

INTERNATIONAL LABOUR LAW NETWORK NEWSLETTER

ILLN.EU



MAY 2025

Top ILLN News

Transfer of Undertakings (Protection of Employment) Regulations (TUPE) in selected European countries

Dear Reader,

Welcome to the May 2025 edition of the ILLN Newsletter. In this issue we write about the **Transfer of Undertakings (Protection of Employment) Regulations (TUPE) in selected European countries.**

The Transfer of Undertakings (Protection of Employment) Regulations, commonly known as TUPE, is a legal framework designed to safeguard employees when a business or part of a business is transferred to a new employer. Understanding the role of TUPE in the transfer of employees in Europe is essential for both employers and employees in order to deal with the complex issues involved in corporate restructuring while complying with applicable laws.

Hopefully, no one doubts that when a workplace is transferred from one employer to another, it is important to protect the rights of employees. The EU has taken steps to ensure that this happens. The Directive regulating this issue ([2001/23/EC](#)) emphasizes that the transfer of an undertaking does not constitute valid grounds for dismissals. However, they may occur for economic, technical or organizational reasons or in relation to certain categories of employees not covered by the provisions on protection against dismissal.

Moreover, other European countries generally follow similar principles. However, as noted in the ILLN newsletter of May 2025, the legal situation in individual European countries varies slightly in detail. Therefore, it is worth knowing about this.

In the case of TUPE, the rights and obligations arising from the employment contract or employment relationship are transferred from the previous employer to the new one. But can the state decide that both of them will be liable for all obligations that arose before the date of transfer? Collective agreements remain in force until they expire, are terminated or replaced. However, the period of their observance may be limited, provided that it is not shorter than one year.

Below you will find **basic information on the practical implementation of the TUPE concept in the most important European jurisdictions.**

The information contained in the current ILLN newsletter of May 2025 is largely the result of the ILLN Associates weekend meeting held on May 9–10, 2025, in Milan, Italy.

We hope you enjoy reading it.

'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

BELGIUM

Transposition of Directive 2001/23 into Belgian Law: CLA 32bis

Directive 2001/23/EC has been transposed into Belgian law by Collective Labour Agreement (CLA) No. 32bis, officially titled CLA concerning the retention of employees' rights in the event of a change of employer pursuant to the transfer of undertakings by agreement and to regulating the rights of employees taken over in the event of takeover of assets following bankruptcy.

Adopted by the National Labour Council on 7 June 1985, CLA 32bis encompasses provisions not only regarding employee rights in cases of a change of employer through a transfer of undertaking by agreement, but also in cases of asset acquisition following bankruptcy.

Scope of Applicability

Due to the inapplicability of the Collective Labour Agreement Act to the public sector, CLA 32bis does not formally extend to public undertakings. However, this exclusion is arguably incompatible with Directive 2001/23/EC, which explicitly applies to both public and private entities engaging in economic activities.

Belgian legal doctrine and jurisprudence uniformly recognize that the legislature has inadequately implemented the directive. The Court of Justice of the European Union has consistently held that the

directive applies to transfers involving legal persons governed by either public or private law, provided the activity is economic in nature. Consequently, public undertakings cannot be excluded if the transferred function constitutes an economic activity (e.g., cleaning services), as opposed to functions involving public authority.

Moreover, the protection under CLA 32bis is not limited to those employed under standard employment or apprenticeship contracts. It also extends to individuals working under the authority of the transferor without such contracts—such as civil servants—if they fall within the directive's personal scope.

Conditions for Application

The application of CLA 32bis in the case of a transfer of undertaking by agreement requires the following three conditions:

BELGIUM



KARLIEN CLEREBAUT
MVVP

karlien.clerebaut@mvvp.be

1. **Change of Employer:** The transfer must result in a change of employer. This includes legal restructurings such as incorporation, merger, or absorption—provided there is an actual change in the employing entity. Internal reorganizations without a change of employer are excluded.
2. **Transfer of an Undertaking or part thereof:** The transfer must concern an economic entity that retains its identity and continues its economic activity. The preservation of identity is assessed case-by-case, based on the factual context. This generally involves transferring an entity that performs an independent function for the transferor.
3. **Agreement between Transferor and Transferee:** There must be an agreement between the transferring employer (transferor) and the acquiring employer (transferee).

Legal Consequences

- **Automatic Transfer of Employment Contracts:** Employment contracts are automatically transferred to the transferee.
- **Preservation of Employment Conditions:** The transferee must uphold all contractual employment terms, including remuneration, benefits, qualifications, seniority, and work arrangements.
- **Joint Liability:** Both the transferor and transferee are jointly liable (in solidum) for debts existing at the time of transfer, except those arising from supplementary social benefits (e.g., occupational pensions).
- **No Dismissal Justification:** The change of employer does not, in itself, constitute valid grounds for dismissal by either party.

Information and Consultation Obligations

CLA 32bis mandates prior information and consultation with employee representatives. Where no works council or union delegation exists, individual employees must be informed in advance of:

- The (intended) date of transfer;
- The reasons for the transfer;
- The legal, economic, and social implications for the employees;
- Any measures envisaged concerning employees.

