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Report

drawn up on behalf of the Committee on Social Affairs, Employment and Education

on the proposal from the Commission of the European Communities to the Council (Doc. 107/78) for a 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

Rapporteur: Mr E. DINESEN

PE 54.777/fin.

English Edition

By letter of 27 April 1978 the President of the Council of the European Communities requested the European Parliament, to deliver an opinion on the propcsal from the Commission of the European Communities to the Council for a 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.

On 9 May 1978 the President of the European Parliament referred this proposal to the Committee on Social Affairs, Employment and Education as the committee responsible and to the Legal Affairs Committee for its opinion.

At its meeting of 16 May 1978 the Committee on Social Affairs, Employment and Education appointed Mr E. DINESEN rapporteur.

It considered this proposal at its meetings of 16 May, 21 September, 20 October, 3 November and 19 December 1978.

At its meeting of 19 December 1978 the committee unanimously adopted the motion for a resolution.

Present: Mr Van der Gun, chairman; Mrs Dunwoody, vice-chairman; Mr Dinesen, rapporteur; Mr Bertrand, Mr Bouquerel, Lord Murray of Gravesend, Mr Pistillo, Mr Power, Mr Schreiber, Mrs Squarcialupi, Mr Vanwelthoven and Mr Wawrzik.

The opinion of the Legal Affairs Committee is attached.

C O N T E N T S

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The Committee on Social Affairs, Employment and Education hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a 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

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council[1],

- having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 107/78),

- having regard to the report of the Committee on Social Affairs, Employment and Education and the opinion of the Legal Affairs Committee (Doc.552/78),

1. Welcomes the proposed directive as a significant step towards improved protection of employees in the event of their employer's insolvency;

2. Regrets however the delay in the submission of a proposal for the approximation of the laws of the Member States in this field, seeing that such laws have existed in several Member States for many years;

3. Deplores the fact that the different language versions of the present proposal for a directive and explanatory memorandum do not always agree, and therefore requests the Commission to carry out a thorough revision of the text in the different Community languages so as to avoid the risk of differences in the application of the same legal text in the various Community countries;

4. Regrets in particular that the Commission has adopted minimum rules as the basis for approximation, when Article 117 of the EEC Treaty clearly defines the Community's task as the harmonization of working and living conditions for workers 'while ... improvement is being maintained';

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[1] OJ No. C 135, 9.6.1978, p. 2

5. Considers it wholly unacceptable that the proposed directive should limit employees' claims to amounts due before the employer's insolvency, as it should include all claims by employees on the employer;

6. Considers it quite unreasonable that, by this proposal, the Commission should reduce the amounts legally due to the employee by limiting wage claims to a maximum of three months' wages or remuneration and other unsatisfied claims to the twelve months preceding the onset of insolvency;

7. Considers that under no circumstances can there be any question of asking employees to contribute to the financing of a guarantee fund to cover their legally justified claims against their employer;

8. Feels that the proposed institutions should be obliged to make payment in all cases in which the claim is notified, documented and outstanding;

9. Believes, therefore, that the Commission should submit a proposal protecting employees' incomes during the period from the onset of insolvency up to the actual payment by the institution, possibly by payment on account by the institutions envisaged;

10. Considers, moreover, that implementation of the directive at a time when the economic crisis, structural changes and the reorganization of working methods within industry and the craft trades have led to the closure of many businesses, is such an urgent matter that the deadlines by which the Member States must comply with the directives are far too long and should be reduced to the absolute minimum;

11. Considers, finally, that the directive should specify that the structure and eventual administration of these institutions should be decided in close cooperation with management and labour;

12. Requests the Commission, therefore, to incorporate the following amendments in its proposal pursuant to Article 149, second paragraph, of the EEC Treaty.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES (1)	AMENDED TEXT
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	
Preamble and recitals unchanged	
Article 1	Article 1
This Directive shall apply to claims arising from employment or training relationships against insolvent employers whose undertaking or business is situated within the territorial jurisdiction of the Treaty.	This Directive shall apply to claims arising <u>from a contract of employment</u> or from employment or training relationships against insolvent employers whose undertaking or business is situated within the territorial jurisdiction of the Treaty.
Article 2	Article 2
For the purposes of this Directive, an employer shall be deemed insolvent if:	For the purposes of this directive, an employer shall be deemed insolvent if:
(a) proceedings have been opened under the laws, regulations and administrative provisions of the Member States to satisfy jointly the claims of creditors, including creditors with claims under Article 1 of this Directive, from the assets of the employer, or	(a) unchanged
(b) an application for the opening of such proceedings has been rejected on the grounds of lack of assets, or	(b) unchanged
(c) his business has been closed down due to insolvency.	(c) <u>the</u> business <u>against which the employee has a claim</u> has been closed down due to <u>the employer's</u> insolvency.

