JUDGMENT OF THE COURT (Fifth Chamber)
10 July 1997 *

In Joined Cases C-94/95 and C-95/95,

REFERENCES to the Court under Article 177 of the EC Treaty by the Pretura Circondariale, Bassano del Grappa (Italy), for a preliminary ruling in the proceedings pending before that court between

Danila Bonifaci and Others (C-94/95),

Wanda Berto and Others (C-95/95)

and

Istituto Nazionale della Previdenza Sociale (INPS)

on the interpretation and validity of Article 4(2) 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 (OJ 1980 L 283, p. 23) and on the interpretation of the principle of State liability for loss or damage caused to individuals by a breach of Community law attributable to the State,

* Language of the case: Italian.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L. Sevón, D. A. O. Edward, P. Jann and M. Wathelet (Rapporteur), Judges,

Advocate General: G. Cosmas,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the plaintiffs in the main proceedings, by C. Mondin, A Campesan and A. Dal Ferro, of the Vicenza Bar,

— the Istituto Nazionale della Previdenza Sociale (INPS), by R. Sarto and L. Cantarini, of the Rome Bar, and R. Di Iorio, of the Vicenza Bar,

— the Italian Government, by Professor U. Leanza, Head of the Legal Affairs Department at the Ministry of Foreign Affairs, acting as Agent, and by D. Del Gaizo, Avvocato dello Stato,

— the United Kingdom Government, by L. Nicoll, of the Treasury Solicitor's Department, acting as Agent, and by N. Green, Barrister,

— the Council of the European Union, by A Sacchettini, Director in the Legal Service, and S. Marquardt, of the Legal Service, acting as Agents,

— the Commission of the European Communities, by L. Gussetti, of its Legal Service, assisted by H. Kreppel, a national civil servant on secondment to that Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiffs in the main proceedings, represented by A. Campesan and A. Dal Ferro, the Italian Government, represented by D. Del Gaizo, the United Kingdom Government, represented by L. Nicoll, N. Green and S. Richards, Barristers, the Council, represented by A. Sacchettini, and the Commission, represented by L. Gussetti, M. Patakia, of its Legal Service, and E. Altieri, a national civil servant on secondment to that Service, acting as Agents, at the hearing on 3 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 23 January 1997,

gives the following

Judgment

1 By orders of 21 March 1995, received at the Court on 24 March 1995, the Pretura Circondariale (District Magistrate's Court), Bassano del Grappa, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions concerning the interpretation and validity of Article 4(2) 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 (OJ 1980 L 283, p. 23, hereinafter 'the Directive') and on the interpretation of the principle of State liability for loss or damage caused to individuals by a breach of Community law attributable to the State.

2 Those questions were raised in two sets of proceedings between, first, Danila Bonifaci and Others and, second, Wanda Berto and Others, on the one hand, and the Istituto Nazionale della Previdenza Sociale (hereinafter 'the INPS'), on the other, concerning reparation for the loss or damage sustained as a result of the belated transposition of the Directive.

3 The Directive is intended to guarantee to employees a minimum level of protection under Community law in the event of the insolvency of their employer, without prejudice to more favourable provisions existing in the Member States. To that end it provides in particular for specific guarantees of payment of outstanding claims to remuneration.

4 Under Article 11(1) of the Directive, the Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 23 October 1983.

5 The Italian Republic failed to fulfil that obligation, as the Court found in its judgment in Case 22/87 *Commission* v *Italy* [1989] ECR 143.

6 Having worked for a business established in Valdastico (Italy) which was declared insolvent on 5 April 1985, Danila Bonifaci and 33 other employees, who were owed an amount of more than LIT 253 million, proved as a debt in the insolvency of the undertaking, brought an action in April 1989 in the Pretura Circondariale, Bassano del Grappa, against the Italian Republic, claiming that, in view of its obligation to apply the Directive from 23 October 1983, it should be ordered to pay the amounts due to them as arrears of salary, at least for the last three months, or in the alternative to pay compensation.

