

Case C-362/89

Giuseppe d'Urso, Adriana Ventadori and Others

v

Ercole Marelli Elettromeccanica Generale SpA and Others

(Reference for a preliminary ruling
from the Pretore di Milano)

(Safeguarding of employees' rights in the event
of transfers of undertakings)

Report for the Hearing	I - 4106
Opinion of Mr Advocate General Van Gerven delivered on 30 May 1991	I - 4119
Judgment of the Court, 25 July 1991	I - 4139

Summary of the Judgment

- 1. Social policy — Approximation of laws — Transfers of undertakings — Maintenance of employees' rights — Directive 77/187 — Automatic transfer of all contracts of employment or employment relationships to the transferee by the mere fact of the transfer (Council Directive 77/187, Art. 3(1))*
- 2. Social policy — Approximation of laws — Transfers of undertakings — Maintenance of employees' rights — Directive 77/187 — Scope — Transfer of an undertaking made as part of a creditors' arrangement procedure having liquidation as its purpose — Not included — Transfer intended to allow an undertaking in difficulties to continue trading — Included (Council Directive 77/187, Art. 1(1))*

1. Article 3(1) of Directive 77/187 on the approximation of the laws of the Member States relating to the safe-guarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is to be

interpreted as meaning that all contracts of employment or employment relationships existing on the date of the transfer of an undertaking between the transferor and the workers employed in the undertaking transferred are automatically transferred to the transferee by the mere fact of the transfer. That transfer is binding on both the transferor and the transferee and on the employees' representatives, who may not agree different arrangements in an agreement with the transferor or the transferee and on the employees themselves, save that the employees may freely decide not to continue the employment relationship with the new employer after the transfer.

2. Article 1(1) of Council Directive 77/187 does not apply to transfers of undertakings made as part of a creditors' arrangement procedure of the kind provided for in the Italian legislation on compulsory administrative liquidation to which the Law of 3 April 1979 on special administration for large undertakings in critical difficulties refers. However, that provision of that directive does apply when, in accordance with a body of legislation such as that governing special administration for large undertakings in critical difficulties, it has been decided that the undertaking is to continue trading for as long as that decision remains in force.

REPORT FOR THE HEARING in Case C-362/89*

I — Facts and procedure

1. *The Community legislation applicable*

Council Directive 77/187 of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (Official Journal 1977 L 61, p. 26) is applicable, according to Article 1(1), 'to the transfer of an undertaking,

business or part of a business to another employer as a result of a legal transfer or merger'.

The first subparagraph of Article 3(1) of the directive provides that: 'The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer within the meaning of Article 1(1) shall, by reason of such transfer, be transferred to the transferee'.

It should also be noted that Article 4(1) provides that: 'The transfer of an under-

* Language of the case: Italian.