

SUMMARY

ECJ 3 April 2025, case C-431/23 (Wibra België), Transfer, Insolvency

AE, CO, DU and Others – v – BA, EP, RI, WIBRA BELGIË SRL, Belgian case

Summary

The ECJ clarifies the employees' rights in a transfer of an undertaking occurring following a declaration of insolvency after the transfer had been prepared in the context of judicial restructuring proceedings.

Question

Must Article 5(1) of Directive 2001/23 be interpreted as meaning that it applies in a situation where insolvency proceedings follow proceedings for judicial restructuring in the course of which an agreement for the partial transfer of the undertaking concerned was prepared, but was not approved by the court having jurisdiction, and was subsequently carried out once the declaration of insolvency was issued?

Ruling

Article 5(1) of Directive 2001/23 must be interpreted as applying in a situation where insolvency proceedings follow judicial restructuring proceedings in the course of which an agreement for the partial transfer of the undertaking concerned was prepared, but was not approved by the court having jurisdiction, and was then implemented once the insolvency had been declared, provided that the bankruptcy proceedings or analogous insolvency proceedings, which have been conducted, are actually instituted with a view to the liquidation of the assets of the transferor, that those proceedings are under the supervision of a competent public authority and that recourse to those proceedings cannot be regarded as abusive.

Creator: European Court of Justice (ECJ)

Verdict at: 2025-04-03

Case number: C-431/23