

SUMMARY

ECJ 28 April 2022, case C-237/20 (Federatie Nederlandse Vakbeweging (Pre-pack procedure)), Transfer, Employment terms, Insolvency

Federatie Nederlandse Vakbeweging - v - Heiploeg Seafood International BV, Heitrans International BV, Dutch case

Summary

In a pre-pack procedure, the transferee can deviate from the employees' rights protection provided that the requirements of Article 5(1) are met and if that procedure is governed by statutory or regulatory provisions. The ECJ's summary of the case is available [here](#).

Questions

Must Article 5(1) of Directive 2001/23 be interpreted as meaning that the condition which it lays down, according to which Articles 3 and 4 of that directive are not to apply to the transfer of an undertaking where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings 'instituted with a view to the liquidation of the assets of the transferor', is satisfied where the transfer of all or part of an undertaking is prepared, prior to the institution of insolvency proceedings with a view to the liquidation of the assets of the transferor and in the course of which that transfer is carried out, in the context of a pre-pack procedure intended to enable, during the insolvency proceedings, a liquidation of the undertaking as a going concern which satisfies to the greatest extent possible the claims of all the creditors and preserves employment as far as possible?

Must Article 5(1) of Directive 2001/23 be interpreted as meaning that the condition which it lays down, according to which Articles 3 and 4 of that directive do not apply to the transfer of an undertaking, business or part of an undertaking or business where the bankruptcy

proceedings or any analogous insolvency proceedings instituted in respect of the transferor 'are under the supervision of a competent public authority', is satisfied where the transfer of all or part of an undertaking is prepared in the context of a pre-pack procedure prior to the declaration of insolvency by a 'prospective insolvency administrator', under the supervision of a 'prospective supervisory judge' and the agreement concerning that transfer is concluded and performed after the declaration of insolvency with a view to the liquidation of the transferor's assets?

Ruling

Article 5(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses must be interpreted as meaning that the condition which it lays down, according to which Articles 3 and 4 of that directive are not to apply to the transfer of an undertaking where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings 'instituted with a view to the liquidation of the assets of the transferor', is satisfied where the transfer of all or part of an undertaking is prepared, prior to the institution of insolvency proceedings with a view to the liquidation of the assets of the transferor and in the course of which that transfer is carried out, in the context of a pre-pack procedure which has as its primary aim to enable, in the insolvency proceedings, a liquidation of the undertaking as a going concern which satisfies to the greatest extent possible the claims of all the creditors and preserves employment as far as possible, provided that that pre-pack procedure is governed by statutory or regulatory provisions.

Article 5(1) of Directive 2001/23 must be interpreted as meaning that the condition which it lays down, according to which Articles 3 and 4 of that directive do not apply to the transfer of an undertaking, business or part of an undertaking or business where the bankruptcy proceedings or any analogous insolvency proceedings instituted in respect of the transferor 'are under the supervision of a competent public authority', is satisfied where the transfer of all or part of an undertaking is prepared in the context of a pre-pack procedure prior to the declaration of insolvency by a 'prospective insolvency administrator', under the supervision of a 'prospective supervisory judge', and the agreement concerning that transfer is concluded and performed after the declaration of insolvency with a view to the liquidation of the transferor's assets, provided that that pre-pack procedure is governed by statutory or regulatory provisions.

Creator: European Court of Justice (ECJ)

Verdict at: 2022-04-28

Case number: C-237/20