

OPINION OF ADVOCATE GENERAL  
LÉGER

delivered on 17 June 2004<sup>1</sup>

1. Where the State takes over activities previously carried on by a non-profit-making association (a legal person governed by private law), is the State, as transferee of the undertaking, obliged under Community law, to preserve unchanged the private law contracts of employment existing at the date of transfer of this undertaking, without reducing the amount of the employees' remuneration, or is it entitled, under the national rules in force relating to the status of public employees, to make such a reduction?

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.<sup>3</sup>

**I — Legal background**

*A — The Community legislation*

2. This, essentially, is the question referred for a preliminary ruling by the Cour Administrative, Luxembourg. In this question, the referring court is requesting the Court, following on from the decision in *Mayeur*,<sup>2</sup> to interpret Council Directive 77/187/EEC of 14 February 1977 on the approximation of

3. Directive 77/187 aims, as set out in its second recital, to 'provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded'.

4. To that end, Article 3(1) of the Directive lays down the principle that '[t]he trans-

1 — Original language: French.

2 — Case C-175/99 *Mayeur* [2000] ECR I-7755.

3 — OJ 1977 L 61, p. 26 ('Directive 77/187' or 'the Directive').

feror'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)<sup>[4]</sup> shall, by reason of such transfer, be transferred to the transferee'.

by a requirement to consult with a view to seeking agreement with the representatives of the employees concerned when measures are envisaged in relation to these employees.

5. Furthermore, the Directive provides that the transferee shall continue to observe the conditions of work agreed in any collective agreement (Article 3(2)) and that the employees concerned shall be protected against dismissal by the transferor or the transferee solely on the grounds of the transfer (Article 4(1)).

7. Where the measures envisaged and consulted on are finally decided upon, Article 4 (2) of the Directive provides that, '[i]f the contract of employment or the employment relationship is terminated [on the employee's initiative] because the transfer ... involves a substantial change in working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship'.

6. Further, Article 6(1) of the Directive imposes on the transferor and the transferee the requirement to inform the representatives of the employees concerned of the legal, economic and social implications of the transfer for these employees and of measures envisaged in relation to them. It is specified that the transferee must give such information in good time, and in any event before these employees are directly affected by the transfer as regards their conditions of work and employment. Article 6(2) of the Directive supplements this requirement for information from the transferor or the transferee

8. All these provisions were reproduced, in their entirety, by Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187,<sup>5</sup> and then by Council Directive 2001/23/EC of 12 March 2001 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 undertakings or businesses,<sup>6</sup> which codified Directive 77/187 in the light of the substantial amendments made by Directive 98/50.

4 — Article 1(1) of the Directive states that '[t]his Directive shall apply to the transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger'.

5 — OJ 1998 L 201, p. 88.

6 — OJ 2001 L 82, p. 16.

B — *The national legislation*

9. In Luxembourg law, the relevant national legislation on safeguarding employees' rights in the event of the transfer of an undertaking is set out in Article 36 of the Law of 24 May 1989 on contracts of employment.<sup>7</sup>

10. Article 36(1) provides that '[i]f any change arises in the legal situation of the employer, in particular by reason of succession, sale, merger, transformation of business assets or incorporation, all contracts of employment in force on the date of that change shall continue to exist between the new employer and the employees of the undertaking'.

11. The first subparagraph of Article 36(2) explains, in addition, that a 'transfer of the undertaking as a result inter alia of a legal transfer or merger shall not in itself constitute grounds for dismissal by the transferor or the transferee'.

12. The second subparagraph of Article 36 (2) of the Law states that '[i]f the contract of employment is terminated because the transfer involves a substantial change in

working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment'.

II — **Facts and main proceedings**

13. Mrs Boor, née Delahaye, was employed as a secretary by the association 'Pour l'insertion professionnelle' (from 2 January 1995), then by the association 'Foprogest ASBL'<sup>8</sup> (from 1 April 1998), after the latter association took over the activities initially carried on by the former. On this takeover of activities, her contract of employment with the first association was preserved by the second, and her working conditions and remuneration remained unaltered.

14. According to Article 3 of its articles of association, Foprogest, established in Luxembourg, had the object of promoting and implementing various training activities intended, inter alia, to improve the situation of persons seeking work and unemployed persons, so as to enable them to join or rejoin the workforce. It was also responsible for providing technical and administrative assistance within the framework of voca-

<sup>7</sup> — *Mémorial* [Official Journal of Luxembourg] A No 35, 1989, p. 611.

