The European Law regarding the Impact of Merger on Employees' Rights

Felicia Bejan*

Abstract: *The regulation of the social implications of transfers of undertakings is a topic that has made its way in the European law with quite enough difficulty, but became in time an increasingly discussed topic. Since the transfer of an undertaking from an employer to another could not be achieved with disregard of its human capital, the European legislator has established a legal framework ensuring the safeguarding of employees' rights in the event of transfers of undertakings. Currently, the main legal basis in the field consists of Council Directive 2001/23/EC 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 undertakings or businesses – the Transfer Directive. The paper aims to achieve a critical analysis of European regulations on the protection of employees' rights in the event of transfer of undertakings as a result of a merger. The scope of the Transfer Directive, the obligation to inform and consult employees in advance and the transfer of rights and obligations arising from the contract of employment as a result of a merger are being approached. In the study, matters on which the current European legal framework requires improvements so that the achieving of its objective be possible beyond interpretation and controversy are highlighted.*

Keywords: *European Law, merger, employees, information and consultation, contract of employment, transfer of rights and obligations.*

1. Introduction

In order to protect employees' rights which could be impacted in the context of restructuring of their employer, Article 12 of Directive 78/855/EEC of 9 October 1978 concerning mergers of public limited liability companies and Article 11 of Directive 82/891/EEC of 17 December 1982 concerning the division of public limited liability companies provide the informing and consulting procedure of employees' representatives, in the event of domestic mergers and divisions, in accordance with Council Directive 77/187/EEC of 14 February 1977 on the approximation of laws of the Members States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.

Council Directive 77/187/EEC of 14 February 1977 on the approximation of laws of the Members States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses[1], referred by the Merger Directive and the Division Directive, is the first Community legislative act regulating

*__Felicia Bejan__ is a PhD Candidate within the Law Department, Bucharest University of Economic Studies, Romania, assistant professor within the Political Sciences Faculty, Bucharest University, E-mail: felicia.bejan@fspub.unibuc.ro

[1] Published in OJ L 16, 20 January 1978

the protection of employees in the event of change of employer.

In time, Directive 77/187/EEC, although supplemented by Directive 98/50/EC, proved to be insufficient compared to the subsequent development of the Community legislation, of the legislations of Member States and of the case law of the Court of Justice of the European Communities, therefore a new regulation became necessary.

Thus, in the Community legal framework, Directive 77/187/EEC has been replaced by Council Directive 2001/23/EC 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 undertakings or businesses (the Transfer Directive)[2], which is the current legal base of the protection of employees' rights in the event of a transfer of undertakings, *lato sensu*[3].

2. The scope of the Transfer Directive: a critical look

According to Article 1 of Directive 2001/23/EC, any transfer of an undertaking, business, or part of an undertaking or business to another employer falls under the Community legislative act, irrespective of the public or private nature of the undertakings and whether or not they are operating for profit.

In the European legislation, the transfer of an undertaking means the transfer of a business, from one employer to another, as a result of a conventional assignment or a merger. The employer which transfers the undertaking has the capacity of transferor, whereas the one taking over the undertaking has the capacity of transferee.

From the content of Article 1(1)(b) of the Directive, it follows that the transferred undertaking represents an organised grouping of resources which retains its identity and has the objective of pursuing an economic activity, whether or not the activity is central or ancillary. For the sake of clarity, the case law of the Court of Justice stated that an undertaking, business or a part of an undertaking or business should be understood as a stably organized grouping of people and elements, which allows the pursuing of an economic activity in order to achieve a specific objective and retains its identity after the completion of the transfer[4].

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[2] Published in OJ L 82, 22 March 2001

[3] Within the same meaning, recital 12 of Directive 2005/56/EC on cross-border mergers of limited liability companies provides that the employees' information and consultation right with regard to the cross-border merger in which the employer is involved, shall remain subject to the national provisions of domestic merger

According to recital (12) of Directive 2005/56/EC: "Employees' rights other than rights of participation, should remain subject to the national provisions referred to in Council Directive 98/59/EC of 20 July 1998 on collective redundancies, Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (1) and Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees".

