JUDGMENT OF THE COURT (Third Chamber)

29 July 2010 *

In Case C-151/09,

REFERENCE for a preliminary ruling under Article 234 EC, from the Juzgado de lo Social Único de Algeciras (Spain), made by decision of 26 March 2009, received at the Court on 28 April 2009, in the proceedings

Federación de Servicios Públicos de la UGT (UGT-FSP)

v

Ayuntamiento de La Línea de la Concepción,

María del Rosario Vecino Uribe,

Ministerio Fiscal,

* Language of the case: Spanish.

THE COURT (Third Chamber),

composed of K. Lenaerts, President of Chamber, R. Silva de Lapuerta, G. Arestis, J. Malenovský (Rapporteur) and D. Šváby, Judges,

Advocate General: E. Sharpston,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Ministerio Fiscal, by J.L.M. Retamino, acting as Agent,

— the Spanish Government, by B. Plaza Cruz, acting as Agent,

— the Commission of the European Communities, by J. Enegren and R. Vidal Puig, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 May 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6(1) of Council Directive 2001/23/EC of 12 March 2001 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 (OJ 2001 L 82, p. 16).

2 The reference was made in proceedings in which the subject of an action involving the Federación de Servicios Públicos de la UGT (UGT-FSP) [a trade union], the Ayuntamiento de la Línea de la Concepción [the municipal authority of the town of La Línea de la Concepción] ('Ayuntamiento de La Línea'), Ms M. del Rosario Vecino Uribe and 19 other defendants, and the Ministerio Fiscal, is the refusal of the Ayuntamiento de La Línea to recognise as lawfully appointed employee representatives those persons elected to carry out that function in various undertakings responsible for outsourced public services which were transferred to that municipal authority.

Legal context

European Union legislation

3 Directive 2001/23 was a consolidation of Council Directive 77/187/EEC of 14 February 1977 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 businesses (OJ 1977 L 61, p. 26), as amended by Council Directive 98/50/EC of 29 June 1998 (OJ 1998 L 201, p. 88) (Directive 77/187).

4 Recital (3) of the preamble to Directive 2001/23 states that 'it is necessary to provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded'.

5 Article 1(1) of that directive provides:

'(a) 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 legal transfer or merger.

(b) Subject to subparagraph (a) and the following provisions of this Article, there is a transfer within the meaning of this Directive where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

(c) This Directive shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain. An administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of this Directive.'

6 Article 2(1) of that directive provides:

'For the purposes of this Directive:

…

(c) "representatives of employees" and related expressions shall mean the representatives of the employees provided for by the laws or practices of the Member States;

…'

7 Under Article 6 of that directive:

'1. If the undertaking, business or part of an undertaking or business preserves its autonomy, the status and function of the representatives or of the representation of the employees affected by the transfer shall be preserved on the same terms and subject to the same conditions as existed before the date of the transfer by virtue of law, regulation, administrative provision or agreement, provided that the conditions necessary for the constitution of the employee's representation are fulfilled.

The first subparagraph shall not apply if, under the laws, regulations, administrative provisions or practice in the Member States, or by agreement with the representatives of the employees, the conditions necessary for the reappointment of the representatives of the employees or for the reconstitution of the representation of the employees are fulfilled.

Where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of a competent public authority (which may be an insolvency practitioner authorised by a competent public authority), Member States may take the necessary measures to ensure that the transferred employees are properly represented until the new election or designation of representatives of the employees.

If the undertaking, business or part of an undertaking or business does not preserve its autonomy, the Member States shall take the necessary measures to ensure that the employees transferred who were represented before the transfer continue to be properly represented during the period necessary for the reconstitution or reappointment of the representation of employees in accordance with national law or practice.

2. If the term of office of the representatives of the employees affected by the transfer expires as a result of the transfer, the representatives shall continue to enjoy the protection provided by the laws, regulations, administrative provisions or practice of the Member States.'

