



## Reports of Cases

**Case C-126/16**

**Federatie Nederlandse Vakvereniging and Others**  
**v**  
**Smallsteps BV**

(Request for a preliminary ruling  
from the Rechtbank Midden-Nederland)

(Reference for a preliminary ruling — Directive 2001/23/EC — Articles 3 to 5 — Transfers of undertakings — Safeguarding of employees' rights — Exceptions — Insolvency proceedings — 'Pre-pack' — Survival of an undertaking)

Summary — Judgment of the Court (Third Chamber), 22 June 2017

*Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 2001/23 — Scope — Transfer of an undertaking following a declaration of insolvency and in the context of a 'pre-pack' when that 'pre-pack' is prepared before the declaration of insolvency and put into effect immediately after that declaration — Included*

*(Council Directive 2001/23, Arts 3, 4 and 5(1))*

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, and in particular Article 5(1) thereof, must be interpreted as meaning that the protection of workers guaranteed by Articles 3 and 4 of that directive applies in a situation, such as that at issue in the main proceedings, in which the transfer of an undertaking takes place following a declaration of insolvency and in the context of a 'pre-pack' where that 'pre-pack' is prepared before the declaration of insolvency and put into effect immediately after that declaration, and, in particular, a court-appointed prospective insolvency administrator investigates the possibilities for continuation of the activities of that undertaking by a third party and prepares for acts which must be carried out shortly after the insolvency to enable such continuation and, moreover, it is irrelevant in that regard that the 'pre-pack' is also aimed at maximising the proceeds of the transfer for all the creditors of the undertaking in question.

In those circumstances, and subject to determination by the referring court, it must be held that since such a procedure is not ultimately aimed at liquidating the undertaking, the economic and social objectives it pursues are no explanation of, or justification for, the employees of the undertaking concerned losing the rights conferred on them by Directive 2001/23 when all or part of that undertaking is transferred (see, by analogy, judgment of 7 December 1995, *Spano and Others*, C-472/93, EU:C:1995:421, paragraphs 28 and 30).

(see paras 50, 59, operative part)