

Case C-382/92

Commission of the European Communities

v

United Kingdom of Great Britain and Northern Ireland

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

Opinion of Advocate General Van Gerven delivered on 2 March 1994	I - 2438
Judgment of the Court, 8 June 1994	I - 2461

Summary of the Judgment

- 1. Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Obligation on the transferor and transferee to inform and consult the employees' representatives — National rules not providing for a system for the designation of employees' representatives in the event of opposition by an employer — Not permissible*
(Council Directive 77/187, Art. 6)
- 2. Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Scope — Non-profit-making undertaking — Included*
(Council Directive 77/187, Art. 1(1))

3. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Obligation on the transferor and transferee to inform and consult the employees' representatives — National rules not imposing an obligation to seek agreement — Not permissible*
(Council Directive 77/187, Art. 6)

4. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Obligation on Member States to penalize infringements of Community rules — Scope — Penalty imposed on an employer who has failed to comply with his obligation to inform and consult his employees' representatives — Compensation which may be set off against an award due by reason of infringement of the rules on redundancies — Non-deterrent sanction — Not permissible*
(EEC Treaty, Art. 5; Council Directive 77/187, Art. 6)

1. Despite the limited character of the harmonization of rules in respect of the safeguarding of employees' rights in the event of transfers of undertakings which Directive 77/187 was intended to bring about, national rules which, by not providing for a system for the designation of employees' representatives in an undertaking where an employer refuses to recognize such representatives, allow an employer to frustrate the protection provided for employees by Article 6(1) and (2) of Directive 77/187, must be regarded as contrary to the provisions of that directive.

2. Article 1(1) of Directive 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings precludes a Member State from restricting the application of the national rules transposing the directive to transfers of profit-making undertakings.

A body may be engaged in economic activities and be regarded as an 'undertaking' for the purposes of Community law even though it does not operate with a view to profit.

3. National rules which merely require a transferor or transferee envisaging measures in relation to employees affected by a transfer to consult the representatives of trade unions recognized by him, to take into consideration any representations made by them, to reply to those representations and, if he rejects them, to provide reasons, whereas Article 6(2) of Directive 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings imposes an obligation to consult representatives of the employees 'with a view to seeking agreement', fail correctly to transpose that directive.

4. Where a Community directive does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the Treaty requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law. For that purpose, while the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements

of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive.

In cases where awards are also due by reason of infringements of the rules on redundancies, compensation which may be set off against such awards cannot be regarded as sufficiently deterrent for employers who fail to comply with their obligation under Article 6 of Directive 77/187 to inform and consult their employees' representatives.