OPINION OF ADVOCATE GENERAL COSMAS
delivered on 7 May 1998 *

I — Introduction

1. In the present case, the Court is asked to rule on a question referred for a preliminary ruling by the Cour du Travail (Higher Labour Court), Brussels, regarding the determination of the scope 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 [1] (hereinafter 'the Directive'). The national court asks whether the Directive covers the transfer of a company in voluntary liquidation to another company.

II — The facts

2. The first of the respondents in the main proceedings, Mr Wilfried Sanders, worked for the appellant company (hereinafter 'Europièces') as a sales representative in Erpent, Belgium, for the provinces of Namur, Luxembourg and Hainaut. In July 1993, Europièces was put into voluntary liquidation. On 27 July 1993, the liquidator made Sanders redundant with 22 months' notice. On 13 August 1993, he informed him, on the one hand, that Europièces had assigned part of the stock and equipment to the second respondent in the main proceedings, namely Automotive Industries Holding Company SA (hereinafter 'Automotive'), and on the other, that Automotive had not taken over all of Europièces' activities. He also informed him that, as from 24 August 1993, his activities on account of the liquidation would be carried out in Brussels, under the direct instructions of the liquidator's representative. According to the liquidator, the change in working conditions was justified by the fact that Europièces would carry on trading only for the purposes of the winding-up, which necessitated the employee's transfer to Brussels. In the aforementioned letter, he also stated that Automotive had offered to maintain the employment contracts of certain members of staff, including Sanders, who had refused. The exchange of letters which followed between Sanders and the liquidator as regards the place of employment and the nature of Sanders' activities did not resolve the matter, whereupon Sanders claimed, by letter of 16 October 1993, unilateral breach of his contract as sales representative or, at the very least, termination of that contract, by reason of the liquidator's conduct.

3. By judgment of 5 September 1995, the Tribunal du Travail (Labour Court), Brussels, in

* Original language: Greek.

1 — OJ 1977 L 61, p. 26.

which proceedings had been initiated by Sanders, ruled, *inter alia*, that the part of Europièces' business in Erpent where Sanders carried on his activities as a sales representative seemed to have been transferred in its entirety to Automotive, to the extent that the latter had continued to carry on similar activities in that area; the Labour Court then asked the plaintiff to put forward its arguments as to whether Directive 77/187 was applicable to the present case.

4. On 16 November 1995, Europièces appealed against that judgment to the national court. The Higher Labour Court, Brussels, upheld the finding made at first instance concerning the transfer of the economic entity in Erpent and of the corresponding part of Europièces to Automotive, but queried the application of the Directive in the case of voluntary liquidation.

III — The question referred for a preliminary ruling

5. In view of the foregoing, the national court submitted the following question to the Court of Justice for a preliminary ruling:

'Does Directive 77/187/EEC apply where a company in liquidation transfers all or part of its assets to another company which then issues orders to a worker which the company in liquidation states must be carried out?'

IV — Legislative background

6. According to Article 1(1) of the Directive,

'This 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.'

Article 3(1), first subparagraph, 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.'

According to Article 4(1) of the Directive,

'The transfer of an undertaking, business or part of a business shall not in itself constitute grounds for dismissal by the transferor or the transferee. This provision shall not stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce.'

V — The admissibility of the preliminary reference

7. The United Kingdom Government submits that the national court's question should be rejected as inadmissible because the factual and legal elements necessary for the Court's legal analysis are not set out in sufficient detail. [2] In particular, it submits that, in order to answer the question properly, the order for reference should describe and explain in detail, first, the specific characteristics of the work that Sanders performed at Europièces; second, whether he carried out that work exclusively in Erpent or whether it was also envisaged that he should work in Brussels; third, whether Sanders worked in a part of Europièces that was sufficiently identifiable and whether that part was transferred to Automotive in the context of the liquidation; fourth, whether, thereafter, Sanders concluded a contract of employment with the transferee, namely Automotive, and fifth, what the link is between the Directive and the dispute in the proceedings pending before the national court. Since the information provided in the context of the question submitted is insufficient, the United Kingdom suggests that the reference should be rejected as inadmissible.

