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Cross-border transfer of undertaking within the EU

Summary in English*

The volume focuses on the phenomenon of cross-border transfers within the European Union. It encompasses the definition of such transfer and its specificity from both, economic as well as legal perspective. The examples of economic processes presented are the most common scenarios underlying the cross-border transfers. The analysis of the differences between traditional concept of inland transfer of undertaking and the cross-border transfer of undertaking leads to the conclusion that the latter is merely a specific type of transfer of undertaking in the already known outline. For the sake of consistency, the thesis is limited to the territory of the European Union. It focuses prevalingly on relocating transfers. Transnational transfers combined with relocations are the main subject of the analysis for being the type of cross-border transfers that yield vast legal consequences. The thesis presents several types of cross-border transfers including the divisions with regard to the direction of relocating transfer (i.e. intra-European, inbound, outbound and relocating transfers between third states). Furthermore, the main aim of this volume is to analyse whether and on what grounds 2001/23/WE directive and its national implementing provisions are applicable to cross-border transfers. For this reason, the legislative activity at the European level connected to 2001/23/WE directive and its implications for application of 2001/23/WE directive to cross-border transfer are examined. Except for 2001/23 directive, it is scrutinised whether any other European legal instrument is applicable to cross-border transfers. The analysis of legal instruments applicable is accompanied by the respective jurisprudence and the doctrine. Once the applicable provisions of law are determined, it is discussed in what manner and to what extent its application shall be effectuated to specific cross-border transfers. Subsequently, this volume analyses the law applicable in the event of cross-border transfers. The search for the applicable law may be based on different legal categories, i.e. the cross-border transfer of undertaking itself or the employment contracts of the individuals affected. Once decided for which legal category the law applicable shall be determined, the possible and most suitable connecting factors are sought. This thesis also analyses the role of mandatory provisions for the determination of the law applicable in the event of cross-border transfers. The current legal regulations on the European level regarding the law applicable are presented to ensure that the most firm and the safest solutions to the problem of encompassing the cross-border transfer with most appropriate legal regulations are presented. Due to the utmost absence of specific regulations concerning the cross-border transfers, the current legal state is confronted with *de lege ferenda* postulations for a more tailor-made legal solutions in case of the cross-border transfers. This volume also focuses on the issue of substantive effects of cross-border transfers is analysed from individual and collective labour law perspective. Once the applicable law is chosen, the effects of the cross-border transfer are determined either based on the law of the state of origin or based on the law of the destination state. The change of the applicable law is usually induced by the change of the habitual place of work of the employees affected by the transfer and relocation. Various consequences of the cross-border relocating transfers are possible in the individual employment sphere and so are in the collective labour law sphere. However, due to the lack of tailor-made regulations in the event of cross-border transfer the nature of the effects of the transfer are not to be defined with certainty but may only be anticipated based on certain national legal standards.

* Written in English