[4] The expression of "transfer" and the expression of "undertaking" have been the subject of numerous case law and doctrinaire interpretations. For a detailed analysis, please refer to Tinca, O., "Observatii critice la Legea nr. 67/2006 privind protecţia drepturilor salariaţilor în cazul transferului întreprinderii, al unităţii sau al unei parţi ale acestora" ("Critical observations on Law no. 67/2006 relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses"), *Dreptul* no. 2/2007

For the topic of our research, the merger of companies as modality to implement the transfer within the meaning given by the Directive and its implications in terms of employee protection are of interest. In the event of a merger, the participating companies have the capacity of transferor, whereas the absorbing company and the newly created company, as the case may be, has the capacity of transferee.

Given that the *ratione personae* scope of the merger is clearly provided by Directive 78/855/EEC concerning mergers of public limited liability companies, the concept of undertaking in the event of a transfer as a result of a merger does not raise interpretation issues. The entities participating to the merger, thus subject to the transfer, are companies established according to the national law of Member States, legal entities having their own organizing and patrimony and pursuing legal economic activities for gain.

As a particular aspect, it must be mentioned that in the European case law it was shown that all limited liability companies fall under the scope of the Directive, whether or not under the national law of Member States the shareholders are governed by public or private regulations. Thus, the Court of Justice ruled in one case that "a limited liability company governed by private law, whose sole shareholder is a social assistance association governed by public law, is among entities subject to Article 3(1) and the first sentence of Article 1(1)(c) of Directive 2001/23/EC [...]"[5], for which reason its provisions apply to a subsequent transfer under the Directive.

With regard to the scope, it can be observed that Directive 2001/23/EC does not expressly refer in its content to the division of companies. Are divisions excluded from the scope of the Directive concerning the safeguarding of employees' rights?

In our opinion, although not expressly regulated by the Community legislative act, the division of companies falls under its scope. Our position is based on the following arguments:

a) From the systematic and teleological interpretation of Article 12 of the Merger Directive and of Article 11 of the Division Directive, which refer to Directive 77/187/EEC (currently Directive 2001/23/EC) with regard to the information and consultation of employees, we come to the conclusion that the absence of division from its scope is only a flaw of the legislator. To argue otherwise is equivalent to denying the recitals for which the European legislator adopted provisions for protection of employees. In addition, our opinion relies on the rule of logical interpretation *actus interpretandus est potius ut valeat quam ut pereat*. In other words, the cited Community regulations must be interpreted as to achieve their objective and not as to be inapplicable;

b) The argument by analogy *ubi eadem est ratio, eadem solutio esse debet* also supports the solutions argued by us in the event of divisions. The merger and division are ways of restructuring companies impacting on the contracts of employment and on employment relationships. Or, as the reasons for which the European legislator has regulated the protection of employees in the event of a merger are found also in the

[5] Case C-297/03, *Sozialhilfeverband Rohrbach v. Arbeiterkammer Oberösterreich and Österreichischer Gewerkschaftsbund), http://eurlex.europa.eu We mention that the first paragraph of Article* 3 has the following content: "The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee [...]", whereas the first sentence of Article 1(1)(c) provides: "This Directive shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain".

case of division we are of the opinion that the same should apply to this operation also; and

c) The special interest given at European level to employee protection and their working conditions is further proof in this regard.

Thus, the enactment of Directive 2001/23/EEC has had as starting point, among other things, the Community Charter of Fundamental Social Rights of Workers, which provides that the information, consultation and participation of employees must be developed and implemented in time, especially in the event of restructuring or mergers that affect the employment of workers. However, the expression "restructuring" also includes division which is a symmetrical operation in relation to merger.

On the other hand, from its preamble it results that the objective of the directive is to protect employees in the event of restructuring the company where the activity is performed and of change of employer. Or, similarly to the merger, the division represents a restructuring involving for part of the divided company, a change of employer.

Similarly to divisions, cross-border mergers are not expressly mentioned in the content of the legislative act. Do the provisions of Directive 2011/23/EC apply to cross-border mergers?

