

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer

(2001/C 154 E/08)

(Text with EEA relevance)

COM(2000) 832 final — 2001/0008(COD)

(Submitted by the Commission on 16 January 2001)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) The Community Charter of Fundamental Social Rights for Workers adopted on 9 December 1989 states, in point 7, that 'the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. ... The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies'.
- (2) Directive 80/987/EEC⁽¹⁾ aims to provide a minimum degree of protection for employees in the event of the insolvency of their employer. To this end, it obliges the Member States to establish a body which guarantees payment of the outstanding pay claims of the employees concerned.
- (3) Changes in insolvency law in the Member States and the development of the internal market mean that certain provisions of that Directive must be adapted.
- (4) Legal certainty and transparency also require clarification with regard to the scope and certain definitions of Directive 80/987/EEC. In particular the possible exclusions granted by way of exception to the Member States should be indicated in the scope of Directive 80/987/EEC and the Annex thereto should be deleted.

⁽¹⁾ OJ L 283, 28.10.1980, p. 23. Directive as last amended by the Act of Accession of Austria, Finland and Sweden.

(5) In order to ensure equitable protection for the employees concerned, the definition of the state of insolvency should be adapted to new legislative trends in the Member States and should also include within this concept insolvency proceedings other than liquidation. This amendment is also necessary to ensure consistency with Council Directive 77/187/EEC of 14 February 1977 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⁽²⁾.

(6) It should be ensured that the employees referred to in Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC⁽³⁾, Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP⁽⁴⁾ and Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship⁽⁵⁾ are not excluded from the scope of this Directive.

(7) In order to ensure legal certainty for employees in the event of insolvency of undertakings pursuing their activities in a number of Member States, and to strengthen workers' rights in line with the established case law of the Court of Justice of the European Communities, a provision should be introduced which expressly states which institution is responsible for meeting pay claims in these cases and to ensure that the relevant arrangements are properly implemented by making provision for collaboration between the competent administrative authorities in the Member States.

(8) In order to make it easier to identify insolvency proceedings in particular in situations with a cross-border dimension, provision should be made for the Member States to notify the Commission and the other Member States about insolvency proceedings giving rise to intervention by the guarantee institution.

(9) Directive 80/987/EEC should be amended accordingly.

⁽²⁾ OJ L 61, 5.3.1977, p. 26; Directive as last amended by Directive 98/50/EC (OJ L 201, 17.7.1998, p. 88).

⁽³⁾ OJ L 14, 20.1.1998, p. 9; Directive as last amended by Directive 98/23/EC (OJ L 131, 5.5.1998, p. 10).

⁽⁴⁾ OJ L 175, 10.7.1999, p. 43.

⁽⁵⁾ OJ L 206, 29.7.1991, p. 19.

- (10) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the amendment of certain provisions of Directive 80/987/EEC to take account of changes in the labour market, cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 80/987/EEC is amended as follows:

1. The title is replaced by the following:

‘Council Directive 80/987/EEC of 20 October 1980 on the protection of employees in the event of the insolvency of their employer.’

2. Sections I and II are replaced by the following:

‘SECTION I

Scope and definitions

Article 1

1. This Directive shall apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2(1).

2. Member States may, by way of exception, exclude claims by certain categories of employee from the scope of this Directive, by virtue of the existence of other forms of guarantee if it is established that these offer the persons concerned a degree of protection equivalent to that resulting from this Directive.

3. Member States may exclude from the scope of this Directive:

- (a) domestic servants employed by a natural person;
- (b) share-fishermen.

Article 2

1. For the purposes of this Directive, an employer shall be deemed to be in a state of insolvency where a request has been made for the opening of collective proceedings, as provided for under the laws, regulations and administrative provisions of a Member State, based on insolvency of the employer and involving the partial or total divestment of the employer's assets and the appointment of a liquidator and the authority which is competent pursuant to the said provisions has:

(a) either decided to open the proceedings,

(b) or established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.

2. This Directive is without prejudice to national law as regards the definition of the terms “employee”, “employer”, “pay”, “right conferring immediate entitlement” and “right conferring prospective entitlement”.

However, the Member States may not exclude from the scope of this Directive

- (a) part-time employees within the meaning of Directive 97/81/EC;
- (b) workers with a fixed-term contract within the meaning of Directive 1999/70/EC;
- (c) workers with a temporary employment relationship within the meaning of Article 1(2) of Directive 91/383/EEC.

3. For the purposes of this Directive, the establishment means any place of operations where the employer carries out a non-transitory economic activity with human means and goods.

SECTION II

Provisions concerning guarantee institutions

Article 3

Member States shall take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4, payment of employees' outstanding claims resulting from contracts of employment or employment relationships.

The claims taken over by the guarantee institution shall be the outstanding pay claims relating to a period prior to and/or, as applicable, after a given date determined by the Member States.

Article 4

1. Member States shall have the option to limit the liability of the guarantee institutions referred to in Article 3.

2. When Member States exercise the option referred to in paragraph 1, they shall specify the length of the period for which outstanding claims are to be met by the guarantee institution. However, this may not be shorter than a period covering the last three months for which pay is still outstanding.

Member States may place this minimum three-month period within a reference period of at least six months.

3. Member States may set a ceiling on payments to be made by the guarantee institution.

When Member States exercise this option, they shall inform the Commission of the methods used to set the ceiling.'

3. The following Section IIIa is inserted:

'SECTION IIIa

Provisions concerning transnational situations

Article 8a

1. When an undertaking with establishments in the territories of at least two Member States is in a state of insolvency within the meaning of Article 2(1) and the opening of insolvency proceedings has been requested in a Member State other than that in which the worker habitually works, the competent guarantee institution shall be that in the latter Member State.

2. The extent of employees' rights shall be determined by the law governing the competent guarantee institution.

3. Member States shall take the measures necessary to ensure that, in the cases referred to in paragraph 1 of the Article, decisions taken in the context of insolvency proceedings referred to in Article 2(1), which have been requested in another Member State, are taken into account when determining the employer's state of insolvency within the meaning of this Directive.

Article 8b

For the purposes of implementing Article 8a, Member States shall make provision for collaboration between their competent administrative authorities.'

4. The following Article 10a is inserted:

'Article 10a

Member States shall notify the Commission and the other Member States of national insolvency proceedings falling within the scope of this Directive, and of any amendments relating thereto.

The Commission shall publish these communications in the *Official Journal of the European Communities*.'

5. The Annex is deleted.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2003 at the latest. They shall forthwith inform the Commission thereof.

They shall apply the provisions referred to in the first to any subparagraph any state of insolvency of an employer occurring after the date of entry into force of those provisions.

When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.