(1) For complete text see OJ C 135, 9.6.1978, p. 2

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 3	Article 3
Member States shall set up institutions to satisfy the unfulfilled claims of employees arising before the onset of the employer's insolvency:	Member States shall adopt the measures necessary to ensure that guarantee institutions, hereinafter referred to as 'institutions', pay the unfulfilled claims of employees (8 words deleted):
a) to remunerations or to payments arising from a training relationship,	a) unchanged
b) to other cash or equivalent benefits on the part of the employer in connection with sickness, holidays or termination of employment and to gratuities, bonuses or indemnities.	b) unchanged
Article 4	Article 4
Member States may limit the liability of the guarantee institutions, but in no case to less than:	Member States may limit the liability of the guarantee institutions, but in no case to less than:
(a) that proportion of the unsatisfied claims under Article 3(a) corresponding to the remuneration or payments for three months;	(a) as regards (three words deleted) the unsatisfied claims under Article 3(a), payment of an amount corresponding to the remuneration or payments for six months; and
(b) those unsatisfied claims under Article 3(b) which have arisen during the twelve months preceding the onset of insolvency or have within that period formed the subject of execution which has not satisfied.	(b) as regards (one word deleted) unsatisfied claims under Article 3(b), payment of those claims which have arisen during the twelve months preceding the onset of insolvency or have within that period formed the subject of execution which has not satisfied.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 5	Article 5
Member States shall observe the following principles in determining the guarantee institutions' structure, financing and method of operation:	Member States shall, in cooperation with management and labour representatives, adopt the measures necessary to ensure that the (setting up), financing and method of operation of the institutions are based on the following principles:
(a) the assets of the guarantee institutions must be independent of the employers' business assets and inaccessible to insolvency proceedings;	(a) unchanged
(b) the institutions must not be financed solely by contributions from employees;	(b) the employer shall pay the necessary contributions to cover the expenditure of the fund, including administrative expenditure;
(c) payment shall be made on the application of the employee entitled to claim. A verbal application shall be sufficient. Applications shall be admissible from the onset of insolvency and and must be made within a period of six months thereafter;	(c) payment shall be made on the application of the employee entitled to claim. Claims shall be documented and outstanding. The institution may make part payment. Applications shall be admissible from the onset of insolvency and must be made within a period of six months thereafter;
(d) the guarantee institutions' liability towards an employee entitled to claim shall not depend on whether the employer concerned has fulfilled his obligations towards the institution;	(d) unchanged;
(e) Member States may only make payment by the institutions dependent on claims being either undisputed or substantiated.	(e) deleted;

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Articles 6-8 unchanged	
Article 9	Article 9
(1) Member States shall bring into force the laws, regulations and administrative provisions needed to comply with this directive within eighteen months of its notification and shall forthwith inform the Commission thereof.	(1) Member States shall bring into force the laws, regulations and administrative provisions needed to comply with this directive within twelve months of its notification and 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 covered by this directive.	(2) Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field covered by this directive. This information shall be communicated not later than six months before the date on which the national provisions are expected to enter into force.
Article 10	Article 10
Within eighteen months following the expiry of the eighteen-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.	Within twelve months following the expiry of the twelve-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
Article 11 unchanged	

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EXPLANATORY STATEMENT

I. INTRODUCTION

1. Rules already exist in all Member States to ensure some form of preferential position for employees' wage claims should their employer go bankrupt. In addition, rules exist in some Member States to protect employees against other forms of financial collapse. All these rules vary considerably.

2. It is generally recognized that a privileged position under bankruptcy law is by itself inadequate protection for employees' claims, for it is a fact that creditors are not, in many cases, covered by bankruptcy assets. Employees, who of all creditors are in the weakest position, are thus in a difficult situation, and efforts are therefore made to protect them by other means. Another reason for protecting employees by means other than privileges under bankruptcy law is that bankruptcy proceedings are often of long duration and employees therefore have to wait a long time before receiving compensation. Other cases may not actually lead to bankruptcy proceedings, yet the employee still cannot receive his normal wage because of the employer's insolvency.

