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**A5-0143/2002**

24 April 2002

**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the Council common position for adopting a European Parliament and Council directive 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  
(14854/1/2001 – C5-0070/2002 – 2001/0006(COD))

Committee on Employment and Social Affairs

Rapporteur: Theodorus J.J. Bouwman

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

At the sitting of 29 November 2001 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive on 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 (COM(2000) 832 - 2001/0006 (COD)).

At the sitting of 28 February 2002 the President of Parliament announced that the common position had been received and referred to the Committee on Employment and Social Affairs (14854/1/2001 - C5-0070/2002).

The committee had appointed Theodorus J.J. Bouwman rapporteur at its meeting of 15 February 2001.

It considered the common position and draft recommendation for second reading at its meetings of 16–17 April and 22–23 April 2002.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Theodorus J.J. Bouwman, chairman and rapporteur; Marie-Hélène Gillig, Winfried Menrad and Marie-Thérèse Hermange, vice-chairmen; Jan Andersson, Elspeth Attwooll, María Antonia Avilés Perea (for Anne-Karin Glase), Regina Bastos, Philip Bushill-Matthews, Alejandro Cercas, Luigi Cocilovo, Jillian Evans, Carlo Fatuzzo, Ilda Figueiredo, Richard Howitt (for Helle Thorning-Schmidt), Stephen Hughes, Anne Elisabet Jensen (for Marco Formentini), Karin Jöns, Dieter-Lebrecht Koch (for Miet Smet), Rodi Kratsa-Tsagaropoulou, Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Claude Moraes, Juan Andrés Naranjo Escobar (for Manuel Pérez Álvarez), Bartho Pronk, Lennart Sacrédeus, Herman Schmid, Ieke van den Burg, Barbara Weiler and Sabine Zissener (for Mario Clemente Mastella).

The recommendation for second reading was tabled on 24 April 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## DRAFT LEGISLATIVE RESOLUTION

### **European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on 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 (14854/1/2001 – C5-0070/2002 – 2001/0006(COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position 14854/1/2001 – C5-0070/2002),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2000) 832<sup>2</sup>),
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A5-0143/2002),
1. Amends the common position as follows;
  2. Calls on the Commission to carry out an in-depth study and to hold a joint public hearing with Parliament on the situation of workers in new labour relations in the Member States, especially economically dependent/subordinate workers;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> Not yet published in OJ.

<sup>2</sup> OJ C 154, 29.5.2001, p. 109 - 111.

Amendment 1  
RECITAL 7 A (NEW)

***(7a.) Member States may set up limitations to the responsibility of the guarantee institutions which should be compatible with the social objective of the Directive and may take into account the different levels of claims.***

*Justification*

*This amendment aims to provide clarity to the text introduced to the proposed Directive by Amendment 5 below.*

Amendment 2  
RECITAL 10 A (NEW)

***(10a.) The Commission should submit to the European Parliament and the Council a report on the implementation and application of this Directive in particular as regards to the new forms of employment emerging in the Member States.***

*Justification*

*The problem of the definition of new forms of work remains of the utmost importance to be addressed in the context of important changes of the economy and of the labour market and worker relations.*

Amendment 3  
ARTICLE 1, POINT 2  
Article 2, paragraph 4, first part (Directive 80/987/EEC)

4. This Directive does not prevent Member States from extending workers' protection to other situations of insolvency established by proceedings different from those mentioned in paragraph 1 as provided for under national law.

4. This Directive does not prevent Member States from extending workers' protection to other situations of insolvency, ***such as de facto stopped payments on a permanent basis***, established by proceedings different from those mentioned in paragraph 1 as provided for under national law.

*Justification*

*This amendment aims to include the more probable insolvency situations.*

Amendment 4  
ARTICLE 1, POINT 2  
Article 3, first subparagraph (Directive 80/987/EEC)

Member States shall take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4, payment of employees' outstanding claims resulting from contracts of employment or employment relationships.

