term "undertaking controlling the employer" covers all undertakings which, by virtue of belonging to the same group or having a shareholding that gives them the majority of votes in the general meeting and/or the decision-making bodies within the employer, are able to require the latter to adopt a decision contemplating or planning for collective redundancies.

Situations also falling within that notion include an undertaking that does not have a majority of the votes, but still can exercise decisive influence compelling the employer to contemplate or plan for collective redundancies. This could be seen through the voting results of company bodies showing a relatively low level of participation by members at general meetings or the existence of pacts between members within the employer, for example.

However, the mere existence of a common interest between the employer and the other undertaking does not necessarily mean an undertaking controls the employer within the meaning of the Directive. In addition, a simple contractual relationship which does not involve decisive influence on dismissal decisions, is not sufficient to establish 'control' within the meaning of the Directive.

The ECJ noted that any extensive definition would require the national court to carry out complex investigations into the nature and intensity of the various interests involved with the employer. This could lead to uncertain results, so undermining the principle of legal certainty. For that reason (amongst others), the ECJ ruled in favour of a broad interpretation.

Ruling

The first subparagraph of Article 2(4) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that the term 'undertaking controlling the employer' covers all undertakings linked to that employer by shareholdings in the latter or by other links in law which allow it to exercise decisive influence in the employer's decision-making bodies and compel it to contemplate or to plan for collective redundancies.

ECJ 6 September 2018, case C-527/16 (Alpenrind), Free movement, Social Insurance

Salzburger Gebietskrankenkasse, Bundesminister für Arbeit, Soziales und Konsumentenschutz (interested parties: Alpenrind GmbH and others), Austrian case

Questions

1. Must Article 5(1) of Regulation No 987/2009, read together with Article 19(2) thereof, be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State under Article 12(1) of Regulation No 883/2004 is binding not only on the institutions of the Member State in which that activity is carried out, but also on the courts of that Member State?
2. a. Must Article 5(1) of Regulation No 987/2009, read together with Article 19(2) thereof, be interpreted as meaning that an A1 certificate, issued by the competent institution of a Member State under Article 12(1) of Regulation No 883/2004, binds both the social security institutions of the Member State in which the activity is carried out and the courts of that Member State so long as that certificate has not been withdrawn or declared invalid by the Member State in which it was issued, even if the competent authorities of the latter Member State and the Member State in which the activity is carried out have brought the matter before the Administrative Commission which held that that certificate has been incorrectly issued and must be withdrawn?

   b. Must Article 5(1) of Regulation No 987/2009, read together with Article 19(2) thereof, be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State under Article 12(1) of Regulation No 883/2004, binds both the social security institutions of the Member State in which the activity was carried out and the courts of that Member State, if necessary, with retroactive effect, even though that certificate was issued only after that Member State determined that the worker was subject to compulsory insurance under its legislation?
3. Must Article 12(1) of Regulation No 883/2004 be interpreted as meaning that, in the case of a worker

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who is posted by his employer to work in another Member State, is replaced by another worker posted by another employer, the latter worker must be regarded as being 'sent to replace another person' within the meaning of that provision so that he cannot benefit from the specific rule laid down in that provision in order to remain subject to the legislation of the Member State in which his employer normally carries on its activities? Is it, in that regard, relevant that the fact that the employers of the two workers concerned have their registered office in the same Member State or the fact that they may have personal or organisational ties?

Ruling

1. Article 5(1) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004, as amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010, read together with Article 19(2) of Regulation No 987/2009, as amended by Regulation No 1244/2010, must be interpreted as meaning that an A1 certificate, issued by the competent institution of a Member State under Article 12(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation No 1244/2010, binds not only the institutions of the Member State in which the activity is carried out, but also the courts of that Member State.
2. a. Article 5(1) of Regulation No 987/2009, as amended by Regulation No 1244/2010, read together with Article 19(2) of Regulation No 987/2009, as amended by Regulation No 1244/2010, must be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State under Article 12(1) of Regulation No 883/2004, as amended by Regulation No 1244/2010, is binding on both the social security institutions of the Member State in which the activity is carried out and the courts of that Member State so long as the certificate has not been withdrawn or declared invalid by the Member State in which was issued, even though the competent authorities of the latter Member State and the Member State in which the activity is carried out have brought the matter before the Administrative Commission for the Coordination of Social Security Systems which held that that certificate was incorrectly issued and should be withdrawn.
   b. Article 5(1) of Regulation No 987/2009, as amended by Regulation No 1244/2010, read together with Article 19(2) thereof, as amended by Regulation No 1244/2010, must be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State under Article 12(1) of Regulation No 883/2004, as amended by Regulation No 1244/2010, binds both social security institutions of the Member State in which the activity is carried out and the courts of that Member State, if appropriate with retroactive effect, even though that certificate was issued only after that Member State determined that the worker concerned was subject to compulsory insurance under its legislation.
3. Article 12(1) of Regulation No 883/2004, as amended by Regulation No 1244/2010, must be interpreted as meaning that, if a worker who is posted by his employer to carry out work in another Member State is replaced by another worker posted by another employer, the latter employee must be regarded as being 'sent to replace another person', within the meaning of that provision, so that he cannot benefit from the special rules laid down in that provision in order to remain subject to the legislation of the Member State in which his employer normally carries out its activities.

The fact that the employers of the two workers concerned have their registered offices in the same Member State or that they may have personal or organisational links is irrelevant in that respect.

ECJ 6 September 2018, case C-17/17 (Grenville Hampshire), Insolvency

Grenville Hampshire – v – The Board of the Pension Protection Fund, British case

Legal background

Directive 2008/94/EC offers protection to employees whose (ex-)employers become insolvent. Article 8 provides that Member States must also protect pensions, regardless whether these are immediate or prospective. The UK implemented the Directive in the Pensions Act 2004. It established a statutory fund known as the Pension Protection Fund (PPF). The PPF assumes responsibility for pension claims when an employer becomes insolvent. There are various ceilings and limitations, which cap the amounts to which employees are entitled.

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