

TUPE: The information you need for every country

Issues	Austria	Belgium	Czech Republic	Denmark	France	Germany	Great Britain (excl NI)	Hungary	Ireland	Italy	Netherlands	Poland	Spain	Sweden	Switzerland		
Legislative term for Transfer of Undertaking?	Sec. 3 et seq. Employment Law (Arbeitsvertragsgesetz)	Transfer d'entreprise – overdracht van onderneming	Sec. 338-340 Labor Code	Transfer of Undertakings (Employees legal position) Act no. 733 of 30 August 2002 (Virksomhedsoverdragelse)	Article L1224-1 Labour Code	613a BGB (Betriebsübergang)	Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)	Article 36-40 of Labour Code (A munkaviszony átvételéről szóló törvény)	SI No 131 of 2003 European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (Transfer of Undertakings, the UK Acronym 'TUPE' is also used)	- Article 2112 Civil Code ('Trasferimento Dazienda')	Book 7, part 10, chapter 8 of the Dutch Civil Code ('Overgang van onderneming')	Article 2310 Labour Code (Przejęcie zakładu pracy)	Article 44 Workers' Statute ('Succession de Entreprise')	Section 6 b Employment Protection Act (EPA) (Övergång av ett företag, en verksamhet, eller en del av en verksamhet)	Response Transfer of Undertaking (German Betriebsübergang, Article 333 and 335a Code of Obligations)		
Definition of TUPE	A transfer of a company, undertaking or part of a business from one employer to another proprietor. In every applicable transfer, the employment relationships are automatically transferred to the new proprietor. All individual rights and obligations are maintained.	The transferor of an enterprise may undertake to transfer the enterprise to the transferee on the basis of a contract entered into with the transferee. An enterprise may also be transferred to a transferee pursuant to law. An enterprise comprises the rights and obligations relating to land in the service of the management of the enterprise, including contracts relating to the enterprise.	(a) All or part of a business or undertaking is transferred from one employer to another based on a special law, or (b) all or part of the employer's activities or employer's tasks are transferred to another employer, provided that the transferee is able as an employer to continue in the performance of tasks or activities of the transferor or a similar activity.	On a transfer of a company or a part thereof, the acquirer assumes the rights and obligations pursuant to the contract of employment that existed at the time of transfer.	A transfer of an autonomous economic entity that retains its identity and whose activity is either continued or taken up.	A transfer of an economic entity that retains its identity post transfer.	A transfer of a business, undertaking for part which involves an economic entity that retains its identity and/or the contracting out of services, reassignment of such a contract or bringing the work 'in-house' where there is an organized grouping of employees whose principal purpose is carrying out these services. However the supply of goods and one-off buying in of services are excluded.	When an independent unit (such as a strategic business unit, plant, shop, division, workplace, or any section of these) or the material and non-material assets of the employees are transferred by agreement to an organization or person falling within the scope of the Labour Code for further operation or for restructuring operations if such transfer takes place within the framework of sale, exchange, lease, leasehold or capital contribution for a business association.	A transfer of assets (employees, business, etc) from a company to another. The object of the transfer is the company or the business, not the shares or stocks.	A transfer of an organized economic concern (employees, business, etc) from a company to another. The object of the transfer is the company or the business or a number of organized assets, not the shares or stocks.	A transfer of assets (employees, business, etc) from one company to another. The object of the transfer is the company or the business, not the shares or stocks.	A transfer of an employing establishment or a part of it (including transfer of assets and/or activities comprising a business unit) which employees are employed to another employer results in the latter becoming a party to the existing employment relationships by virtue of law.	A transfer of an economic entity which maintains its identity, and is understood as a group of organized means/resources that carry out an economic activity either essential or incidental.	In conjunction with the transfer of an undertaking, a business or part of a business from one employer to another, the rights and obligations pursuant to contracts of employment and the employment relationships that existed at the time of the transfer shall, with a few exceptions, also be transferred to the new employer.	If the employer transfers the enterprise or a part thereof to a third party, the employment relationship is transferred to the acquiring party including all rights and obligations as of the date of transfer unless the employee declines the transfer.		
