Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 5 June 2020 — Federatie Nederlandse Vakbeweging v Heiploeg Seafood International BV, Heitrans International BV

(Case C-237/20)

(2020/C 297/34)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Federatie Nederlandse Vakbeweging

Defendants: Heiploeg Seafood International BV, Heitrans International BV

Questions referred

1. Must Article 5(1) of Directive 2001/23/EC ([1]) be interpreted as meaning that the condition that 'bankruptcy proceedings or any analogous insolvency proceedings … have been instituted with a view to the liquidation of the assets of the transferor' has been met, where

   (i) the bankruptcy of the transferor is inevitable and the transferor is therefore effectively insolvent

   (ii) under Dutch law, the objective of the bankruptcy proceedings is to secure the highest possible return for the joint creditors by liquidating the debtor's assets, and

   (iii) in a so-called pre-pack prior to the declaration of bankruptcy, preparations are made for the transfer of (part of) the undertaking but it is only carried out after the declaration of bankruptcy, in terms of which

   (iv) prior to the declaration of bankruptcy, the prospective insolvency administrator appointed by the Rechtbank (District Court) must be guided by the interests of the joint creditors as well as by social interests such as the importance of job preservation, and the prospective Rechter-commissaris (supervisory judge), also appointed by the Rechtbank, must exercise a supervisory function in that regard,

   (v) the objective of the pre-pack is to enable, in the subsequent bankruptcy proceedings, a method of liquidation whereby (part of) the undertaking belonging to the assets of the transferor is sold as a going concern so as to obtain the highest possible return for the joint creditors and jobs are preserved as far as possible, and

   (vi) the structure of the procedure ensures that that objective is in fact the guiding principle?

2. Must Article 5(1) of the Directive be interpreted as meaning that the condition that 'the bankruptcy proceedings or any analogous insolvency proceedings are under the supervision of a competent public authority' is fulfilled if the transfer of (part of) the undertaking is prepared in a pre-pack prior to the declaration of bankruptcy and is carried out after the declaration of bankruptcy, and

   (i) is monitored, prior to the declaration of bankruptcy, by a prospective insolvency administrator and a prospective Rechter-commissaris who have been appointed by the Rechtbank but who do not have legal powers,

   (ii) under Dutch law, prior to the declaration of bankruptcy, the prospective insolvency administrator is obliged to be guided by the interests of the joint creditors and by other social interests, such as the preservation of jobs, and the prospective Rechter-commissaris is obliged to exercise a supervisory function in that regard,

   (iii) the duties of the prospective insolvency administrator and the prospective Rechter-commissaris do not differ from those of the insolvency administrator and the Rechter-commissaris in a bankruptcy,

(iv) the agreement on the basis of which the company is transferred and which has been prepared during a pre-pack is only concluded and executed after the bankruptcy has been declared,

(v) the Rechtbank, when declaring the bankruptcy, may proceed to appoint an insolvency administrator or a Rechter-commissaris other than the prospective insolvency administrator or the prospective Rechter-commissaris, and

(vi) the same requirements of objectivity and independence apply to the insolvency administrator and the Rechter-commissaris as apply to an insolvency administrator and a Rechter-commissaris in a bankruptcy that was not preceded by a pre-pack and, irrespective of the degree of their involvement prior to the declaration of bankruptcy, they are obliged by virtue of their statutory duty to assess whether the transfer of (part of) the undertaking prepared prior to the declaration of bankruptcy is in the interests of the joint creditors, and if they answer that question in the negative, to decide that such a transfer will not take place, while they are also always entitled to decide on other grounds, for example, because other social interests, such as the interest of employment, are opposed to it, that the transfer of (part of) the undertaking prepared prior to the declaration of bankruptcy will not take place?

([1]) 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 (OJ 2001 L 82, p. 16).

Request for a preliminary ruling from the Tribunal de première instance du Luxembourg (Belgium) lodged on 5 June 2020 — BJ v État belge

(Case C-241/20)

(2020/C 297/35)

Language of the case: French

Referring court

Tribunal de première instance du Luxembourg

Parties to the main proceedings

Applicant: BJ

Defendant: État belge

Questions referred

1. Does Article 45 TFEU preclude rules such as those at issue in the main proceedings — irrespective of whether or not they are laid down in a convention for the avoidance of double taxation — whereby a taxpayer forfeits, in the calculation of the income tax payable by him in his State of residence, part of the tax-free amount of that income and of his other personal tax advantages (such as a tax reduction for long-term savings, that is to say, premiums paid under an individual life insurance contract, and a tax reduction for costs incurred in energy savings) because, during the year in question, he also received income in another Member State which was taxed in that State?

2. If the answer to the first question is in the affirmative, does that answer remain in the affirmative if the income received by the taxpayer in his State of residence is neither quantitatively nor proportionately significant but that State is nevertheless in a position to grant him those tax advantages?

3. If the answer to the second question is in the affirmative, does that answer remain in the affirmative if, under a Convention for the avoidance of double taxation between the State of residence and the other State, the taxpayer has enjoyed in that other State, in respect of income taxable in that other State, personal tax advantages under the tax legislation of that other State but those tax advantages do not include certain tax advantages to which the taxpayer is in principle entitled in the State of residence?