

COUNCIL DIRECTIVE

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

(80/987/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas it is necessary to provide for the protection of employees in the event of the insolvency of their employer, in particular in order to guarantee payment of their outstanding claims, while taking account of the need for balanced economic and social development in the Community;

Whereas differences still remain between the Member States as regards the extent of the protection of employees in this respect; whereas efforts should be directed towards reducing these differences, which can have a direct effect on the functioning of the common market;

Whereas the approximation of laws in this field should, therefore, be promoted while the improvement within the meaning of Article 117 of the Treaty is maintained;

Whereas as a result of the geographical situation and the present job structures in that area, the labour market in Greenland is fundamentally different from that of the other areas of the Community;

Whereas to the extent that the Hellenic Republic is to become a member of the European Economic Community on 1 January 1981 in accordance with the Act concerning the Conditions of Accession of the Hellenic Republic and the Adjustments to the Treaties, it is appropriate to stipulate in the Annex to the Directive under the heading 'Greece', those categories of employees whose claims may be excluded in accordance with Article 1 (2) of the Directive,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Scope and definitions

Article 1

1. This Directive shall apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2 (1).

2. Member States may, by way of exception, exclude claims by certain categories of employee from the scope of this Directive, by virtue of the special nature of the employee's contract of employment or employment relationship or of the existence of other forms of guarantee offering the employee protection equivalent to that resulting from this Directive.

The categories of employee referred to in the first subparagraph are listed in the Annex.

3. This Directive shall not apply to Greenland. This exception shall be re-examined in the event of any development in the job structures in that region.

Article 2

1. For the purposes of this Directive, an employer shall be deemed to be in a state of insolvency:

- (a) where a request has been made for the opening of proceedings involving the employer's assets, as provided for under the laws, regulations and administrative provisions of the Member State concerned, to satisfy collectively the claims of creditors and which make it possible to take into consideration the claims referred to in Article 1 (1), and
- (b) where the authority which is competent pursuant to the said laws, regulations and administrative provisions has:
 - either decided to open the proceedings,
 - or established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.

⁽¹⁾ OJ No C 135, 9. 6. 1978, p. 2.

⁽²⁾ OJ No C 39, 12. 2. 1979, p. 26.

⁽³⁾ OJ No C 105, 26. 4. 1979, p. 15.

2. This Directive is without prejudice to national law as regards the definition of the terms 'employee', 'employer', 'pay', 'right conferring immediate entitlement' and 'right conferring prospective entitlement'.

SECTION II

Provisions concerning guarantee institutions

Article 3

1. Member States shall take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4, payment of employees' outstanding claims resulting from contracts of employment or employment relationships and relating to pay for the period prior to a given date.

2. At the choice of the Member States, the date referred to in paragraph 1 shall be :

- either that of the onset of the employer's insolvency ;
- or that of the notice of dismissal issued to the employee concerned on account of the employer's insolvency ;
- or that of the onset of the employer's insolvency or that on which the contract of employment or the employment relationship with the employee concerned was discontinued on account of the employer's insolvency.

Article 4

1. Member States shall have the option to limit the liability of guarantee institutions, referred to in Article 3.

2. When Member States exercise the option referred to in paragraph 1, they shall :

- in the case referred to in Article 3 (2), first indent, ensure the payment of outstanding claims relating to pay for the last three months of the contract of employment or employment relationship occurring within a period of six months preceding the date of the onset of the employer's insolvency ;
- in the case referred to in Article 3 (2), second indent, ensure the payment of outstanding claims relating to pay for the last three months of the contract of employment or employment relationship preceding the date of the notice of dismissal issued to the employee on account of the employer's insolvency ;
- in the case referred to in Article 3 (2), third indent, ensure the payment of outstanding claims relating to pay for the last 18 months of the contract of

employment or employment relationship preceding the date of the onset of the employer's insolvency or the date on which the contract of employment or the employment relationship with the employee was discontinued on account of the employer's insolvency. In this case, Member States may limit the liability to make payment to pay corresponding to a period of eight weeks or to several shorter periods totalling eight weeks.

3. However, in order to avoid the payment of sums going beyond the social objective of this Directive, Member States may set a ceiling to the liability for employees' outstanding claims.