3. Consequently, in Belgium, Germany, France, the Netherlands and Denmark, statutory schemes have been introduced whereby the employee is afforded a further possibility of having his claim met alongside that provided for under bankruptcy law. These schemes share certain essential features. They are based on the principles of social protection, with the necessary resources being derived from compulsory contributions by the employer.

4. Although the schemes are administered differently in the various countries, in practically all cases management and labour have considerable influence on how they are administered. All schemes go further than protecting employees merely against bankruptcy: they ensure that other forms of insolvency proceedings may also result in payments being made. There are quite large differences between the kinds of insolvency proceedings giving rise to payment in the individual countries, but they all have one feature in common, namely the fact that mere refusal by the employer to pay wages, where insolvency has not been established, is insufficient grounds for putting the various schemes into operation.

5. Furthermore, most of the schemes place a limit on the amount required to be paid out under the guarantees. The sole exception is France, where the payment of any outstanding sum can be claimed. In other countries, claims depend to a greater or lesser degree on the preferential position enjoyed under bankruptcy law. However, only under the Danish scheme is there any real connection between the said preferential position and the payment.

6. As the growing economic inter-dependence between Member States makes national rules inadequate, the Commission has submitted this proposed directive on the approximation of the laws of the Member States in this field.

7. The aim of the proposal is to have the individual Member States set up special institutions to settle the outstanding sums to which employees are entitled but which have not been paid out owing to the insolvency of their employers.

8. Finally, it should be emphasized that the proposal is formulated in such a way that Member States already possessed of suitable institutions may continue with them to a large extent, while Member States which do not yet have such institutions are given the chance to choose for themselves the form which best suits their individual countries.

II. EXAMINATION OF THE PROPOSAL

9. By way of introduction it is very much to be regretted that the different language versions of this important text do not always entirely agree. As far as the rapporteur has been able to establish, the French and Danish versions in particular contain major faults both in the explanatory memorandum and the proposal for a directive.

Although it is not the rapporteur's task to deal in detail with these misunderstandings and outright errors in translation, he would ask the Commission to carry out a thorough revision of the text in all six Community languages so as to avoid the risk of differences in the application of the same legal text in the various Community countries.

10. One expression will, however, be examined as it has an important bearing on a number of articles in the draft directive; this is the word 'insolvency'. The original German text makes consistent use throughout of the word 'Zahlungsunfähigkeit'.

The Danish text, on the other hand, operates with no less than four different expressions to indicate the onset of this particular set of circumstances. In Article 1, for example, the phrase is 'ikke er betalingsdygtige', Article 2 uses the expression 'manglende betalingsevne', Article 3 employs the words 'ude af stand til at opfylde sine forpligtelser', while Article 5 has adopted the term 'insolvenssag'.

The French text uses the expression 'cessation de paiements' (suspension of payments), while the English, Italian and Dutch versions all use the term 'insolvent' throughout.

To eliminate this linguistic confusion it is proposed that all the languages should stick to the one expression, i.e. 'insolvent'. The amendments to this effect should therefore be seen in this light.

11. Article 1 stipulates that the directive shall cover both employment and training relationships within undertakings on Community territory.

This means that all employees, whatever their nationality, are protected against the insolvency of their employer, also irrespective of his nationality. Employees sent to a non-member country by undertakings whose head office is in the Community are also covered.

The amended text of this article has been taken over from the opinion of the Legal Affairs Committee since it not only clarifies the wording of the article but also brings it closer into line with the Council Directive on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses[1].

12. Article 2 defines when an employer shall be deemed insolvent, thereby entitling the employee to submit his claims to the institutions referred to in Article 3.

Within the meaning of this directive, this occurs when bankruptcy proceedings are opened against the employer, when such proceedings cannot be opened owing to lack of assets or the business is closed down due to the insolvency of the employer.

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[1] Doc. 149/74

The Commission itself states that these are minimum provisions. Member States are therefore free to introduce any provisions which are more favourable to employees.

