3. Directive 1999/70/EC on fixed-term work

MAIN OBJECTIVES

- No discrimination between fixed-term and comparable permanent workers
- Prevent abuse of successive fixed-term contracts

KEY PROVISIONS

- Personal scope: Fixed-term workers with an employment contract in both private and public sectors with limited exemptions for training contracts
- Measures to prevent abuse: Prevent abuse of successive fixed-term contracts by objective reasons and/or limits on number or duration of fixed-term contracts
- Equal treatment between fixed-term and comparable permanent workers as regards employment conditions as well as length of service criteria unless objective grounds





Directive 1999/70/EC

(continued)

- No distinctions as regards possible threshold levels for bodies representing workers
- Information about permanent employment opportunities,
- As far as possible: Training possibilities and information about fixed-term workers to workers' representative bodies





Directive 1999/70/EC

(continued)

KEY ELEMENTS FOR TRANSPOSITION

- Put the rules in place and make sure especially that there are no possibilities to hire on successive fixed-term contracts unless objective grounds; check if legislation or other rules discriminate against fixed-term workers in any way without objective grounds and redress that; make sure that there are effective sanctions in individual cases

CASE LAW

- C-144/04 Mangold
- Forthcoming: C-53/04 Marrosu et al; C212/04 Adeneler et al; C-307/05 Del Cerro Alonso





4. Part-time work (97/81/EC)

- This Directive implements the relevant Framework agreement of the European social partners
- The agreement presupposes, in several of its clauses, prior consultation of the national social partners (e.g. clauses 2, 4, 5)

OBJECTIVE: - Removal of discrimination against part-time workers and improvement of quality of part-time work
- Facilitation of development of part-time work

KEY PROVISIONS:

- Definitions (clause 3)
- Principle of non-discrimination (clause 4)
- Promotion of part-time work (clause 5)





Part-time work

(continued)

In particular: Definitions (clause 3)

- "Part-time worker": employee whose normal hours of work are less than the normal hours of work of a comparable full-time worker
- "comparable full-time worker": a full-time worker in the same establishment having the same type of employment relationship, who is engaged in the same or a similar work, due regard being given to other considerations including seniority and qualification

In particular: Principle of non-discrimination (clause 4)

- Part-time workers shall not be treated in a less favourable manner than comparable full-time workers in respect of employment conditions solely because they work part-time
- Possibility of different treatment where justified on objective grounds
- Application of the principle of pro rata temporis, where appropriate





Part-time work

(continued)

In particular: Promotion of part-time work (clause 5)

- Member States and social partners should identify, review and, where appropriate, eliminate obstacles which may limit the opportunities for part-time work
- A worker's refusal to transfer from full-time to part-time and vice versa should not constitute a valid reason for termination of employment
- As far as possible, employers should give consideration to a number of measures facilitating access to and quality of part-time work





5. Posting of workers (96/71/EC)

OBJECTIVE: facilitation of the transnational provision of services by way of ensuring fair competition and respect of workers' rights

KEY PROVISIONS: Scope (Article 1); Terms and conditions of employment (Article 3); Cooperation and information (Article 4); Jurisdiction (Article 6)

In particular:

- The Directive applies to an undertaking established in a Member State which posts workers to the territory of another MS in the framework of the transnational provision of services
- The provision of services may take the form either of performance of work by an undertaking under a contract concluded between that undertaking and a service-receiver or of the hiring-out of workers for use by an undertaking in the framework of a public or private contract





Posting of workers

(continued)

In particular (Article 3):

- Certain minimum requirements for conditions of employment in the Member State, where the work is carried out, apply to the posted worker
(i.e. minimum rates of pay, maximum working hours, minimum rest periods, minimum paid annual holidays, health and safety at work)
- These conditions of employment are laid down by law and/or by collective agreements which have been declared universally applicable as regards activities set out in the Directive's Annex





Posting of workers

(continued)

In particular (Article 4):

- Designation of liaison offices to ensure the cooperation between the national authorities responsible for the monitoring of conditions of employment.
- Notification of the designated liaison offices to Commission and other Member States
- Ensuring that information on conditions of employment is made generally available





Posting of workers

(continued)

In particular (Article 6):

- Possibility to institute judicial proceedings in the Member State in whose territory the worker is or was posted





Posting of workers

(continued)

IMPORTANT CASE-LAW:

- C- 60/03 (Wolff and Mueller), Judgement of 12.10.2004
- C-215/01 (Schnitzer), Judgement of 11.12.2003