National legislation

8 Directive 2001/23 was transposed into Spanish law by Royal Legislative Decree No 1/1995 of 24 March 1995 approving the amended text of the Workers 'Statute (BOE No 75 of 29 March 1995, p. 9654) in the version following Law 12/2001 of 9 July 2001 (BOE No 164 of 10 July 2001, p. 24890) ("the Workers" Statute').

9 Under Article 44 of the Workers' Statute:

'1. The transfer of an undertaking, business or independent production unit of a business shall not in itself terminate the employment relationship; the new employer shall take over the former employer's rights and obligations with respect to the employment contract and social security, including all commitments in respect of pensions, in the circumstances provided for by the relevant specific legislation and, generally, all obligations in relation to additional social protection which the transferor has undertaken.

…

5. If the undertaking, business or production unit of a business which is the subject of the transfer preserves its autonomy, the change of employer shall not of itself bring to an end the term of office of the employees' lawfully appointed representatives, who shall continue to carry out their functions on the same conditions as before.'

10 Article 67(1) *in fine* of the Workers' Statute provides for the possibility of organising partial elections within an undertaking, to meet an increase in the size of the workforce, as follows:

'partial elections may be organised following resignation or removal from office or in order to adjust the representation of employees following an increase in the size of the workforce. Collective agreements may provide for the measures necessary in order to adapt the representation of the employees to significant reductions in the workforce that may occur within an undertaking. If no such provision is made, such an adaptation shall be the subject of an agreement between the undertaking and the representatives of the employees.'

11 Under Article 67(3) of the Workers' Statute:

'The length of the term of office of staff representatives and works council members shall be fixed at four years, but they shall maintain their functions, and exercise their powers subject to the related safeguards, until the calling and organisation of new elections.

The staff representatives and works council members may be removed from office only by a decision of the employees who have elected them adopted at an assembly called for that purpose with a quorum of at least one third of those eligible to vote, by an absolute majority of that assembly and by direct universal suffrage in a free and secret ballot. However, no removal from office can take place when a new collective agreement is being negotiated or be raised again before the expiry of at least six months.'

The main proceedings and the question referred for a preliminary ruling

12 On 25 August 2008 the mayor of the Ayuntamiento de La Línea issued a decree stating his decision to take over in-house a number of outsourced public services the provision of which had until then been entrusted to four private undertakings. The

outsourced services which were to be taken over involved caretaking and cleaning in public schools, street cleaning and maintenance of parks and gardens.

13 The order for reference states that, after the various outsourced public services were taken over in-house by the Ayuntamiento de La Línea, the employees who made up the staff of the undertakings which until then had provided the outsourced public services were taken on by that municipal authority and integrated into its staff, but that those same employees all remain in the same posts and carry out the same duties as before the takeover, in the same places of work and under the orders of the same immediate managers [line managers], without any significant changes in their working conditions, the sole difference being that those ultimately in charge, above those immediate managers, are now the competent elected officials, namely, the municipal councillors or the mayor.

14 The lawfully appointed representatives of the employees of each of the undertakings which had provided the outsourced services, after the taking over of those services, submitted requests to the Ayuntamiento de La Línea that they should be entitled to time off in which to carry out their duties. Those requests were rejected by decision of 10 September 2008, on the ground that the employees concerned were no longer, because of their integration into the municipal workforce, carrying out their functions as lawfully appointed representatives.

15 That being the case, after the applicant in the main proceedings, namely UGT-FSP, became aware of the decision, it requested clarification from the Ayuntamiento de La Línea on 28 October 2008, and then, on 13 November 2008, brought an action against that decision before the Juzgado de lo Social Único de Algeciras.

16 By decision of 26 March 2009 the Juzgado de lo Social Único de Algeciras decided to stay proceedings and to refer to the Court the following question for a preliminary ruling:

'Is the requirement that autonomy be preserved – referred to in Article 6(1) of Directive 2001/23/EC …met in a factual situation (such as that in the main proceedings) in which, following the recovery of various outsourced public services by a municipal authority, the employees who were part of the staff of the undertakings which until then had provided the outsourced municipal services are taken on by that municipal administration and integrated into its staff, but it is those same employees (without exception) who continue to hold the same posts and carry out the same duties as before that recovery, in the same places of work and under the instruction of the same immediate superiors (hierarchical superiors), without significant changes in the working conditions, the sole difference being that now their overall managers (above the previous superiors) are the relevant publicly elected officials (councillors or mayor)?'