The rapporteur feels that the Commission itself should have based its proposal on those national rules which afford employees the greatest measure of protection, seeing that it is up to the Commission to be a front-runner when it draws up proposals for Community rules.

As regards the amended text of this article, here too the committee has endorsed the view of the Legal Affairs Committee recommending elimination of the tautological statement that 'an employer shall be deemed insolvent if ... (c) his business has been closed down due to insolvency.'

13. Article 3 defines the sums outstanding which the employee may claim from the institutions in question.

These include wages and sums accruing in connection with sickness, holidays or termination, as also gratuities, bonuses and indemnities.

The Commission itself points out that the concept of claims should be understood in the widest possible sense, and that it is immaterial whether the legal basis for these claims exists in the employment contract, a collective agreement or a statutory provision.

As regards the actual form to be taken by the institutions, the proposed directive leaves this to the individual Member States, subject to certain principles concerning their structure, financing and method of operation laid down in Article 5.

Article 3 also stipulates that employees may claim only sums outstanding before the employer's insolvency. This seems quite unreasonable since all claims by employees against the employer should be covered.

The proposed amendment to the text of the Commission proposal should be seen in this light. An amendment by the Legal Affairs Committee specifying that the institutions concerned are 'guarantee institutions' has also been incorporated, this likewise being considered an improvement on the Commission's text.

14. Article 4 empowers the Member States to limit the liability of the guarantee institutions vis-à-vis the employees.

However, this liability may not be less than the value of wages for a 3-month period and of other claims for the preceeding 12-month period.

The Commission itself considers that these limitations are 'reasonable'. The rapporteur cannot agree with this view, and as justification for his view would refer to the French system, under which payment of any amount due may be claimed. It is therefore regrettable once again to note that the Commission has not drawn up its proposal with reference to the most favourable legislation for employees, as there is now a risk that rights already acquired may be curtailed.

However, out of consideration for those Member States which do not yet operate a system of this nature, and as this is the first Community action in this field, the rapporteur is prepared to accept a reasonable time limit, six months' remuneration or payments being, in his view, suitable.

The remaining amendments to this article have been taken over from the opinion of the Legal Affairs Committee, as the committee felt that they made the text much clearer.

15. Article 5 concerns the institutions' structure, financing and method of operation.

This article states, inter alia, that 'the institutions must not be financed solely by contributions from employees'.

The rapporteur considers this provision wholly unacceptable, as under no circumstances can there be any question of requiring employees to contribute to the financing of a guarantee fund to cover their legally justified claims against their employer. The employers, and they alone, must pay the necessary contributions to cover expenditure under the fund, including administrative expenditure. The Commission's proposal is all the more surprising in view of the fact that it clearly states in the explanatory memorandum to the proposed directive that the guarantee schemes envisaged must not be an increased financial burden on employees, but should be financed solely by contributions from the employer.

Article 5 also stipulates that Member States may only make payment by the institutions 'dependent on claims being either undisputed or substantiated'.

The rapporteur feels that this provision is extremely dangerous, as the employer, by disputing a wage claim, may well place the employee in the very situation which this proposal is designed to protect him against, namely, being deprived for some time of his material means of existence.

On another point, however, the rapporteur does not believe that verbal applications should be accepted, and he therefore stipulates in his proposed amendment that claims must be documented and outstanding, whereas the provision that they must be undisputed should be omitted.

As the Commission proposal does not protect the employee's income from the time of the suspension of payment up to the actual payment by the institution, the rapporteur proposes that a provision be inserted in Article 5 enabling the institution to effect payment on account immediately the employer suspends payment.

16. The purpose of Article 6 is to ensure that the employee's entitlement to social security benefits is not affected by the employee's failure to pay contributions.

An important point to note is that the limitations permitted under Article 4 are not applicable here. The employee is thus entitled to all benefits.

The Commission justifies this provision on grounds of equity. The rapporteur fully agrees with the Commission here, and for this reason fails to see why the same consideration of equity cannot be adduced in favour of the employee with regard to claims to remuneration or to payments arising from a training relationship, the payable value of which is limited by the Commission - as mentioned above under Article 4 - to a maximum of three months.

17. Article 7 is designed to protect employees' pension rights in the event of the employer or other bodies failing or no longer being in a position to pay the necessary contributions over a given period.

