

Business Transfers in Europe

		AUSTRIA	BELGIUM	CZECH REPUBLIC	DENMARK
1	Relevant legislation	Sec. 3 et seq. Employment Law Harmonisation Act (Arbeitsvertragsrechtsonpassungsgesetz)	Collective Bargaining Agreement Number 32 bis dated 7 June 1985, as amended (Transfer D'entreprise – Overdracht Van Onderneming)	Sec. 338-340 Labour Code (Sec. 338-340 zákona č. 262/2006 Sb, zákoník práce)	Transfer of Undertakings (Employees legal position) Act no. 441 of 7 June 2001 (virksomhedsoverdragelse)
2	Is a minimum number of employees required for the legislation to apply?	No.	No.	No.	Yes, >35 employees
3	Are there any mandatory information and consultation requirements?	Yes. Works council. If there is no works council, inform employees directly and no need for consultation.	Yes. Works council. If there is no works council, the union delegation. Alternatively, inform and consult directly with the employees.	Yes. Employee representatives (trade union or works council). If none, directly with all affected employees.	Yes. Employee representatives. If none directly with employers.
4	If so, when should information and consultation take place?	Prior to the transfer. If there is a works council early enough to enable the works council to discuss the terms of the transfer with the employer.	Before the transfer is made public, and executed, usually before the “closing” of the deal.	No specific timing. Usually, at least 30 days before the transfer.	As early as possible, so the employees have time to evaluate how the transfer will affect them. In any event before the transfer is executed.
5	If the information and consultation procedure is not followed, can the transfer be prevented?	No.	No.	No.	No.
6	Is there any penalty for non-compliance with the information and consultation procedure?	No.	Employees can claim damages for abusive dismissal related to transfer.	Employee can appeal against unfair dismissal and claim full salary compensation and continuing employment.	No.
7	Are there any other sanctions?	Termination of contract due to the transfer is void. Employees may demand a declaratory judgement or accept the termination and demand all payments they are entitled due to the unjustified termination.	Criminal sanctions if a works council is in existence but has not been consulted.	Fine for failure to inform and consult.	The company may be fined.

		FINLAND	FRANCE	GERMANY	HUNGARY
1	Relevant legislation	Chapter 1, section 10 of the Employment Contracts Act (55/2001) as amended (liikkeen luovutus)	Articles L. 1224-1, L. 2261-14 Labour Code	613a Civil Code BGB (<i>Betriebsübergang</i>)	Article 85/A-85/B. of Labour Code (<i>Munkál-tat jogutdolás</i>)
2	Is a minimum number of employees required for the legislation to apply?	No.	No.	No.	No.
3	Are there any mandatory information and consultation requirements?	Yes, if the transferor or the transferee has 20 or more employees. Employee representatives.	Yes. Works council and, sometimes, personnel delegates and Health and Safety Committee, must be informed and consulted.	Inform and consult only if there is a works council and the transfer constitutes a 'change in establishment. In all cases (irrespective of works council) written information to be provided to each affected employee.	Yes. Transferor, local trade union, works council or the committee of the employee representatives.
4	If so, when should information and consultation take place?	Well in advance. Usually one to two weeks before the transfer is enough.	The information and consultation must take place before the decision to proceed with the corporate operation giving rise to the TUPE situation is made.	As early as possible, in any event before the transfer is made public and executed written information to employees ideally as least one month before transfer.	At least 15 days prior to the transfer.
5	If the information and consultation procedure is not followed, can the transfer be prevented?	No.	Yes, a Court may order the suspension of the whole operation (including the corporate operation giving rise to the TUPE situation) until completion of a proper information and consultation procedure.	No. Some court districts might grant injunctions to delay if serious breach of works council rights, but unlikely.	Failure to provide information (but not to consult) may lead to transfer being considered invalid by the Court. There is no court practice.
6	Is there any penalty for non-compliance with the information and consultation procedure?	Yes.	Yes, criminal sanctions are incurred (1 year imprisonment and/or € 3,750 fine).	Failure to inform and consult the works council where an obligation exists can lead to employees being able to claim damages and compensation. Failure to give written information to employees may lead to damage claims.	Yes, the employer shall be subject to liability for any and all damages caused by any violation of employment-related obligations.
7	Are there any other sanctions?	If the employer fails to consult in connection with the transfer of business and redundancies, it may be ordered by the court to pay compensation to the dismissed employees of up to €30,000 per employee for the breach of the consultation obligation on top of possible award for unfair dismissal.	Reinstatement of wrongfully dismissed employees, damages.	No.	Breach of information/consultation obligation is fine up to HUF 100,000.