No statutory timeline is imposed for such communication, but it must precede the effective transfer.

KARLIEN CLEREBAUT
MVVP

karlien.clerebaut@mvvp.be



'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

FRANCE

Legal basis

The concept of transfer of undertaking, or "*change in the legal situation of the employer*", covers a variety of situations, some of them expressly covered by the law, others resulting from interpretation or case law.

- Art. L. 1224-1 of the Labor Code
- Interpretation or case law

General description

In the event of a change in the employer's legal status, **notably** by succession, sale, merger, transformation of the business or incorporation of the company, all employment contracts in force on the date of the change continue to exist between the new employer and the company's employees.

However, as the legal list is preceded by the adverb "**notably**" and is therefore non-exhaustive, case law has extended the scope of application of this text to other situations, such as management leases, subcontracting, concessions and service contracts.

Employer information obligations, (e.g. deadlines) and process description

(a) Information and consultation obligations

The rules related to the information and consultation prior to company decisions are

applicable to all companies with at least 50 employees where a CSE exists (art. L. 2312-8 of the Labor Code):

- **Under 50 employees:** the employer does not have to inform and consult the CSE on the matters set out in the law or case law;
- **at least 50 employees with the existence of a CSE:** the employer has to inform and consult the CSE on the matters set out in article L. 2312-8 of the Labor Code, which include "*questions concerning the organization, management and general running of the company*", in particular **measures affecting the size or structure of the workforce or changes to its economic or legal organization** in case of merger, demerger or transfer (art. L. 2312-8 of the Labor Code).

It's the responsibility of each company concerned by the operation with at least 50 employees to

FRANCE



ANNE-SOPHIE LEHEMBRE
VOLTAIRE AVOCATS

asl@voltaire-avocats.com

inform and consult their CSE, which notably means:

- to inform it on the reasons of the planned operation,
- and to consult it on the measures that could be take and could concern the employees when the operation has consequences on them.

In this case, there are two separate consultations:

- the first one about the legal aspects of the planned operation,
- and the second one about the employment consequences of the planned operation.

(b) Process description

The French law does not set any precise timetable for the information and consultations of the *Comité Social et Economique* (elected representatives, CSE). The employer is free to choose the dates of the meetings with the elected representatives.

The information and consultation of the CSE concerns the transfer measure itself, **as soon as a project is envisaged**, independently of its consequences, which must be the subject of separate information and consultation.

Consequences for not obeying

If the project is implemented before the CSE has been consulted:

- The employer may be prosecuted of obstruction;
- The implementation of the project may be suspended by the judges until the CSE has been informed and consulted.

ANNE-SOPHIE LEHEMBRE

VOLTAIRE AVOCATS

asl@voltaire-avocats.com



'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

GERMANY

In Germany, the legal framework governing the transfer of business ("*Betriebsübergang*") is stipulated in Section 613a of the German Civil Code (BGB), which plays the central role in this context, outlining how employment relationships are handled when a business or part of it is transferred to a new owner.

What happens to Employment Relationships?

If a business or part of a business is transferred to another owner by legal transaction, then the latter succeeds to the rights and duties under the employment relationships existing at the time of transfer. Importantly, the termination of the employment relationship of an employee by the previous employer or by the new owner due to transfer of a business or a part of a business is ineffective. The right to terminate the employment relationship for other reasons remains unaffected.

The employee may object in writing to the transfer of the employment relationship within one month following receipt of notification (more on this below). If they do, their employment remains with the former employer.

Employer Obligations: Clear Communication Is Key

Either the previous employer or the new owner is to notify employees affected by a transfer in text form prior to transfer:

1. of the date or planned date of transfer,
2. of the reason for the transfer,
3. of the legal, economic and social consequences of the transfer for the employees, and
4. of the measures that are being considered with regard to employees.

If employees are not properly informed about the legal consequences of a business transfer, according to case law the one-month objection period does not begin.

Joint Liability: A Shared Responsibility

The previous employer is jointly and severally liable with the new owner for duties arising from the employment relationship to the extent that they arose prior to the date of transfer and are due before the end of one year following that date. If such duties are due after the date of transfer, however, the previous employer is only liable for

GERMANY



LUCA BOROWSKI, LL.M.
KÜTTNER RECHTSANWÄLTE

borowski@kuettner-rechtsanwaelte.de

them in that scope that corresponds to the part of their assessment period that ended on the date of transfer. This does not apply if a legal person or a commercial partnership ceases to exist by way of conversion.

What About Collective Bargaining and Works Agreements?