The proposed amendment concerning the term 'insolvent' should be seen in the light of the above comments on the consistent use of the same expression to describe the same situation throughout the draft directive, and does not affect the English text. The reference to Article 2 applies only to the Danish text, which had omitted to specify that the definition of the word 'insolvent' was to be based on Article 2.

18. Article 8 affords Member States the opportunity to introduce provisions which are more favourable to employees than those proposed in the present directive.

Article 9 gives the Member States eighteen months to bring their legislation into line with the directive.

In view of the Commission's own observation that the present difficult economic situation has led to the closure of more and more undertakings, with consequent financial loss for employees, the rapporteur believes that there is such an urgent need to bring the proposed directive into force that the eighteen-month deadline is too long and should be reduced to the absolute minimum. As the Commission has fixed a twelve-month deadline in other proposed directives[1], the rapporteur suggests that this should also be the case for this proposal.

As regards the Member States' obligation to communicate to the Commission the text of the laws, regulations and administrative provisions which they adopt in this field, the rapporteur feels that a deadline should be fixed for this, too, and proposes that it should be 'no later than six months before the date fixed for the entry into force of the national provisions'.

19. Article 10 fixes a further eighteen-month deadline for forwarding to the Commission all relevant information on the application of the directive in the individual Member States.

The rapporteur feels that this deadline, too, should be reduced to twelve months, as the Commission itself proposed in the above-mentioned 1974 proposal for a directive.

On a final point, the Committee on Social Affairs, Employment and Education has reacted favourably to the request by the Legal Affairs Committee for an amendment requiring the Commission to forward the report on the application of the directive both to the Council and to the European Parliament, thereby enabling the latter to exercise its legitimate powers more effectively.

III. CONCLUSION

The Committee on Social Affairs, Employment and Education, while welcoming the Commission's proposal, feels prompted nevertheless to make a number of critical comments in addition to the specific amendments that it has proposed.

The critical comments mainly concern the formal aspects of the draft directive. The committee is astonished, for example, that the proposal did not see the light of day until 1978 in view of the fact that similar provisions have been in existence in certain Member States for several years.

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1 For example, see Article 13 of the proposal for a directive on harmonization of the legislation of Member States on the retention of the rights and advantages of employees in the case of mergers, takeovers and amalgamations (Doc. 149/74).

Furthermore, there are the different language versions which, for certain languages, deviate from the original text to such an extent that differences are to be feared in the application of an identical legal text in the various Community countries, unless a thorough postrevision is carried out.

As regards the amendments, the rapporteur has been guided by the need for the broadest possible protection for the employee in the event of the insolvency of the employer.

As this particular situation naturally cannot be blamed on the employee, it seems quite plain that he should neither suffer loss nor be required to make any kind of financial sacrifice in obtaining satisfaction for any claims to which he is legally entitled.

The committee therefore supported the rapporteur's proposal that all claims by theemployee should be covered, irrespective of whether they arose prior to or after the employers' insolvency. The only conditions that may be laid down are that the claims should be notified, documented and outstanding. A certain time limit needs to be accepted, however, for the sake of those countries that do not yet operate similar arrangements, and the committee therefore proposes, for an initial period, to limit liability to six months' pay or remuneration.

The other principal amendments are also motivated by concern for the employee. For example, the committee sharply rejects the idea that employees should in any way participate in the financing of the proposed guarantee fund but does, on the other hand, wish to see employee participation in the actual setting up and, afterwards, administration of the various guarantee schemes.

Finally, as regards the amendments shortening the various deadlines for the implementation of the directive, the Committee on Social Affairs, Employment and Education wishes to emphasize that this proposal concerns the hardship suffered by a steadily growing number of citizens and that not a second should therefore be wasted in relieving as rapidly and effectively as possible the distress caused by unemployment and loss of income.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr P.C. KRIEG

On 22 May 1978, the Legal Affairs Committee appointed Mr Krieg draftsman.

At its meetings of 16 and 17 October 1978 and 26 October 1978, the Legal Affairs Committee considered this opinion and adopted it unanimously at the latter meeting

Present: Sir Derek Walker-Smith, chairman; Mr Krieg, draftsman of the opinion; Mr Alber, Lord Ardwick, Mr Bangemann, Mr Forni, Mr de Gabay Fortman, Mr Luster, Mr Massullo and Lord Murray of Gravesend.

