

SUMMARY

Cases C-680/15 and C-681/15. Transfer of undertakings

1. Does Article 3 of Council Directive 2001/23 preclude a provision of national law which provides that, in the event of the transfer of an undertaking or business, all conditions of employment agreed between the transferor and the employee individually and in the exercise of their freedom of contract in the contract of employment, transfer to the transferee unaltered, as if he had himself agreed them in an individual contract with the employee, where national law provides for both consensual and unilateral adjustments by the transferee?

If Question 1 is answered in the affirmative, either generally or for a defined group of individually agreed conditions of employment in the employment contract between the transferor and employee:

Does the application of Article 3 of Directive 2001/23/EC have the effect that certain terms of the contract of employment between the transferor and the employee agreed in the exercise of freedom of contract must be excluded from being transferred unaltered to the transferee, and are to be adjusted simply by reason of the transfer of the undertaking or business?

If, according to the Court of Justice's answers to Questions 1 and 2, an individual provision which has been agreed in an individual contract, under which certain provisions in a collective agreement are, dynamically and in the exercise of freedom of contract, incorporated into the employment contract, is not transferred unaltered to the transferee: Does this apply also where neither the transferor nor the transferee is party to a collective agreement or is affiliated to such a party, that is, where, even prior to the transfer of the undertaking or business, the provisions of the collective agreement would not have applied to the employment relationship with the transferor if there had been no reference to them in the agreement?

If the answer to that question is in the affirmative: Does this apply also if the transferor and the transferee are undertakings within the same group?

II. Does Article 16 of the Charter of Fundamental Rights of the European Union preclude a national provision enacted to implement Directive 77/187/EEC or Directive 2001/23/EC which provides that, in the event of the transfer of an undertaking or a business, the transferee is bound by the conditions of employment agreed individually and in the exercise of their freedom of contract by the transferor with the employee as if he had agreed them himself, even if these conditions incorporate into the employment contract dynamically, certain provisions of a collective agreement which would not otherwise have applied to the employment contract, insofar as national law provides for both consensual and unilateral adjustments by the transferee?

Creator: European Court of Justice (ECJ)

Verdict at: 2015-12-17

Case number: C-680/15 and C-681/15