WRITTEN QUESTION E-3994/00
by Helmuth Markov (GUE/NGL) to the Commission

(21 December 2000)

Subject: Transposition and interpretation of EU Directives by the Federal Republic of Germany

1. Does the Commission know whether and in what way the EU Directive 80/987 (employer insolvency) has been transposed into German national law?

2. Do the judgments of the European Court of Justice in Cases 262/88 and C-173/91 mean that operational dismissal without compensation is prohibited?

3. With regard to this point, how should the EU Directive be interpreted when the employer in question is the State?

4. Is it the State’s obligation to guarantee, firstly, the continued payment of wages and, secondly, the right to compensation?

5. If an employee receives compensation for operational dismissal and in another case an employee receives no compensation owing to bankruptcy, can the EU Directive be interpreted in such a way that this constitutes a breach of equal treatment?

6. Does the Commission know whether and in what way EU Directive 87/344 (legal expenses insurance) has been transposed into German national law?

7. Can Article 3(2)(c) be interpreted to mean that associations and other legal persons may assert the right to reimbursement of their costs vis-à-vis their insurance company if they are non-profit making organisations or groups of people?

8. Must the insurance company reimburse these organisations the costs incurred without any profit?

Answer given by Mrs Diamantopoulou on behalf of the Commission

(28 February 2001)

1. 3., 4. and 5. 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 (?) has been transposed into German law by volume III of the Social Security Code: Employment Promotion (Sozialgesetzbuch, Drittes Buch: Arbeitsförderung) and the Occupational Pension Schemes Improvement Act (BetAVG). According to the Commission’s report on the transposition of Directive 80/987/EEC in the Member States, there are several points on which German law contains provisions which are more favourable to employees than those contained in the Directive.

The Directive requires Member States to establish a body to ensure payment of employees’ outstanding claims relating to pay for a given period, if their employer becomes insolvent. The minimum guaranteed by the Community Directive is their pay for the last three months of the employment relationship. The Directive cannot apply to a State, as a State cannot be the subject of proceedings to satisfy collectively the claims of creditors.

2. The Court of Justice case law referred to by the Honourable Member relates only to application of the principle of equal pay for men and women, and more specifically the scope of Article 141 (ex Article 119) of the EC Treaty. This Article applies to all benefits under occupational social security schemes, in accordance with the Court of Justice’s judgment of 17 May 1990 in case C-262/88 (Douglas Harvey Barber v Guardian Royal Exchange Assurance Group) (?).
tion of the principle of equal treatment for men and women as regards access to employment, voca-
ional training and promotion, and working conditions (1), redundancy pay provided for by national legislation
must be granted without discrimination to both male and female employees in the same situation. This
obligation to comply with the principle of equal treatment also applies where the Member State is the
employer.

regulations and administrative provisions relating to legal expenses insurance (2), the German legislator has
chosen option (b) of Article 3 (2) for the management of claims in respect of legal expenses insurance
(VAG, Section 8a). Under this option, such claims are managed by an undertaking with separate legal
personality which does not manage claims in other insurance branches at the same time. This requirement
applies to any legal expenses insurance undertaking with its registered office on German territory.

Where the method laid down in Article 3 (2) (c) of Directive 87/344/EEC has to be applied by a legal
expenses insurance undertaking in accordance with the legislation of its Member State of origin, the
insured party may entrust the management of a claim to a lawyer of his or her choice. Where the method
laid down in Article 3 (2) (c) of the Directive is applied and the insured party entrusts the management of
a claim to a lawyer of his or her choice, the insurer must cover the ensuing costs. The insurance
undertaking may in some cases set a ceiling for reimbursement of the chosen lawyer's fees and expenses.
Whether the party taking out legal expenses insurance is a natural or legal person or a non-profit
organisation should not make any difference in this respect.

(2) ECR 1990 I-1889.

WRITTEN QUESTION P-3997/00
by Charles Tannock (PPE-DE) to the Commission
(13 December 2000)

Subject: The Charter of Fundamental Rights (legal status)

Does the Commission agree with Keith Vaz, the British Minister for Europe, that the Charter of
Fundamental Rights, if agreed to by representatives of the Member States at Nice but not incorporated
into the treaties, would constitute merely a declaratory document with the same legal status as 'The Beano'
(a well-known children's comic), and, if not, does the Commission concur with the view that if the Charter
were not to be incorporated into the European Treaties that the Court of Justice would be acting both
unwisely and outside its powers if it were to attempt to alter the balance of rights and duties within the
European Union or to restrict the freedom of individuals or companies or the prerogatives of sovereign
nation states on the basis of reference to the Charter if the Court had not expressly been authorised to do
so by international treaty?

Answer given by Mr Vitorino on behalf of the Commission
(23 January 2001)

The Charter of Fundamental Rights of the Union was proclaimed jointly by the President of the Council,
the President of Parliament and the President of the Commission in Nice on 7 December 2000 on the
occasion of the European Council meeting.