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ing, together with interest and late-payment penalties, from employees, sums unduly paid by a guarantee institution in respect of employees' outstanding salary claims for periods not included in the reference period laid down in the legislation of that State, referred to in the first and second questions, or claimed outside the general limitation period, where:

- the conditions for recovery laid down by that national legislation are less favourable to employees than the conditions for recovering benefits payable under the national provisions falling within the scope of the law on social protection; or
- the application of the national legislation at issue makes it impossible or excessively difficult for the employees concerned to claim payment of sums due in respect of outstanding salary claims from the guarantee institution, or the payment of interest and late-payment penalties, provided for by that national legislation, affects the protection granted to employees both by Directive 2008/94 and by the national provisions implementing that directive, in particular by undermining the minimum level of protection provided for in accordance with Article 4(2) of that directive.

ECJ 16 February 2023, case C-710/21 (IEF Service), Insolvency

IEF Service GmbH – v – HB, Austrian case

Summary

In cross-border situations, where the worker works equally in two Member States, the responsible guarantee institution is the one in the Member State where the employer has its lasting presence.

Questions

Must Article 9(1) of Directive 2008/94 be interpreted as meaning that, in order to determine which Member State's guarantee institution is responsible for meeting employees' outstanding claims, it must be held that an employer in a state of insolvency carries out activities in the territories of at least two Member States, within the meaning of that provision, where the employment contract of the worker in question provides that his or her primary and habitual place of employment is in the territory of the Member State in which the employer has its registered office, but that, during an equal amount of his or her working time, that worker performs his or her duties remotely from another Member State where his or her main place of residence is situated?

Ruling

Article 9(1) of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that in order to determine which Member State's guarantee institution is responsible for meeting employees' outstanding claims, it must be considered that an employer in a state of insolvency does not carry out activities in the territories of at least two Member States, within the meaning of that provision, where the employment contract of the worker in question provides that his or her primary and habitual place of employment is in the territory of the Member State in which the employer has its registered office, but during an equal proportion of his or her working time that worker performs his or her duties remotely from another Member State where his or her main place of residence is situated.

ECJ 16 February 2023, case C-675/21 (Strong Charon), Transfer

Strong Charon – Soluções de Segurança SA – v – 2045 – Empresa de Segurança SA, FL, Portuguese case

Summary

The absence of a contractual link between a transferor and a transferee has no bearing on the establishment of the existence of a transfer. In a labor intensive undertaking, the fact that a only very limited number of employees is taken over, without them having specific skills and knowledge essential to the services, is not likely to establish the existence of a transfer. Unfortunately, no English translation of the case is available. Other translations are available on https://eur-lex.europa.eu/legal-content/nl/TXT/?uri=CELEX:62021CJ0675.

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