

		Situation after Plessers ruling but before Heiploeg ruling		Situation after Heiploeg ruling
		Existing Belgian PRJ/WCO by transfer Articles XX.84 and XX. 86 §3 CEL	New articles XX.84 and XX.86 §3 CEL in the draft bill transposing Directive 2019/1023	Impact of Heiploeg ruling on existing Belgian PRJ/WCO by transfer
APPLICABLE LAW				
Complete transfers & Partial transfers	<p>XX.84 CEL The PRJ/WCO by transfer may be ordered by the court with a view to ensuring the continuation of the enterprise.</p>	<p>NEW DRAFT XX.84 CEL (not final) New definition of the objective of PRJ/WCO by transfer as aiming to the liquidation of the transferor.</p>	<p>We forecast two scenarios:</p> <p>The Belgian legislator decides to leave the law as it is.</p>	
	<p>XX.86, §3 CEL The transferee may choose the transferor's employees that are taken over, the "takeovers" having to be justified with economic, technical or organisational reasons.</p>	<p>NEW DRAFT XX.86 §3 CEL (not final) New motivation obligation for the transferee with regard to the dismissals of the transferor's employees.</p> <p>Justification based on technical, economic or organisational reasons entailing changes in the workforce, being understood that the transfer shall not in itself constitute grounds for dismissal.</p> <p>No mention of partial transfers in the definition of current draft article XX.84 CEL while they do not aim at the liquidation of the transferor.</p> <p>Error or omission?</p>	<p>OR</p> <p>The Belgian legislator decides to keep the new definition of business transfer as currently mentioned in the draft bill, i.e. as a necessary and preliminary step of the transferor's bankruptcy or liquidation.</p> <p>But what about partial transfers?</p>	

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THE TRANSFEEE'S RIGHT OF OPTION AND MOTIVATION OBLIGATION REGARDING THE TRANSFEROR'S EMPLOYEES			
Complete transfers	The transferee's right of option is allowed. The transferee may choose the transferor's employees that it takes over based on economic, technical or organisational reasons .	The transferee's right of option would no longer be allowed. The transferee must justify the dismissals based on technical, economic or organisational reasons that are independent of the planned transfer	The transferee's right of option is allowed (again). The transferee may choose the transferor's employees that it takes over based on economic, technical or organisational reasons .
Partial transfers	Idem	Idem	The transferee's right of option is not allowed. The transferee must justify the dismissals based on technical, economic or organisational reasons that are independent from the planned transfer .
COMPLIANCE WITH EU LAW?			
Complete transfers	NO The transferee' right of option does not comply with Directive 2001/23.	YES Current draft articles XX.84 and XX.86 §3 CEL (still not final) comply with Directive 2001/23.	YES under the Heiploeg ruling As the Belgian PRJ/WCO by transfer eventually results in the transferor's liquidation/bankruptcy, the transferee's right of option complies with Directive 2001/23.
Partial transfers	NO The transferee' right of option does not comply with Directive 2001/23.	UNCLEAR Because the definition of the transfer in the current draft article XX.84 CEL does not correspond to the reality of a partial transfer that does not eventually lead to the bankruptcy/liquidation of the transferor.	NO under the Heiploeg ruling As partial transfers do not eventually lead to the transferor's bankruptcy/liquidation, the transferee's right of option does not comply with Directive 2001/23.