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

2001/0006(COD) - 18/02/2002 - Council position

The Council unanimously adopted the common position. It accepted the same amendments as the Commission, with the exception of one amendment. This amendment aims to add the obligation of paying indemnities on termination of the employment relationship. The Council did not accept the amendment as it did not consider that this addition brought any extra element of protection insofar as the indemnities are employee's outstanding claims resulting from contracts of employment or employment relationships and are therefore already covered by Article 3 of the Directive. With regard to the amendments adopted by the European Parliament, accepted by the Commission and included in the common position, the following amendments have been incorporated in common position with a slight modification to the wording. These refer to: - a limitation on the possibility of exclusion from the scope to the exclusions already in existence in the Member States. In its new version, this paragraph provides that Member States may continue to exclude from the scope of this directive, if it is already customary to do so under national law; - extending the definition of insolvency proceedings leading to payments from the guarantee institution by adding after the word "liquidator" the phrase "or any other person exercising a similar function"; - introducing a provision to the effect "that Member States may extend the protection of employees to other insolvency situations on the basis of procedures than those which are provided under national law"; - providing that Member States may not make the exercise of rights arising out of the provision of the Directive subject to a minimum working period; - to eliminate the possibility of assigning a threshold to the payments made by the guarantee institution, has been accepted in spirit, i.e. the Council has accepted the inclusion of this potential restriction with a view to avoiding the adoption of a ceiling which would lead to a socially unacceptable level. The Council has retained the option of setting a ceiling, but it has recognised that this ceiling should not lead to an excessive reduction in the claims which would be incompatible with the Directive's objectives. Hence, it has inserted a provision according to which "this ceiling may not be lower than a threshold which is socially compatible with the social objective of the Directive". Another amendment was incorporated into the text of the common position without the new wording. The Council endorsed the Commission's proposal and reintroduced the old Article 5 of Directive 80/987/EEC in its 1980 version. Since this directive concerns the protection of workers, the funding method of the guarantee may be left to the Member States provided the cost of funding is not fully borne by the employees. In addition, new provisions introduced in the common position relate to, the insertion of a new sentence into Article 4(2), pursuant to which, under certain conditions, a temporary limitation of the pay guarantee to 8 weeks may be authorised. The new provision is the outcome of a long debate on the interplay of the three elements of contained in Article 4: the period giving rise to the payment of claims, the reference period and the payment ceiling. A consensus on this point was finallyachieved because all the elements are now taken into account in the new version of Article 4 and because the possibility of limiting payment to 8 weeks has been very precisely formulated. Finally, a new point has been added which authorises the Member States to refuse or to reduce the obligation to pay in cases in which a worker already owned an essential part of the firm and exercised a considerable influence on the firm's activities.