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

2001/0006(COD) - 23/09/2002 - Final act

PURPOSE : to amend 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.

LEGISLATIVE ACT : Directive 2002/74/EC 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.

CONTENT : the Council adopted this Directive which amends Directive 80/987/EEC.

It is important to move to protect workers in the context of the transnationality of undertakings,

especially during the present phase of restructuring and reorganisation of undertakings. Directive 80/987 /EEC 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.

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. This Directive aims, in actual fact, adapt and improve the existing Directive and takes account of the established case law of the Court of Justice, of changes in working life and of the development of insolvency legislation in the Member States.

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. In this context, Member States should, in order to determine the liability of the guarantee institution, be able to lay down that where an insolvency situation results in several insolvency proceedings, the situation be treated as a single insolvency procedure.

In order to ensure legal certainty for employees in the event of insolvency of undertakings pursuing their activities in a number of Member States, a provision is included in the text which expressly states which institution is responsible for meeting pay claims, the institution responsible being that in the Member State in whose territory the workers concerned work or habitually work.

When an undertaking with activities in the territories of at least 2 Member States is in a state of insolvency, the institution responsible for meeting employees' outstanding claims shall be that in

the Member State in whose territory they work or habitually work. The extent of employees' rights shall be determined by the law governing the competent guarantee institution.

The Directive also stipulates that Member States may not exclude from the scope of this Directive part-time employees, workers with a fixed-term contract or workers with a temporary employment relationship. In addition, they may not set a minimum duration for the contract of employment or the employment relationship in order for workers to qualify for claims under this Directive.

Member States 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 remuneration of the last three months of the employment relationship prior to and/or after the date determined by the Member States. Member States may include this minimum period of three months in a reference period with a duration of not less than six months.

Member States having a reference period of not less than 18 months may limit the period for which outstanding claims are met by the guarantee institution to eight weeks. In this case, those periods which are most favorable to the employee are used for the calculation of the minimum period.

Furthermore, Member States may set ceilings on the payments made by the guarantee institution. These ceilings must not fall below a level which is socially compatible with the social objective of this Directive. Member States shall inform the Commission of the methods used to set the ceiling.

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 the types of insolvency proceedings which give rise to intervention by the guarantee institution.

Implementation of this Directive shall not under any circumstances be sufficient grounds for a regression in relation to the current situation in the Member States and in relation to the general level of protection of workers in the area covered by it.

By 8 October 2010 at the latest, the Commission shall submit to the European Parliament and the Council a report on the implementation and application of this Directive in the Member States.

ENTRY INTO FORCE : 08/10/2002.

TRANSPOSITION : 08/10/2005.