If rights and duties are governed by the legal provisions of a collective agreement or by a works agreement, then they become part of the employment relationship between the new owner and the employee and may not be changed to the disadvantage of the employee before the end of one year following the date of transfer. This does not apply, if the rights and duties given with the new owner are governed by the legal provisions of another collective agreement or by another works agreement. Prior to expiry of the period mentioned above, the rights and duties may be changed if the collective agreement or the works agreement

no longer applies or, where neither party is under the collective bargaining coverage of the scope of applicability of another collective agreement, the application of that collective agreement is agreed between the new owner and the employee. Thus, the applicability of a collective agreement can vary depending on the employee's trade union membership, the employer's association affiliations, or specific referral clauses in the employment contract - meaning that legal assessment may differ on a case-by-case basis. If the business retains its identity, works agreements applicable at the previous employer remain in force under collective law.

LUCA BOROWSKI, LL.M.

KÜTTNER RECHTSANWÄLTE

borowski@kuettner-rechtsanwaelte.de



'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

LUXEMBOURG

Based on Luxembourg labour law rules, qualifies as a transfer of undertaking a *"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"*.

The special rules on transfer of undertaking apply when the undertaking to transfer is based on the territory of the Grand-Duchy of Luxembourg and when the transfer occurs by contract, merger, succession, scission, conversion of capital resources or conversion into company form. Case law has further extended the scope of situations to which such rules apply.

Given the consequences that may arise from the qualification of a transaction as a legal transfer and the specific steps required to ensure compliance, it is recommended to seek prior legal advice.

What are the main consequences of a legal transfer of undertakings?

- **Automatic transfer of employment** contracts which will be carried over to the new employer by law.
- **Working conditions are maintained** by the new employer who shall continue to apply all employment terms, conditions and benefits to the transferred employees.

- **Joined liability** between the transferor and the transferee, after the date of the transfer, for obligations that fall due before the date of transfer as a result of an employment relationship existing on the date of transfer.
- **The transfer may not constitute in itself grounds for termination** and, in the event of a substantial change in the working conditions due to the transfer, the termination of the employment relationship resulting thereof shall be deemed to have been initiated by the employer.
- **Other Key Points:** special rules also apply for instance in case of:
 - collective bargaining agreements,
 - transfer of staff representatives,
 - supplementary pension schemes, etc.

LUXEMBOURG



GIULIA COSI

ELVINGER HOSS PRUSSEN

giuliacosi@elvingerhoss.lu

What procedure and timeline apply in case of a transfer of undertaking?

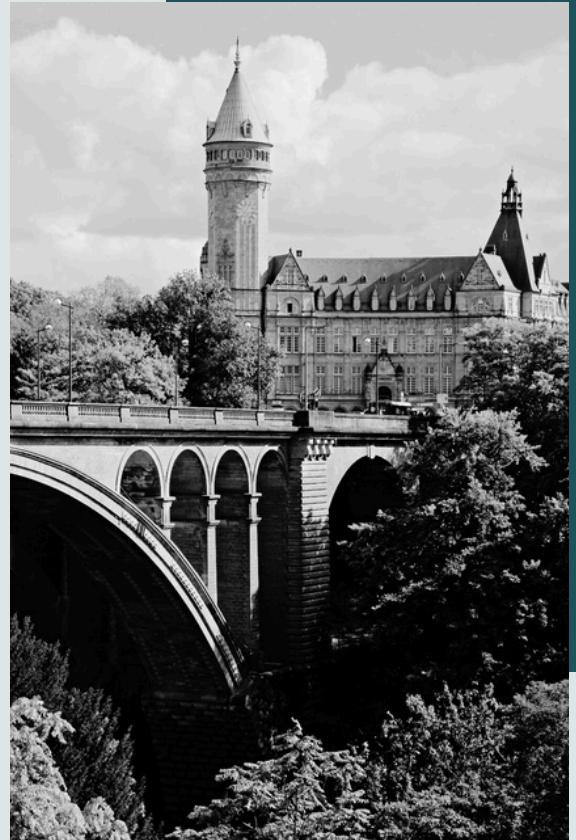
Although the transfer is automatic by law, there are specific steps to follow, such as:

- Prior to any decision to transfer an undertaking, as well as in due time prior to the date of the transfer, information and, where applicable, consultation of the employee representatives of both the transferor and the transferee applies. In the absence of employee representatives, special notification is to be addressed to the employees concerned by the transfer.
- In due time prior to the date of the transfer, a special notification by the transferor to the transferee regarding all rights and obligations to be transferred is required. A copy of such notification has also to be addressed to the Labour Authority (*Inspection du Travail et des Mines* – ITM).

The steps to be taken and their timing will vary depending on the specific circumstances and the nature of the restructuring. Conducting a preliminary legal assessment of the transaction will hence ensure a smooth and compliant implementation of the project.

What are the sanctions for non-compliance with the rules on transfer of undertaking?

Administrative sanctions may apply in case of a failure to comply with rules on transfer of undertaking. Criminal sanctions may also not be excluded, notably when the information and consultation rights of the employee representatives have not been respected. Damages may also be allocated to employees, mainly for abusive termination.



The above rules on transfer of undertaking may also apply in the context of cross-border restructurings, along with additional rules. Luxembourg has recently implemented into its national laws the EU Directive 2019/2121 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions.