Minimum number of employees required in a company?	No, there is no minimum number of employees required.	There is no minimum number of employees required in a company.	There is no minimum number of employees required in a company.	There is no minimum number of employees required in a company.	There is no minimum number of employees required in a company.	There is no minimum number of employees required in a company.	There is no minimum number of employees required in a company.	There is no minimum number of employees required in a company.	There is no minimum number of employees required in a company.	No, there isn't.	No.	No.	No.	No.	No.		
Mandatory information and consultation requirements?	Yes. Works council, if there is no works council, then information to employees directly and no need for consultation.	Information and consultation at the level of the works council, or if none, at the level of the Committee for Prevention and Protection at work, or if none, at the level of the union delegation or, lastly, if none, the employees directly.	Yes. Employee representatives (trade union or works council), if none, directly with all affected employees.	Yes. There are mandatory obligations which should be completed with employee representatives and if there are no employee representatives then directly with employees.	Yes. Information/Consultation (I/C) with the works councils of the transferor and transferee.	Information/consultation required only if there is a works council and the transfer constitutes a change in establishment, which usually is the case when only parts of the business are transferred. In all cases (irrespective of works council) detailed written information to be provided to each affected employee.	Yes. obligation to inform and consult with recognized trade unions, or if none, elected representatives of affected employees, or in companies with fewer than 10 employees, with affected employees directly. In addition, the transferor must provide specific information to the transferee.	Yes. Transferor must inform the works council or workers' representatives (TUPE and similar) in consultation. If no works council or works agent exists, the employer must inform directly affected employees. TU might request consultation under general rights of TU.	Yes. Consultation with employee representatives (following an election) only if measures in changes in the Terms and Conditions of the employees are intended.	Before proceeding with the transfer the company employing more than 15 employees has to consult with the internal unions or, if no internal unions are present, with the territorial unions.	Yes. Works council or a staff association, in their absence the employees directly.	Yes. Works council and either trade union organizations at the establishment level, or individual employees; no precise time scale for parallel information/consultation with the works council.	Yes. Works council and either trade union organizations at the establishment level, or individual employees; no precise time scale for parallel information/consultation with the works council.	No specific timeframe, but with sufficient notice before the transfer (recommended: 30 days before the transfer is effected. If the commercial operation falls under the scope of the Spanish Act named 'Ley de Modificaciones Estructurales de las Sociedades Mercantiles' (Act of Structural Modifications in Commercial Companies) then, from a labor perspective, it will be mandatory to give more detailed information to the employees (such as merger plan, reports of the directors of each company on the merger, report from independent experts, etc.) before the announcement of the shareholders meeting to approve the merger.	Yes. Employee representatives should be informed, if there are not employee representatives affected employees should be informed individually.	Yes. Employee representatives from the relevant trade unions must be informed and consulted with, if a CBA applies and there are affected trade unions.	Yes. Employee representatives or, if there are none, the employees directly must be informed about the reason for the transfer and its legal, economic and social consequences for the employees. Consultation with the employee representatives or, if there are none, the employees directly must be conducted where measures affecting the employees are envisaged as a result of the transfer or undertaking.
Timeframe I/C?	Prior to the transfer. If there is a works council, then early enough to enable the works council to discuss the terms of the transfer with the employer.	Before the decision to transfer an undertaking is taken.	Yes. At least 30 days prior to the transfer.	Information and/or consultation should start as early as possible, so the employees have time to evaluate how transfer will affect them. In any event before the transfer is executed.	1 month if only the works council is consulted 2 months if an expert could be appointed 2 months if the health and safety committee must be consulted as well 4 months if a coordination body of health and safety committee has been constituted In practice, as the project is likely to impact conditions of work, the health and safety committee would be consulted. In all cases (irrespective of works council) detailed written information would be 3 months for the consultation process.	As early as possible, in any event before the transfer is made public, and executed; written information to employees ideally at least one month before transfer.	No specific timeframe but must take place long enough before the transfer to enable consultation on proposed measures to take place.	At least 15 days prior to the transfer.	'In good time', but not less than 30 days prior to the closing date, unless this is not reasonably practicable.	Commences at least 25 days before the binding agreement is executed by the parties.	At a time where the advice for the works council can have a significant impact before the actual decision has been made. If there is no works council, a staff association might have a right to give advice within reasonable time.	At least 30 days in advance of the transfer for information/consultation with trade union or individual employees; no precise time scale for parallel information/consultation with the works council.	No specific timeframe, but with sufficient notice before the transfer (recommended: 30 days before the transfer is effected. If the commercial operation falls under the scope of the Spanish Act named 'Ley de Modificaciones Estructurales de las Sociedades Mercantiles' (Act of Structural Modifications in Commercial Companies) then, from a labor perspective, it will be mandatory to give more detailed information to the employees (such as merger plan, reports of the directors of each company on the merger, report from independent experts, etc.) before the announcement of the shareholders meeting to approve the merger.	Before the decision is taken.	Information: Prior to the transfer. Consultation: Before the decisions are taken.		