I. INTRODUCTION

1. This proposal for a directive should be considered as an instrument of the Communities' social policy (see Articles 117-128 of the EEC Treaty).

A useful comparison may be made here with the Council Directive of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses[1]; both these texts:

- express the same desire to improve the social protection of employees;

- have the same legal basis (Articles 100 and 117 of the EEC Treaty)[2] and the same legal form (a directive, pursuant to Article 189 of the EEC Treaty).

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2. The aim of the proposal for a directive is to improve the protection afforded to workers, which is at present inadequate and varies from one Member State to another, in recovering claims against an insolvent employer.

In such cases employees can encounter one or more of the following difficulties:

- insufficiency of assets,
- the length and complexity of bankruptcy procedures,
- a total lack of protection in cases where failure to pay does not result in bankruptcy proceedings.

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[1] Parliament delivered a favourable opinion (OJ No C 95, 28 April 1975, page 17) on this proposal, on the basis of the report by Mr YEATS (Doc. 385/74/rev.)

[2] The text of these articles is given as an annex.

3. The Commission has drawn up a comparative study of the current situation in the various Member States, and it is to be congratulated on this; this study was distributed to the Members of the Legal Affairs Committee under Notice to Members No 10/78 (PE 54.075).

II. LEGAL BASIS OF THE PROPOSAL FOR A DIRECTIVE

4. It is in the light of this study that the Commission has tabled the proposal before our committee; since the purpose is the approximation of legislation, as in the case of the safeguarding of employees' rights in the event of mergers, the Commission has used the form of a proposal for a directive, pursuant to Article 100 of the EEC Treaty, which is mentioned specifically in the preamble to the proposal.

5. Furthermore, the Community's powers to take action in this field result from a joint reading of Articles 100 and 117 of the EEC Treaty[1]; the aim of the Commission proposal is to bring about a levelling-up in the living and working conditions of workers, the method used being the approximation of the laws, regulations and administrative provisions of the Member States.

6. This is a levelling-up and is not intended to hold down the level of protection afforded by the social policies of the Member States to that set out in the directive; this is made clear in the general provision contained in Article 8 of the proposal; the provision allowing Member States to limit the guarantee on employees' claims against an insolvent employer, subject to a two-fold minimum, is based on the same consideration (see Article 4).[2]

7. The committee considered whether it would be preferable for Article 117 of the EEC Treaty, mentioned in the last recital, to be mentioned together with Article 100 at the opening of the preamble.

The Legal Affairs Committee concluded that Article 117 of the EEC Treaty, which defines the aims of social policy, does not confer any specific powers on Community Institutions for the attainment of these objectives, but relies on the procedures laid down in the Treaty; consequently, the Legal Affairs Committee does not need to propose any amendment in this connection; it suggests, nevertheless, that the committee responsible should stress in its report the fundamental role played by the principles embodied in Article 117 in the structure and legitimization of this proposal for a directive.

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[1] See Annex, page 15

[2] It cannot be overemphasized that this is an option granted to Member States with the proviso that they must observe the guarantee minima as laid down in Article 4(a) and (b)

III. PROPOSED AMENDMENTS

8. The explanatory memorandum accompanying the Commission's proposal provides a clear explanation of the purpose of the various articles.

Nevertheless, a number of these articles could be improved by the amendments proposed and commented on below.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 1	Article 1
This Directive shall apply to claims arising from employment or training relationships against insolvent employers whose undertaking or business is situated within the territorial jurisdiction of the Treaty.	This Directive shall apply to claims arising from a contract of employment or **from employment or training relationships against insolvent employers whose undertaking or business is situated within the territorial jurisdiction of the Treaty.**

Comments:

General:

This article sets out a rule of Community public law: it makes the directive applicable independently of the nationality of the employer or of the employee (the territorial jurisdiction of the Treaty is defined in Article 227 of the EEC Treaty).

The Court of Justice, if requested to give a preliminary ruling (Article 177 of the EEC Treaty), will have to provide a Community definition of the concepts of employment and training relationships, basing its decision on consideration of the laws of the Member States; the Commission's explanatory memorandum is ambiguous on this point; the material scope of the directive should not vary from one Member State to another on the basis of specifically national legal concepts.

The Legal Affairs Committee, having considered the explanations by the Commission's representative, is of the opinion that the scope of the directive rightly includes not only claims arising from employment but also those arising from training relationships, given the economic dependence of the claimant on the employer.