GIULIA COSI

ELVINGER HOSS PRUSSEN

giuliacosi@elvingerhoss.lu

'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

THE NETHERLANDS

Dutch law has implemented the EU Transfer of Undertakings Directive (2001/23/EC) through Articles 7:662–666 of the Dutch Civil Code ('*Burgerlijk Wetboek*'). A transfer of undertaking is defined as the transfer (by agreement, merger or split) of an economic entity that retains its identity. Courts assess factors such as transferred assets, workforce, and continuity of operations. However, they do not focus on actual continuation of business and work processes, nor formal ownership or contract structures. A share transaction does not qualify as a transfer unless it results in a functional reorganisation of business units.

If a transfer falls within aforementioned definition, all employment contracts automatically move to the transferee by operation of law. Employees retain their salary, seniority, and other conditions, including collective labour agreement (CLA) terms. Dismissals solely due to the transfer are invalid. A significant deterioration in employment terms may entitle employees to terminate their contracts with compensation. Employees may also object to the transfer, in which case their contract ends at the transfer date. The liability of the transferor is limited to those obligations that arose prior to the transfer of the business which is limited to one year.

Dutch law obliges employers in case of an (anticipated) transfer of undertaking to inform and, where applicable, consult employee representatives in advance. If a works council is in place, consultation is required under the Works

Councils Act. Otherwise, Article 7:665a DCC requires employers to inform employees individually and in due time about:

1. **the decision to transfer,**
2. **timing,**
3. **reasons,**
4. **legal, economic and social consequences and**
5. **any envisaged measures.**

"Due time" ('*tijdig*') is not legally determined but is interpreted to mean early enough to allow meaningful consultation.

Failure to comply with information obligations may lead to liability under the general duty of good employment practice (Article 7:611 DCC). Dismissals or modifications contrary to the TUPE rules may trigger reinstatement or compensation claims.

THE NETHERLANDS



ANGELET VELDSCHOLTE
PALLAS LAWYERS & MEDIATORS

angelet.veldscholte@pallas.nl

Some Dutch-specific aspects include:

- **Pensions:** Occupational pension rights do not transfer automatically. The transferee is only required to continue the previous scheme under specific conditions (Article 7:664 DCC).
- **Bankruptcy:** Transfers as part of formal bankruptcy proceedings are excluded from TUPE protection (Article 7:666 DCC), though reforms are under consideration.
- **Collective Labour Agreements:** Existing CLA terms continue to bind the transferee unless replaced, expired, or renegotiated.
- **Case Law:** Dutch courts emphasise substance over form. For instance, case law shows that TUPE protection applied even where employees were formally employed by a separate group entity.

In conclusion, Dutch TUPE law strongly protects employees' rights by ensuring continuity of employment, strict notification duties, and invalidity of transfer-related dismissals. Employers must treat transfers with care, or risk legal and financial consequences.

ANGELET VELDSCHOLTE

PALLAS LAWYERS & MEDIATORS

angelet.veldscholte@pallas.nl



'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

POLAND

The transfer of an undertaking or part thereof to another employer is the result of various economic events such as the sale, lease, or leasing of part of a business, mergers and acquisitions, which result in a change of the entity acting as the employer. The regulation regarding the transfer of employees was introduced into the Polish Labour Code in 1989 and subsequently amended to align with Council Directive 2001/23/EC. Article 23(1) of the Polish Labour Code (implementing the principles of the EU TUPE directive – Directive 2001/23/EC) sets out the rights and obligations of the transferee employer and the legal position of the transferred employees. Article 23¹ does not exclude the possibility of transferring an undertaking or part of it with only one employee.

Pursuant to Article 23(1) of the Labour Code,

the transfer of a workplace or a part of an organized workplace results in the new employer (the entity that has taken over the workplace or its part) replacing the previous employer in the existing employment relationships. The previous and the new employer are jointly and severally liable for obligations arising from employment relationships established before the transfer. However, this does not exclude the application of specific provisions, such as the exclusive liability of the new employer for obligations under the PPE Act (Act of 20 April 2004 on Employee Pension Schemes).

Obligation to provide information to the Trade Unions

In the event of the transfer of a plant or a part of the workplace to a new employer, the existing and new employers are obliged to inform in writing the trade unions operating at each of them about:

1. **the date of this transition,**
2. **its causes, legal, economic and social**
3. **the implications for employees, and**
4. **intended actions regarding the terms of employment of these employees, in particular working conditions, remuneration and retraining.**

This information should be provided at least 30 days before the expected date of transfer of the workplace or its part.

POLAND



JACEK SUCHAR

WOJEWÓDKA I WSPÓLNICY
LABOUR LAW FIRM

jacek.suchar@wojewodka.pl

Transfer of the workplace – consequences

Automatic change of employer

In the event of the transfer the workplace to another employer, he becomes, under the law, a party to the existing employment relationships, with the exception of employment relationships established on a basis other than an employment contract (Article 23(1) of the Labour Code).