8. In my view, the plea of inadmissibility should not be considered as made out. According to the well-established case-law of the Court, referred to by the United Kingdom, the answer to a question is designed to provide an interpretation of Community law enabling the national court to resolve the dispute in the main proceedings. It follows from that general rule that, in order for the national court and Community judicature to cooperate fully, the latter replies to the questions submitted to it where it is in possession of the minimum factual and legal elements necessary to be able to give an accurate and useful interpretation of the rule of Community law at issue, with a view to resolving the dispute in the main proceedings; it refrains from ruling on purely hypothetical questions in any event. In the present case, the national court has formulated in a clear and precise manner the legal issue that it has to deal with and for which it needs an answer in order to resolve the dispute before it. It follows, in my view, from the analysis of the substance of the case

2 — In this regard, it relies on the order in Case C-257/95 *Gérard Bresle* v *Préfet de la Région Auvergne and Préfet du Puy-de-Dôme* [1996] ECR I-233, the judgment in Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo* v *Circostel and Ministero delle Poste e Telecomunicazioni and Ministero della Difesa* [1993] ECR I-393, paragraph 6, as well as the orders in Case C-157/92 *Banchero* [1993] ECR I-1085, paragraph 4; Case C-458/93 *Saddik* [1995] ECR I-511, paragraph 12; Case C-167/94 *Grau Gomis and Others* [1995] ECR I-1023, paragraph 8, and Case C-307/95 *Max Mara Fashion Group* v *Ufficio del Registro di Reggio Emilia* [1995] ECR I-5083, paragraph 6.

that the disputed factual and legal context is known to the Court and I do not therefore see any reason not to answer the question referred, although doubts exist regarding certain aspects of the dispute in the main proceedings. In any event, it is for the Higher Labour Court alone to examine whether the factual circumstances fall within the scope of the rules of law to be applied, for the interpretation of which the assistance of the Court has been sought.

VI — Substance

A — *Relevant case-law*

9. The problem raised by the question submitted concerns the extent to which there can be a 'legal transfer' within the meaning of Article 1(1) of the Directive where the undertaking transferred is in voluntary liquidation. As the Commission and the United Kingdom Government rightly observe, in order to answer that question it is particularly useful to examine the development of the case-law of the Court concerning the scope of the Directive.

10. In its judgments in *Abels*, [3] *D'Urso*, [4] *Spano and Others* [5] and *Dethier Équipement*, [6] the Court considered whether the Directive also covers transfers of undertakings which find themselves in a particular legal situation, similar or analogous to that which has arisen in this case. In those judgments, it examined in greater detail the extent to which Article 1(1) of the Directive covers the transfer of undertakings that were subject to certain rules of national law, such as insolvency and 'surseance van betaling' (suspension of payments) in Dutch law, [7] compulsory administrative liquidation and the special administration procedure in respect of large undertakings in difficulties under Italian law, [8] and, finally, the procedure for winding-up by the court in Belgian law. [9]

(a) The judgments in *Abels*, *D'Urso* and *Spano and Others*

11. According to the case-law, the Court bases itself on the purpose and the specific procedural characteristics of the rules of national law which it examines in relation to the struc-

3 — Case 135/83 *Administrative Board of the Bedrijfsvereniging voor de Metaalindustrie en de Electrotechnische Industrie* [1985] ECR 469.

4 — Case C-362/89 *Giuseppe d'Urso, Adriana Ventadori and Others* v *Ercole Marelli Elettromeccanica Generale and Others* [1991] ECR I-4105.

5 — Case C-472/93 *Luigi Spano and Others* v *Fiat Geotech and Fiat Hitachi Excavators* [1995] ECR I-4321.

6 — Case C-319/94 *Dethier Équipement* [1998] ECR I-1061.

7 — *Abels*, cited above at footnote 3.

8 — In the *D'Urso* judgment, cited above at footnote 4, the Court considered the problem of compulsory administrative liquidation and the special administration procedure in respect of large undertakings in critical difficulties, introduced by Italian Decree-Law No 26 of 30 January 1979, while the *Spano and Others* judgment raised the problem of the transfer of an undertaking that was recognised as being in critical difficulties under the procedure laid down by Italian Law No 675 of 12 August 1977.

9 — *Dethier Équipement*, cited above at footnote 6.

ture, purpose and place of the Directive within the general scheme of Community law. As is clear from its preamble, the Directive aims to lay down provisions for the '... protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded' [10] within the framework of the structural changes that the economic development of the common market entails for undertakings. Following the teleological approach taken in the Directive, the Court analyses the more specific elements of national law that are submitted to it for the purposes of the judgment, in order to assess whether the relevant national rules are consistent with the objectives of the Directive and justify its application in the event of transfers of undertakings.