We believe that after the interpretation of recital 12 of Directive 2005/56/EC together with provisions of Article 14(4) of the same Directive and the *ubi lex non distinguit, nec nos distinguere debemus* rule of interpretation, the answer can only be affirmative.

Recital 12 cited above expressly refers to the provisions of Directive 2001/23/EC as concerns the safeguarding of employees' rights in the event of a transfer. Meantime, Article 14(4) of Directive 2005/56/EEC expressly provides that the rights and obligations of the merging companies arising from contracts of employment or employment relationships, existing at the date of coming into force of the cross-border merger are transferred to the company resulting from the cross-border merger, due to the entry into force of this cross-border merger, at the date of coming into force of the cross-border merger. Finally, since it can be observed that Directive 2001/23/EC does not distinguish between domestic and cross-border mergers in terms of employee protection in the event of a transfer, we are of the opinion that cross-border mergers fall within the scope of the Directive with regard to the safeguarding of employee rights.

In conclusion, for all these reasons, we believe that the wording of the law which allows for the possibility that only the merger falls within its scope is more limited than the actual intent of the legislator and that it is necessary to supplement it so as to expressly comprise the division and the cross-border merger.

Consequently, we suggest the correction and supplementing *de lege ferenda* of Article 1(1)(a) as follows: "This Directive shall apply to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a domestic or cross-border conventional assignment or division or merger".

The companies participating to the transfer and the types of operations that fall within the definition of a transfer do not deplete all legal issues raised by the scope of Directive 2011/23/EC.

Ratione loci, the scope provided by Directive 2011/23/EEC is limited to companies located in the territorial applicability of the Treaty establishing the EEC (Article 1 paragraph (2) of the Directive). Or, the directive on cross-border mergers applies to

Members States of the European Union and to the states of the European Economic Area. Will the Directive apply if the statutory registered office of the companies to be transferred is in Norway, Iceland or Liechtenstein?

We are of the opinion that, in this situation, the principle of non-discrimination should prevail and for this reason we believe that the protection of employees' rights must be ensured in all companies participating to a cross-border merger, given that the provisions of the Directive on cross-border merger apply equally to companies from Member States of the EEA.

With reference to the contracts of employment falling within the scope of the Transfer Directive, certain clarifications must be brought.

As a rule, it is for the Member States to establish the definition of the expression "contract of employment", respectively "employment relationship". However, in order to protect employees from potential abuses from employers, Article 2(2) of the Directive expressly provides that the national laws shall not exclude from the scope of the directive contracts of employment or employment relationships solely because:

- of the number of working hours performed or to be performed;
- they are employment relationships governed by a fixed-duration contract of employment within the meaning of Article 1(1) of Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship; or
- they are temporary employment relationship within the meaning of Article 1(2) of Directive 91/383/EEC, and the undertaking, business or part of the undertaking or business transferred is, or is part of, the temporary employment business which is the employer.

The beneficiary of the provisions of the Directive is the employee. The Directive does not contain a definition of the employee, but only refers to the national laws as those laying down autonomously the content of the expression „employee". Employee shall mean „any person who, in the Member State concerned, is protected as an employee under national employment law" (Article 2(1)(d) of Directive 2001/23/EEC).

The first clarifications on the expression „employee" were brought by the case law of the Court of Justice shortly after the entering into force of Directive 77/187/EEC. In contrast with the lack of regulation in the Community law, in one case, it was decided that „the Directive does not require Member States to enact provisions in accordance with which the transferee of an undertaking becomes liable in respect of obligation concerning holiday pay and compensation to [former] employees who are not employed in the undertaking at the date of transfer"[6]. The Court thus established the rule that, in order to enjoy the rights granted by the Directive, the employee must be in an employment relationship with the transferor at the date of the transfer. Subsequently, the opinion of the Court was introduced in the Community legal framework; so that the current regulation expressly stipulates that the employment relationship or the contract of employment must exist at the date of the transfer.

[6] Case 19/83 *Knud Wendelboe and others v L.J. Music ApS, in liquidation. - Reference for a preliminary ruling: Vestre Landsret - Denmark*. - http://eurlex.europa.eu

In another case, the Court held that the Directive does not apply to persons who are employed at the date of the transfer but decide not to work as employee for the new employer. In the same case, it was demonstrated that a person who simultaneously holds the positions as employee and Chairman of the Board of Directors or holds participations to the share capital of the transferor, can not be excluded from the scope of the Directive.