<sup>8</sup> — Or 'Foprogest'.

tional training programmes and for managing the budgets of some of these programmes. Under Article 19 of its articles of association, this non-profit-making association's resources were to be largely derived from contributions, donations and bequests, grants and subsidies.

employee was recognised, in accordance with the provisions of the amended Law of 27 January 1972 laying down rules for State employees. According to Article 4 of her contract, Mrs Boor's employment was subject to the Regulation of the Government in Council of 1 March 1974 laying down rules for the indemnities of employees of State administrations and services.

15. At the end of 1999, the activities carried on by Foprogest were, in turn, taken over by the administration of the Luxembourg State, namely the Ministry of National Education, Vocational Training and Sport.

18. By letter of 25 January 2001, Mrs Boor brought before the Minister for Public Service and Administrative Reform an internal appeal against an order adopted by the Minister on 27 October 2000, which had categorised her at a certain career and grade.<sup>9</sup> She contested this order on the grounds that it placed her, *inter alia* in terms of remuneration, in a less favourable situation than she had earlier enjoyed with her previous employer.<sup>10</sup>

16. In the context of this transfer of activities, the employment of Mrs Boor and Foprogest's other employees was taken over by the Luxembourg State. This process gave rise to the conclusion of several contracts between the new employer and the employees concerned. In these circumstances, on 22 December 1999, Mrs Boor concluded a contract for an indefinite period with the Ministry of National Education, Vocational Training and Sport. The contract came into effect on 1 January 2000.

19. Mrs Boor maintained that, according to Article 36 of the Law of 24 May 1989 on contracts of employment, a change in the employer's legal situation cannot be accompanied by a change in working conditions or

17. Under the terms of Article 2 of this contract, the claimant's status as a State

9 — The category in question was: career A, grade 1.

10 — Mrs Boor claims, without contradiction by the Luxembourg Government, that she was subject, by reason of the transfer of activities in question, to a reduction in remuneration of 37%; her salary had, according to her statements, initially been EUR 2 000 a month.

remuneration. The same applies, *inter alia*, where a legal person governed by public law takes over activities carried on until then by a legal person governed by private law. Consequently, Mrs Boor requested that the working conditions she had enjoyed before 1 January 2000, that is to say within the framework of her contract with Foprogest, be re-established retroactively.

of Article 36 of the Law of 24 May 1989 on contracts of employment and the way they should be interpreted in accordance with the provisions of Directive 77/187, which was relevant to this case by reason of the *Mayeur* judgment.

20. The competent administration did not allow her application. According to the administration, there had been no changes in the employer's situation, but only the formation of a new working relationship with a new employer, which had given rise to the conclusion of a new contract, so that the provisions of national law on which Mrs Boor relied did not apply.

22. By a judgment of 13 March 2002, the Tribunal Administratif dismissed Mrs Boor's action. According to the court, the applicant's situation fell within the context of the transfer of an economic entity, meeting the conditions governing the application of Article 36 of the Law of 24 May 1989. However, the national court pointed out that the activity taken over is now carried on as an administrative public service and therefore comes under the rules of public law, which means that the takeover of the economic entity in question can proceed only subject to its compatibility with mandatory rules of public law on, *inter alia*, the remuneration of State employees.

21. Mrs Boor then applied to the Tribunal Administratif (Administrative Court) (Luxembourg) with a view to having the contested grading order and the later amending order varied or set aside, inasmuch as neither of them permitted her to preserve her level of remuneration.<sup>11</sup> In support of her action, Mrs Boor relied *inter alia* on the provisions

23. The Tribunal Administratif concluded from this that, while the reduction in remuneration of which Mrs Boor complains is capable of constituting a substantial change in her working conditions such that the employer is responsible for termination of her contract, she cannot preserve her contractual relationship while still enjoying the same remuneration.

<sup>11</sup> — By an order of 6 July 2001, which set aside and replaced that of 27 October 2000, Mrs Boor was categorised as follows: career B, grade 2.