12. More particularly, in *Abels*, the Court refused to extend the scope of the Directive to transfers of undertakings, businesses or parts of businesses that take place within the framework of the insolvency procedure under Dutch law, in so far as that procedure is designed, subject to judicial supervision, only to protect the interests of the various categories of creditors and is not based on any social consideration, such as the protection of employees, which the Directive seeks to ensure. [11]

13. However, that restrictive solution does not extend to suspension of payments (surseance van betaling) under Dutch law. In reaching that conclusion, the Court examined the purpose and characteristics of that special procedure. The Court found that its purpose is primarily to safeguard the assets and, where necessary, to continue the business of the undertaking by means of a settlement allowing the latter to continue operating in the future. It also found that the procedure is of a judicial nature, but that judicial supervision is more limited in scope. Consequently, in contrast to the situation with regard to insolvency, the application of the Directive to the total or partial transfer of an undertaking which has suspended payments is entirely permissible, a conclusion which is not contradicted by the mere fact that a similar procedure may later result in the undertaking being put into liquidation. [12]

10 — Second recital in the preamble to the Directive.

11 — The Court observed that the need to protect creditors justified the existence of specific rules in all the Member States 'which may derogate, at least partially, from other provisions, of a general nature, including provisions of social law' (paragraph 15 of the *Abels* judgment, cited above at footnote 3). It further observed that, if the Directive applied to the transfer of insolvent undertakings, the working and living conditions of workers, far from improving, risked overall deterioration, contrary to the social objectives of the Treaty. Specifically, in that case, the possibility of the transferee taking over the insolvent undertaking transferred on the terms accepted by the category of creditors is extremely remote, which means that the only solution is the partial transfer of the workforce of the undertaking, with the ensuing loss of all the jobs, contrary to the objectives of Directive 77/187 (paragraph 23).

12 — Paragraphs 28 and 29 of the *Abels* judgment, cited above at footnote 3.

14. The Court followed the same reasoning in the abovementioned *D'Urso* judgment. It first held that Article 1(1) of the Directive did not apply to transfers of undertakings taking place within the context of a creditors' arrangement of the kind provided for under Italian legislation on compulsory administrative liquidation, in so far as the effects of such an arrangement were contrary to those of insolvency. By contrast, the same Community provisions were applicable to a large undertaking in critical difficulties which, in accordance with specific rules of Italian law, is under special administration, where it has been decided that the undertaking is to continue trading.

15. That distinction was not based on the specific procedural characteristics of special administration, [13] but on the purpose of that procedure. Under Italian law, the official responsible for special administration can decide that the undertaking is to continue trading. In that case and for the duration of the validity of the decision to continue trading, the procedure, according to the Court, aims above all to give the undertaking a degree of stability allowing its future activity to be safeguarded. 'The social and economic objectives thus pursued cannot explain nor justify the circumstance that, when all or part of the undertaking concerned is transferred, its employees lose the rights which the Directive confers on them under the conditions which it lays down.' [14] In other words, having focused almost exclusively on the objective of the specific national procedure and distinguished it from that of insolvency, the Court recognised that the Directive was applicable under certain conditions.

16. Similarly, in its judgment in *Spano and Others*, the Court held that the Directive applied to the transfer of an undertaking declared to be in critical difficulties under a procedure of Italian law similar to that which it had considered in the *D'Urso* judgment. It relied on the argument that this procedure for declaring an undertaking to be in critical difficulties is designed to promote the continuation of the undertaking's business and, above all, to preserve employees' jobs with a view to subsequent recovery, by making the declaration conditional on the submission of a recovery plan which must include measures to resolve the employment problems.

17. In the same judgment, the Court went on to base its reasoning first on a teleological approach comparing the specific national procedure and the Directive, and secondly, on the finding that this national procedure did not involve judicial supervision among the measures for administration of the assets of the undertaking and did not provide for any suspension of payments. [15]

13 — According to paragraph 25 of the *D'Urso* judgment, cited above at footnote 4, which refers to the decision in *Abels*, the criterion of the kind of supervision exercised by the judicial or administrative authorities over the transfer of undertakings in the context of specific national procedures for creditors' arrangements, such as the special administration procedure under Italian law, provides certain indications as to the scope of Directive 77/187 but it does not constitute the most certain or precise criterion.