Is local I/C required in the event of a transfer at group or holding level outside your country?	No, unless the transfer can be considered as an event that might have important consequences for the employees.	Yes, the rules also apply where there is a transfer between two companies of the same corporate group because there are two different legal entities, with a separate social and economic autonomy.	No, unless such transfer has an impact on the employees in the Czech Republic.	Yes.	No, unless there is an impact on employees in France.	No, unless there is an economic committee (in companies with more than 100 employees) and the transfer can be considered as an event or plan which could materially affect the employees' interests in which case information only.	No, only if there is an impact on employees in the UK.	Yes. I/C is required if TUPE occurs in Hungary and/or there is an impact on employees or the employer's economic situation in Hungary.	No, only if the company that employs the employees changes.	No, unless there is an impact on employees in Italy.	Yes, if the holding and legal entity in the Netherlands can be identified, jointly undertake or a decision of the holding can be attributed to the Netherlands.	No, unless the transfer leads to essential changes in the organization of work or legal terms of employment.	No, only if this will lead to measures regarding the employees in Spain.	No, unless such transfer directly concerns a Swedish company.	No, only if there is an impact on employees in Switzerland.		
Necessary to provide information to third parties?	No, it is not necessary to provide information to third parties.	No, it is not mandatory to give information to third parties.	No.	No.	No, unless transfer of part of a business and protected employees are transferred (e.g. works council members, personnel delegates, their transfer has to be authorized by the Labour Inspector (their dismissal as well).	No, unless transfer involves collective redundancies then notification of Employment Office in accordance with collective redundancy rules.	No, unless 20 or more redundancies are proposed in which case the government must be informed. However, there are information duties owed to affected employees and from the transferor to the transferee (see question on information and consultation requirements).	No, it is not mandatory to give information to third parties.	No.	Yes, internal and external unions must be informed.	Yes, depending on several circumstances, trade unions and Social and Economic Council.	No.	Yes, if the transfer implies a collective modification/dismisals of the labor conditions, or geographical mobility.	No.	No, unless the transfer involves a collective redundancy (then notification of Labour Office is required).		
Do employees/representatives need to agree?	No, employees or representatives do not need to agree with the transfer.	No, except as far as the protected employees who have been candidates to the social elections for the status of the works council and/or the committee for prevention and protection at work are concerned.	No, employees/representatives do not need to agree to the transfer.	No, employees/representatives do not need to agree with the transfer.	No, the transfer is automatic, except for staff representatives (e.g. works council members, personnel delegates) in the event of a partial transfer of the business: their transfer (or dismissal) has to be authorized by the Labour Inspector.	No, employees/representatives do not need to agree with the transfer.	No, employees/representatives do not need to agree with the transfer.	No, employees/representatives do not need to agree with the transfer.	No.	No, employees/representatives do not need to agree with the transfer.	No.	No.	No.	No.	No.		
Can employees object?	Yes, if the new employer refuses to accept special protection under a Collective Bargaining Agreement (meaning that the employee loses special protection against termination), or if the new employer refuses to accept individual pension entitlements.	The employee has the right to object. Doing so is usually a termination by the employer if the employee is not confronted with major amendments to his employment conditions.	No, but the employee can give a notice to his/her employer for the reason related to the transfer. In such a case, the employment terminates regardless of the notice period or later than the day before the effective day of the transfer.	The employee cannot object, unless the ground for objection is a breach of expectation (an objection based on an employee's personal connection with the employer). However, this will not affect the transfer, but may provide the employee reason to consider the employment as terminated by the employer (constructive dismissal).	No. If the employee refuses to continue to work for his new employer, it could be considered as a disciplinary reason for dismissal.	Yes, if they do so, they remain employees of the transferor who will have to deal with them.	Yes, employment ends on transfer date. Compensation claim only if anticipated breach of contract (transfer) or a substantial change to their working conditions to their detriment.	No, employees cannot object to a transfer under 'TUPE' regulations.	Yes, an employee who refuses to transfer is currently deemed to have resigned from the Transferor. This is a change from the previous position, and is currently the subject of a Supreme Court appeal.	Yes, by resigning with notice.	No, if employees object, their employment agreement ends by operation of law.	Yes, employees can object within two months of the transfer, upon seven days prior notification (objection has the same effect as dismissal with notice by the employer, but entitlement to severance payment is only exceptional).	Yes, if proposed measures are a substantial modification of duties or labor mobility or dismissals. In this case the employee can claim compensation.	Yes, they then remain employees of the transferor or, where it is not possible, their employment contract is terminated on the ground of redundancy.	Yes, in such case the employment is considered to be terminated with the statutory termination period.		