7 At the same time Mr Francovich, an employee of a company which had only made sporadic payments on account of his wages and owed him an amount of approximately LIT 6 million, also claimed in proceedings before the Pretura Circondariale, Vicenza, to be entitled to obtain from the Italian State the guarantees provided for in the Directive or, in the alternative, compensation.

8 The above two national courts referred identical questions concerning the direct effect of the Directive and the right to reparation of loss or damage sustained in

connection with provisions of the Directive not having direct effect. In reply to those questions, the Court held, in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357 (hereinafter *'Francovich I'*), first, that the provisions of the Directive which determine the rights of employees must be interpreted as meaning that the persons concerned could not enforce those rights against the State in proceedings before the national courts where no implementing measures were adopted within the prescribed period and, secondly, that the Member State was required to make good loss or damage caused to individuals by failure to transpose the Directive.

9 On 27 January 1992, the Italian Government adopted Legislative Decree No 80 (GURI No 36, 13 February 1992, hereinafter 'the Legislative Decree'), pursuant to Article 48 of Enabling Law No 428 of 29 December 1990.

10 Article 2(7) of the Legislative Decree lays down the conditions governing reparation for the loss or damage caused by the belated transposition of the Directive, by reference to the terms laid down, pursuant to the Directive, for giving effect to the liability of the guarantee institutions in favour of employees who have suffered as a result of their employer's insolvency. That provision is worded as follows:

'For the purposes of determining any compensation to be paid to employees under the procedures referred to in Article 1(1) (namely, insolvency, composition with creditors, compulsory administrative liquidation and the extraordinary administration of large undertakings in periods of crisis) by way of reparation of the loss or damage resulting from the failure to transpose Directive 80/987/EEC within the prescribed period, the relevant time-limits, measures and procedures shall be those referred to in Article 2(1), (2) and (4). The action for reparation must be brought within a period of one year to run from the date of entry into force of this Decree.'

11 Article 2(1) of the Legislative Decree provides that the guarantee covers:

'wage claims, other than those relating to severance pay, appertaining to the last three months of the employment relationship falling within the 12 months preceding:

(a) the date of the measure initiating one of the procedures listed in Article 1(1).'

12 It appears from the orders for reference that the period of 12 months to which the latter provision refers is calculated retroactively from the date of the decision declaring the undertaking concerned insolvent.

13 Moreover, under Article 2(2) of the Legislative Decree:

'Payment effected by the (Guarantee) Fund pursuant to the first paragraph may not exceed a sum equal to three times the maximum amount of the special supplementary monthly pay net of pension and social security deductions.'

14 In the light of those rules, the INPS considered that the claims for reparation lodged pursuant to Article 2(7) of the Legislative Decree by Danila Bonifaci and others, whose employers had been declared insolvent after 23 October 1983 and before the entry into force of the Legislative Decree, had to be rejected on the ground that no period of employment in respect of which remuneration was owed fell within the reference period of 12 months preceding the declaration of insolvency to which Article 2(1) of the Legislative Decree refers, namely 5 April 1985.

15 The Pretura Circondariale, Bassano del Grappa, hearing the actions, finds that in transposing the Directive the Italian legislature exercised the option conferred on it by Article 4(1) of limiting the liability of the guarantee institutions and also availed itself of the same option for the purpose of evaluating the damages which could be claimed from the Italian State, as a result of belated transposition, by employees who were owed money by employers who had become insolvent before the national measures implementing the Directive had entered into force.

16 In that connection the relevant provisions of the Directive are set out below.

17 Under Article 2(1) of the Directive, an employer is deemed to be in a state of insolvency:

(a) where a request has been made for the opening of proceedings to satisfy collectively the claims of the employer's creditors and which make it possible to take into consideration the claims of employees against the employer; and

(b) where the competent authority 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.