When Member States exercise this option, they shall inform the Commission of the methods used to set the ceiling.

Article 5

Member States shall lay down detailed rules for the organization, financing and operation of the guarantee institutions, complying with the following principles in particular :

- (a) the assets of the institutions shall be independent of the employers' operating capital and be inaccessible to proceedings for insolvency ;
- (b) employers shall contribute to financing, unless it is fully covered by the public authorities ;
- (c) the institutions' liabilities shall not depend on whether or not obligations to contribute to financing have been fulfilled.

SECTION III

Provisions concerning social security

Article 6

Member States may stipulate that Articles 3, 4 and 5 shall not apply to contributions due under national statutory social security schemes or under supplementary company or inter-company pension schemes outside the national statutory social security schemes.

Article 7

Member States shall take the measures necessary to ensure that non-payment of compulsory contributions due from the employer, before the onset of his insolvency, to their insurance institutions under national statutory social security schemes does not adversely affect employees' benefit entitlement in respect of these insurance institutions inasmuch as the employees' contributions were deducted at source from the remuneration paid.

Article 8

Member States shall ensure that the necessary measures are taken to protect the interests of employees and of persons having already left the employer's undertaking or business at the date of the onset of the employer's insolvency in respect of rights conferring on them immediate or prospective entitlement to old-age benefits, including survivors' benefits, under supplementary company or inter-company pension schemes outside the national statutory social security schemes.

SECTION IV

General and final provisions*Article 9*

This Directive shall not affect the option of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

Article 10

This Directive shall not affect the option of Member States :

- (a) to take the measures necessary to avoid abuses ;
- (b) to refuse or reduce the liability referred to in Article 3 or the guarantee obligation referred to in Article 7 if it appears that fulfilment of the obligation is unjustifiable because of the existence of special links between the employee and the

employer and of common interests resulting in collusion between them.

Article 11

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 36 months of its notification. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field governed by this Directive.

Article 12

Within 18 months of the expiry of the period of 36 months laid down in Article 11 (1), Member States shall forward all relevant information to the Commission in order to enable it to draw up a report on the application of this Directive for submission to the Council.

Article 13

This Directive is addressed to the Member States.

Done at Luxembourg, 20 October 1980.

For the Council

The President

J. SANTER

*ANNEX***Categories of employee whose claims may be excluded from the scope of this Directive, in accordance with Article 1 (2)****I. Employees having a contract of employment, or an employment relationship, of a special nature****A. GREECE**

The master and the members of a crew of a fishing vessel, if and to the extent that they are remunerated by a share in the profits or gross earnings of the vessel.

B. IRELAND

1. Out-workers (i.e. persons doing piece-work in their own homes), unless they have a written contract of employment.
2. Close relatives of the employer, without a written contract of employment, whose work has to do with a private dwelling or farm in, or on, which the employer and the close relatives reside.
3. Persons who normally work for less than 18 hours a week for one or more employers and who do not derive their basic means of subsistence from the pay for this work.
4. Persons engaged in share fishing on a seasonal, casual or part-time basis.
5. The spouse of the employer.

C. NETHERLANDS

Domestic servants employed by a natural person and working less than three days a week for the natural person in question.

D. UNITED KINGDOM

1. The master and the members of the crew of a fishing vessel who are remunerated by a share in the profits or gross earnings of the vessel.
2. The spouse of the employer.

II. Employees covered by other forms of guarantee**A. GREECE**

The crews of sea-going vessels.

B. IRELAND

1. Permanent and pensionable employees of local or other public authorities or statutory transport undertakings.
2. Pensionable teachers employed in the following: national schools, secondary schools, comprehensive schools, teachers' training colleges.
3. Permanent and pensionable employees of one of the voluntary hospitals funded by the Exchequer.

C. ITALY

1. Employees covered by benefits laid down by law guaranteeing that their wages will continue to be paid in the event that the undertaking is hit by an economic crisis.
2. The crews of sea-going vessels.

D. UNITED KINGDOM

1. Registered dock workers other than those wholly or mainly engaged in work which is not dock work.
 2. The crews of sea-going vessels.
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