



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.5.2002
COM(2002) 265 final

2001/0006 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**amending Council Directive 80/987/EEC 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**

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

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1. BACKGROUND

The Commission forwarded the above-mentioned proposal for a directive based on Article 137(2) to the Parliament and to the Council on 16 January 2001.

The Economic and Social Committee gave its opinion on 30 May 2001.

The European Parliament adopted an opinion at first reading on 29 November 2001.

The Commission accepted some of the Parliament's amendments. It submitted an amended proposal to the Council on 3 December 2001 including these amendments.

The Council adopted a common position unanimously on 18 February 2002.

On 14 May 2002, at second reading, the European Parliament adopted six amendments to the Council's common position.

This opinion sets out the Commission's position on the European Parliament's amendments in accordance with Article 251(2)(c) of the EC Treaty.

2. AIM OF THE COMMISSION PROPOSAL

To revise Council Directive 80/987/EEC with a view to adapting and improving it, bearing in mind the case law of the Court and the developments which have demonstrated the gaps or inadequacies of the text adopted in 1980.

3. COMMISSION'S OPINION ON THE PARLIAMENT'S AMENDMENTS

3.1. Summary of the Commission's position

The Commission can accept the six European Parliament amendments in full. It considers that these amendments will extend and improve the text of the common position.

3.2. Parliament amendments at second reading

3.2.1. Amendments accepted

3.2.1.1. Amendment 1 (*possibility of restricting the responsibility of the guarantee institutions*) (new recital)

The purpose of the amendment is to introduce a recital to clarify Article 4(3), first subparagraph (cf. amendment 5 below) which authorises Member States to set ceilings on the payments made by the guarantee institutions. These ceilings *may* be differentiated but *must* be compatible with the social objective of the Directive.

The Commission accepts this amendment in that it gives greater clarity to the option given to Member States under Article 4(3) of the Directive.

3.2.1.2. Amendment 2 (*report on implementation of the Directive*) (new recital)

This amendment adds a recital with a view to including a new article in the final provisions concerning a report on implementation of the Directive (cf. amendment 7 below).

The Commission accepts this amendment in that it is directly linked to amendment 7 introducing a new article into the final provisions.

3.2.1.3 Amendment 3 (*option for Member States of extending protection under the Directive*) ARTICLE 1, POINT 2 (Article 2(4), first subparagraph of Directive 80/987/EEC)

The purpose of this amendment is to cover the greatest possible number of insolvency situations in Article 2(4), first subparagraph. It extends the text to the effect that the Directive *does not prevent Member States from extending protection to de facto stopped payments on a permanent basis*.

Since this is an option which does not impose obligations on the guarantee institutions of other Member States in cross-border situations (Article 8a), the Commission accepts this amendment.

3.2.1.4. Amendment 4 (*payment of wage claims*) ARTICLE 1, POINT 2 (Article 3, first subparagraph of Directive 80/987/EEC)

This amendment specifies that, *where provided for by national law, severance pay on termination of employment relationships is included* in payment of employees' outstanding claims.

The Commission accepts this clarification of outstanding claims in Article 3, in that the severance pay referred to is included in the concept of pay within the meaning of Article 2(2) of the Directive and where it is actually due under national law.

3.2.1.5. Amendment 5 (*option for Member States to limit payments*) ARTICLE 1, POINT 3 (Article 4(3), first subparagraph of Directive 80/987/EEC)

The purpose of the amendment is to specify that the ceiling which may be set by Member States need not necessarily be a single ceiling (cf. amendment 1).

The Commission accepts this amendment, given that *these ceilings* (possibly differentiated) *must not fall below* a level which is compatible with the social objective of the Directive.

3.2.1.6. Amendment 7 (*report on implementation*) (new Article 3 in the final provisions of the Directive)

The Commission accepts this amendment, which provides for a *report on the implementation and application of the Directive to be established by the Commission within five years of the date indicated in Article 2* of the Directive.

3.3. Amended proposal

The Commission is not submitting an amended proposal but urges the Council to take full account of the above opinion when examining the Parliament's amendments.