Under the law, the new employer becomes a party to the employment relationship, which means that:

- **does not have to terminate existing employment contracts and enter into new or additional contracts**
- **it is not necessary to submit any declarations of will by the employees and the current and new employer.**

Employees' right to withdraw from the employment contract

The employee may not file an objection preventing the automatic effect of the transfer of the workplace, both to the current and the new employer. However, within 2 months from the transfer of the workplace or part of it, he has the right to terminate employment contract, without notice, with seven days' notice.

Protection against unfair dismissal

The fact of a workplace transfer alone cannot be used as a valid reason to terminate an employment relationship. Any dismissal must be based on other legitimate grounds under labour law.

Collective bargaining agreement

In case of transfer, and a Collective Labour Agreement was in place at the former employer, then (1) after that one-year period ends, the terms of the Collective Labour Agreement are still binding as part of the individual employment contracts (not as a collective agreement anymore) and they remain in force until the employment is formally changed or ended (usually via a notice of termination), (2) for one year after the transfer, the same Collective Labour Agreement continues to apply to the transferred employees under the same conditions as before the transfer, unless a specific law says otherwise.

JACEK SUCHAR

WOJEWÓDKA I WSPÓLNICY
LABOUR LAW FIRM

jacek.suchar@wojewodka.pl



'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

SPAIN

General description

The Directive 2001/23/EC was transposed into Spanish Law in Article 44 of the Workers' Statute, which establishes that the change of the ownership of a company, work center or a stand unit does not produce by itself the termination of the employment relationship, if it maintains the same identity and the group of organizational resources to carry out the economic activity.

In consequence, the new employer must be subrogated to all labor and Social Security rights and obligations of the previous employer, including pension commitments.

Some Collective Bargaining Agreements (CBAs), mainly those which regulate sector which depends on workforce, state an automatic transfer of undertakings (even if there is not a transfer of employees or tools) applies automatically when there is a change of the provider of the services engaged. It is the case of the hotel industry, catering, handling and cleaning industries, state an automatic application of the transfer of undertakings when there is a change of the provider of the services engaged.

The case law of Spain, mainly, differentiates between two kinds of businesses, **(i)** machinery and **(ii)** workforce based business:

- **In case of machinery**, the transfer of undertakings applies automatically when the machinery is transferred.
- **In case of workforce**, it applies if the main workforce is transferred or the main workforce is not intended to be transferred but those with the main knowledge are.
- **In case of a stand-alone unit**, the employees who provide indirect services for this stand-alone unit could be affected (finance, HR, marketing) depending on the percentage of time they provide services for this stand-alone unit.

The employment relationships of the workers affected by the transfer of undertakings shall continue to be governed by the collective agreement applicable at the time of the transfer to the company, work center, or autonomous

SPAIN



CARLOS MIRALLES DOMS
MIRALLES

cmiralles@miralles-abogados.com

production unit transferred, unless otherwise agreed between the transferee and the workers' representatives once the succession has been completed.

This application shall remain in force until the expiry date of the original collective agreement or until the entry into force of the collective agreement applicable to the Company where the economic entity was transferred.

In view of the above, the most common situation is to maintain the same agreement that the company, work center or stand-unit transferred had in the outgoing company until a new one is negotiated in which they are included, or another agreement is reached with the incoming company.

Employer information obligations

Both the outgoing and incoming companies must inform the legal representatives of the employees affected by the transfer in writing, at least sufficiently in advance (normally 15 days before the transfer takes place), of:

- **The date or expected date of the transfer.**
- **The reasons for the transfer.**
- **The legal, economic, and social consequences for the employees.**
- **Measures planned with regard to the employees** (e.g., restructuring, layoffs, changes in working conditions, etc.).

This obligation to provide information applies whether or not there are employee representatives (works councils or union representatives), in which case the information is provided directly to the employees.

The consultation obligation with Works Council only applies when labor measures that affect employees, such as substantial changes, layoffs, changes in organization, etc.

The company planning to implement these measures (usually the incoming company) must open a consultation period with employee representatives in order to reach an agreement on these measures.

The non-compliance of these information and consultation obligations may result in administrative penalties, as well as potential legal claims by employees, and also may affect to the validity of the labor measures adopted.

Description of the process

The Spanish regulation does not set any specific timetable for the information and consultation to the Workers Representatives.

However, it should be noted that, in case of merger or spin-off, in accordance with the law on structural modifications, the moment to communicate the transfer must be prior to the convening of the shareholders' meeting approving the merger, which takes place at least 1 month before the merger / spin-off takes effect.

Once the transfer of undertaking has been done, in principle, employees must maintain their seniority, salary, type of contract...

Individual particularities of Spanish Regulation

- In the case of Spain, the decision to be transferred depends exclusively on the employer decision. The employer must inform about the transfer and the employee cannot refuse to be transferred.
- The purchase and sale of shares does not constitute a transfer of undertaking as the identity of the company is maintained.