14 — Paragraph 32.

15 — Paragraphs 26, 28 and 29 of the *Spano and Others* judgment, cited above at footnote 5.

18. It follows from the foregoing that the main element to be examined in order to resolve the legal issue arising in the present case involves determining the objective of the specific national procedure which is at issue in each particular case and which governs the partial or total transfer of an undertaking. Additionally, in particular where the first criterion is not sufficient to resolve the matter, it is useful to take account of the manner in which the national procedure at issue is set out and put into practice because if it is imposed in a mandatory fashion by a judicial or administrative authority or is subject to rigorous judicial or administrative supervision, the legal nature of the transfer, which is a precondition for the application of the Directive, may be called into question.

(b) The *Dethier Équipement* Case

19. The case-law set out above was recently followed by the Court in *Dethier Équipement*, a judgment to which I attach particular weight because of the similarity of the problem raised therein to the question referred to the Court in this case. *Dethier Équipement* concerned the transfer of an undertaking which, according to the rules of Belgian law, was being wound up by the court, while the dispute pending before the Higher Labour Court, Brussels, in the context of which this reference was made, concerns the voluntary liquidation of an undertaking under Belgian law. Furthermore, in *Dethier Équipement*, the national court had asked the Court about the application of Directive 77/187 to both judicial winding-up and voluntary liquidation, but the Court did not reply to the second limb of the question since it was purely hypothetical.

20. Before examining the judgment in *Dethier Équipement*, I believe it is necessary to point out that, under Belgian law, liquidation of an undertaking covers all measures that are intended to satisfy creditors by using the assets of the company and distributing any eventual excess between the members. [16] Although voluntary liquidation is close to insolvency, it is in certain respects preferable because it allows for a better valuation, or the least bad valuation, of the property and does not exclude the possibility of the business activities of the undertaking which remain profitable being continued, in whole or in part, after the winding-up. Furthermore, liquidation is never an alternative to insolvency. If the conditions for insolvency are fulfilled, liquidation is no longer possible, nor is it desired by the creditors, who have far more extensive guarantees under the insolvency procedure than under the liquidation procedure. Moreover, the distinction between voluntary liquidation and winding-up by the court is devoid of any practical merit under Belgian law. It simply lies in the fact that, in the case

16 — In any event, the undertaking in liquidation does not necessarily need to be faced with economic difficulties. The liquidation procedure may also be implemented where, for example, the members no longer wish to cooperate.

of winding-up by the court, the general meeting cannot appoint the liquidators by the majority required by law; as a result, they are appointed by the competent national court in a non-contentious procedure; by contrast, in the case of voluntary winding-up, the liquidators are chosen by the general meeting. Apart from the question of the appointment of the liquidators, the two procedures are essentially identical, which reinforces the significance of *Dethier Équipement* in answering the question submitted in the present case.

21. In his Opinion of 11 July 1996 in *Dethier Équipement*, Advocate General Lenz ruled out the application of the Directive in the case of definitive cessation of trading on the part of an undertaking in liquidation which has been transferred or in the event of its insolvency and went on to examine the extent to which continuation of trading for an undertaking in liquidation justified conferral of the rights laid down in Directive 77/187 on employees. Starting from the premiss that continuation of trading was possible, but was designed to ensure the survival, restructuring or stabilisation of the company only in order the better to achieve the objectives of the liquidation, [17] he stated that the judgments in *D'Urso* and *Spano and Others* could not simply be applied without further qualification to liquidation. In those cases, the Court considered the continuation of the business of the undertaking transferred to be a decisive criterion for the application of the Directive. Such trading was continued with a view to stabilising or restructuring the undertaking transferred, whereas, in the case of liquidation, trading may be continued solely with the aim of dissolving the company; in other words, trading 'is not directed towards the future, but is only being continued until the undertaking is sold.' [18] However, taking into account the general scheme of the Directive and the place it occupies in Community social law, the Advocate General reached the conclusion that it was not the aim pursued by the continuation of trading on the part of the undertaking in liquidation which is decisive, but continuation of trading in itself. Consequently, to the extent that the undertaking in liquidation continues trading, neither the fact of putting it into liquidation nor the fact that continuation of trading is aimed at the liquidation of the undertaking, and not its survival, can justify the loss by its employees, in the event of the transfer of that undertaking, of the rights which the Directive confers on them. [19]

22. That observation does not in any case amount to an affirmative answer to the question submitted for a preliminary ruling. As a result, in so far as continuation of trading on the part of the undertaking in liquidation does not suffice of itself to justify the application of the Directive, Advocate General Lenz goes on to assess the particular characteristics of

17 — The legal personality of the undertaking in liquidation in fact exists only for the realisation of the assets, to discharge liabilities and to distribute the proceeds; trading may not be carried out except to the extent that it is conducive to the liquidation. Consequently, a company in liquidation can only complete unfinished business, which is often necessary in order to prevent a reduction in the value of the economic units of the undertaking to be transferred.

18 — Point 39 of the Opinion of Advocate General Lenz in the *Dethier Équipement* Case, cited above at footnote 6.

19 — Point 44 of the Opinion of Advocate General Lenz in the *Dethier Équipement* Case, cited above at footnote 6.

the liquidation procedure and compare them with those of insolvency. [20]

23. That comparison reveals fundamental differences between insolvency and liquidation. The liquidator is an organ of the company who deals with the sale of the assets under the supervision of the general meeting; moreover, there is no special procedure supervised by the courts for establishing the company's liabilities, although a creditor has a remedy against the company on the basis of the general rules for enforcement. In contrast, the administrator in insolvency proceedings represents the creditors, that is to say he is a third party *vis-à-vis* the company, disposing of the assets under the supervision of the judicial officer appointed, and there is also a special procedure supervised by the competent national court for establishing liabilities, without the creditors being able to bring individual actions against the company on the basis of the general rules for enforcement. In short, while the insolvency procedure is clearly characterised by judicial intervention, in the case of liquidation there is no judicial intervention except for the choice of liquidator, in particular in the case of winding-up by the court. Consequently, the determining factor is that, to the extent that the liquidator of the company disposes of the assets under the supervision of the general meeting, the possible transfer of an undertaking, business or part of a business is a matter for the company organs themselves, a choice that does not need to be approved by the court.

24. In view of the foregoing, Advocate General Lenz suggested that the Directive should be held to apply to the transfer of an undertaking where it is in liquidation but the general meeting has resolved to continue trading.

25. The Court followed that Opinion in its judgment of 12 March 1998. Having examined first of all the purpose of the procedure for winding-up by the court, which it did not consider decisive in itself for the resolution of the case, [21] it examined the characteristic features of that procedure [22] and reached the following conclusion:

'It is thus apparent that the situation of an undertaking being wound up by the court presents considerable differences from that of an undertaking subject to insolvency proceedings and that the reasons which have led the Court to rule out application of the Directive in the latter situation may be absent in the case of an undertaking being wound up by the court.

That is the case where, as in the main proceedings, the undertaking continues to trade while it is being wound up by the court. In such circumstances, continuity of the business is assured when the undertaking is transferred. There is accordingly no justification for depriving the employees of the rights

20 — Point 46 et seq. of the Opinion of Advocate General Lenz in the *Dethier Équipement* Case, cited above at footnote 6.

21 — Paragraph 28 of the *Dethier Équipement* judgment, cited above at footnote 6.

22 — Paragraph 29 of the *Dethier Équipement* judgment, cited above at footnote 6.

which the Directive guarantees them on the conditions it lays down.' [23]

B — *The present case*

26. In my view, it follows fairly convincingly from the foregoing analysis that the results of the trend in the case-law — in particular the reasoning and the views adopted in *Dethier Équipement* by the Court — must be applied to the present case in order to answer the question submitted to the Court. Given the specific similarity of the voluntary liquidation procedure, under consideration here, to the procedure for winding-up by the court which arose in the *Dethier Équipement* case, I believe that, for the same reasons, it should be recognised that Directive 77/187 also applies to the transfer of undertakings, businesses or parts of businesses where the undertaking is in voluntary liquidation, on condition of course that the continuation of trading has been decided upon and for as long as that decision remains in force.

27. That solution applies with even greater force following the recent judgment in *Dethier Équipement*; since the Directive applies to transfers of undertakings wound up by the court, in relation to which there has been judicial intervention, if only as regards the choice of liquidator, the same interpretation should also prevail for transfers of undertakings in voluntary liquidation, given that, under that special procedure, no judicial intervention is provided for and, as a result, nothing can affect the genuine will of the organs of the company.