24. Mrs Boor appealed to the Cour Administrative (Higher Administrative Court) against that judgment. According to her, the effect of Article 36 of the Law of 24 May 1989 and of Article 3(1) of Directive 77/187 is that any transfer of an economic entity entails the safeguarding of the employees' rights without restriction or exception. The interpretation of these provisions given by the Tribunal Administratif would mean, firstly, that they were rendered completely redundant and, secondly, that the principle of primacy of Community law over national law was infringed.

25. The Luxembourg Government questioned whether the activities previously carried on by the non-profit-making association Foprogest and taken over by the State may be regarded as economic in nature within the meaning of Directive 77/187, as amended by Directive 98/50, since they involve combating unemployment, an activity which may come under the exercise of public power.

### III — The question referred for a preliminary ruling

26. Having regard to the arguments put forward by the parties, the Cour Adminis-

trative decided to stay proceedings and to refer a question to the Court for a preliminary ruling, asking whether:

'Having regard to the provisions of Directives 77/187/EEC, 98/50/EC and 2001/23/EC identified herein, in the event of the transfer of an undertaking from a non-profit-making association, which is a legal person under private law, to the State as transferee, is it permissible for the transferor's rights and obligations to be taken over only in so far as they are compatible with the State's own rules of public law, in particular in the field of remuneration, where the detailed provisions and amounts of compensation are laid down by Grand-Ducal regulation, bearing in mind that the status of public-sector employee confers legal benefits in the fields of, inter alia, career development and job stability on the employees concerned, and that, in the event of disagreement as regards "substantial changes" to the employment relationship within the meaning of Article 4 (2) of those directives, the employees concerned retain the right to request termination of that relationship according to the detailed rules in the relevant provisions?'

27. At the outset, it should be pointed out that the question referred for a preliminary ruling refers to Directive 77/187, Directive 98/50 and Directive 2001/23. However, the main proceedings took place at a date before the passing of the deadline for implementation of Directive 98/50, set at 17 July 2001, and before its transposition into Luxem-

bourg law, which took effect later as a result of the Law of 19 December 2003.<sup>12</sup> It follows that Directive 98/50 does not apply to the main proceedings.<sup>13</sup> The same is true of Directive 2001/23, intended to codify Directive 77/187 in the light of the substantial amendments made by Directive 98/50. It is therefore not necessary, in the context of the main proceedings, to consider the interpretation of Directive 98/50 or of Directive 2001/23, particularly because the relevant provisions of Directive 77/187 were reproduced in their entirety by Directives 98/50 and 2001/23. It is necessary to interpret only Directive 77/187 and, in particular, Article 3(1).<sup>14</sup>

employees' remuneration in accordance with national rules in force relating to the status of public employees.

29. As in *Mayeur*, this question referred for a preliminary ruling falls within the context of a takeover by a legal person governed by public law, acting according to the specific rules of administrative law, of activities previously carried on by a legal person governed by private law.

30. However, unlike the situation in the earlier case, the Court has not been asked whether such an operation is capable of constituting a transfer of an economic entity within the meaning of Directive 77/187.

28. It follows that, by this question, the referring court is essentially asking whether Article 3(1) of Directive 77/187 must be interpreted as precluding, where the transfer of an undertaking involves the State taking over activities previously carried on by a legal person governed by private law, the State, as new employer, from reducing, on the grounds of the transfer, the amount of the

31. The referring court has already ruled on this point, *inter alia* in the light of *Mayeur*.<sup>15</sup> In this regard, it was careful to state that

12 — *Mémorial* GD No 182, 2003, p. 3678.

13 — For a comparable situation, see, *inter alia*, Case C-340/01 *Abler and Others* [2003] ECR I-14023, paragraph 5.

14 — I refer to Article 3(1) of the Directive (on the rights arising from a contract of employment), rather than Article 3(2) (on the working conditions agreed in a collective agreement). It was stated at the hearing that the remuneration which Mrs Boor is seeking to preserve derives solely from her contract of employment with Foprogest, and not from any collective agreement binding on that association, so that Article 3(2) of the Directive cannot apply.

