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Judgment in Case E-2/04 *Reidar Rasmussen and Others v Total E&P Norge AS*

Transfer of undertakings

In an Advisory Opinion delivered today, the EFTA Court dealt with questions concerning the concept of transfer of undertakings within the meaning of Article 1 of Council Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of businesses. It also dealt with a question concerning the time of the transfer of employment relationships according to Article 3(1) of the Directive and objections to such a transfer.

The Advisory Opinion was given in response to a request made by Gulating Lagmannsrett in a case between Total E&P Norge, operator of an offshore gas field, and three workers who were employed by Total E&P Norge. The dispute before the Norwegian court concerns the question of whether a contract concluded between Total E&P Norge and Aker Offshore Partner, concerning maintenance and support functions in the field, entails a dismissal of the workers. It includes the question of whether there is a transfer of undertaking within the meaning of the Norwegian Working Environment Act that implements the Directive.

In the Advisory Opinion, the EFTA Court found that the organisational structure of a business, as such, cannot exclude the applicability of the Directive. It also stated that in a situation where tangible assets are an important factor for the performance of the activity in question and it is established that the transferee has the right to use any relevant assets in such a way as is necessary to enable the transferee to continue to perform the transferred activities, it is immaterial whether ownership of the assets is transferred. Furthermore, the EFTA Court stated that the application of the Directive is not precluded by the fact that the transferee carries out the transferred functions together with an affiliated company, which also engages some of the transferred employees.

In answering the question concerning the time of transfer pursuant to Article 3 of the Directive, the EFTA Court stated that the Article must be interpreted to the effect that employment relationships are transferred to the transferee simultaneously with and by virtue of the transfer of the undertaking for those employees who have not, prior to the time of transfer, declared that they do not wish to work for the transferee.

The full text of the judgment may be found on the Internet at: www.eftacourt.lu.

This press release is not an official document. Please note that the Court may not comment on the case.