Member States shall take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4, payment of employees' outstanding claims resulting from contracts of employment or employment relationships ***including severance pay on termination of employment relationships, where provided for by national law.***

*Justification*

*The inclusion of severance pay on termination of work is in harmony with the International Labour Organisation's International Labour Convention No 173, Article 6(d). The reason is that employers frequently make employees redundant, in view of imminent insolvency, without paying any severance pay which, in fact, amounts to accumulated back pay.*

Amendment 5  
ARTICLE 1, POINT 2  
Article 4, paragraph 3, first part (Directive 80/987/EEC)

3. Furthermore, Member States may set ***a ceiling*** on the payments made by the guarantee institution. ***This ceiling*** must not fall below a level which is socially compatible with the social objective of the Directive.

3. Furthermore, Member States may set ***ceilings*** on the payments made by the guarantee institution. ***These ceilings*** must not fall below a level which is socially compatible with the social objective of the Directive.

*Justification*

*This amendment provides clarity to the text.*

Amendment 6

ARTICLE 1, POINT 3  
Article 5 (new) (Directive 80/987/EEC)

*Article 5*

*Member States shall lay down detailed rules for the organisation, financing and operation of the guarantee institutions, complying with the following principles in particular:*

*(a) the assets of the institutions shall be independent of the employers' operating capital and be inaccessible to proceedings for insolvency;*

*(b) the employers shall contribute to financing, unless it is fully covered by the public authorities;*

*(c) the institutions' liabilities shall not depend on whether or not obligations to contribute to financing have been fulfilled.*

*Justification*

*There is no reason to delete Article 5 from the existing Directive.*

Amendment 7  
ARTICLE 3 A (NEW)

*3a. Within five years of the date indicated in Article 2, the Commission shall submit to the Parliament and the Council a report on its implementation and application in the Member States.*

*Justification*

*Self-explanatory.*



## EXPLANATORY STATEMENT

The Council Common Position adopted on 18 February 2002 with a view to the adoption of the 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 fully or partly incorporates 6 of the 16 amendments adopted by European Parliament at the sitting of 29 November 2001.

In general, progress has been made. It can be agreed that the text of the Common Position reinforces the protection of workers objective of the Directive.

Your rapporteur welcomes the acceptance by Council and Commission of the amendments 2, 4 and 9 of the European Parliament. The Commission is further willing to accept amendment 11 with a slight modification. This amendment covers the obligation of paying indemnities on termination of the employment relationship.

The Council has inserted new provisions in the Common Position concerning namely Article 4(2) and Article 9 as well as Articles 8b (2 new) and 10 c) new not presented to the Parliament for first reading. The Commission indicated that it could accept these changes introduced by the Council. Your rapporteur cannot fully agree with the new proposal of the Council, concerning Article 4(3) and therefore formulates an amendment on that, in the line of the position taken by the Parliament in first reading.

The most significant amendments that neither the Commission nor the Council have been willing to accept, are those aiming to cover as much as possible new forms of work and work relations and to introduce a minimum Community definition of the notion "employee" which, in the old and in the proposed new Directive, remains of national competence. The issue of the definition of new work forms and labour relations remains of the utmost importance. Therefore it needs to be addressed on short notice, especially in the context of modernisation and flexibilisation of the European labour market and the ongoing restructuring of industry and services. New forms of work should be fully included in European social legislation.

Given the significant changes in working relationships in the Member States, there is a need for a consolidated solution for workers who are in a similar position to employees but who lack an employment contract, especially economically dependent/subordinate workers.

In this context, the Commission should launch an in-depth study giving a detailed and comprehensive overview of the legal, social and economic situation of such workers in the Member States and in the accession countries. The Commission and the European Parliament will organise a joint hearing to raise awareness amongst all parties concerned, foster an exchange of ideas and experience and consider next steps in the light of the findings of the study. Such steps could include legislative and/or other action by the Commission, in particular towards common European criteria for the definition or categorisation of this kind of work. This may, in turn, lead to a framework directive consolidating and adding to the existing directives on atypical work (part-time work, fixed-term contracts and temporary work).

Other issues not taken over by Council and Commission, that your rapporteur thinks are

important, are the formulation of the state of insolvency or the including of severance pay. Your rapporteur proposes a few amendments on these issues, following amendments of the Parliament's report in first reading of 29 November 2001.

Your rapporteur intends to ensure that the proposal for modification of the Directive can be adopted quickly and start to be implemented as early as possible.

We hope that the Council will respond in consequence to Parliament's determination.