15 — See order for reference (p. 4). To the same effect, the Tribunal Administratif had pointed out that it was common ground that the activities previously carried on by Foprogest remained the same, as did the staff, the organisation and the means and methods of working, so that the entity in question retained its identity, and therefore a transfer of an economic entity had taken place (see judgment of 13 March 2002, p. 5). The consideration of these diverse elements by the national court, to which it falls to determine whether the conditions of a transfer have been met, is entirely consistent with the settled case-law of the Court. See, *inter alia*, Case 24/85 *Spijkers* [1986] ECR 1119, paragraph 13; Case C-13/95 *Süzen* [1997] ECR I-1259, paragraph 14; Case C-234/98 *Allen and Others* [1999] ECR I-8643, paragraph 26; *Mayeur*, paragraph 52; and, finally, *Abler and Others*, paragraph 33.

activities comparable to those referred to in the main proceedings have already been recognised by the Court as economic.<sup>16</sup> The referring court has concluded from this that the State's takeover of the activities previously carried on by Foprogest indeed constitutes a transfer of an undertaking within the meaning of Directive 77/187, so that the Directive is applicable in the present case.

32. In continuation of *Mayeur*, the referring court simply invites the Court to state the appropriate conclusions to be drawn in this case from the existence of a transfer of an economic entity, regarding the employees' situation, in particular as far as their remuneration is concerned.

#### IV — Analysis

33. In paragraph 106 of my Opinion in *Mayeur*, I pointed out that the Directive is not intended to amend the national laws in

16 — See order for reference (p. 4). It refers to Case C-29/91 *Redmond Stichting* [1992] ECR I-3189, concerning activities providing assistance to drug addicts; Joined Cases C-173/96 and C-247/96 *Hidalgo and Others* [1998] ECR I-8237, concerning activities providing home-help services for persons in need, and *Mayeur*; concerning activities relating to publicity and information on behalf of a municipality in connection with the services which it offers to the public (paragraphs 38 to 41).

force by bringing about full harmonisation of the rights of Community workers in the event of a change of employer following a transfer of an undertaking, but only to ensure, as far as possible, that the contract of employment or employment relationship continues unchanged with the transferee.<sup>17</sup> I added that the purpose of the Directive is, therefore, to prevent employees affected by a transfer of an undertaking from being placed in a less favourable position solely by reason of this transfer.<sup>18</sup>

34. I drew the inference from this that the Directive could not be interpreted as requiring the Member States to amend their national law in order to enable an entity governed by public law to maintain in force contracts of employment governed by private law, contrary to the applicable national rules.<sup>19</sup>

35. I pointed out, however, that, in this situation, Article 4(2) of the Directive applies.<sup>20</sup>

17 — I referred, inter alia, to Case 105/84 *Dammols Inventar* [1985] ECR 2639, paragraph 26, and Case 324/86 *Tellerup ('Daddy's Dance Hall')* [1988] ECR 739, paragraph 16. See also paragraph 9 of *Daddy's Dance Hall*.

18 — See, inter alia, *Dammols Inventar*, paragraph 26, and Case C-343/98 *Collino and Chiappero* [2000] ECR I-6659, paragraph 37.

19 — Paragraph 106 of my Opinion in *Mayeur*.

20 — *Ibid.*, paragraph 107.



36. I took the view that the obligation imposed on an employer, a legal person governed by public law, by a provision of national law, to terminate contracts governed by private law entered into by the transferor, in circumstances in which all the conditions for the transfer of an undertaking are satisfied, would have to be regarded as a substantial change in working conditions to the detriment of the employee.<sup>21</sup>

37. I concluded from this that, in accordance with the provisions of Article 4(2) of the Directive, it would be incumbent on the new employer, the transferee of the activities previously carried on by the former entity, to assume responsibility for the dismissal brought about by reason of his act.<sup>22</sup>

38. In its judgment in *Mayeur*, the Court agreed with my analysis.

39. It did not simply point out that the possible existence of national rules imposing an obligation on a legal person governed by public law to terminate private law contracts

of employment, in the event of taking over an activity previously carried on by a person governed by private law, does not mean in principle that this takeover falls outside the scope of the Directive.<sup>23</sup>

40. The Court took care to state that any obligation, prescribed by national law, to terminate contracts of employment governed by private law in the case of transfer of an activity to a legal person governed by public law constitutes a substantial change in working conditions to the detriment of the employee, resulting directly from the transfer, with the result that termination of such contracts of employment must, in such circumstances, be regarded as resulting from the action of the employer, in accordance with Article 4(2) of the Directive.<sup>24</sup>

41. As the Luxembourg Government and the Commission of the European Communities have rightly pointed out, these developments in case-law shed light on the answer to be given to the question referred for a preliminary ruling.