6. Employer Insolvency Directive (80/987/EEC as amended by 2002/74/EC)

- **OBJECTIVE:** Provision of minimum protection for employees in the event of the insolvency of their employer
- **KEY PROVISIONS:**
 - definitions (Article 2)
 - establishment of an independent guarantee body (Article 5)
 - guarantee for payment of employees' outstanding claims (Articles 3,4, 7)
 - transnational situations (Articles 8a, 8b)
 - Notification of information (Articles 8b, 10a)





Employer Insolvency Directive

(continued)

– In particular (Article 2):

An employer is deemed to be in a state of insolvency where:

- a request has been made for the opening of collective proceedings based on an employer's insolvency, involving divestment of his/her assets and the appointment of a liquidator, and
- the competent authority has decided to open these proceedings or established the definite closure of the undertaking and the insufficiency of the available assets





Employer Insolvency Directive

(continued)

- In particular (Article 5):
Member States regulate the organization, financing and operation of the guarantee institution, in compliance with certain principles ensuring the independence of the institution and the payment of the employees' claims





Employer Insolvency Directive

(continued)

- In particular (Article 3, 4,7):
 - Guarantee for payment of the employees' outstanding claims resulting from their employment relationships including severance pay on their termination. The claims shall relate to a period prior to and/or after a given date determined by the Member States
 - Member States have the option to limit the liability of the guarantee institution and/or set ceilings on payments, by virtue of Article 4
 - Member States may also limit the liability of the guarantee institution in certain cases and take the necessary measures to avoid abuses (Article 10)





Employer Insolvency Directive

(continued)

- In particular, transnational situations (Articles 8a, 8b)
When an undertaking with activities in at least two Member States is in a state of insolvency, the responsible guarantee institution will be the one in the Member State where the workers concerned work or habitually work.
Sharing of information between the competent administrative authorities and/or the guarantee institutions
Notification by Member States to the Commission and the other MS of:
 - contact details of the competent administrative authorities and/or the guarantee institutions
 - types of national insolvency proceedings





Employer Insolvency Directive

(continued)

IMPORTANT CASE-LAW:

- C- 6/90 and 9/90 (Francovich I.), Judgement of 19.11.1991
- C-479/93 (Francovich II.), Judgement of 9.11.1995
- C-373/95 (Maso), Judgement of 10.07.1997
- C-117/96 (DAH-Mosbaek), Judgement of 17.09.1997
- C- 198/98 (Everson-Bell Lines Ltd.), Judgement of 16.12.1999





7. Health and Safety in fixed term and temporary employment (91/383/EEC)

- OBJECTIVE: Ensure workers with fixed-term or temporary employment relationships the same level of protection as other workers in the same workplace
- Equal treatment as regards safety and health at work
- General Directive 89/391/EEC and the other individual Directives on Health and Safety at work continue to apply in full.





Health and Safety in fixed term and temporary employment

(continued)

KEY PROVISIONS:

- General (regarding both fixed-term and temporary employment relationships)
 - Information to workers by user undertaking before taking up any activity on risks regarding, in particular
 - special qualifications/skills or medical surveillance required
 - any increased specific risks due to the job
 - Training
 - sufficient and appropriate training taking account of the job and the workers' experience/skills
 - Medical surveillance
 - Member States have the option to prohibit use of workers for certain work
 - Where they do not use this option, they must ensure the provision of appropriate special medical surveillance





Health and Safety in fixed term and temporary employment

(continued)

- Information to protection and prevention services at work of the assignment of workers with fixed-term and temporary employment relationships
- Special provisions (regarding only temporary employment relationships)
- Information to temporary work agency by user undertaking, before temporary workers take up any activity, on – inter alia-
 - occupational qualifications/skills required
 - specific features of the jobThe agency transmits this Information to the workers concerned.
- Responsibility of the user undertaking as regards the health and safety-related working conditions during the period of the assignment.





8. *Collective redundancies*

(98/59/EC consolidating 75/129/EEC as amended by 92/56/EEC)

- **OBJECTIVE:** Approximation of the different laws of the Member States in order to afford greater protection to workers in the event of collective redundancies.
- **KEY PROVISIONS:** Definitions and scope (article 1); Information and consultation with the workers' representatives (article 2); Procedure for collective redundancies (articles 3 and 4).
- In particular, Article 1: Two criteria regarding the notion of "collective redundancies":
 - qualitative: dismissals for reason(s) not related to individual workers
 - quantitative: number of redundancies within a certain period of time, depending on the size of the establishment





Collective redundancies

(continued)

- **Article 2:** Where an employer is contemplating collective redundancies, he consults the workers' representatives in good time and with a view to reaching an agreement, in order to avoid or reduce the number of workers affected and to mitigate the negative consequences. At the same time, he informs them on a number of relevant issues (e.g. on reasons, number of workers employed and affected, period, criteria of the redundancies, etc.) He transmits this information also to the competent public authority.
- **Articles 3 and 4:** The employer notifies to the competent public authority information on projected collective redundancies. He transmits this information also to the workers' representatives. The projected collective redundancies cannot take effect earlier than 30 days from the notification.