Can the new employer change the terms and conditions?	Yes, regarding individual pension entitlements and special protection against termination in a CBA. If the transferor continues to exist, in all other cases deteriorations may not be agreed unless the transferor had been entitled to do so and the transfer is not the reason for the measure) by individual contract within one year of the transfer.	In principle, the new employer cannot change the terms and conditions of the employment contract except by mutual agreement or when those amendments are limited and reasonable. In any other case, the employee could claim the amendments constituted a constructive dismissal.	No, except with employee consent. If the terms and conditions are non-contractual the new employer can change them generally in the same way as the original employer.	No, except with employee consent. If substantial changes are notified and the employees do not want to continue their employment relationships on the changed conditions as offered, the employees are entitled to consider the notification as a dismissal by the employer and cease their work at the end of the period of notice.	No, except with employee consent and provided the change is not because of the transfer.	Not if the change is because of the transfer, agreed change possible but in some cases (originally collective terms) not within the first year following the transfer to the employee's detriment.	No, if sole or principal reason is the transfer unless there are economic, technical or organizational (ETO) reasons entailing changes in the workforce and the employee agrees the changes or the transferor has contractual right of variation. No timeframe.	ETO reasons entailing changes in the workforce or the transfer is the sole or principal reason.	The transfer itself cannot be the reason for termination. The employer may only terminate the employment contract for the normal reasons in connection with performance etc.	No, except with employee consent after the transfer. An agreed change before the transfer is likely to be deemed during upon the employee, unless it is made clear that the employee can still transfer without agreeing to the change.	No.	No, except with respect to position in specific circumstances, where change is for a reason other than the transfer in which case it is possible to agree on changes and under certain circumstances a change unilaterally. No mandatory time frame.	For one year after the transfer, the provisions of the collective labor agreement which is binding on the transferor at the date of the transfer apply. After one year or at any time when no collective agreement is in place, the new employer can change the conditions of the employment for a good reason, upon notice. The employer's consent is required.	Yes, but with limitations and consultation is always required.	No, Only by termination of the employment contract and simultaneous offer of a revised contract.		
Reasons for which termination can be justified?	The contract may be terminated for gross misconduct, for economic or organizational reasons.	Apart from serious misconduct, the employer may terminate the employment for economic, organizational or technical reasons.	Employer, only for general statutory reasons. However, if the transferred employee gives notice within two months following the transfer and proves before the court that his/her employment was terminated due to substantial deterioration of working conditions in connection with the transfer, such employee may be entitled to severance payment.	Gross misconduct or economic, technical or organizational reasons entailing changes in the work force. The employer bears the burden of proof.	A reason unrelated to the transfer, as long as it is based on genuine and serious grounds.	Gross misconduct or one of the fair reasons under the Protection Against Dismissal Act (reasons in the person, conduct, or business) but not because of the transfer.	ETO reasons entailing changes in the workforce or the transfer is the sole or principal reason.	The transfer itself cannot be the reason for termination. The employer may only terminate the employment contract for the normal reasons in connection with performance etc.	Economic, technical or organizational reasons, and any reasons unconnected with the transfer which were available to the Transferor. Such a termination is only possible post transfer.	Gross misconduct, or economic, technical or organizational reasons.	Economic, technical or organizational reasons can be justified if they are not directly connected to the transfer.	Employment can be terminated for gross misconduct or in case of extensive absence, or with notice for other genuine and justified reasons except the transfer itself.	Gross misconduct, and very serious objective causes, economic, organizational, technical or productive reasons.	Gross misconduct, or economic, technical or organizational reasons.	General provisions for termination apply.		