42. It may be seen from *Mayeur* that, in the event of the transfer to a legal person governed by public law of an economic

21 — *Ibid.*, paragraph 108.

22 — *Idem.* Classifying the termination of a contract of employment or of an employment relationship as being at the initiative of or resulting from the action of the employer may, under the applicable national law, present some financial advantages for the employee concerned. It can thus confer entitlement to redundancy payments or to damages.

23 — See, to that effect, *Mayeur*, paragraphs 50 to 55.

24 — *Ibid.*, paragraph 56.

entity within the scope of a legal person governed by private law, the application of the Directive does not necessarily mean that contracts of employment existing at the time of the transfer should be preserved, in accordance with Article 3(1) of the Directive.

43. Thus, in the event that national law lays down, in the context of this type of transfer, an obligation to terminate private law contracts of employment, the Directive does not preclude termination.

44. However, in this situation, termination required by national law should be regarded as resulting from the action of the employer, under Article 4(2) of the Directive, since this requirement of national law would constitute a substantial change in working conditions to the detriment of the employees.

45. In my opinion, this rule in *Mayeur* is capable of being applied to the situation in the main proceedings. There are two sets of arguments in favour of this.

46. Firstly, it is apparent from the order for reference and from the judgment at first instance that the reduction in the amount of the remuneration in question results from the application, to employees affected by a transfer of activities from a legal person governed by private law to a legal person

governed by public law, of mandatory national rules governing the situation of State employees. In other words, according to the interpretation that the national court has placed on its domestic law, the State, as new employer, is required to set the remuneration of the employees affected by the transfer at a lower amount than that provided for in the contracts of employment governed by private law which these employees had with their former employer.<sup>25</sup>

47. Secondly, in my opinion, such an obligation to reduce the amount of remuneration constitutes a *substantial* change in working conditions to the detriment of the employees, within the meaning of Article 4(2) of the Directive.

48. It must be recognised that remuneration is an essential condition of the contract of employment.<sup>26</sup> In my opinion, it follows that the obligation, laid down by national law, to

25 — This interpretation of national law is disputed by Mrs Boor. According to her, a State employee's contract of employment continues to be covered by private law and therefore falls outside the application of mandatory rules relating to civil servants, in particular in the area of remuneration. I shall not take a view on this question of interpretation of domestic law, which is solely within the competence of the national court.

26 — Indeed, the existence of remuneration is necessarily taken into account in defining an employment relationship and the corresponding application of the rules of Community law on freedom of movement for persons. According to settled case-law, 'the essential feature of an employment relationship ... is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration' (emphasis added). See, *inter alia*, Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraphs 16 and 17; Case 197/86 *Brown* [1988] ECR 3205, paragraph 21; and Case C-27/91 *Le Manoir* [1991] ECR I-5531, paragraph 7. It follows that there cannot be any employment relationship without remuneration.

reduce the amount of remuneration of the employees affected by the transfer in question constitutes, *by its nature*, a *substantial* change in working conditions to the detriment of these employees. It must be categorised as such, whatever the size of the reduction at issue.<sup>27</sup> Admitting the opposite entails a risk of giving rise to numerous proceedings and of national courts diverging in their determinations on treatment of the reduction in the amount of the remuneration in question. That prospect would not meet the need to guarantee uniform protection of the rights of employees facing such a reduction.

49. In accordance with this logic, the Court, in its judgment of 7 March 1996 in *Merckx and Neuhuys*,<sup>28</sup> held that 'a change in the level of remuneration awarded to an employee is a substantial change in working

conditions within the meaning of [the provisions of Article 4(2) of the Directive], even where the remuneration depends in particular on the turnover achieved'.<sup>29</sup>

50. In that case, a motor vehicle sales dealer refused, as transferee of the entity being transferred, to guarantee to maintain the level of remuneration which two salesmen had received from the transferor. This remuneration depended in particular on the turnover achieved, so that the amount of the remuneration in question was likely to vary significantly. Despite this distinctive feature, the Court took the view, generally, that any change in the level of remuneration constitutes a substantial change in working conditions.

