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New decision on the liability of the parent company as so-called "employer" gives hope for a reduction of the risk

Arbeitsrecht



Since the "Jungheinrich ruling" of January 18, 2011 (no. 09-69,199), employees of the French subsidiary of foreign parent company are able to rise a damages claim, for restructuring measures taken by French subsidiaries, against the parent companies on the ground of the so-called “co-employment” and therefore claim that the parent company is jointly liable alongside the subsidiary (see our Newsletter 5/2014).

As early as 2014, the Court of Cassation appeared to limit its highly criticised case law and ruled that "a company (...) can only be regarded as an co-employer if there is control which goes beyond the necessary coordination of economic acts between companies of the same group of companies, which leads to **a mixing of interests, activities and corporate governance** and thus indicates interference in the economic and social governance of the company" (n° 13-15.208, Sté Molex incorporated c/ A.).

Now, two years later, this case law is further restricted: On 6 July 2016 (nos. 14-27.266; 14-26.541;15- 15.481), the Court of Cassation stressed, in the context of three similar disputes, that the principles or indications of a co-employment (legal subordination, mixing of interests, activities and management) established so far still had to be taken into account. However, it is now demanded in detail that these indications should represent **an interference in the financial and social processes** of the subsidiary.

In this decision, the judges explicitly acknowledge that despite an interference of the parent company, the co-employment cannot automatically be affirmed, since it is reasonable and to be expected within a group of companies that the "group policy"' determined by the parent company can also have an impact on the subsidiary's finances and workforce. Rather, it must be examined whether the parent company exceeds the reasonable limits of the group policy in the context of a so-called "abnormal mixing".

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Practical advice:

The Court of Cassation increasingly restricts the scope of application of the joint liability of parent companies for co-employment, which is to be welcomed. Nevertheless, the court has still not abandoned its "Jungheinrich" case law, so that the risk of liability - albeit reduced - remains.

Companies with a French subsidiary in which restructuring measures are planned should continue to take this into account in their day-to-day decisions and ensure that the subsidiary is granted sufficient freedom, at least in the areas of finance and personnel, to avoid the qualification of abnormal interference and joint liability.

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