

S/OR/aj/5/2000/insolv1e

*Revision of directive 80/987 on protection of employees  
in the event of employer insolvency*

**UNICE COMMENTS ON THE  
SECOND CONSULTATION OF THE SOCIAL PARTNERS**

31 July 2000

UNICE notes the fact that, despite the reservations and negative views expressed by employer organisations, the Commission intends to pursue its initiative to revise directive 80/987/EEC on protection of employees in the event of employer insolvency.

## **GENERAL COMMENTS**

### **Justification for the initiative**

1. One of the arguments advanced by UNICE in its response to the first consultation<sup>1</sup> was the unconvincing nature of the justification for a legislative initiative in this area. In this second stage, the Commission announces, in the penultimate paragraph of point 2 on its communication, that it intends to respond to the questions raised by the social partners on this point. Yet, after reading this document, UNICE believes that the few elements of additional information given by the Commission are explanatory but do not provide convincing justification for this initiative.

### **Expert group**

2. In its first response, UNICE also asked questions about the work of the expert group, which the Commission referred to several times. It can only reiterate its question, and is concerned seem that the Commission's intentions seem to depend more on an expert group than on the contributions of the social partners.

### **Documentation**

3. In the framework of consultations of the social partners, UNICE has repeatedly asked that, when reference is made to documents deemed important by the Commission in construction of its rationale, such documents should be attached to the consultation document. This is particularly the case when, as in point 3.2, the Commission refers, without any further explanation, to an unofficial document of which the social partners have no knowledge.

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<sup>1</sup> See letter dated 10 April 2000 to Mrs Odile Quintin, Deputy Director-General at DG Empl

## DETAILED COMMENTS

### *Crossborder dimension*

4. UNICE maintains its previous comments and believes that the question raised by the Commission has a satisfactory solution in ECJ decisions, that have to be applied in Member States. It does not consider it necessary to codify jurisprudence in this area.
5. However, the question posed by UNICE in its first response, concerning crossborder aspects of recovery procedures, is not dealt with satisfactorily by the new regulation on insolvency procedures adopted by the Council on 29 May 2000<sup>2</sup>. Thus, UNICE considers that, if the Commission intends to revise directive 80/987/EEC, it should go beyond simple codification of jurisprudence and enshrine the principle whereby the institution making the payments, if they are advances, must be able to recover the sums in question in the framework of insolvency procedures instigated in another Member State.

### *Concept of insolvency*

6. The questions linked to definition of insolvency are extremely complex insofar as they are closely linked to national systems which themselves differ widely. In this regard, the arguments put forward by the Commission are insufficiently precise to allow a proper evaluation of their effects. Hence, UNICE feels unable to take a stance and will reserve its comments until the Commission has submitted wording proposals.

### *Coherence with other EU directives*

7. UNICE believes that coherence with directive 77/187/EEC, as amended by directive 98/50/EC, on transfers of undertakings is secured by the reference to directive 80/987/EC in directive 98/50/EC. Accordingly, modification of directive 80/987/EEC on this point is not necessary.
8. Regarding the scope of the directive, UNICE considers that both part-time employees and employees on fixed-term contracts are covered by the principles established by 80/987/EEC, without prejudice to the application of national specific provisions, due to the peculiarities of their situation. The situation of temporary workers is more complex because of the triangular relationship between worker, temporary work agency and user company. Directive 80/987/EEC should only come into play in the event that the employer (temporary work agency) is insolvent. The situation in which the user company is insolvent does not affect the employment relationship, but the commercial relationship between the temporary work agency and the client company.

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<sup>2</sup> Regulation 1346/2000, published in OJEC L 160 of 30 June 2000 , pages 1 to 17

**Complexity of the regime put in place by articles 3 and 4 of the directive**

9. UNICE considers that the arguments developed by Commission officials do not demonstrate convincingly that concrete application of these articles in national legislation, over almost twenty years, has posed particular problems.

In conclusion, UNICE remains unconvinced of the need to modify the directive, but will examine closely any specific proposal presented by the Commission.