18 Article 3(1) of the Directive provides that Member States are to take the measures necessary to ensure that guarantee institutions guarantee 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; under Article 3(2), that date is, at the choice of the Member States, to be either the date of the onset of the employer's insolvency, or that of the notice of dismissal issued on account of the employer's insolvency, or, alternatively, that of the onset of the employer's insolvency or that on which the contract of employment or the employment relationship was discontinued on account of the employer's insolvency.

19 However, under Article 4(2) of the Directive, payment may be limited to outstanding claims relating to pay for certain periods, according to the choice made by the Member States pursuant to Article 3(2), namely:

— 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;

— 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;

— 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 was discontinued on account of the employer's insolvency, in which 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.

20 Article 4(3) of the Directive further allows Member States to set a ceiling on payments in order to avoid the payment of sums going beyond the social objective of the Directive.

21 Under Article 9 of the Directive, the Member States may apply or introduce provisions which are more favourable to employees.

22 The national court points out that the limit on the liability of the guarantee institutions imposed, pursuant to Article 4(2) of the Directive, by Article 2(1) of the Legislative Decree, to which Article 2(7) of the latter also refers for the purpose of evaluating reparation for the loss or damage resulting from belated transposition of the Directive, may, in view of the length of the proceedings for satisfying collectively the claims of creditors in Italy, mean that payment of both the guaranteed claims and compensation is not ensured, through no fault of the employee.

23 In the light of the foregoing, the Pretura Circondariale, Bassano del Grappa, expressed doubts regarding the interpretation of Article 4(2) of the Directive and its validity, as well as doubts regarding the compatibility of the conditions governing compensation laid down by the Legislative Decree with paragraph 43 of the *Francovich I* judgment cited above, according to which the substantive and procedural conditions laid down by the national law of the Member States for reparation of loss or damage arising from a breach of Community law by a Member State must not be less favourable than those relating to similar domestic claims and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation.

24 Consequently, it referred the following questions to the Court for a preliminary ruling:

'1. Must Article 4(2) of Council Directive 80/987/EEC be interpreted as meaning that the Member States may opt to limit the liability of the guarantee institutions to pay remuneration to a particular period of time — in this case, 12 months — even in cases where the period of time in question was exceeded not because of inertia amounting to fault on the part of the employee concerned and, in particular, where the employee claims compensation for damage on account of the non-implementation or the belated implementation of the Directive itself?

2. In the event that Question 1 is answered in the affirmative, must Article 4(2) of the Directive be considered valid in the light of the principle of equal treatment and non-discrimination?

3. Must paragraph 43 of the judgment of the Court of Justice of 19 November 1991 in Joined Cases C-6/90 and C-9/90 *Francovich and Others* v *Italian Republic* be interpreted as meaning that the substantive and procedural conditions laid down by the national law of the Member States concerning claims for reparation of damage on account of failure to implement a Community directive must be the same as (or in any event not more unfavourable than) those laid down by the national legislature in belatedly implementing the Directive itself?'

Admissibility of the questions submitted

25 The INPS considers that the first two questions on the interpretation of Article 4(2) of the Directive are inadmissible in the absence of a relationship of 'objective need' between the interpretation requested and the solution to be found to the dispute by the national court. According to the INPS, that article, however interpreted, will play no part in the way the dispute in the main proceedings is decided, since it concerns only the scheme for protecting employees who have suffered as a result of their employer's insolvency which occurred after the transposition measure entered into force. As regards the third question, relating to the compatibility of the compensation scheme established by the Legislative Decree with *Francovich I*, cited above, the INPS considers that that is a matter for the national courts alone.

26 According to settled case-law, it is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the particular facts of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court (see, in particular, Case C-297/94 *Bruyère and Others* v *Belgian State* [1996] ECR I-1551,

paragraph 19). Only where it is quite obvious that the interpretation of Community law or examination of the validity of a Community rule sought by a national court bears no relation to the actual facts of the main action or its purpose may a reference for a preliminary ruling be held to be inadmissible (see, in particular, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 61).