CARLOS MIRALLES DOMS
MIRALLES

cmiralles@miralles-abogados.com

'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

SWEDEN

In Sweden, Directive (2001/23/EC) relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (a "Transfer of Business") has been implemented primarily through Section 6 b of the Employment Protection Act and Section 28 of the Co-determination Act. In the event a Transfer of Business occurs, the following employment protection rules will apply.

Transfer of business

In order to assess whether a business transfer qualifies as a Transfer of Business under the law, the business shall constitute a going concern that retains its identity after the transfer. That assessment shall, in line with applicable case law from ECJ, be based on an overall assessment of all relevant circumstances in the case with special focus on the Spijkers criteria. Given the complexity of the assessment, it is recommendable to seek employment law advice to ensure compliance with the rules, especially since breaching the rules may render liability to pay damages.

If a business transfer qualifies as a Transfer of Business, the following employment protection rights apply.

Protection Against Termination

Employees working in the transferred business have a significant protection against the

transferor unfairly terminating their employment simply due to the transfer. The transferor may however terminate the employees for economic, technical or organisational reasons, as well as terminate certain categories of employees not covered by the Employment Protection Act.

"Automatic" transfer and Right to Oppose

In the event of a Transfer of Business, employees employed in the business covered by the transfer (at the time of the transfer) are entitled to have their rights and obligations under the employment contract or relationship pass from the previous employer to the new one on unchanged terms and conditions. This applies in relation to their salary, other employment benefits and employment conditions. Unlike some other jurisdictions applying Directive 2001/23/EC, Swedish law grants employees

SWEDEN



LISA ERICSSON
CIRIO

lisa.ericsson@cirio.se

the right to oppose the transfer of their employment to the transferee. Accordingly, the transfer is not entirely automatic.

If an employee chooses to use this right, that employee will remain employed by the transferor. If that would lead to a redundancy situation at the transferor, the transferor must handle that in accordance with the general rules on termination due to redundancy. In this situation the protection against termination due to the transfer is not applicable since the termination is based on economic, technical or organisational reasons.

Credit for Term of Employment

The transferred employees have the right to credit themselves with the term of employment gained with the transferor in their new employment with the transferee. This continuity is crucial as it provides better employment protection in case a redundancy situation would arise at the transferee after the transfer. The length of the term of employment has an impact on the employee's statutory notice period as well as their seniority rights. It is therefore beneficial for the employees to be entitled to credit themselves with the term of employment gained with the transferor.

Transfer of Vacation Benefits

The transferred employees are also entitled to transfer their accrued vacation benefits from the transferor to the transferee. This right ensures that employees do not lose out on their earned vacation days due to the transfer and can continue to enjoy their vacation entitlements without interruption.

Transfer of re-employment rights

Employees who have been dismissed due to redundancy have, in certain situations, a preferential right to re-employment in the business where they were previously employed. This right applies during the notice period and for nine months after the end of the employment. If there has been a Transfer of Business during this period, the preferential rights will transfer to the transferee.

Joint liability for Financial obligations

The transferor and the transferee are jointly liable for any financial obligations which arose before the transfer. This includes unpaid wages, bonuses, and any other financial entitlements that the employees accrued before the transfer. The employee may freely choose towards which of the transferor and transferee, such claims are raised. The Swedish law does not include any statutory right of recourse for the transferee. If the transferee wants to have a right to claim compensation from the transferor for payments made to employees for unpaid salary and other financial obligations for the period before the transfer, that must be expressly addressed in the business transfer agreement.

Collective Bargaining Agreement

If the transferor is bound by a Collective Bargaining Agreement (CBA), the CBA will transfer with the business to the transferee unless the transferee already has a CBA that can be applied on the transferred employees, or the transferor terminates the CBA before the transfer takes places.

In cases where closing of the transfer takes place earlier than 60 days from the notice of

termination of the CBA is made, the transferee will be bound by the CBA until 60 days have passed. Regardless of whether the CBA has been terminated or not, the transferee must apply the employment terms in the collective agreement (that applied to the transferor) for one year from the transfer. The terms and conditions shall be applied in the same way as the transferor was obliged to apply them. However, this does not apply after the term of the CBA has expired or after a new collective agreement has come into force for the employees taken over.

Union consultations

Both the transferor and the transferee are obligated to conclude union consultations before the decision to transfer the business may be taken regardless of whether they are bound by a CBA or not.

LISA ERICSSON

CIRIO

lisa.ericsson@cirio.se



'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

SWITZERLAND

The Swiss legal framework for the transfer of undertakings and the protection of employees (TUPE) draws from both international and domestic laws, although it differs significantly from European Union regulations like Directive 2001/23/EC, which does not apply in Switzerland. Under Swiss law, TUPE provisions apply to transfers of "undertakings" or parts thereof. An "undertaking" is a permanent, self-contained organizational service unit that participates independently in economic life. A "part of an undertaking" is a service unit which is only organizationally independent.

Legal Basis and General Description

In Switzerland, a transfer of undertaking occurs when the transferred undertaking (or a part thereof) maintains its identity post-transfer. This includes the continuation of business purpose, organization, and character, as well as the transfer of infrastructure, resources, and customer relationships. Swiss law has extended TUPE's applicability to situations such as outsourcing or insourcing, even if no physical assets are transferred, provided a substantial number of employees continue working in the business.