The question referred for a preliminary ruling

17 By its question, the national court seeks, essentially, to ascertain whether a transferred economic entity preserves its autonomy, within the meaning of Article 6(1) of Directive 2001/23, when the employees who make up its workforce are taken on by a municipal authority and integrated into its workforce, when those employees continue to occupy the same posts and to carry out the same duties as before the transfer, in the same places of work and under the instruction of the same immediate managers, without significant changes in the working conditions, the sole difference being that elected officials become the persons ultimately in charge of the transferred entity.

18 The Spanish Government considers that the conditions governing a transfer within the meaning of Directive 2001/23 are not satisfied in the case in the main proceedings. The Spanish Government contends that there is no transfer of significant tangible assets from the undertakings providing the outsourced services to the Ayuntamiento de La Línea, since the public schools, streets, parks and municipal gardens already belonged to the Ayuntamiento de La Línea. All that is involved is the taking on of all the staff employed by those undertakings. It is impossible, even though the labour force is a significant factor in those services, to disregard the assets which are an essential part of the outsourced caretaking, cleaning and maintenance services entrusted to those undertakings.

19 In order to answer the question referred, it must therefore first be determined whether a transfer such as that in the main proceedings falls within the scope of Article 1(1)(b) of Directive 2001/23. Only if that question can be answered in the affirmative does the question of autonomy within the meaning of Article 6(1) of Directive 2001/23 arise.

Whether there is a transfer within the meaning of Article 1 of Directive 2001/23

20 On the information provided by the national court, the issue in the main proceedings is the taking back in-house by a municipal authority, a public-law body, of a number of outsourced public services, the provision of which was until then entrusted to various private undertakings. This resumption has been achieved by means of a municipal decree.

21 Under Article 1(1) of Directive 2001/23, that directive is applicable to any transfer of an undertaking, business or part of an undertaking or business to another employer as a result of a legal transfer or merger.

22 In accordance with settled case-law, the aim of Directive 2001/23 is to ensure continuity of employment relationships within an economic entity, irrespective of any change of ownership. The decisive criterion for establishing the existence of a transfer within the meaning of that directive is, therefore, whether the entity in question retains its identity, as indicated, in particular, by the fact that its operation is actually continued or resumed (see, inter alia, Case 24/85 *Spijkers* [1986] ECR 1119, paragraphs 11 and 12, and Joined Cases C-232/04 and C-233/04 *Güney-Görres and Demir* [2005] ECR I-11237, paragraph 31 and case-law there cited).

23 The Court has held that, under Directive 77/187, the mere fact that the person to whom the activity is transferred is a public-law body, namely a municipality, cannot be a ground for excluding the existence of a transfer within the scope of that directive (Case C-175/99 *Mayeur* [2000] ECR I-7755, paragraph 33). The same conclusion is called for under Directive 2001/23.

24 The fact that the decision bringing about the resumption of the outsourced public services is a decree, namely, a decision taken unilaterally by the Ayuntamiento de La Línea, does not preclude a finding that there was a transfer, within the meaning of Directive 2001/23, from the private undertakings providing the outsourced services to the Ayuntamiento de La Línea.

25 The Court has previously ruled that the fact that the transfer results from unilateral decisions of public authorities rather than from an agreement does not render the directive inapplicable (see Case C-29/91 *Redmond Stichting* [1992] ECR I-3189, paragraphs 15 to 17, and Case C-343/98 *Collino and Chiappero* [2000] ECR I-6659, paragraph 34).

