

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

2006/0220(COD) - 28/02/2011 - Follow-up document

This report from the Commission to the European Parliament and the Council concerns the implementation and application of certain provisions of Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer.

To recall, Directive 2008/94/EC codifies Council Directive 80/987/EEC as last amended by Directive 2002/74/EC aims at protecting employees in the event of the insolvency of their employer in particular in order to guarantee payment of their outstanding claims. To this end Member States have to establish a body which guarantees the payment of these claims.

Article 15 of the Directive requires the Commission to submit to the European Parliament and to the Council a report on the implementation and application in the Member States of Articles 1 to 4, 9 and 10, Article 11, second paragraph, Article 12, point (c), and Articles 13 and 14.

In preparation for this report, the Commission commissioned a study by independent experts, addressed a questionnaire to the Member States and to the European social partners and invited them to comment on the findings of the study.

The main conclusions of the report are the following:

(1) Overview of the cases: at the beginning of 2010 the Commission addressed a questionnaire to the Member States in order to collect data on the number of insolvencies treated by the national guarantee institutions, as well as the number of workers concerned and the sums paid out to them. In the period 2006-2009, the national guarantee institutions intervened in more than 420 000 cases of insolvency. In the same period, 3.4 million workers benefited from payments of the guarantee institutions on account of the insolvency of their employers. Moreover, EUR 17.7 billion have been paid out by the guarantee institutions to those workers. The average number of workers per case in the period 2006-2009 was eight, while the average amount paid to each worker by the national guarantee institutions was EUR 5 187.

The Commission notes the significant increase in the number of cases between 2008 and 2009 (+19 %) and, above all, the number of workers (+ 61%) and the money spent (+ 72 %), which can be attributed to the economic crisis. The average size of the companies becoming insolvent in 2009 also increased (from 7.4 workers per case in 2008 to 10.0 workers per case in 2009, i.e. an increase of 35 %) as well as the amount of unpaid remuneration (from EUR 5 059 per worker in 2008 to EUR 5 409 per worker in 2009, i.e. an increase of 7%).

While Germany is the Member State with the highest number of cases (146 673 in the period 2006-2009), France accounts for the highest number of workers (953 887 in the period 2006-2009) and the most money paid out (EUR 6.4 billion).

(2) Role and effectiveness of the Directive: more than 30 years after the adoption of the original Directive in 1980, the Commission considers that it continues to play a key role in providing a minimum degree of protection of workers' rights in the internal market. Member States have been obliged to set up guarantee institutions that intervene in insolvency situations to cover employees' outstanding claims. The

3.4 million workers who have benefited from the safety net provided by the intervention of the guarantee institutions in the last four years, mostly in times of economic crisis, prove its usefulness. The revision carried out in 2002 clarified the legal consequences of transnational situations and adapted the provisions to take into account changes in the insolvency laws in the Member States, thus enhancing legal certainty.

The above analysis shows that, in general, the provisions subject to the reporting obligation have been correctly implemented and applied. There are still, however, some areas of concern that the Commission intends to tackle with the appropriate means, including infringement proceedings where necessary. The Commission will continue to monitor the functioning of the Directive, taking into account further developments in the fields of labour law and insolvency law so as to ensure that its aim is adequately achieved.