Collective redundancies

(continued)

KEYS ELEMENTS:

- **The directive covers dismissals effected by an employer for reasons not related to the individual workers concerned (broad definition).**
- **Terminations of an employment contract on the initiative of the employer are assimilated to collective redundancies, provided that they are at least five redundancies.**
- **Dinstinction between the procedural steps before the workers' representatives on the one hand, and the competent public authority on the other hand.**
- **Designation of the competent public authority.**
- **Enforcement of obligations and sanctions.**





Collective redundancies

(continued)

IMPORTANT CASE-LAW:

- Case C-188/03, (Junk), Judgement of 27.01.2005
- Case C-55/02, (Commission v Portugal), Judgement of 12.10.2004
- Case C-449/93, (Rockfon), Judgement of 07.12.1995.
- Case C-383/92, (Commission v UK), Judgement of 08.06.1994.





9. *Transfer of undertakings*

(2001/23/EC consolidating 77/187/EEC as amended by 98/50/EC)

- **Objective: Protection of employees in the event of a change of employer.**
 - In particular, safeguarding of employees' rights arising from an employment relationship
 - Information and consultation of employees' representatives
- **Key provisions:**
 - Scope and definitions (Articles 1 and 2)
 - Safeguarding of employees' rights (Articles 3-6)
 - Information and consultation (Article 7)
- **In particular Article 1 :**
 - Notion of "transfer": transfer of 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.





Transfer of undertakings

(continued)

- The means through which the transfer takes place are irrelevant (contract, unilateral act, a judicial decision or a law)
- All types of undertakings are covered, whether they are public or private and whether or not they are operating for gain
- Exclusions:
 - Activities involving the exercise of public authority
 - Administrative reorganisation of public administrative authorities
 - Sea-going vessels





Transfer of undertakings

(continued)

- **Two conditions should be met:**
 - **Change of employer**
 - **Maintenance of the identity of the economic entity** (following criteria)
 - type of undertaking or business
 - whether or not tangible assets such as buildings and movable property are transferred
 - the value of intangible assets at the time of transfer
 - whether or not the majority of employees are taken over by the new employer
 - whether or not the customers are transferred
 - the degree of similarity between the activities carried on before and after the transfer
 - the period, if any, for which those activities were suspended





Transfer of undertakings

(continued)

- **In particular Articles 3-6 : Safeguarding of employees' rights**
 - All rights and obligations arising from the employment contract existing on the date of the transfer are automatically transferred
 - The transferee has to continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.
 - an employee cannot waive the rights conferred upon him by the Directive and these rights cannot be restricted, even with his consent
 - In the event of the employee deciding of his own accord not to continue with the contract of employment or employment relationship with the transferee, it is for the Member States to determine what the fate of the contract of employment or employment relationship should be.





Transfer of undertakings

(continued)

- Transfer does not in itself constitute grounds for dismissal either by the transferor or by the transferee (but dismissals may take place for economic, organisational or technical reasons)
- Preservation of the status and functions of the employees' representatives under determined conditions; protection of the employees' representatives whose term of office expires as a result of the transfer.





Transfer of undertakings

(continued)

INFORMATION

- **Who Provides it:** Both transferor and transferee
- **To whom:** To the representatives of the employees affected by the transfer. If there are no workers' representatives, to the employees concerned
- **Content of the information:**
 - 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
- **When:**
 - by the transferor, in good time before the transfer
 - by the transferee, in good time and, in any event, before his employees are directly affected by the transfer as regards their conditions of work and employment





Transfer of undertakings

(continued)

CONSULTATION

- **Who consults**: The transferor or transferee who envisage measures in relation to the employees
- **Whom**: the representatives of the employees concerned
- **Content**: the envisaged measures in relation to the employees
- **When**: In good time
- **Aim**: With a view to reaching an agreement





Transfer of undertakings

(continued)

IMPORTANT CASE-LAW:

- **Case 24/85, (*Spijkers*), Judgment of 18.03.86**
- **Case C-13/95, (*Süzen*), Judgment 11.03.97**
- **Case 324/86, (*Daddy's Dance Hall*), Judgment of 10.2.1988**
- **Case C-340/01, (*Abler*), Judgment of 20.11.2003**





Community Labour Law

http://europa.eu.int/comm/employment_social/labour_law/directives_en.htm