27 In this case, it need merely be noted that the scheme established by the Legislative Decree to compensate employees for the belated transposition of the Directive refers expressly to the provisions of the Legislative Decree transposing the Directive into the Italian legal system, and that the national court considered it necessary to ask the Court to interpret Article 4(2) of the Directive in order to ascertain in particular whether the national legislature had correctly exercised the option conferred on it by that article.

28 Moreover, contrary to the INPS's contention, the third question requires the Court not to rule on the compatibility of the Legislative Decree with Community law, but rather essentially to provide the national court with a ruling on the interpretation of Community law which it needs in order to undertake that examination.

29 Consequently, the objections raised by the INPS regarding the admissibility of the questions referred for a preliminary ruling cannot be upheld. The questions submitted by the national court must therefore be answered.

The first part of the first question and the second question

30 In the first part of its first question the national court asks, essentially, whether Article 4(2) of the Directive must be interpreted as meaning that the Member

States retain the right to limit the liability of the guarantee institution when such a limitation would have the effect of depriving the employees concerned of the benefit of any guarantee on the ground that no period of employment fell within the reference period provided for in that provision, even though they were not responsible for that circumstance. If so, the Court is asked, in the second question, to assess the validity of Article 4(2) of the Directive in the light of the principle of equal treatment.

31 It appears from the orders for reference and the observations submitted to the Court that those questions were raised because Article 2(1) of the Legislative Decree implementing Articles 3 and 4(2) of the Directive takes the date of the decision opening the proceedings for satisfying collectively the claims of creditors as the date from which the reference period is to be calculated for the purposes of the provision of the guarantee.

32 It follows that in Italian law, if employees are to benefit from the guarantee provided for by the Directive as transposed into the Italian legal system, the periods of employment to which unpaid remuneration relates must fall within the period of 12 months preceding the date on which the proceedings for satisfying collectively the claims of creditors are opened.

33 In order to provide the national court with a useful answer, it must be ascertained at the outset whether the onset of the employer's insolvency within the meaning of Articles 3(2) and 4(2) of the Directive in fact corresponds to the date, referred to in Article 2(1) of the Directive, on which proceedings for satisfying collectively the claims of creditors are opened. It is with regard to the harmful consequences of such correspondence for employees, in view of the length of time that may elapse between the request to open proceedings for satisfying collectively the claims of creditors and the decision to open such proceedings, that the national court submitted the first question.

34 In Case C-479/93 *Francovich* v *Italian Republic* [1995] ECR I-3843 (hereinafter '*Francovich II*'), paragraph 18, the Court considered that it was clear from the terms of Article 2(1) that in order for an employer to be deemed to be in a state of insolvency, it is necessary, first, that the laws, regulations and administrative provisions of the Member State concerned provide for proceedings involving the employer's assets to satisfy collectively the claims of creditors; secondly, that employees' claims resulting from contracts of employment or employment relationships may be taken into consideration in such proceedings; thirdly, that a request has been made for the proceedings to be opened; and, fourthly, that the authority competent under the said national 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.

35 It therefore appears that, for the Directive to apply, two events must have occurred: first, a request for proceedings to be opened to satisfy collectively the claims of creditors must have been lodged with the competent national authority and, secondly, there must have been either a decision to open those proceedings, or a finding that the business has been closed down where the available assets are insufficient.

36 Although the occurrence of those two events referred to in Article 2(1) of the Directive is a condition precedent for the guarantee provided for in the Directive to come into play, nevertheless it cannot serve to identify the outstanding claims which are subject to the guarantee. That question is governed by Articles 3 and 4 of the Directive, which necessarily refer to a single date prior to which the reference periods specified in those articles must run.

37 Thus, Article 3 of the Directive offers Member States the option to choose from among several possibilities the date prior to which unpaid remuneration will be guaranteed. It is by taking account of the choice thus made by Member States that Article 4(2) of the Directive determines the outstanding claims which in any event will have to be covered by the guarantee obligation if, as in this case, a Member State has decided, pursuant to Article 4(1), to limit liability to a specific period.

