

Employment Chamber [Sezione Lavoro], Judgment [sentenza] of 1 June 2020, No 10414.

In the case of transfer of an undertaking declared to be in a situation of crisis (pursuant to Article 2(5)(c) of Law No 675 of 1977) or made subject to the special administration procedure (pursuant to Legislative Decree No 270 of 1999) when the undertaking's business has continued or has not ended, the trade-union agreement provided in Article 47(4-bis) of Law No 428 of 1990 (inserted by Decree Law No 135 of 2009, subsequently converted into Law No 166 of 2009), may allow derogations from Article 2112 civil code (which provides, inter alia, that "In case of business transfer, the employment relationship continues with the transferee and the employee maintains all the ensuing rights") concerning employment conditions, without prejudice to the transfer of the employment relationships to the transferee.

This is based on the fact that the phrase "When an agreement is reached on the maintenance – even partial – of employment levels, Article 2112 shall apply in the terms and within the limits of the relevant agreement" (contained in the above mentioned paragraph 4-bis) is to be read in compliance with the law of the European Union and the interpretation of it given by the EU Court of Justice, on 11 June 2009, in case C-516/07 (in its judgment in the infringement procedure against the Republic of Italy for the violation of Directive 2001/23/EC) in the sense that where the transferor is the subject of insolvency proceedings that have been instituted "with a view to the liquidation of the assets" of the transferor, the collective agreements cannot decide on the employment pre-existing to the transfer of the undertaking. (The case examined concerned the transfer of the company's assets from Alitalia CAI to Alitalia SAI).