

**Re:**

Reference for a preliminary ruling — Arbeidshof te Brussel — Interpretation of Articles 39 EC and 42 EC and of Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ 1998 L 209, p. 46) — Absence of action on the part of the Council — Employee working successively in the operating units of the same employer in several Member States (otherwise than in the context of postings) and subject on each occasion to the locally applicable supplementary pension scheme

**Operative part of the judgment**

1. Article 48 TFEU does not have any direct effect capable of being relied on by an individual against his private-sector employer in a dispute before national courts.
2. Article 45 TFEU must be interpreted as precluding, in the context of the mandatory application of a collective labour agreement:
  - for the determination of the period for the acquisition of definitive entitlements to supplementary pension benefits in a Member State, the non-inclusion of the years of service completed by a worker for the same employer in establishments of that employer situated in different Member States and pursuant to the same coordinating contract of employment;
  - a worker who has been transferred from an establishment of his employer in one Member State to an establishment of the same employer in another Member State from being regarded as having left the employer of his own free will.

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(<sup>1</sup>) OJ C 312, 19.12.2009.

**Judgment of the Court (Third Chamber) of 10 March 2011 (reference for a preliminary ruling from the Cour de cassation (France)) — Charles Defossez v Christian Wiart, in his capacity as liquidator of Sotimon SARL, Office national de l'emploi — fonds de fermeture d'entreprises, Centre de gestion et d'études de l'Association pour la gestion du régime de garantie des créances des salariés de Lille (CGEA)**

(Case C-477/09) (<sup>1</sup>)

**(Preliminary ruling — Directives 80/987/EEC and 2002/74/EC — Insolvency of the employer — Protection of employees — Payment of outstanding workers' claims — Determination of the competent guarantee institution — More favourable guarantee under national law — Possibility of relying on that law)**

(2011/C 139/09)

Language of the case: French

**Referring court**

Cour de cassation

**Parties to the main proceedings**

*Applicant:* Charles Defossez

*Defendants:* Christian Wiart, in his capacity as liquidator of Sotimon SARL, Office national de l'emploi — fonds de fermeture d'entreprises, Centre de gestion et d'études de l'Association pour la gestion du régime de garantie des créances des salariés de Lille (CGEA)

**Re:**

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Article 8a 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, as amended by Directive 2002/74/EC (OJ 2002 L 270, p. 10), in conjunction with Article 9 of that directive — Determination of the competent guarantee institution in respect of payment of workers' outstanding claims — Guarantee institution of the Member State on the territory of which the workers are habitually employed — Possibility for the employees to take advantage of the more favourable guarantee provided by the institution with which their employer is insured and to which it makes contributions under national law

**Operative part of the judgment**

Article 3 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, in the version thereof as it existed before it was amended by Directive 2002/74, is to be interpreted as meaning that, for the payment of the outstanding claims of workers having been habitually employed in a Member State other than that where their employer is established, where the employer was declared insolvent before 8 October 2005 and that employer is not established in that other Member State and fulfils its obligation to contribute to the financing of the guarantee institution in the Member State where it is established, it is that institution which is liable for the obligations defined by that article.

Directive 80/987 does not preclude a Member State's legislation from providing that employees may avail themselves of the salary guarantee from that Member State's institution in accordance with its law, either in addition to or instead of the guarantee offered by the institution designated as competent under that directive, provided however that that guarantee results in a greater level of worker protection.

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(<sup>1</sup>) OJ C 37, 13.2.2010.