38 In the event, the Italian State opted for the date of the onset of the employer's insolvency referred to in Article 3(2), first indent, and Article 4(2), first indent, and extended the reference period from six to twelve months.

39 It follows from the foregoing that although application of the system for protecting employees established by the Directive requires both a request to open proceedings to satisfy collectively the claims of creditors as laid down by the legislation of the Member State concerned and a formal decision opening such proceedings, determination of outstanding claims which must be guaranteed by the Directive is made in accordance with Articles 3(2), first indent, and 4(2) in relation to the onset of the employer's insolvency, which does not necessarily coincide with the date of that decision.

40 As is clear, moreover, from the circumstances of the case, the decision to open proceedings to satisfy collectively the claims of creditors or, more precisely, in this case the judgment declaring the firm insolvent, may be given long after the request to open the proceedings or the discontinuation of the periods of employment to which the unpaid remuneration relates, so that, if the onset of the employer's insolvency were subject to fulfilment of the conditions set out in Article 2(1) of the Directive, payment of that remuneration might, given the temporal limits referred to in Article 4(2), never be guaranteed by the Directive, for reasons wholly unconnected with the conduct of the employees. That last consequence would be contrary to the purpose of the Directive which is, as the first recital in its preamble makes clear, to provide a minimum level of Community protection for employees in the event of the insolvency of the employer.

41 The definition of the onset of the employer's insolvency cannot, nevertheless, be equated purely and simply, as the plaintiffs in the main proceedings maintain, with the date when payment of remuneration ceases. For the purpose of identifying the outstanding claims which must be guaranteed by the Directive, Articles 3 and 4(2)

refer to a period prior to the date of the onset of insolvency. If the argument of the plaintiffs in the main proceedings were accepted, the necessary conclusion would be that, prior to that date, the employer had not, by definition, ceased paying remuneration, with the result that Articles 3 and 4(2) would be rendered nugatory.

42 In view of both the social purpose of the Directive and the need to settle precisely the reference periods to which the Directive attaches legal effects, the term 'onset of the employer's insolvency' used in Articles 3(2) and 4(2) must be interpreted as designating the date of the request that proceedings to satisfy collectively the claims of creditors be opened, since the guarantee cannot be provided prior to a decision to open such proceedings or to a finding that the business has been definitively closed down where the assets are insufficient.

43 That definition of the term 'onset of the employer's insolvency' cannot, however, preclude the option available to the Member States, acknowledged in Article 9 of the Directive, of applying or introducing provisions that are more favourable to employees, in particular for the purpose of including unpaid remuneration during a period subsequent to the lodging of a request that proceedings to satisfy collectively the claims of creditors be opened (see also the judgment of today's date in Case C-373/95 *Maso and Others* [1997] ECR I-4051, paragraphs 46 to 52).

44 Since the onset of insolvency, within the meaning of Articles 3(2) and 4(2) of the Directive corresponds to the date of the request that proceedings to satisfy collectively the claims of creditors be opened rather than that of the decision to open such proceedings, in this case the date of the judgment declaring the firm insolvent, which was the date taken by the national court, the first part of the first question and the second question are devoid of purpose.

Second part of the first question and the third question

45 In the second part of its first question, the national court asks the Court whether, in making good loss or damage sustained by employees as a result of the belated transposition of the Directive, a Member State is entitled to apply retroactively to such employees belatedly adopted implementing measures, including the limitations provided for in Article 4(2) of the Directive. In its third question, which it is appropriate to examine in conjunction with the second part of the first question, the national court raises more generally the issue of the extent of the reparation payable by the Member State where a Directive is transposed belatedly.

46 In that connection, the Court has repeatedly held that the principle of State liability for loss or damage caused to individuals as a result of breaches of Community law for which the State can be held responsible is inherent in the system of the Treaty (*Francovich I*, cited above, paragraph 35; Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 31; Case C-392/93 *British Telecommunications* [1996] ECR I-1631, paragraph 38; and Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 24; Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94 *Dillenkofer and Others* [1996] ECR I-4845, paragraph 20).