28. In my view, the answer to be given to the question at issue stems directly from the foregoing considerations. In order to resolve the dispute in the proceedings pending before the national court, it is obviously necessary to clarify, first, to what extent it was decided to continue the business of Europièces after the company was placed in voluntary liquidation and to what extent that business has in fact been continued, and secondly, whether Europièces or a part of Europièces was in fact transferred, within the meaning of the Directive, to Automotive. I assume, on the basis of the scant details given in the order for reference, that, in the context of the dispute, first of all, Europièces continued to trade after being placed in voluntary liquidation, and secondly, part of Europièces was transferred to Automotive. In any event, it does not seem necessary to me that the Court should take a view on these questions, which are linked to the application of the relevant rules of law to the facts of the case. Moreover, according to well-established case-law, it is for the national court to make the necessary factual appraisal, in the light of the criteria laid down by the Community judicature, to determine whether there is a legal transfer of an undertaking, business or part of a business within the

23 — Paragraphs 30 and 31 of the *Dethier Équipement* judgment, cited above at footnote 6.

meaning of the Directive in each individual case. [24]

29. However, I believe it is necessary, as the Commission and the United Kingdom rightly point out, to deal with a further matter, in order to answer the question referred as fully as possible and to provide the national court with an answer that is as useful as possible to enable it to resolve the dispute in the main proceedings.

30. According to the national court's order for reference, it would seem that Automotive, the transferee within the meaning of the Directive, had offered to conclude a contract of employment with Sanders, which he had refused. Moreover, he had taken the view that, after the transfer and because of the change in the place of business and conditions of work, following the instructions that he received from the liquidator, his contract of employment as a sales representative with Europièces had been unilaterally breached or terminated.

31. I believe the Court should bear in mind that the purpose of the Directive, in the case of the transfer of an undertaking, business or part of a business, is to maintain the acquired rights of the employees with the result that they continue to be employed after the transfer under the same conditions as those that were originally agreed with the transferor. In order to resolve the dispute in the main proceedings, the national court will therefore have to take into account that criterion as well, by following the guidelines laid down by the Court in its judgments in *Katsikas and Others* [25] and *Merckx and Neuhuys*. [26]

32. In *Katsikas and Others*, the Court held that if the Directive '... allows the employee to remain in the employ of his new employer on the same conditions as were agreed with the transferor, it cannot be interpreted as obliging the employee to continue his employment relationship with the transferee. Such an obligation would jeopardise the fundamental rights of the employee, who must be free to choose his employer and cannot be obliged to work for an employer whom he has not freely chosen.' [27]

33. In *Merckx and Neuhuys*, the Court referred to *Danmols Inventar* [28] and went on to hold that '... the protection which the Directive is intended to guarantee is redundant where the person concerned decides of

24 — Case 24/85 *Jozef Maria Antonius Spijkers* v *Gebroeders Benedik Abattoir and Alfred Benedik en Zonen* [1986] ECR 1119, paragraph 14, and Case C-29/91 *Sophie Redmond Stichting* v *Hendrikus Bartol and Others* [1992] ECR I-3189, paragraphs 23, 24 and 25.

25 — Joined Cases C-132/91, C-138/91 and C-139/91 *Katsikas* v *Konstantinidis, Skreb and Schroll* v *Stauereibetrieb Paetz* [1992] ECR I-6577.

26 — Joined Cases C-171/94 and C-172/94 *Albert Merckx and Patrick Neuhuys* v *Ford Motors Company Belgium* [1996] ECR I-1253.

27 — Paragraphs 31 and 32 of the *Katsikas* judgment, cited above at footnote 25.

28 — Case 105/84 *Foreningen af Arbejdsledere i Danmark* v *Danmols Inventar* [1985] ECR 2639.

his own accord not to continue the employment relationship with the new employer after the transfer.' [29] In that situation, where the employee decides of his own accord not to continue the employment relationship with the transferee, '...it is for the Member States to determine what the fate of the contract of employment or employment relationship should be.' [30]

VI — Conclusion

34. In view of the foregoing, I propose that the Court should answer the questions submitted for a preliminary ruling in the following terms:

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, is applicable in the case of a transfer by a company in voluntary liquidation, provided that the undertaking continues to trade.

29 — Paragraph 33 of the judgment in *Merckx and Neuhuys*, cited above at footnote 26.

30 — Paragraph 35 of the judgment in *Merckx and Neuhuys*, cited above at footnote 26.