Beyond these specifications, in the opinion of the Court of Justice, „the expression „employee" must be interpreted as covering any person who, in the Member State concerned, is protected as an employee under national employment law"[7] and it is for the national court to establish whether that is the case.

3. Obligation to inform and consult the employees in advance

Community regulation imposed on the transferor and transferee companies the obligation to inform the representatives of the employees affected by the transfer of the following items:

- Established or proposed date of transfer, as the case may be;
- Reasons for the transfer;
- The legal, economic and social implications of the transfer for the employees;
- Measures envisaged in relation to the employee.

According to provisions of Article 1 (2) and (3), the obligation to inform must be fulfilled in good time. What is the meaning of the expression "*in good time*"?

The Directive does not clearly define the expression "*in good time*", but through the interpretation of the legal contents we can obtain a minimal contouring. Thus, the information in good time, under the current regulations, occurs before the transfer, in case of the transferor, or before its employees are directly affected by the transfer in respect of their work and employment conditions, in case of the transferee.

We are of the opinion that the *de lege lata* distinction between the moment when the information is performed in case of the transferor and transferee is not justifiable and is rather confusing. *De lege ferenda*, provision of a certain and mutual term for both transferor and transferee would result in eliminating any controversy on this legal issue and would guarantee equal treatment for all employees involved in the transfer. We believe that the case law solution, according to which the obligation to inform the employees must be met before making any decision on the merger, can be imported into the legislation.

In case the transferor or transferee intends to take actions in connection to their own employees, the directive sets as their obligation, in addition to the obligation to inform, also the obligation to consult the representatives of the employees, the purpose of such consultation being to conclude an agreement on the measures envisaged.

Member States whose laws provide that representatives of the employees may have recourse to an arbitration board to obtain a decision on the measures to be taken in relation to employees may limit the obligations to inform and to consult to cases where

[7] Case 105/84 *Foreningen af Arbejdsledere i Danmark [Association of Supervisory Staff, Denmark], acting on behalf of Hans Erik Mikkelsen, v A/S Danmols Inventar, in liquidation*. -http://eurlex.europa.eu

the transfer carried out gives rise to a change in the business likely to entail serious disadvantages for a considerable number of employees (Article 7(3) of the Directive). Legal limitations of information and consultation obligations can not affect, however, the right of employees to be informed and consulted in good time on proposed measures which concern them. It is worth highlighting that the limitation of the obligation to inform and consult is permitted only within the undertakings which fulfill in terms of number of employees, the conditions for the election or nomination of a collegiate body representing the employees.

If, for reasons beyond the control of employees, there are no representatives of the employees in the undertakings, the transferor and the transferee are bound only by the obligation to inform in advance. Therefore, in situations which fall within this scenario, the obligation to consult does not exist and the obligation to inform may not be limited.

4. Transfer of rights and obligations under the contract of employment as a result of a merger

According to Article (3)(1) of Directive 2001/23/EC "the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee". In addition, paragraph 3 of Article 3 states that "following the transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same 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."

Practically, in case of transfer by merger of the undertaking, the individual contracts of employment and collective employment agreements concluded between the transferor and its employees are transferred to the transferee who is bound to safeguard working conditions in force at the time of transfer.

The essential legal aspects of the transfer of rights and obligations that form the content of the employment relations from the merging companies to the acquiring company or the newly established are:

a) Transfer of rights and obligations from the transferor companies to the transferee company operates *ope legis*, which means that the execution of an agreement between the parties regarding the transfer of the employment relationships is not necessary in order for this effect to occur. The fact that one of the important aspects of the merger project consists of the employee rights it does not provide it the legal regime of an agreement between the parties producing its effects within the legal frame covered by the Directive. In practice, the transferee is informed, during the merger project step, on the legal status of employees and, if it considers the transfer as burdensome obligations, it may waive the closing of the merger, as a result of the transfer. The negotiation of the transfer of employment contracts and of their content is, therefore, excluded[8].

