Basic information

2001/0006(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Protection of employees: insolvency of employer, transnational situations (amend. Directive 80/987/EEC) **Subject** 4.15.12 Workers protection and rights, labour law	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
EMPL Employment and Social Affairs	BOUWMAN Theodorus J.J. (V/ALE)	15/02/2001

Former committee responsible	Former rapporteur	Appointed
EMPL Employment and Social Affairs	BOUWMAN Theodorus J.J. (V/ALE)	15/02/2001

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	OOMEN-RUIJTEN Ria (PPE-DE)	06/02/2001

Council of the European Union

Council configuration	Meetings	Date
Employment, Social Policy, Health and Consumer Affairs	2392	2001-12-03
Agriculture and Fisheries	2441	2002-06-27
Agriculture and Fisheries	2410	2002-02-18

European Commission

Commission DG	Commissioner
Employment, Social Affairs and Inclusion	

Key events

Date	Event	Reference	Summary

15/01/2001	Legislative proposal published	COM(2000)0832	Summary
31/01/2001	Committee referral announced in Parliament, 1st reading		
09/10/2001	Vote in committee, 1st reading		Summary
09/10/2001	Committee report tabled for plenary, 1st reading	A5-0348/2001	
15/11/2001	Debate in Parliament		
29/11/2001	Decision by Parliament, 1st reading	T5-0627/2001	Summary
18/02/2002	Council position published	14854/1/2001	Summary
28/02/2002	Committee referral announced in Parliament, 2nd reading		
23/04/2002	Vote in committee, 2nd reading		Summary
23/04/2002	Committee recommendation tabled for plenary, 2nd reading	A5-0143/2002	
13/05/2002	Debate in Parliament		
14/05/2002	Decision by Parliament, 2nd reading	T5-0219/2002	Summary
27/06/2002	Act approved by Council, 2nd reading		
23/09/2002	Final act signed		
23/09/2002	End of procedure in Parliament		
08/10/2002	Final act published in Official Journal		

Technical information

Procedure reference	2001/0006(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 137-p2
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/5/15538

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0348/2001	09/10/2001	
Text adopted by Parliament, 1st reading/single reading		T5-0627/2001 OJ C 153 27.06.2002, p. 0031-0243 E	29/11/2001	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0143/2002	23/04/2002	
		T5-0219/2002		

Text adopted by Parliament, 2nd reading		OJ C 180 31.07.2003, p. 0024-0122 E	14/05/2002	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	14854/1/2001 OJ C 119 22.05.2002, p. 0001 E	18/02/2002	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2000)0832 OJ C 154 29.05.2001, p. 0109 E	15/01/2001	Summary
Commission communication on Council's position	SEC(2002)0200	22/02/2002	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2002)0265	23/05/2002	Summary
Follow-up document	SEC(2008)0475	11/04/2008	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0718/2001 OJ C 221 07.08.2001, p. 0110	30/05/2001	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2002/0074
OJ L 270 08.10.2002, p. 0010-0013 Summary

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.

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.

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

2001/0006(COD) - 15/01/2001 - Legislative proposal

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. CONTENT : twenty years have elapsed since Directive 80/987/EEC was adopted by the Council, and the Commission believes that the time has come to take stock of the discussions and deliberations on the problems in enforcing some of its provisions, and to present the Council with a proposal for amendments to the Directive. The Commission takes the view that the structure of the basic Directive should be retained: its aim of offering protection, the mechanism introduced and the results achieved are beyond dispute. It appears, however, that over the years new conditions on the job market as well as restructuring and reorganisation within firms means that the Directive should be revised in relation to specific points on which it has got out of step. The main developments which have shown up gaps or shortcomings concern changes to insolvency law in the Member States, the dynamism of the internal market, the need for consistency with other Community directives on labour law adopted in the meantime, and the recent case law of the Court of justice. The following amendments are proposed: - precise indication of the scope of in Article 1 and 2, with the current Annex being removed; - new concept of insolvency in Article 2: definition based on that used in the Council Regulation on insolvency procedures; - simplification of Articles 3 and 4; - new Article 8a specifying the component guarantee institution in cases with a cross-border dimension; - new Article 8b providing for administrative collaboration between the Member States with a view to facilitating the implementation of Article 8a. On the whole, this proposal aims to strengthen employees' confidence and belief that adequate provision is being made for their protection as the internal market develops and competition between businesses becomes more intense. It is therefore likely to have beneficial effects on internal-market policy as well as on economic and social cohesion.

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

2001/0006(COD) - 14/05/2002 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a resolution on the protection of employees in the event of an insolvency, based on the report of Theodorus BOUWMAN (Greens/EFA, NL). Please refer to the document dated 23/04/02. Parliament added that Member States may set limitations to the responsibility of the guarantee institutions which should be compatible with the social objective of the directive and may take into account the different levels of claims.

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

2001/0006(COD) - 23/05/2002 - Commission opinion on Parliament's position at 2nd reading

The Commission can accept the six European Parliament amendments in full. These amendments will extend and improve the text of the common position. The amendments are: -a recital which authorises the Member States to set ceilings on the payments made by the guarantee institutions; -a report on the implementation of the new Directive; -the Directive does not prevent Member States from extending protection to de facto stopped payments on a permanent basis; -a clause specifying that, where provided for by national law, severance pay on termination of employment relationships is included in payment of employees' outstanding claims; -an option for Member States to limit payments, so that the ceilings which they may set need not necessarily be a single ceiling. These ceilings must not fall below a level which is compatible with the social objective of the directive;

-a report on the implementation and application of the Directive is to be established by the Commission within five years of the date indicated in Article 2 of the Directive.

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

2001/0006(COD) - 22/02/2002 - Commission communication on Council's position

The Commission considers that the amendments introduced into the text render the proposal more protective and that the common position perfectly matches the objectives pursued in revising the 1980 Directive. Hence the Commission accepts the text of common position in its entirety. The Commission anticipates rapid progress at the second reading with the view to the adoption of the Directive as soon as possible.

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

2001/0006(COD) - 29/11/2001 - Text adopted by Parliament, 1st reading/single reading

The European Parliament approved the report drafted by Mr Theodorus BOUWMAN (Greens/EFA, NL) on 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. Parliament adopted several amendments to the proposal. The Directive should cover employment relationships, such as subcontracts, quaesi self-employment - particularly former employees of the insolvent company, if there is clear evidence that the employee's situation is independent from the plaintiff for accounting purposes. Workers with a training contract, home workers and those regarded under national legislation as being in a similar category to paid workers, should be included explicitly in the scope of the directive. MEPs say that exceptions should be allowed only if there were already similar exceptions in the national legislation. Parliament also approved amendments on insolvency procedures in order to safeguard workers' rights. Member States should not be allowed to make exclusions on the grounds of threshold provisions (e.g. a specific minimum period of employment agreement). Parliament stressed the need to ensure that 'pay' covers all elements of remuneration (salary, overtime supplements, holidays and bonuses) over the previous six months and the corresponding social security contributions payable by the employer. It should also cover indemnities or compensation owed for terminating the contract of employment. MEPs did not want to introduce a ceiling on payments to be made by guarantee institutions in insolvency cases. They called for detailed rules for the organisation, financing and operation of these institutions.

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:

- 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.