51. This rule in *Merckx and Neuhuys* cannot be disregarded on the ground that, unlike the situation in that case, Mrs Boor, upon the transfer, acquired the status of public-sector employee, which confers (as the referring court pointed out in the question it referred for a preliminary ruling) legal benefits in the areas of, inter alia, career development and job stability.

27 — In my opinion, reduction in the level of remuneration should be distinguished from other changes in working conditions, such as changes in hours or place of work. It is true that, in some cases, such changes may significantly affect the situation of employees and thus may constitute substantial changes in working conditions. This would be the case, in particular, where daytime working was converted to night working or where the place of work was moved to somewhere far from the initial site. However, in other cases, changes in hours or place of work may have little impact on the employees' situation, so that it would be excessive to see them as substantial changes in working conditions. This is why, in my opinion, unlike a reduction in the amount of remuneration, which constitutes by its nature a substantial change in working conditions, changes in hours or place of work should be examined case by case in order to determine whether they actually amount to a substantial change in working conditions.

28 — Joined Cases C-171/94 and C-172/94 *Merckx and Neuhuys* [1996] ECR I-1253.

29 — Paragraph 38.

52. In my opinion, since the reduction in the amount of remuneration constitutes *by its nature* a substantial change in working conditions, it matters little whether this reduction is likely to be offset, wholly or partly, by the conferring of benefits.<sup>30</sup>

53. It follows from all these considerations that what holds good, according to *Mayeur*, for any obligation, laid down by national law, to terminate private law contracts of employment when an economic entity is transferred to a legal person governed by public law applies equally to any obligation, laid down by national law, to reduce in these circumstances the amount of remuneration provided for by private law contracts of employment, as is the case in the main proceedings.

54. Based on the analysis of *Mayeur* and *Merckx and Neuhuys*, I take the view that Article 3(1) of the Directive does not

30 — This view can be likened to the method adopted by the Court to ascertain whether the principle of equal pay for male and female workers is being observed. In Case C-262/88 *Barber* [1990] ECR I-1889, paragraph 35, the Court held that 'the principle of equal pay must be ensured in respect of each element of remuneration and not only on the basis of a comprehensive assessment of the consideration paid to workers'. This analysis is based on the idea that it would be particularly difficult for national courts to assess and compare all the varied forms of consideration paid, in different cases, to male or female workers. See also Case C-236/98 *Jämställhetsombudsmannen* [2000] ECR I-2189, paragraph 43.

preclude the reduction in the amount of the remuneration at issue, but that any termination of the contract of employment on this ground should be regarded as resulting from the action of the employer, in accordance with Article 4(2) of the Directive. Thus, contrary to Mrs Boor's claim, continued observance of the working conditions existing at the date of the transfer does not amount to an absolute or sacrosanct principle.

55. This interpretation of the Directive reflects the Community legislature's concern to reconcile the different opposing interests: those of the new employer, who should be in a position to make the adjustments and adaptations necessary to the running of the economic entity transferred, and those of the employees affected by the transfer, whose interests should be maintained as far as possible.

56. Consequently, the answer to this question referred for a preliminary ruling should be that Article 3(1) of the Directive must be interpreted as not precluding, where the transfer of an undertaking involves the State taking over activities previously carried on by a non-profit-making association (legal person governed by private law), the State, as new employer, from making a reduction, by reason of the transfer, in the amount of the employees' remuneration, under the national

rules in force relating to the status of public employees. However, this reduction in the amount of remuneration constitutes, by its nature, a substantial change in working conditions to the detriment of the employees

affected by the transfer, so that the termination of their contract of employment must be regarded as resulting from the action of the employer, in accordance with the provisions of Article 4(2) of the Directive.

## V — Conclusion

57. Having regard to all these considerations, I propose that the Court give the following answer to the question referred by the Cour Administrative for a preliminary ruling:

'Article 3(1) of Council Directive 77/187/EEC 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 must be interpreted as not precluding, where the transfer of an undertaking involves the State taking over activities previously carried on by a non-profit-making association (legal person governed by private law), the State, as new employer, from making a reduction, by reason of the transfer, in the amount of the employees' remuneration, under the national rules in force relating to the status of public employees. However, this reduction in the amount of remuneration constitutes, by its nature, a substantial change in working conditions to the detriment of the employees affected by the transfer, so that the termination of their contract of employment must be regarded as resulting from the action of the employer, in accordance with Article 4(2) of Directive 77/187.'