[8] In case of the merger by forming of a new company, the transparency of legal and economic aspects of the companies involved is guaranteed by the nature of the operation, while the transparency of merger by acquisition is insured by the acquiring company.

b) If national law so provides, each transferor may have the obligation to notify the transferee of all rights and obligations that will be transferred. It is worth mentioning that if, in the event of a merger by acquisition, notification is possible, when the merger takes place through the formation of a new company, such an act cannot be performed in advance because the transferee company begins its existence as a legal entity at the time of transfer, while the transferor company ceases to exist. Nevertheless the Directive provides that failure by the transferor to perform such notification affects neither the transfer of such rights and obligations, nor of the rights of employees. Therefore, the transferee cannot claim the lack of notification to justify its breaches of the obligation to safeguard the employees' rights.

c) The date on which the transfer of rights and obligations arising from contracts of employment or labour relations is given by the date of transfer of the undertaking from the transferor to the transferee.

In the event of mergers, the transfer of business takes place upon registration with the trade register of the addendum to increase the share capital of the acquiring company or the articles of association of the new company. Rights and obligations arising from contracts of employment that ceased before registration of the merger are not transferred to the transferee, even if termination of such contracts has occurred after the beginning of the merger process. A potential transfer of any payment obligations to former employees is not excluded, but it is based on universal transfer of patrimony of the acquired company to the acquiring company. We are of the opinion that the transfer of rights and obligations within the merger, the universal transfer of patrimony is the common law while the Directive providing the transfer of employees' rights in case of transfer is the special law.

d) The obligation to safeguard the employees' rights stipulated by the individual contracts of employment, as well as those stipulated in collective agreements, in case such contracts exist. Observing employees' rights provided by the collective agreements of the transferor companies is limited in time until expiration or termination thereof, or until the coming into force of another collective agreement, as the case may be.

e) The obligation to safeguard employees' rights in case of merger belongs to the transferee company, or the legal entity that becomes the employer as a result of the merger.

In respect of the obligations arising before the date of transfer of a contract of employment or from an employment relationship existing on the date of transfer, the Directive allows Member states to provide that, after the transfer, both the transferor and transferee may be held liable together and separately.

f) The right correlative to the obligation to safeguard belongs to the employee, namely the individual having a contract of employment or employment relations concluded with the transferor, namely the legal entity which stops being the employer as a result of the merger. The Directive is silent on the opposition right of the employee, under which the employee can safeguard employment relations with the transferor. Appealed in cases of employees entitled to object, the Court of Justice ruled that nothing precludes national legislation to provide for such a right. We believe that, in respect of a merger, a right of opposition is not justified, regardless of how the operation is performed. On the other hand, if we admit that the scope of the Directive comprises

also the division, the issue that an employee may elect to continue his employment with the company subject to the division could be raised.

g) The *ope legis* transfer of rights and obligations contained in the contracts of employment as a result of the transfer of the undertaking excludes, in principle, the dismissal due to transfer. However, labour relations can be terminated at the initiative of the transferor or transferee for economic, technical or organizational reasons entailing changes in terms of employment. Moreover, if the transfer substantially affects working conditions at the expense of the employee, the contract of employment may be terminated by resignation. In both methods described, the liability for the termination of the contract of employment belongs to the employer.

h) The provisions of Directive 23/2001 do not apply, except otherwise prescribed by the national law of the Member States, if the transferring participating companies are subject to bankruptcy or other insolvency proceedings for liquidation of their goods. The rule according to which the Directive is not applicable in the case of insolvency of the transferor should not lead to misuse of this procedure to circumvent the provisions on the protection of employees in case of transfer. The Directive imperatively provides Member States obligation to take appropriate measures in this respect.

If national law allows the transfer to take place during the insolvency proceedings, the Member State may provide that the obligations of the transferor company arising from any contracts of employment or employment relations and outstanding prior to the transfer or before the opening of insolvency proceedings are not assigned to the transferee company. Such an exemption from the transfer of all obligations of the transferor is possible only under the condition that the respective Member State is concerned to provide a protection at least equivalent to that covered by Directive 80/987/EEC on the protection of employees in case of insolvency of the employer[9]. Cumulatively with the first condition or alternatively, the Member State may provide the transferor's, transferee's and employee representatives' ability to agree on changes in the working conditions of employees, so as to ensure their employment conditions and to ensure the activity of the undertaking. Member States may extend the possibility of concluding this tripartite agreement in case of any transfer if the transferor is in a serious economic crisis as provided by law.

