

COMMISSION OF THE EUROPEAN COMMUNITIES

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AMENDMENT TO THE PROPOSAL FOR A COUNCIL DIRECTIVE
ON THE APPROXIMATION OF THE LAWS OF THE
MEMBER STATES CONCERNING THE PROTECTION
OF EMPLOYEES IN THE EVENT OF THE
INSOLVENCY OF THEIR EMPLOYER

(presented by the Commission to the Council pursuant
to the second paragraph of Article 149 of the EEC Treaty)

INTRODUCTION

1. On April 1978 the Commission forwarded a proposal for a Council directive on the approximation of the laws of the Member States concerning the Protection of Employees in the Event of the Insolvency of their Employer (1).
2. The Economical and Social Committee delivered its opinion on this directive on 29 November 1978 (Doc. CES 1135/78).

The Committee approves the aim of the proposed directive, namely that workers should be better protected in the event of the insolvency of their employers, independently of existing national bankruptcy legislation. In the Committee's view insolvencies of employers have a particularly severe effect on workers, who lose not only their jobs but also frequently lose their entitlement to payment of outstanding wages, which they already earned.

The Committee considers that the financial protection for workers proposed in the draft directive is in the interests not only of workers' but also of employers and the economy as a whole.

The Committee also points out that in most Member States in which measures similar to those proposed have already been taken, funds are provided solely by the employers.

Moreover the Committee points out that Member States also have the possibility of financing measures out of official funds; that employers must contribute to the financing and, possibly employees may also contribute. The Commission has adopted this standpoint.

1) O.J. No C 135/2 of 9.6.1978

Furthermore the Committee believes that it should be left to Member States to choose the form in which employees can apply for their outstanding claims.

3. The European Parliament delivered its opinion on 17 January 1979.

Although the European Parliament supports the initiative of the Commission, it proposes a number of amendments, which aim at providing a comprehensive protection of employees in case of insolvency of their employer in the widest possible sense. Therefore the European Parliament has pronounced itself in favour of taking into account all claims of employees, it being indifferent whether they arise before the onset or after the employer's insolvency.

The Commission however considers that account should be taken of the fact that the proposed income safeguards necessitate considerable financial burdens, which must be kept within quantifiable limits. This applies in particular to those Member States which have up to now not applied a system of this kind.

Furthermore under Article 8 of the proposed directive Member States may at any time introduce or apply measures which are more favourable than those contained in the proposed directive.

For the same reasons, the Commission does not feel able to approve the amendments proposed in the abovementioned opinion of the European Parliament to Article 4 (a) (increase in the minimum period of liability from three to six months).

The proposed amendment concerning the beginning of Article 5 (cooperation between governments and representatives of both sides of industry in determining the guarantee institutions' structures financing and methods of operation) has been retained.

The European Parliament also pronounced itself in favour of the principle that the guarantee institutions should be financed solely by contributions from employers. The Commission however feels that each Member States should be free to make financing arrangements that are appropriate

to its own economic and socio-political system. In two Member States a financial contribution is also made by employees to the full satisfaction of all concerned.

The European Parliament proposed an adjunct which allows the institution to make advance payments from the onset of insolvency of the employer. This proposal has been taken in consideration in Article 5 c).

Finally the Resolution of the European Parliament proposes that the report on the application of the directive mentioned in Article 10 should also be submitted to Parliament. The Commission is in favour of this proposal and Article 10 is consequently amended.

AMENDMENTS TO THE PROPOSAL FOR A COUNCIL DIRECTIVE

concerning the protection of employees in the event of the insolvency of their employer

Article 3 of the proposal shall be replaced by the following text :

Member States shall adopt the necessary measures so that guarantee institutions ensure payment of the unfulfilled claims of employees arising before the onset of the employer's insolvency.

These claims comprise :

- a) unchanged
- b) unchanged

Article 5 of the proposal shall be replaced by the following text :

Member States shall, in cooperation with employers and labour representatives, adopt the measures necessary to ensure the setting up, financing and method of operation of the institutions are based on the following principles :

- a) unchanged
- b) Employers must contribute towards the financing of the institutions, the public authorities and, possibly, employees may also contribute.
- c) Payment shall be made on the application of the employee entitled to claim. The institutions may make an advance payment. Applications shall be admissible from the onset of insolvency and must be made within a period of six months thereafter.
- d) unchanged
- e) unchanged

Article 10 shall be replaced by the following text :

Within 18 months following the expiry of the 18-month period laid down in Article 9, 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 and the European Parliament.