Remarks on proposed amendments:

- from a contract of employment or an employment relationship: this phrase is taken over from the directive of 14 February 1977, mentioned in paragraph 1 above;

- in addition the rapporteur has proposed a number of drafting amendments to the French text bringing it into line with the terminology of the directive of 14 February 1977. A further amendment, not affecting the English text, relating to the term 'insolvent' is proposed in connection with Article 2.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 2	Article 2
For the purposes of this Directive, an employer shall be deemed insolvent if:	For the purposes of this directive, an employer shall be deemed insolvent if:
(a) proceedings have been opened under the laws, regulations and administrative provisions of the Member States to satisfy jointly the claims of creditors, including creditors with claims under Article 1 of this Directive, from the assets of the employer, or	(a) unchanged
(b) an application for the opening of such proceedings has been rejected on the grounds of lack of assets, or	(b) unchanged
(c) his business has been closed down due to insolvency.	(c) the business against which the employee has a claim has been closed down due to the employer's insolvency.

Remarks:

(i) The rapporteur has proposed an amendment to the French term for 'insolvent' ('en état de cessation de paiements') not affecting the English text.

Should any doubts arise on the interpretation for the purposes of this directive of the term 'insolvent', it will be for the Court of Justice of the European Communities to give a ruling concerning its interpretation pursuant to Article 177 of the EEC Treaty; the present text - at least in some languages - is tautological: the text reads as follows:
'for the purposes of this directive, an employer shall be deemed insolvent if ... (c) his business has been closed down due to insolvency.'

(ii) As regards letter (c) the rapporteur has proposed an amendment to the French text to bring it into line with the other language

versions ('établissement' for 'entreprise', English: 'business'); in addition the right of employees might be better safeguarded by a more precise wording as follows: 'if ... the business against which the employee has a claim has been closed down due to the employer's insolvency'; in fact, the Court of Justice has already given a ruling on the interpretation of the phrase 'establissement dont relève le travailleur' (here translated as 'the business against which the employee has a claim') which occurs in Article 13(a) of Regulation No. 3 (Social Security for migrant workers, OJ 16.12.1958 p. 561), see judgement of 5 December 1967, 1967 ECR p.345.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
Article 3	Article 3
Member States shall set up institutions to satisfy the unfulfilled claims of employees arising before the onset of the employer's insolvency:	Member States shall adopt the measures necessary to ensure that guarantee institutions, hereinafter referred to as 'institutions', pay the unfulfilled claims of employees arising before the onset of the employer's insolvency:
(a) to remunerations or to payments arising from a training relationship,	(a) unchanged
(b) to other cash or equivalent benefits on the part of the employer in connection with sickness, holidays or termination of employment and to gratuities, bonuses or indemnities.	(b) unchanged

Remarks:

There are already institutions with responsibilities of this kind (guarantee) in six of the nine Member States (exceptions: Luxembourg, Ireland and Italy); the proposed amendment takes this situation into account and consequently leaves the Member States free, where appropriate, to entrust these duties to existing organizations.

If this amendment is adopted, the fourth recital will have to be amended and might be worded as follows:

'Whereas this situation requires that in each Member State there should be institutions to safeguard the claims of the employees concerned'

Article 4	Article 4
Member States may limit the liability of the guarantee institutions, but in no case to less than:	Member States may limit the liability of the (one word deleted) institutions, but in no case to less than:
(a) that proportion of the unsatisfied claims under Article 3(a) corresponding to the remuneration or payments for three months;	(a) as regards the unsatisfied claims under Article 3(a), payment of an amount corresponding to the remuneration or payments for three months; and

(b) those unsatisfied claims under Article 3(b) which have arisen during the twelve months preceding the onset of insolvency or have within that period formed the subject of execution which has not satisfied.	(b) as regards unsatisfied claims under Article 3(b), payment of those claims which have arisen during the twelve months preceding the onset of insolvency or have within that period formed the subject of execution which has not satisfied.

Remarks:

The liability of the (guarantee) institutions relates to the claims referred to in Article 3.

This article allows Member States to limit that liability; for each of the claims defined in Article 3, paragraphs (a) and (b) of this article fix a 'floor' for the limits allowed by this directive. Naturally, each of these limits operates independently of the other.

