

SUMMARY

**ECJ 11 September 2014, case C-328/13
(Österreichischer
Gewerkschaftsbund - v -
Wirtschaftskammer Österreich -
Fachverband Autobus-, Luftfahrt- und
Schiffahrtsunternehmen),
Collective agreements, Transfer of
undertakings**

Facts

A union and an employers' association had entered into a collective agreement for a group of airline companies (the parent company) and a specific collective agreement for one of its subsidiaries. On 30 April 2012, the parent company decided to transfer its entire aviation activity to the subsidiary with effect from 1 July 2012, so that the employees would be subject to the conditions laid down in the subsidiary's collective agreement, which were less advantageous than that of the parent company. The employers' association rescinded the parent company's agreement with effect from 30 June 2012. In response, the union rescinded the subsidiary's collective agreement. The result was that the employees in question – who were now employees of the subsidiary – were not covered by any collective agreement. The subsidiary proceeded to apply terms of employment that were considerably less generous than they were before 1 July 2012. The union claimed that the parent company's collective agreement continued to apply. The employers' association argued that a collective agreement which no longer exists on the date of the transfer of a business cannot be mandatorily imposed on the transferees.

National proceedings

The parties litigated to the Supreme Court. It referred to the ECJ questions relating to Article 3(3) of Directive 2001/23, which says as follows:

“Following the transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.”

Paragraph 13 of the Austrian law governing transfers of undertakings says as follows:

“The legal effects of the collective agreement shall continue after its termination in respect of employment relationships which were covered by it immediately before its termination unless a new collective agreement takes effect in respect of those employment relationships or a new individual agreement is concluded with the employees concerned.”

ECJ’s findings

The questions referred for a preliminary ruling are admissible (§ 15-20).

Article 3(3) of the Directive requires the terms and conditions put in place by a collective agreement to continue to be observed, without the specific origin of their application being decisive. It follows that those terms and conditions fall within the scope of Article 3(3) irrespective of the method used to make them applicable to the persons concerned (§ 21-28).

The objective of Directive 2001/23 is to ensure a fair balance between the interests of the employees, on the one hand, and those of the transferee on the other, and the transferee must be in a position to make the adjustments and changes necessary to carry on its operations. It does not appear that the Austrian transposition hinders the transferee’s ability to make such adjustments and changes (§ 29-30).

Ruling

Article 3(3) of Council Directive 2001/23 [...] must be interpreted as meaning that the terms and conditions laid down in a collective agreement pursuant to the law of a Member State continue to have effect as regards employment relationships governed by them before the agreement was terminated and constitute ‘terms and conditions agreed in any collective agreement’ provided the employment relationship is not subject to a new collective agreement or a new individual agreement is not concluded with the employees.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-09-11

Case number: C-328/13