26 For Directive 2001/23 to be applicable, the transfer must relate to a stable economic entity whose activity is not limited to performing one specific works contract (see, inter alia, Case C-48/94 *Rygaard* [1995] ECR I-2745, paragraph 20). The term 'entity' thus refers to an organised grouping of persons and assets enabling the exercise of an economic activity which pursues a specific objective (see, inter alia, Case C-13/95 *Süzen* [1997] ECR I-1259, paragraph 13; Case C-340/01 *Abler and Others* [2003] ECR I-14023, paragraph 30; and *Güney-Görres and Demir*, cited above, paragraph 32).

27 In order to determine whether the conditions for the transfer of an organised economic entity are met, it is necessary to consider all the facts characterising the transaction in question, including in particular the type of undertaking or business concerned, whether or not its tangible assets, such as buildings and movable property, are transferred, the value of its intangible assets at the time of the transfer, whether or not the majority of its employees are taken over by the new employer, whether or not its customers are transferred, the degree of similarity between the activities carried on before and after the transfer, and the period, if any, for which those activities were suspended. However, all those circumstances are merely single factors in the overall assessment which must be made and cannot therefore be considered in isolation (see, inter alia, *Spijkers*, paragraph 13; *Redmond Stichting*, paragraph 24; *Süzen*, paragraph 14; *Abler and Others*, paragraphs 33 and 34; and *Güney-Görres and Demir*, paragraphs 33 and 34).

28 Further, the Court has stated that an economic entity is able, in certain sectors, to function without any significant tangible or intangible assets, and therefore the maintenance of the identity of such an entity following the transaction affecting it cannot, logically, depend on the transfer of such assets (see *Süzen*, paragraph 18; Joined Cases C-127/96, C-229/96 and C-74/97 *Hernández Vidal and Others* [1998] ECR I-8179, paragraph 31, and Joined Cases C-173/96 and C-247/96 *Hidalgo and Others* [1998] ECR I-8237, paragraph 31).

29 The Court has accordingly held that inasmuch as, in certain labour-intensive sectors, a group of workers engaged in a joint activity on a permanent basis may constitute an economic entity, such an entity is capable of maintaining its identity after it has been transferred where the new employer does not merely pursue the activity in question but also takes over a major part, in terms of their numbers and skills, of the employees specially assigned by his predecessor to that task. In those circumstances, the new employer takes over a body of assets enabling him to carry on the activities or certain activities of the transferor undertaking on a regular basis (*Süzen*, paragraph 21; *Hernández Vidal and Others*, paragraph 32; and *Hidalgo and Others*, paragraph 32).

30 More specifically, the Court has held, in relation to a cleaning company, that an organised grouping of wage earners who are specifically and permanently assigned to a common task may, in the absence of other factors of production, amount to an economic entity (*Hernández Vidal and Others*, paragraph 27).

31 As stated by the Advocate General in point 39 of her Opinion, the fact that, in the main proceedings, there was no transfer of the assets in relation to which the outsourced services were provided by the private undertakings, such as school buildings, streets, parks and civic gardens, has no bearing whatsoever on the issue. The assets which should, where appropriate, be taken into consideration are the plant, machinery and/or equipment that are actually used in order to provide the caretaking, cleaning and maintenance services.

32 It is for the national court to establish, in the light of all the foregoing criteria of interpretation, whether a transfer, within the meaning of Directive 2001/23, has taken place in the case in the main proceedings.

Autonomy within the meaning of Article 6 of Directive 2001/23

33 The Spanish Government maintains that the concept of 'autonomy' in Article 6 of Directive 2001/23 must be interpreted as equivalent to the concept of 'identity' in Article 1(1)(b) of that directive. However, such an interpretation cannot be accepted.

34 As is clear from the wording of Article 1(1)(b) of Directive 2001/23, the question of retention of identity is to be assessed at the time when the transaction consisting of the legal transfer or merger of the economic entity concerned takes place. Only if the identity of that entity is retained can such a transaction be classified as a transfer within the meaning of that directive.

