



Cabinet Adam-Caumeil  
Avocats · Rechtsanwälte

# Co-employer in French law

## Practise Group Employment law

THE HAGUE 20th October 2012



# PRACTICE AREAS



- French company law
- International trade law
- Sales representative law
- Employment law
- Product liability

- Collection of claims
- Insolvency law
- Transport law
- Maritime law

# Employer – Co-employer

- A common definition of the employer
- The Co-employer: actually no new concept in French law



# Change with the decision Jungheinrich (1)

- No more use for the old definition of the co-employer
- New definition: Confusion of interests, activities and direction.
- No mention of the term subordination (“*lien de subordination*”) to establish an employment relationship.



# Change with the decision Jungheinrich (2)

- Some facts from which this triple confusion can be derived:
  - Takeover of 80 % of the production and fixing the prices of the subsidiary's products.
  - Nearly all shares of the subsidiary hold by the parent undertaking
  - Determination of the strategic orientation by the parent undertaking
  - Human resources management of some subsidiaries by the mother
  - In fact administrative and operative direction by the parent undertaking



# Confirmation (!) and Clarification (?)

- Confirmation by some decisions in 2011 and 2012
- Special importance of the field “human resources”
- Financing of the social plan
- Obligation of redeployment



# Consequence

- Obligations for the co-employer equivalent to the employer's duties.
- Even if no direct legal relationship or connection between the parent company and the employees of the subsidiary.



# Problems

- High risk for international companies
- Inexact and unclear terminologies
- No end or limits?





# Recommendations

- Try to preserve the subsidiary's independence and autonomy.
- The higher the interference, the higher the risk.



# Explanations, Criticism (1)

- No application of article 1165 of the French Civil Code?
- No principle of autonomy of legal persons?



# Explanations, Criticism (2)

- Insolvency of the subsidiary – no way out any more.



# Outlook

- Extending to other fields than termination of employment contracts?

# French avocats and German Rechtsanwälte

- Avocats and Rechtsanwälte, more than 20 years experience
- Qualified translator for legal and financial documents





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