



Press Release

ECJ: MUST AN EMPLOYER CONTINUE TO PAY INCREASES OF STANDARD WAGES AFTER A "TRANSFER OF BUSINESS"?

Munich, 22 November 2016 - Tomorrow, the European Court of Justice (ECJ) will address the question whether an employer must continue to pay increases of standard wages even after a so-called transfer of business (C-680/15).

A private operator took over a clinic which had been run by a municipality before. When wage increases became due, the new owner did not grant them. The Appellant argues that the private operator must grant the increases of standard wages which have been laid down in the meantime and that the increases apply to the Appellant's employment relationship due to a "dynamic" reference clause (reference is made to the collective bargaining agreement as amended from time to time). The private operator, however, is of the opinion that a merely "static" reference to the original collective bargaining agreement exists. The private operator states that, above all, the operator does not have any influence on the Collective Bargaining Agreement of Public Services (TVöD) because the operator is not and is also not able to become a member of the respective employers' association.

The ECJ now rules on this case because the German Federal Labour Court (BAG), which is the court of last instance in Germany, wants to know if the principles of the so-called *Alemo-Herron* judgement of the ECJ apply. In said case, the ECJ ruled that it is not compatible with EU law that a private acquirer of a formerly public company has to implement increases in standard wages resulting from a new collective bargaining agreement if the acquirer did not have the opportunity to take part in the negotiations of an agreement that was concluded after the transfer.

"It is important and necessary that the ECJ establishes legal certainty regarding this crucial issue", says *Anne Dziuba*, a lawyer at the international commercial law firm BEITEN BURKHARDT representing the private hospital operator. Wolfgang Lipinski, who also represents the hospital in his position as lawyer at BEITEN BURKHARDT, confirms: "If a company is sold, it is very important to know which wage demands the acquirer can expect in order to determine a purchase price. It should be in the interest of the employer to be aware of all possible future remuneration payments. Let us hope that, in this case at hand too, the ECJ will decide for a continued applicability of the static reference clause if the acquirer is not



Press Release

bound by collective bargaining agreements." By way of explanation, the lawyer adds: "After a transfer of business, acquirers often face large disparities when it comes to working conditions. A corresponding judgement would facilitate the harmonisation of working conditions for the acquirers."

Dr Wolfgang Lipinski is a Labour Law Specialist and a Partner at BEITEN BURKHARDT's Munich office. *Dr Anne Dziuba* is a Labour Law Specialist and also a Partner at BEITEN BURKHARDT's Munich office. They are available for further information, statements and guest contributions.



Press Release

Contact

Dr Wolfgang Lipinski

Phone: +49 89 350 65-1133

Email: Wolfgang.Lipinski@bblaw.com

Dr Anne Dziuba

Phone: +49 89 350 65-1126

Email: Anne.Dziuba@bblaw.com

Public Relations (Labour & Employment Law)

Bettina Kaltenbach

Phone: +49 89 350 65-1142

Email: Bettina.Kaltenbach@bblaw.com

Information about BEITEN BURKHARDT

- BEITEN BURKHARDT is an independent international commercial law firm with a focused range of services and some 280 lawyers working in 8 locations.
- Through our long-established offices in Germany, Brussels, China and Russia we advise large and mid-sized companies and corporate groups from various industries, banks and financial institutions as well as the public sector.