35 By contrast, the question of preservation of autonomy is to be assessed only after the decision has first been made that a transfer, within the meaning of Directive 2001/23, has taken place. That directive is intended to apply to any transfer satisfying the conditions laid down in Article 1(1) of the directive, whether or not the economic entity transferred preserves its autonomy in the transferee's organisational structure (see Case C-466/07 *Klarenberg* [2009] ECR I-803, paragraph 50).

36 If the concepts of 'identity' and 'autonomy' were equivalent, the introductory part of Article 6 stating the condition relating to the preservation of the autonomy of the undertaking, business or part of an undertaking or business concerned would be deprived of any purpose, since Article 6(1) of the Directive would automatically apply if the commercial entity retained its identity, within the meaning of Article 1(1)(b) of the Directive. Consequently, those concepts are not equivalent and the question

whether an undertaking has preserved its autonomy, for the purposes of Article 6 of Directive 2001/23, must be considered only once it has been established that a transfer has indeed taken place within the meaning of that directive.

37 As regards the concept of 'autonomy', it is clear that Article 6 contains no definition of it. Nor is the concept defined in other articles of that directive.

38 However, according to settled case-law, it follows from the need for uniform application of Community law and from the principle of equal treatment that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purposes of determining its meaning and scope must as a general rule be given an autonomous and uniform interpretation throughout the Community at European Union level (see, to that effect, latterly, Case C-433/08 *Yaesu Europe* [2009] ECR I-11487, paragraph 18 and case-law there cited).

39 Further, it is also settled case-law that the meaning and scope of terms for which European Union law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they form part (see to that effect, inter alia, Case C-336/03 *easyCar* [2005] ECR I-1947, paragraph 21; Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 17; and Case C-556/07 *Commission* v *France* [2009] ECR I-0025 (summary publication), paragraph 50).

40 It should, first, be borne in mind that Directive 2001/23 is intended to safeguard the rights of employees in the event of a change of employer by allowing them to continue to work for the new employer on the same conditions as those agreed with the transferor (see, inter alia, Case 324/86 *Foreningen af Arbejdsledere i Danmark* [1988]

ECR 739, paragraph 9; Case C-499/04 *Werhof* [2006] ECR I-2397, paragraph 25; and Case C-396/07 *Juuri* [2008] ECR I-8883, paragraph 28). The right of employees to be represented is not an exception. It follows that, as a general rule, that representation must not be affected by the transfer.

41 The first subparagraph of Article 6(1) of Directive 2001/23, containing the general rule on the representation of employees, provides that, if the undertaking, business or part of an undertaking or business preserves its autonomy, the status and function of the representatives or of the representation of the employees affected by the transfer are to be preserved, on the same terms and subject to the same conditions as before the date of the transfer.

42 Next, it must be observed that the word 'autonomy', according to its usual meaning in everyday language, describes the right of self-government.

43 Applied to an economic entity, the term means the powers, granted to those in charge of that entity, to organise, 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 organisational structures of the employer ('the organisational powers').

44 Consequently, autonomy is as a general rule preserved, within the meaning of the first subparagraph of Article 6(1) of Directive 2001/23, if, after the transfer, the organisational powers of those in charge of the entity transferred remain, within the organisational structures of the transferee, essentially unchanged as compared with the situation pertaining before the transfer.

45 Accordingly, in those circumstances, the right of employees to be represented must, as a general rule, be exercised on the same terms and subject to the same conditions as before the transfer.

46 By contrast, in a situation in which those in charge of the employees are, following the transfer, persons whose organisational powers have been reduced and can no longer be described as autonomous, the interests of those employees are therefore no longer the same and, consequently, the terms and conditions of their representation must be adapted to the changes which have occurred. For that reason, as is clear from the fourth subparagraph of Article 6(1) of Directive 2001/23, the term of office of the representatives of the employees affected by the transfer must, in such circumstances, be restricted to merely the period required for the reconstitution or reappointment of the representation of employees.