If the procedure is not followed can the transfer be prevented or delayed?	Not prevented, but delayed. Court could grant interim injunctions if information rights are severely violated (possible, but unlikely).	No, the process cannot be prevented or delayed due to the procedure not being followed.	No, the process cannot be prevented or delayed due to the procedure not being followed.	No.	Yes, if the works council refuses to give an opinion on the transfer on the basis that it was not given sufficient information, it can try to obtain a postponement of the project from a judge.	Prevented: No. Delayed: Some court districts might grant injunctions to delay if serious breach of works council rights, but unlikely.	No, the process cannot be prevented or delayed due to the procedure not being followed.	Theoretically if the procedure is not followed.	Yes, until the correct information and consultation procedure is completed.	Yes, the transfer can both be prevented and delayed if works council gives negative advice and starts litigation.	No.	No, transfers cannot generally be prevented or delayed. However, as measures taken by employers in Spain can be subsequently declared 'null and void' by the Spanish courts, decisions can effectively be reversed at a later date/prevented from taking effect following a judge's ruling.	Prevented: No. Delayed: Yes.	Yes, registration in the commercial register may be denied by court injunction in cases of merger/demerger/transfer of assets and liabilities according to the Swiss Merger Law. In other cases uncertain whether court injunction would be available.			
If the procedure is not followed can the company be punished with damages?	If the failure to comply with the procedure actually leads to damages, these damages could be claimed (possible but unlikely).	No.	No.	No.	Yes.	Failure to I/C 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 damages claims.	Yes, transferor and transferee jointly liable for protective awards (max 13 weeks' pay uncapped per affected employee) for failing to inform and consult.	Employer's representatives (WC, union, committee) can challenge the transfer and the Labour Supervisor can impose a fine, but damages are not available.	Limited scope of damages, but there is potential to be costly. Maximum 4 weeks per employee for failure to inform and consult. Maximum 2 years' remuneration per employee for other breaches. Employee can also claim constructive dismissal, or seek contractual redress in the Courts.	No.	If the employee was refused the ability to transfer and was dismissed he/she can appeal against the dismissal and claim damages and/or continuing employment with the transferee.	Yes, economic sanction and employee representatives can claim for a damages compensation going beyond of their fundamental right as employee representatives.	Yes.	Employee can claim compensation for damages if he/she is able to prove such. Failure to follow procedure does not justify indemnity for unfair dismissal.			
Are there other sanctions available if the procedure is not followed?	Termination of contract due to the transfer is void. Employees may demand a declaratory judgment or alternatively accept the termination and demand all payments they are entitled to due to the unjustified termination.	Yes, criminal sanctions are possible if the CBA, 32a is not respected.	Fine for failure to inform and consult up to CZK,000,000 (approx €8,000).	Yes, the company may be fined.	Failure to inform and consult with the works council is a criminal offence. For the head of the company: fine up to €3,750 and/or a prison sentence of up to one year for a first offence (€7,500 and/or two years' prison sentence in case of a repeated offence). For the company: fine of up to €18,750.	No, there are no other sanctions that can be used if an organization does not follow the correct procedure.	If TUPE is not complied with, in addition to protective awards, the employer risks other employment litigation including unfair dismissal claims.	If employment is terminated despite TUPE regulation the employer can challenge it in court.	A TUPE situation could give rise to other legislative sanctions, or HR difficulties. The Rights Commissioners have a very broad power to require an employer to 'take a specified course of action' in order to comply with the Regulations. HR difficulties relate to the various issues which may arise with employees where they feel they are not engaged with or consulted with in advance of a change. This often leads to the loss of employees and if the employees are alienated, they may take industrial action if they are not informed and consulted with.	Failure to inform and consult the Trade Unions is deemed as anti-union behaviour (leading to possible criminal offences).	No, if the works council starts legal proceedings the Enterprise Division of the Amsterdam Court of Appeal could determine that the decision of the employer is manifestly unreasonable (ie an employer may have to reconsider its decision or may not implement the decision) and order the revocation of the decision and make its consequences undone.	Employees can be liable for a petty offence ('malversación' / criminal sanctions (fine)).	Compensation of damages to the employees. Damages must be proved by the specific employee.	No.	No.		

