Protection of employees: insolvency of employer, transnational situations (amend. Directive 80/987 /EEC)

2001/0006(COD) - 11/04/2008 - Follow-up document

This Commission working document concerns the implementation of Article 8 and related provisions of Council Directive 80/987/EEC of 20 October 1980 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, concerning supplementary company or inter-company pension schemes outside the national statutory social security schemes.

To recall, Directive 80/987/EECprovides for protecting employees' rights in the event of the insolvency of their employer, in particular in order to guarantee payment of their outstanding claims (wages, pensions and other benefits). It was extended and adapted by Directive 2002/74/ECto cover insolvency proceedings other than liquidation also and to give legal certainty in the event of insolvency of transnational undertakings. Article 8 of Directive 80/987/EEC, which was not affected by the 2002 revision, concerns old-age benefits, including survivors' benefits, under supplementary company or inter-company pension schemes outside the national statutory social security schemes. As the number and importance of occupational pension schemes increase across the EU Member States, the associated economic risks are expected to become more visible and will raise problems from the perspective of protecting workers' and pensioners' rights. Employers' insolvency is one of those risks, and the Commission departments concerned have received a significant number of complaints and petitions, which not only suggest the growing practical importance of situations covered by Article 8 of Directive 80/987/EEC, but also reveal considerable differences of opinion on the specific obligations that it imposes on Member States.

The last general reports on transposition of Directive 80/987/EEC date back to 1995 for the EU-12and to 1996 for Austria, Finland and Sweden. No report exists on the Member States that have joined the EU since 2004. This report examines the current legal situation and measures implementing Article 8 of Directive 80/987/EEC in 25 Member States. A separate report on Bulgaria and Romania will be submitted in 2009.

This report provides an overview of implementation of Article 8 of Directive 80/987/EEC in the Member States. The following aspects are examined: what are the national measures transposing Article 8 in the Member State, what types of supplementary pension system exist in the Member State and, if there is the possibility of establishing a pension or guarantee fund, are the following criteria met: the pension fund should be separated from the employer's capital, it should create sufficient assets, it should ensure careful investments and will it be subject to independent supervision. Finally, this section will also examine whether there is sufficient protection against under-funding from the point of view of Directive 80/987 /EEC and whether or not contributions not paid by an insolvent employer are protected in the Member State.

The report concludes that most Member States have in place specific measures aimed at meeting the requirements of Article 8 of Directive 80/987/EEC. Although this working paper is descriptive and is not intended to assess the conformity of the measures in place with the obligations imposed by Article 8 of the Directive, it is clear that, in certain cases, issues can be raised as regards the extent to which some of these measures are sufficient to protect the interests of employees and retired persons in the event of insolvency of the employer. Further investigation is therefore needed in order to address the following issues:

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how to protect employees and retired persons against the risk of under-funding of the pension schemes, and to what extent;

- how to guarantee any unpaid contributions to the pension schemes;
- how to deal with cases where the supplementary pensions scheme is managed by the employer himself.

The Commission departments concerned intend to pursue this investigation by means of bilateral contacts with Member States, combined with a specific study to be conducted in cooperation with the main stakeholders. The Social Protection Committee, in particular, will be involved in such a study.