47 With regard to the conditions under which a Member State is required to make good the loss or damage thus caused, it follows from the case-law cited above that these are three in number, namely that the rule of law infringed must have been intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties (*Brasserie du Pêcheur and Factortame*, paragraph 51; *British Telecommunications*, paragraph 39; *Hedley Lomas*, paragraph 25; and *Dillenkofer and Others*, paragraph 21). Those conditions are to be applied according to each type of situation (*Dillenkofer and Others*, paragraph 24).

48 As for the extent of the reparation payable by the Member State responsible for the breach of Community law, it follows from *Brasserie du Pêcheur and Factortame*, cited above, paragraph 82, that reparation must be commensurate with the loss or damage sustained, that is to say so as to ensure effective protection for the rights of the individuals harmed.

49 Lastly, it follows from consistent case-law since *Francovich I*, cited above, at paragraphs 41 to 43, that, subject to the foregoing, it is on the basis of the rules of national law on liability that the State must make reparation for the consequences of the loss or damage caused; further, the conditions for reparation of loss or damage laid down by national law must not be less favourable than those relating to similar domestic claims and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation.

50 In the event, the Court has already held in *Francovich I*, cited above, paragraph 46, that the Member State concerned was required to make good loss or damage caused to individuals by the failure to transpose the Directive within the prescribed period.

51 As regards the extent of the reparation for the loss or damage arising from such failure, it should be noted that retroactive application in full of the measures implementing the Directive to employees who have suffered as a result of belated transposition enables in principle the harmful consequences of the breach of Community law to be remedied, provided that the Directive has been properly transposed. Such application should have the effect of guaranteeing to those employees the rights from which they would have benefited if the Directive had been transposed within the prescribed period (see also the judgment of today's date in Case C-373/95 *Maso and Others*, cited above, paragraphs 39 to 42).

52 Retroactive application of the measures implementing the Directive necessarily implies that a limitation of the guarantee institution's liability may also be applied, in accordance with the terms of Article 4(2) of the Directive, where the Member State has in fact exercised that option when transposing the Directive into national law.

53 However, it is for the national court to ensure, in the proceedings before it, having regard to the principles set out in the Court's case-law, as recorded in paragraphs 46 to 49 of this judgment, that reparation of the loss or damage sustained by the beneficiaries is adequate. Retroactive and proper application in full of the measures implementing the Directive will suffice for that purpose unless the beneficiaries establish the existence of complementary loss sustained on account of the fact that they were unable to benefit at the appropriate time from the financial advantages guaranteed by the Directive with the result that such loss must also be made good.

54 The answer to the second part of the first question and the third question must therefore be that retroactive application in full of the measures implementing the Directive enables the harmful consequences of the belated transposition of that Directive to be remedied, provided that the Directive has been properly transposed. However, it is for the national court to ensure that reparation of the loss or damage sustained by the beneficiaries is adequate. Retroactive and proper application in full of the measures implementing the Directive will suffice for that purpose unless the beneficiaries establish the existence of complementary loss sustained on account of the fact that they were unable to benefit at the appropriate time from the financial advantages guaranteed by the Directive with the result that such loss must also be made good.

Costs

55 The costs incurred by the Italian and United Kingdom Governments, the Council of the European Union and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Pretura Circondariale, Bassano del Grappa, by orders of 21 March 1995, hereby rules:

Retroactive application in full of the measures implementing 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 enables the harmful consequences of the belated transposition of that Directive to be remedied, provided that the Directive has been properly transposed. However, it is for the national court to ensure that reparation of the loss or damage sustained by the beneficiaries is adequate. Retroactive and proper application in full of the measures implementing the Directive will suffice for that purpose unless the beneficiaries establish the existence of complementary loss sustained on account of the fact that they were unable to benefit at the appropriate time from the financial advantages guaranteed by the Directive with the result that such loss must also be made good.

Moitinho de Almeida Sevón Edward

Jann Wathelet

Delivered in open court in Luxembourg on 10 July 1997.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber