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European Monitoring Centre on Change

## Belgium: Employment protection in relation to business transfers

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 Belgium

Phase:

Management

Type: [Employment protection in relation to business transfers](#)

 Last modified: 10 December, 2021

Native name:

Collectieve arbeidsovereenkomst nr. 32 bis gesloten op 7 juni 1985 in de Nationale Arbeidsraad, betreffende het behoud van de rechten van de werknemers bij wijziging van werkgever ingevolge de overgang van ondernemingen krachtens overeenkomst en tot regeling van de rechten van de werknemers die overgenomen worden bij overname van activa na faillissement / Convention collective de travail No 32 BIS conclue le 7 juin 1985 au sein du Conseil national du travail, concernant le maintien des droits des travailleurs en cas de changement d'employeur du fait d'un transfert conventionnel d'entreprise et réglant les droits des travailleurs repris en cas de reprise de l'actif après faillit; Collectieve arbeidsovereenkomst nr. 9 houdende ordening van de in de Nationale Arbeidsraad gesloten nationale akkoorden en collectieve arbeidsovereenkomsten betreffende de ondernemingsraden / Convention collective de travail n° 9 du 9 mars 1972 coordonnant les accords nationaux et les conventions collectives de travail relatifs aux conseils d'entreprise conclus au sein du Conseil national du Travail; Collectieve arbeidsovereenkomst nr. 6 van 30 juni 1971 Betreffende de faciliteiten welke moeten verleend worden aan leden die de werknemers in de comités voor veiligheid, gezondheid en verfraaiing der werkplaatsen vertegenwoordigen / Convention collective de travail n° 6 du 30 juin 1971 concernant les facilités à consentir aux membres représentant les travailleurs aux comités de sécurité, d'hygiène et d'embellissement des lieux de travail ; Wet van 4 augustus 1996 betreffende het welzijn van de werknemers bij de uitvoering van hun werk / Loi du 4 Aout 1996 relative au bien-être des travailleurs lors de l'exécution de leur travail ; Wet van 5 december 1968 betreffende de collectieve arbeidsovereenkomsten en de paritaire comités / Loi du 5 decembre 1968 sur les conventions collectives de travail et les commissions paritaires;

English name:

"Collective labour agreement nr. 32 bis agreed upon 7th of June 1985 in the National Labour Council, concerning the retention of employee rights in case of a change of employer due to a transfer of enterprises by force of agreement, and the establishment of employee rights for those retained in case of a take-over of assets after closure"; Collective labour agreement nr. 9 with relation to the ordering of the national agreements and collective labour agreements made by the National Labour Councils concerning the Workcouncils; Collective labour agreement nr. 6 of 30th of June 1971 concerning the facilities which have to be provided to members wih represent employees in the comités for saftey, health and beautification of places of work.; Law of 4th of August 1996 concerning the well-being of employees during the exectuion of their work; Law of 5th December 1968 concerning the collective labour agreements and the joint commitees.

### Article

Articles 20 and 23 of CBA-Act (5 December 1968); Article 6 of CBA 32bis; Article 1 of CBA 6; Law 1996, Art. 69-76 .

### Description

Under the Belgian law, a transfer of undertaking applies to a transfer of 'an economic entity which will keep its identity after the transfer' (a 'going concern'). The act provides for the transfer of employment contracts without change if the economic entity continues to exist. However, as is stated in collective agreement 32bis, the transferee does retain the right to make reasonable changes to an employment contract but may not include conditions which are to the detriment of the transferred employees without agreement.

Specific criteria determining whether an undertaking will retain its identity following a transfer include:

- The type of business or undertaking being transferred;
- Whether the transfer includes tangible assets (there is no requirement to involve the transfer of property rights);
- The value of intangible assets on the date of the transfer;
- The percentage of the staff being taken over by the transferee;
- Whether there is a transfer of customers;
- The degree of consistency in activities before and after the transfer; and
- The duration of any interruption to such activities.

The criteria mentioned above are investigated in order to evaluate to what extent they play a role in forming the identity of the company. If - considering these criteria - the company identity is deemed to remain intact after the transfer, the employment contracts can be transferred as well, without change.

Outsourced and contracted activities do not necessarily fall within the scope of the CBA no. 32bis and whether or not this is the case depends on the amount of the workforce transferred and on whether other 'identity' factors (managers, the way the business is organised, etc.) are affected as well.

Employment benefits are fixed and cannot be changed during the course of a transfer, however an explicit exception is made in regards to extra-legal benefit schemes (including invalidity) such as occupational company pension schemes.

All employees (all people attached by way of a labour/learning agreement, as well as people who deliver work performances and are under the supervision of the transferor without a labour agreement) are protected by the transfer, including self-employed persons who are in substance employees. Moreover, the Belgian courts apply the rule of a 'suspect period' whereby employees dismissed prior or after, but in close proximity to, the transfer may also claim against the transferee or transferor as appropriate. Employees who are being dismissed in response to the transfer and are able to prove the transfer is at the base of their dismissal are protected as well.

In general, it is up to the transferee and transferor to negotiate occupational pension agreements, except when they arise from a collective bargaining agreement. The transferee is also not obliged to take over employees' pension rights relating to periods of service performed before the transfer, although the transferee is (in general) obliged to provide some compensation. Vested rights, however, will be maintained in accordance with the transferor's occupational contract.

Collective agreements are covered by article 20 of the CBA act of 1968. This act states that in a case of business transfer 'the transferee must respect the CBAs by which the former employer was bound until these CBAs cease to have effect'. This is also subject to the level at which the CBA occurs (departmental, sectoral, etc.).

If the transferee and the transferred employees reside in different technical operating units (TOU), then a union delegation remains as it was prior to the transfer until the date when the contract would have normally ended. If the transferred employees become part of the transferee's technical operating unit, the works council for the transferee will function for both companies, unless otherwise agreed, until the following social elections.

## Comments

An area of legal uncertainty is the fate of a sector level CBA which has been concluded at the level of a branch of industry and is applicable to companies belonging to that branch. This situation can imply that the transferee must simultaneously adhere to the sector level CBA of two different branches of industry until the CBAs of the transferor cease to have effect. However, even if the transferee does not have to comply with the CBAs of the branch of industry to which the transferor belongs, individual normative provisions will be incorporated in the individual employment contract of the transferred employees in accordance with article 23 of the CBA Act of 5 December 1968.

### Cost covered by

Not applicable

### Involved actors other than national government

National government only

### Thresholds

No, applicable in all circumstances

### Sources

- ▣ Ius Laboris (2009), 'Transfers of Undertakings Guide'
- ▣ [Overgang van onderneming krachtens overeenkomst](#)
- ▣ [CBA's](#)
- ▣ [CBA 32bis](#)
- ▣ [Act of 5 December 1968](#)

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