Employer Information and Consultation Obligations

If the case of a transfer of undertaking, the works council (if existing) or the employees need to be

informed in due time prior to the transfer on: **(i)** the reasons for the transfer; **(ii)** the legal, economic and social consequences of the transfer for the employees; and **(iii)** the planned changes in working conditions and/or terminations. If any "measures" are planned in connection with the transfer of undertaking (such as any changes in working conditions or planned redundancies), the works council, if any, or otherwise all employees need to be consulted in due time prior to any decision taken on the planned measures.

Process Description

The process of transferring employees in Switzerland is automatic, meaning employment relationships are transferred to the new employer unless an employee objects. Employees have a legal right to object, and their contracts are

SWITZERLAND



IRÈNE SUTER-SIEBER, DR. IUR.
WALDER WYSS

irene.suter@walderwyss.com

terminated upon the expiration of statutory notice periods if they do. A key aspect is that the transfer is unaffected by any agreements between the original and receiving employers to exclude employees from the transfer.

Consequences for Non-Compliance

While Swiss law does not explicitly mention remedies for breaches, procedural violations can lead to claims for damages. If the transfer provisions are circumvented, such as by unlawfully terminating employees or altering their contracts, the Swiss Federal Supreme Court has ruled such actions void. In the event of a breach, employers could also be required to engage in consultations with works councils or employees.

Country-Specific Particularities

Swiss law differs from EU regulations in several key ways. For instance, while the EU allows for partial employment relationship transfers (split contracts), Swiss case law does not currently support this and typically adheres to the “50% rule,” meaning an employee must predominantly work for the transferred business to be automatically included in the transfer. Additionally, Swiss law requires that if changes to working conditions occur after the transfer, these must either be mutually agreed upon or formalized through a “notice for variation of contract” process. The law also outlines specific procedures for mass dismissals if the changes impact a large group of employees, with consultation and formal notification procedures required.

Lastly, pensions are an important consideration in Swiss TUPE cases. A transferring business’s pension scheme might change, but this typically



requires a separate consultation process. Employers must ensure employees’ pension rights are properly addressed to avoid legal challenges.

Conclusion

Swiss TUPE law offers strong protections for employees in the case of business transfers, although it diverges in some key areas from EU laws. Employers must be proactive in meeting their legal obligations, especially in informing and consulting employees, to ensure a smooth and legally compliant transfer process.

IRÈNE SUTER-SIEBER, DR. IUR.

WALDER WYSS

irene.suter@walderwyss.com

'TUPE' REGULATIONS IN SELECTED EUROPEAN COUNTRIES

THE UNITED KINGDOM

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) implements the Acquired Rights Directive and remains in force post-Brexit. TUPE is designed to protect employees when the business, or service they work for, changes hands. It ensures that employees transfer on their existing terms of employment and with their continuity of employment preserved.

When does TUPE apply?

TUPE applies in two scenarios:

- **Business transfers:** When an economic entity (such as a business, undertaking or part of a business or undertaking) is transferred and retains its identity following the transfer.
- **Service provision changes:** Where a client engages a contractor to do work on its behalf and that contract is outsourced, reassigned, or brought back "in-house".

Automatic transfer principle

When TUPE applies, employees' terms and conditions of employment automatically transfer from the outgoing employer (transferor) to the incoming employer (transferee) by operation of law on the transfer date.

The transferee inherits all rights, duties and liabilities connected to those contracts, including any claims against the transferor. Due diligence is therefore

critical for transferees, who often seek indemnities from the transferor to mitigate potential risks that could arise from acquiring such liabilities.

Employee liability information (ELI)

The transferor must provide the transferee with key information about the transferring employees at least 28 days before the transfer. ELI includes, for example, information relating to the transferring employees' terms and conditions of employment, their commencement date, details of any grievances, disciplinary actions or existing claims and information on any collective agreement.

If the transferor fails to provide this information, then the transferee can bring a claim in the Employment Tribunal. This is subject to a minimum award of £500 per employee whose information was not provided, with potentially higher amounts being awarded depending on the transferee's losses.

THE UNITED KINGDOM



ELEANOR BULLEN BELL
BIRKETTS LLP

Eleanor-Bullen-Bell@birketts.co.uk

Duty to inform and consult

The transferor and transferee have an obligation to inform and, where required, consult with their own affected employees about the transfer. Depending on the employer's size or the number of transferring employees, this will either be with the employees directly or appropriate employee representatives. Affected employees includes any employees who may be affected by the transfer, not just those transferring.

Where measures are proposed, such as redundancies, changes in work location, pay date or benefits, formal consultation must take place with the aim of reaching agreement. However, informal consultation is usually encouraged to maintain employee relations.

Failure to inform or consult can lead to compensation of up to 13 weeks' full pay per employee.

Right to object

Employees have the right to object to the transfer. If they object, their employment automatically terminates on the transfer date with no entitlement to notice or other payments.

