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§ 58.6.175 - Legislative Decree No. 61 of May 18, 2018. Implementation of Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, [...]

Sector: **National legislation**

Subject: **58. Work**

Chapter: **58.6 general regulations**

Date: **18/05/2018**

Number: **61**

Summary

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Entry into force

§ 58.6.175 - Legislative Decree No. 61 of May 18, 2018.

Implementation of Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council and Council Directives 98/59/EC and 2001/23/EC as regards seafarers.

(O.J. June 6, 2018, No. 129)

THE PRESIDENT OF THE REPUBLIC

Having regard to Articles 76 and 87 of the Constitution;

Having regard to [Law no. 234 of 24 December 2012](#), laying down general rules on the participation of Italy in the formation and implementation of the legislation and policies of the European Union;

Having regard to Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council and Council Directives 98/59/EC and 2001/23/EC as regards seafarers;

Having regard to Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies;

Having regard to Council Directive 2001/23/EC 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;

Having regard to [Directive 2002/14/EC](#) of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European

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Community;

Having regard to [Directive 2008/94/EC](#) of the European Parliament and of the Council on the protection of employees in the event of the insolvency of their employer;

Having regard to [Directive 2009/38/EC](#) of the European Parliament and of the Council on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees;

Having regard to [Law No. 163 of 25 October 2017](#), delegating the Government to transpose European directives and implement other acts of the European Union - European Delegation Law 2016-2017;

Having regard to [Law No 297 of 29 May 1982](#), and in particular Article 2 thereof;

Having regard to [Law No 428 of 29 December 1990](#), laying down provisions for the fulfilment of obligations arising out of Italy's membership of the European Communities (Community Law for 1990) and in particular Article 47 (Business Transfers);

Having regard to the [law of 23 July 1991 no. 223](#), containing norms on redundancy funds, mobility, unemployment treatments, implementation of European Community directives, start-up of employment and other provisions on the labour market;

Having regard to [Legislative Decree No 80 of 27 January 1992](#), implementing Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer;

Having regard to [legislative decree no. 25 of 6 February 2007](#), implementing [directive 2002/14/EC](#) establishing a general framework for informing and consulting employees;

Having regard to [legislative decree no. 113 of 22 June 2012](#), implementing [directive 2009/38/EC](#) on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees;

Having heard the most representative trade unions of workers and employers;

Having regard to the preliminary deliberation of the Council of Ministers, adopted at its meeting on 8 February 2018;

Acquired the opinion of the Permanent Conference for relations between the State, the Regions and the Autonomous Provinces of Trento and Bolzano, adopted at the meeting of 22 February 2018;

Having obtained the opinions of the competent Special Commissions for the examination of Government acts, set up at the Chamber of Deputies and the Senate of the Republic following the start of the eighteenth legislature;

Having regard to the deliberation of the Council of Ministers, adopted at its meeting on 16 May 2018;

On the proposal of the President of the Council of Ministers and the Minister of Labour and Social Policies, in agreement with the Ministers of Foreign Affairs and International Cooperation, of Justice, of Economy and Finance and of Infrastructure and Transport;

Emana

the following legislative decree:

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Art. 1. Amendments to [Legislative Decree no. 113 of 22 June 2012](#)

1. [Legislative Decree no. 113 of 22 June 2012 shall](#) be amended as follows:

a) Article 1(5) shall be deleted;

b) Article 2, paragraph 1, shall be amended as follows:

1) points (a) and (b) are replaced by the following:

"(a) establishment means a production unit or vessel;

b) a Community-scale undertaking, an undertaking employing at least 1 000 workers in the Member States and at least 150 workers per Member State in at least two Member States or a maritime undertaking employing at least 1 000 seafarers on Community-flagged vessels and employing at least 150 seafarers on at least two Community-flagged vessels

2) point (d) is replaced by the following:

"(d) Community-scale group of undertakings means a group of undertakings, including maritime undertakings, which fulfils the following conditions:

1) the group employs at least 1000 workers in the Member States or employs at least 1000 seafarers on vessels flying Community flags;

2) at least two undertakings in the group are located in different Member States;

3) at least one undertaking in the group employs at least 150 workers in one Member State and at least one other undertaking in the group employs at least 150 workers in another Member State or, in the case of maritime undertakings, at least one maritime undertaking in the group employs at least 150 seafarers on ships flying a Community flag and at least one other maritime undertaking in the group employs at least 150 workers on ships flying another Community flag;"

c) Article 12 shall be amended as follows:

1) The following sentence is added at the end of paragraph 1: "In the case of seafarers, the provisions of article 35, third paragraph, of Law no. 300 of 20 May 1970 shall remain in force";

2) the following subparagraph is added after subparagraph 4:

"4a. A member of the special negotiating body or of the EEOC, or his alternate, who is a member of the crew of a seagoing ship, shall be entitled to attend a meeting of the special negotiating body or of the EEOC or any other meeting held under the information and consultation procedures if, when the meeting takes place, that member or his alternate is not at sea or in a port of a country other than that in which the shipping company is based. Wherever possible, meetings shall be so arranged as to facilitate the attendance of members, or their alternates, who are crew members of seagoing ships. In the event that a member of a special negotiating body or an EEOC, or his alternate, who is a member of the crew of a seagoing ship is unable to attend a meeting, consideration shall be given to using, where possible, new information and communication technologies."

Art. 2. Amendments to [Law 223 of 23 July 1991](#)

1. The following sentence shall be added at the end of article 4, paragraph 2, of [law no. 1. In article 4, paragraph 2, law 223 of 23 July 1991](#), the following sentence is added at the end: "If the collective dismissal procedure concerns the members of the crew of a seagoing ship, the employer sends the communication to the subject indicated in paragraph 4 if the collective dismissal procedure concerns crew members who are Italian citizens or whose employment relationship is regulated by Italian law, and to the competent authority of the foreign State if the collective dismissal procedure concerns crew members of a seagoing ship flying a flag other than the Italian flag."

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Art. 3. Amendments to the Navigation Code

1. The following shall be inserted after Article 347 of the Navigation Code:

"Art. 347 bis. (Maintenance of seafarers' rights in case of company transfer). - Without prejudice to the provisions of this Code and of special laws, the provisions on the transfer of business as per article 2112, first, second, third, fourth and fifth paragraphs, of the Civil Code shall also apply in case of transfer of a seagoing ship as part of the transfer of an undertaking, an establishment or part of an undertaking or establishment within the meaning of article 2112 (5) of the civil code, provided that the transferee is situated or that the undertaking, establishment or part of an undertaking or establishment transferred remains within the territorial scope of the Treaty on the functioning of the European Union. The provisions relating to the transfer of a business shall not apply where the object of the transfer consists exclusively of one or more seagoing ships."

Article 4. Financial uncertainty clause

1. The implementation of the present decree shall not cause new or greater burdens for the public finance. The public administrations concerned shall provide for the tasks provided for by the present decree with the human, instrumental and financial resources available at the legislation in force.

Art. 5. Entry into force

1. The present decree shall enter into force on the day following that of its publication in the Official Gazette of the Italian Republic.

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