Directive 23/2001/CEE regulates, through special provisions, representatives of employees protection[10]. Article 6 of the Directive establishes differences in case the undertaking retains or not its autonomy following the transfer.

In case the assigned undertaking remains independent, the employee representatives retain their statute and function in the same conditions that existed before the transfer date, if they meet the requirements for acting as employee representatives. However, provisions for safeguarding the status and function of employees' representatives will not apply and the reappointment of the representatives of the employees or the

[9] Published in OJ L 283, 20.10.1980, p 23

[10] Including the case the transferor is undergoing insolvency proceedings, Member States may take the necessary measures to ensure that the assigned employees are properly represented. If the mandate of the employees' representatives affected by the transfer expires as a result of the transfer, such representatives continue to benefit from the protection provided by the laws, regulations and administrative provisions or practice of the Member States.

reconstitution of employee representation will occur if the legal conditions for this purpose are met.

If, on the contrary, the undertaking loses its autonomy following the transfer, as in the case of merger, Member States are obliged to take the necessary measures to ensure that the transferred employees are properly represented during the period necessary for the reforming of the employees representation or the reappointment of the representatives of the employees, in accordance with national law and practice.

The Directive does not explain the concept of the undertaking's autonomy. Appealed with a claim for preliminary ruling concerning, in essence, the meaning of the concept of safeguarding the autonomy of the undertaking, the Court decided that an economic entity retains autonomy as defined in Article 6(1) of Directive 2001/23/EC "provided that the powers granted to those in charge of that entity, within the organizational structures of the transferor, namely the power to organize, relatively freely and independently, the work within that entity in the pursuit of its specific economic activity and, more particularly, the powers to give orders and instructions, to allocate tasks to employees of the entity concerned and to determine the use of assets available to the entity, all without direct intervention from other organizational structures of the employer, remain, within the organizational structures of the transferee, essentially, unchanged"[11]. Thus, the Court explained the concept of autonomy as the ability of the governing bodies to make independent decisions by organizing and carrying out their activities in the assigned economic entity.

6. Conclusions

Community regulations on the obligation to inform and consult, the obligation to safeguard the rights of employees reflect the Community legislator's concern to protect employees in the context of changing their employer for reasons outside of their will. As an expression of the same concerns, the final provisions of the Directive expressly stipulate the right of Member States to establish a national regime more favourable to the protection of employees' interests and promote or permit collective agreements between social Partners more favourable to employees.

However, we believe that the current EU framework should be improved, in terms of both form and content. In our opinion, legal texts, especially the chapter "Safeguarding employees' rights" are drafted in a negligent manner and their content seems more an amalgam of ideas rather than a coherent sequence of rules of law. In fact, this is our justification for our choice of systematic analysis, that is, from our point of view, the only way to have a clear mirror Community legal framework in the field.

Beyond these issues, future regulation should explicitly extend the scope of the Directive, which certainly is treated *de lege lata* superficially and therefore, incomplete. Meanwhile, normative clarifications of key concepts for the enforcement of the Directive such as undertaking, autonomy, good time are absolutely necessary.

[11] Case C 151/09, Federación de Servicios published by the UGT (UGT FSP) v Ayuntamiento de La Línea de la Concepción, María del Rosario Vecino Uribe, Ministerio Fiscal http://eurlex.europa.eu

Of course, the case rulings of the European Court of Justice can compensate glitches of the European legislator, but the time factor of this approach should not be ignored and also the aspects regarding the mandatory nature of the decision. Also, a case ruling is only a jurisprudential repair, and, certainly for those involved, a lost beginning. Especially in case of a restructuring by merger, which is motivated by goals that require promptitude and which by nature is done in a long time, the claim lodged with the Court of Justice may determine quitting operation.

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