OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 8 November 1984

Mr President,
Members of the Court,

Directive 77/187 (on 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 (Official Journal 1977 L 61 p. 26)) was implemented in the Netherlands by a law of 15 May 1981, which inserted Articles 1639(aa) to 1639(dd) into the Civil Code. That law, like the directive, does not expressly refer to transfers of businesses which have been declared bankrupt or which have obtained a suspension of payments ('surséance van betaling').

Initially, the Dutch Government took the view that the law did apply to such businesses, and the directors of the regional employment offices, whose consent is required under Dutch law before workers can validly be made redundant, were given guidelines to that effect.

Subsequently, doubts were expressed as to whether this was a correct interpretation of the effect of the directive and the law.

These doubts prompted the Dutch Government to examine the matter afresh. The Government's conclusion, as a result of such reconsideration, was set out in a memorandum dated 6 April 1983 from the Ministry of Justice to the President of the Second Chamber of the States-General. The view was expressed there that neither the directive nor Articles 1639(aa) to 1639(dd) of the Civil Code applied where the business concerned had been declared bankrupt or had obtained a suspension of payments. A circular of the Ministry of Social Affairs dated 17 May 1983 informed the directors of the regional employment offices among others of the Government's new position, which they were instructed to observe.

The plaintiff trade union federations thereupon brought an action against the Dutch State before the Arrondissementsbank (District Court) at The Hague in which they sought an interim order withdrawing, rendering ineffective or declaring inapplicable that part of the circular of 17 May 1983 inviting the persons to which it was addressed to 'disregard Article 1639(aa) *et seq.* of the Dutch Civil Code when considering applications for permission to dismiss employees in the event of insolvency or leave to suspend payment of debts'. In addition to a number of arguments of Dutch law, the plaintiffs contended that the circular was incompatible with Directive 77/187.

Accordingly, the court at The Hague made the present reference for the preliminary ruling under Article 177 of the EEC Treaty. The question referred is essentially the same as the first question posed by the national court in Case 135/83 *H.B.M. Abels* v *The Administrative Board of the Bedrijfsvereniging voor de Metaalindustrie en de Electrotechnische Industrie.*

Having regard to the conclusions set out in my Opinion in *Abels* (to which I refer) I take the view that the question posed in this case should be answered on the following basis:

Council Directive 77/187 does not apply to the transfer of an undertaking, business or part of a business where the undertaking or the owner of the business or part of the business has been declared bankrupt or has been granted final leave to suspend payments ('surséance van betaling').

The costs of the parties to the proceedings in the national court fall to be dealt with by that court; no order should be made as to the costs of the other parties intervening in this reference.