The proposed amendment is aimed at making this point clearer.

Article 5	Article 5
Member States shall observe the following principles in determining the guarantee institutions' structure, financing and method of operation:	Member States shall adopt the measures necessary to ensure that the (setting up), financing and method of operation of the institutions are based on the following principles:
(a) the assets of the guarantee institutions must be independent of the employer's business assets and inaccessible to insolvency proceedings;	(a) unchanged
(b) the institutions must not be financed solely by contributions from employees;	(b) unchanged
(c) payment shall be made on the application of the employee entitled to claim. A verbal* application shall be sufficient. Applications shall be admissible from the onset of insolvency and must be made within a period of six months thereafter;	(c) payment shall be made on the application of the employee entitled to claim. (delete the second sentence) Applications from employees shall be admissible on pain of distraint within a period of six months from the onset of insolvency;

* English-speaking members of the committee noted that the term 'oral application' would be more appropriate.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDED TEXT
(d) the guarantee institution's liability towards an employee entitled to claim shall not depend on whether the employer concerned has fulfilled his obligations towards the institution;	(d) the (one word deleted) institution's liability (six words deleted) shall not depend on whether the employer concerned has fulfilled his obligations towards the institution;
(e) Member States may only make payment by the institutions dependent on claims being either undisputed or substantiated.	(e) if claims are either undisputed or substantiated, payment may not be made dependent on any other condition.

Remarks:

(i) Two amendments might be made to the introduction to this article:

- the use of the standard formula in proposals for directives: 'Member States shall adopt the measures necessary to...';
- omission of the reference to 'structure'; this word is translated differently in the various language versions; moreover, the reference seems superfluous, since (a) to (e) of Article 5 appear to concern solely the financing and method of operation of these institutions.

(ii) Drafting amendment, not affecting the English text, relating to the word 'insolvency', as defined in Article 2.

(iii) As regards (c), in addition to the drafting amendment to the last sentence, it is proposed that the first two sentences be deleted; for although the aim of facilitating as much as possible the employee's application to the guarantee institution is a laudable one, it is unlikely that legal security will be enhanced by allowing the application to be made verbally; what of the case of applications made verbally within the six-month deadline but not satisfied within that period?

(iv) In letter (d), the words 'towards an employee entitled to claim' appear superfluous; it is proposed that they be deleted.

(v) In letter (e), the reason for the proposed amendment is as follows: it is clear that the guarantee institutions could not pay a claim which was contested or open to dispute, or which had not been substantiated; once the existence of a claim or claims is established, there is no reason to make payment subject to any conditions other than the limits fixed pursuant to Article 4 of the directive.

Articles 6 and 7

In these two articles the rapporteur has proposed an amendment, not affecting the English text, concerning the term 'insolvency', as defined in Article 2.

Article 8

This article calls for no special comment by the Legal Affairs Committee; the justification for its provisions has already been given in paragraph 6 above.

Article 9 unchanged

Article 10

To allow Parliament to fulfil its duties of debating and supervising the application of this directive, it would be helpful if the Commission also submitted to Parliament the report which it has to draw up for the Council on the application of the directive; the Legal Affairs Committee therefore recommends that the committee responsible amend this article accordingly.

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IV. CONCLUSIONS

The Legal Affairs Committee

(a) recommends that the Committee on Social Affairs, Employment and Education adopt the amendments proposed in Section III of this opinion,

(b) subject to those amendments, and within its own terms of reference, approves the proposal for a directive.

(c) desires that the Commission be requested again to ensure that the different language versions of its proposals are standardized as far as possible, with the aim not only of facilitating the task of the European Parliament as the control body, but also, and above all, of avoiding the risk of differences in the implementation of the same legal text in the various Community countries[1].

[1] Speech by Mr SANTER when submitting the opinion drawn up by him on behalf of the Legal Affairs Committee on the proposal for a directive on the harmonization of provisions laid down by law; regulation or administrative action relating to customs debt (Debates of the European Parliament, Official Journal/Annex No. 206, September 1976, p.216)

ANNEX

Article 100

The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.

The Assembly and the Economic and Social Committee shall be consulted in the case of directives whose implementation would, in one or more Member States, involve the amendment of legislation.

Article 117

Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained.

They believe that such a development will ensue not only from the functioning of the common market, which will favour the harmonization of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action.