Enhanced protections

TUPE provides enhanced protection against dismissal. Where the sole or principal reason for a dismissal is the transfer, and there is no economic, technical or organisational (ETO) reason entailing changes in the workforce, the dismissal is automatically unfair.

Similarly, contractual variations are void if the sole or principal reason for the variation is the transfer itself, unless justified by an ETO reason. Transferees therefore have very limited ability to vary and harmonise transferring employees' employment terms.

ELEANOR BULLEN BELL

BIRKETTS LLP

eleanor-bullen-bell@birketts.co.uk



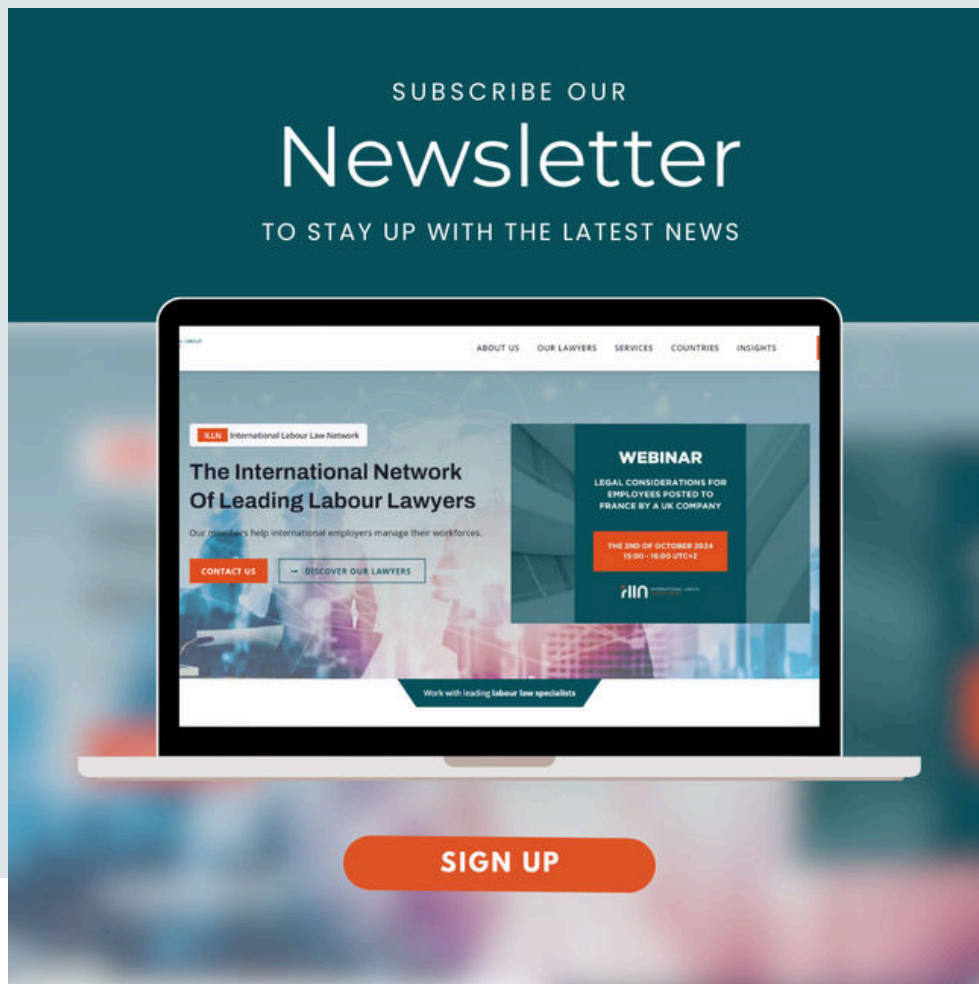
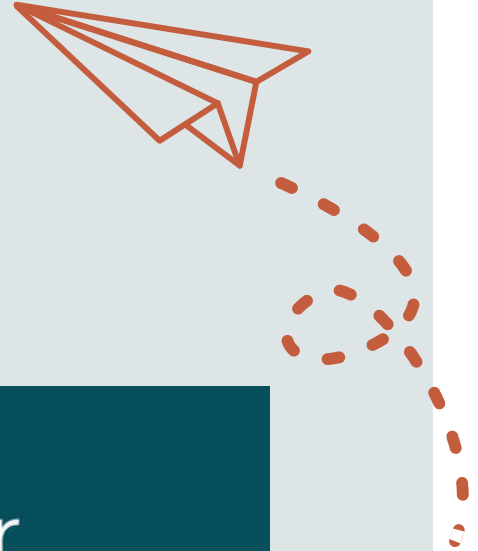
FOLLOW US FOR MORE CONTENT



WWW.ILLN.EU



[INTERNATIONAL LABOUR
LAW NETWORK \(ILLN\)](#)



The content of the articles published in this newsletter is for general information only. It is not, and should not be taken as, legal advice. If you require any further information in relation to these articles please contact the author in the first instance.