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Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies

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COUNCIL DIRECTIVE 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

(1) Whereas for reasons of clarity and rationality Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (3) should be consolidated;

(2) Whereas it is important that greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community;

(3) Whereas, despite increasing convergence, differences still remain between the provisions in force in the Member States concerning the practical arrangements and procedures for such redundancies and the measures designed to alleviate the consequences of redundancy for workers;

(4) Whereas these differences can have a direct effect on the functioning of the internal market;

(5) Whereas the Council resolution of 21 January 1974 concerning a social action programme (4) made provision for a directive on the approximation of Member States' legislation on collective redundancies;

(6) Whereas the Community Charter of the fundamental social rights of workers, adopted at the European Council meeting held in Strasbourg on 9 December 1989 by the Heads of State or Government of 11 Member States, states, inter alia, in point 7, first paragraph, first sentence, and second paragraph; in point 17, first paragraph; and in point 18, third indent:

'7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community (. . .).

The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.

(. . .)

17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

(. . .)

18. Such information, consultation and participation must be implemented in due time, particularly in the following cases:

(- . . .)

(- . . .)

- in cases of collective redundancy procedures;(- . . .)`;

(7) Whereas this approximation must therefore be promoted while the improvement is being maintained within the meaning of Article 117 of the Treaty;

(8) Whereas, in order to calculate the number of redundancies provided for in the definition of collective redundancies within the meaning of this Directive, other forms of termination of employment contracts on the initiative of the employer should be equated to redundancies, provided that there are at least five redundancies;

(9) Whereas it should be stipulated that this Directive applies in principle also to collective redundancies resulting where the establishment's activities are terminated as a result of a judicial decision;

(10) Whereas the Member States should be given the option of stipulating that workers' representatives may call on experts on grounds of the technical complexity of the matters which are likely to be the subject of the informing and consulting;

(11) Whereas it is necessary to ensure that employers' obligations as regards information, consultation and notification apply independently of whether the decision on collective redundancies emanates from the employer or from an undertaking which controls that employer;

(12) Whereas Member States should ensure that workers' representatives and/or workers have at their disposal administrative and/or judicial procedures in order to ensure that the obligations laid down in this Directive are fulfilled;

(13) Whereas this Directive must not affect the obligations of the Member States concerning the deadlines for transposition of the Directives set out in Annex I, Part B,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Definitions and scope

Article 1

1. For the purposes of this Directive:

(a) 'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

(i) either, over a period of 30 days:

- at least 10 in establishments normally employing more than 20 and less than 100 workers,

- at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers,

- at least 30 in establishments normally employing 300 workers or more,

(ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

(b) 'workers' representatives' means the workers' representatives provided for by the laws or practices of the Member States.

For the purpose of calculating the number of redundancies provided for in the first subparagraph of point (a), terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned shall be assimilated to redundancies, provided that there are at least five redundancies.

2. This Directive shall not apply to:

(a) collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts;

(b) workers employed by public administrative bodies or by establishments governed by public law (or, in Member States where this concept is unknown, by equivalent bodies);

(c) the crews of seagoing vessels.

SECTION II

Information and consultation

Article 2

1. Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time with a view to reaching an agreement.

2. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.

Member States may provide that the workers' representatives may call on the services of experts in accordance with national legislation and/or practice.

3. To enable workers' representatives to make constructive proposals, the employers shall in good time during the course of the consultations:

(a) supply them with all relevant information and

(b) in any event notify them in writing of:

(i) the reasons for the projected redundancies;

(ii) the number of categories of workers to be made redundant;

(iii) the number and categories of workers normally employed;

(iv) the period over which the projected redundancies are to be effected;

(v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;

(vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

The employer shall forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph, point (b), subpoints (i) to (v).

4. The obligations laid down in paragraphs 1, 2 and 3 shall apply irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.

In considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the ground that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies.

SECTION III

Procedure for collective redundancies

Article 3

1. Employers shall notify the competent public authority in writing of any projected collective redundancies.

However, Member States may provide that in the case of planned collective redundancies arising from termination of the establishment's activities as a result

of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests.

This notification shall contain all relevant information concerning the projected collective redundancies and the consultations with workers' representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

2. Employers shall forward to the workers' representatives a copy of the notification provided for in paragraph 1.

The workers' representatives may send any comments they may have to the competent public authority.

Article 4

1. Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3(1) without prejudice to any provisions governing individual rights with regard to notice of dismissal.

Member States may grant the competent public authority the power to reduce the period provided for in the preceding subparagraph.

2. The period provided for in paragraph 1 shall be used by the competent public authority to seek solutions to the problems raised by the projected collective redundancies.

3. Where the initial period provided for in paragraph 1 is shorter than 60 days, Member States may grant the competent public authority the power to extend the initial period to 60 days following notification where the problems raised by the projected collective redundancies are not likely to be solved within the initial period.

Member States may grant the competent public authority wider powers of extension.

The employer must be informed of the extension and the grounds for it before expiry of the initial period provided for in paragraph 1.

4. Member States need not apply this Article to collective redundancies arising from termination of the establishment's activities where this is the result of a judicial decision.

SECTION IV

Final provisions

Article 5

This Directive shall not affect the right of Member States to apply or to introduce laws, regulations or administrative provisions which are more favourable to

workers or to promote or to allow the application of collective agreements more favourable to workers.

Article 6

Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to the workers' representatives and/or workers.

Article 7

Member States shall forward to the Commission the text of any fundamental provisions of national law already adopted or being adopted in the area governed by this Directive.

Article 8

1. The Directives listed in Annex I, Part A, are hereby repealed without prejudice to the obligations of the Member States concerning the deadlines for transposition of the said Directive set out in Annex I, Part B.

2. References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 9

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Communities.

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 20 July 1998.

For the Council

The President

W. MOLTERER

(1) OJ C 210, 6. 7. 1998.

(2) OJ C 158, 26. 5. 1997, p. 11.

(3) OJ L 48, 22. 2. 1975, p. 29. Directive as amended by Directive 92/56/EEC (OJ L 245, 26. 8. 1992, p. 3).

(4) OJ C 13, 12. 2. 1974, p. 1.

ANNEX I

PART A

Repealed Directives (referred to by Article 8)

Council Directive 75/129/EEC and its following amendment:

Council Directive 92/56/EEC.

PART B

Deadlines for transposition into national law (referred to by Article 8)

>TABLE>

ANNEX II

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