47 As regards the possibility of there being a redistribution of some organisational powers within the entity transferred, that is not, in principle, liable to impair its autonomy. What matters is that all of those in charge of the entity transferred can exercise the organisational powers which they held previously, prior to the transfer, vis a vis other organisational structures of the new employer.

48 Further, the mere change of those ultimately in charge, as in the case in the main proceedings, cannot in itself impair the autonomy of the entity transferred.

49 Only powers which enabled those ultimately in charge to organise directly the activities of the employees of that entity and to substitute their own decision-making within that entity would be liable to impair the autonomy of that entity. That is, however, subject to the qualification that such substituted decision-making within the entity transferred cannot be considered to be detrimental to its autonomy if it occurs, exceptionally, in circumstances of urgency such as a serious incident detrimental to the operation of the entity, on a temporary basis and in accordance with specific rules for that purpose.

50 Moreover, the mere power of control on the part of those ultimately in charge cannot, as a general rule, affect the autonomy of the entity transferred, unless that control also includes powers of the kind specified in the preceding paragraph.

51 Such an interpretation of the concept of autonomy makes it possible, it may be added, to preserve the practical effect of Article 6 of Directive 2001/23, given that, in practice, the transfer of an undertaking, a business or part of an undertaking or business is almost always accompanied by the replacement of those ultimately in charge.

52 That interpretation cannot be called in question by the arguments of the Spanish Government that such an interpretation, implying the continuation, in the case in the main proceedings, of the employees' existing representation, would, first, bring about a form of 'double representation' within the workforce of the new employer and, secondly, be tantamount to ignoring the economic damage which the new employer would suffer if he were obliged to concede, to the representatives of transferred employees, time off in which to carry out their duties. Those arguments merely attempt to call in question the legal effects of the choice made by the European Union legislature when inserting Article 6 of Directive 2001/23.

53 Likewise, the Court must reject the argument of the Spanish Government concerning discrimination and an infringement of the principle of equal treatment in relation to the staff representatives and trade union officials representing the existing staff of the new employer.

54 In that regard, as stated by the Advocate General in point 88 of her Opinion, even if the transferred employees and those employed by the new employer are in comparable situations, the difference in treatment which stems from any imbalance within the organisation of the new employer, at the expense of trade union representatives who are already represented there and representatives of the staff concerned, whose numbers remain unchanged, is justified in the light of the objective of Directive 2001/23, which is to ensure, so far as possible and practicable, that the new employees are not disadvantaged by reason of the transfer in comparison with the situation before that transfer.

55 Lastly, as regards the argument related to the freedom of the existing workforce to engage in trade union activities, suffice it to say that the Spanish Government does not demonstrate how, in the circumstances of the main proceedings, the exercise of that fundamental freedom is affected by retaining the representatives of employees of the transferred entity.

56 Having regard to all of the foregoing, the answer to the question referred is that an economic entity which is transferred preserves its autonomy, within the meaning of Article 6(1) of Directive 2001/23, provided that the powers granted to those in charge of that entity, within the organisational structures of the transferor, namely the power to organise, 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 organisational structures of the employer, remain, within the organisational structures of the transferee, essentially unchanged. The mere change of those ultimately in charge cannot in itself be detrimental to the autonomy of the entity transferred, except where those who have become ultimately in charge have available

to them powers which enable them to organise directly the activities of the employees of that entity and therefore to substitute their decision-making within that entity for that of those immediately in charge of the employees.

Costs

57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

A transferred economic entity preserves its autonomy, within the meaning of Article 6(1) of Council Directive 2001/23/EC of 12 March 2001 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, provided that the powers granted to those in charge of that entity, within the organisational structures of the transferor, namely the power to organise, 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 organisational structures of the employer, remain, within the organisational structures of the transferee, essentially unchanged.

The mere change of those ultimately in charge cannot in itself be detrimental to the autonomy of the entity transferred, except where those who have become ultimately in charge have available to them powers which enable them to organise directly the activities of the employees of that entity and therefore to substitute their decision-making within that entity for that of those immediately in charge of the employees.

[Signatures]