		ITALY	NETHERLANDS	NORWAY	POLAND
1	Relevant legislation	Article 2112 Civil Code (<i>Trasferimento D'azienda</i>)	S7: 662-666 Dutch Civil Code	Chapter 12A in the Working Environment Act (<i>Virksomhetsoverdrageise</i>)	Article 23(1). ^o Labour Code (<i>Przejskie Zakladu Pracy</i>)
2	Is a minimum number of employees required for the legislation to apply?	Yes, >15 employees	No.	No.	No.
3	Are there any mandatory information and consultation requirements?	Yes. The company has to consult with the internal unions or, if none, with the territorial unions.	Yes. Works council or a staff association, in their absence the employees directly.	Yes. Employee Representatives, if necessary appointed by the employees for this purpose. Also, all affected employees shall be provided with information.	Yes. Works council and either trade union organisations at the establishment level, or where there are none, individual employees.
4	If so, when should information and consultation take place?	At least 25 days before the binding agreement is executed by the parties.	Within 'reasonable' time for the works council/staff association to give advice before the actual decision has been made.	"As early as possible".	At least 30 days in advance of the transfer with trade union or individual employees; no precise time scale for parallel information/consultation of the works council.
5	If the information and consultation procedure is not followed, can the transfer be prevented?	Yes.	Yes, can both be prevented and delayed if works council provide negative advice and start litigation.	No. It can be delayed.	No.
6	Is there any penalty for non-compliance with the information and consultation procedure?	No.	No.	Provided the employee can prove financial loss, Yes. This is not common in practice.	Employee can appeal against unfair dismissal.
7	Are there any other sanctions?	Failure to inform and consult the Trade unions is deemed as anti-union behaviour (leading to a possible criminal offence).	No.	The general sanctions for breach of Working Environment Act applies.	Criminal sanctions (fine).

		SLOVAKIA	SWEDEN	SWITZERLAND	UK
1	Relevant legislation	Sec 27 et seq Labour Code no. 311/2001 Coll. (<i>Prevod podniku</i>)	Section 6 b Employment Protection Act (EPA) (<i>Övergang av ett företag, en verksamhet, eller en del av en verksamhet</i>)	Article 333 and 333a Code of Obligations (<i>Betriebsübergang</i>)	Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
2	Is a minimum number of employees required for the legislation to apply?	No.	No.	No.	No.
3	Are there any mandatory information and consultation requirements?	Yes. Employee representatives or, if there are none, the employees directly.	Yes. Employee representatives from the relevant trade union(s).	Yes. Employee representatives. If there are none, the employees directly.	Yes. Recognised trade union, if none, elected representatives of affected employees.
4	If so, when should information and consultation take place?	One month prior to the transfer.	Before the decision is taken.	Prior to the transfer.	No specific timeframe but must take place long enough before the transfer to enable consultation to take place.
5	If the information and consultation procedure is not followed, can the transfer be prevented?	No.	No. It can be delayed.	Yes. registration in the commercial register may be denied by court injunction in cases of merger/demerger/transfer of assets and liabilities. In other cases, uncertain whether court injunction would be available.	No.
6	Is there any penalty for non-compliance with the information and consultation procedure?	No.	Yes.	Employee can claim compensation for damages if he is able to prove this. Failure to follow procedure does not justify indemnity for unfair dismissal.	Yes, protective awards (maximum 13 weeks' pay per affected employee) for failing to inform and consult.
7	Are there any other sanctions?	Fine by the Labour Inspectorate of up to €67,000.	No.	No.	Protective award.

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