

Directive 2008/94/EC of the European Parliament and of the Council
of 22 October 2008 on the protection of employees in the event of the
insolvency of their employer (Codified version) (Text with EEA relevance)

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

1 This Directive shall apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2(1).

2 Member States may, by way of exception, exclude claims by certain categories of employee from the scope of this Directive, by virtue of the existence of other forms of guarantee if it is established that these offer the persons concerned a degree of protection equivalent to that resulting from this Directive.

[^{F13} Where such provision already applies in their national legislation, Member States may continue to exclude domestic servants employed by a natural person from the scope of this Directive.]

Textual Amendments

- F1** Substituted by [Directive \(EU\) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers \(Text with EEA relevance\)](#).

Article 2

1 For the purposes of this Directive, an employer shall be deemed to be in a state of insolvency where a request has been made for the opening of collective proceedings based on insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a Member State, and involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and the authority which is competent pursuant to the said provisions has:

- a either decided to open the proceedings; or
- b established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.

2 This Directive is without prejudice to national law as regards the definition of the terms 'employee', 'employer', 'pay', 'right conferring immediate entitlement' and 'right conferring prospective entitlement'.

However, the Member States may not exclude from the scope of this Directive:

- a part-time employees within the meaning of Directive 97/81/EC;
- b employees with a fixed-term contract within the meaning of Directive 1999/70/EC;

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- c employees with a temporary employment relationship within the meaning of Article 1(2) of Directive 91/383/EEC.

3 Member States may not set a minimum duration for the contract of employment or the employment relationship in order for employees to qualify for claims under this Directive.

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

Such procedures shall not however create a guarantee obligation for the institutions of the other Member States in the cases referred to in Chapter IV.

CHAPTER II

PROVISIONS CONCERNING GUARANTEE INSTITUTIONS

Article 3

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, where provided for by national law, severance pay on termination of employment relationships.

The claims taken over by the guarantee institution shall be the outstanding pay claims relating to a period prior to and/or, as applicable, after a given date determined by the Member States.

Article 4

1 Member States shall have the option to limit the liability of the guarantee institutions referred to in Article 3.

2 If Member States exercise the option referred to in paragraph 1, they shall specify the length of the period for which outstanding claims are to be met by the guarantee institution. However, this may not be shorter than a period covering the remuneration of the last three months of the employment relationship prior to and/or after the date referred to in the second paragraph of Article 3.

Member States may include this minimum period of three months in a reference period with a duration of not less than six months.

Member States having a reference period of not less than 18 months may limit the period for which outstanding claims are met by the guarantee institution to eight weeks. In this case, those periods which are most favourable to the employee shall be used for the calculation of the minimum period.

3 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 this Directive.

If Member States exercise this option, they shall inform the Commission of the methods used to set the ceiling.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

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 must be independent of the employers' operating capital and be inaccessible to proceedings for insolvency;
- (b) employers must contribute to financing, unless it is fully covered by the public authorities;
- (c) the institutions' liabilities must not depend on whether or not obligations to contribute to financing have been fulfilled.

CHAPTER III

PROVISIONS CONCERNING SOCIAL SECURITY

Article 6

Member States may stipulate that Articles 3, 4 and 5 shall not apply to contributions due under national statutory social security schemes or under supplementary occupational or inter-occupational pension schemes outside the national statutory social security schemes.

Article 7

Member States shall take the measures necessary to ensure that non-payment of compulsory contributions due from the employer, before the onset of his insolvency, to their insurance institutions under national statutory social security schemes does not adversely affect employees' benefit entitlement in respect of these insurance institutions in so far as the employees' contributions have been deducted at source from the remuneration paid.

Article 8

Member States shall ensure that the necessary measures are taken to protect the interests of employees and of persons having already left the employer's undertaking or business at the date of the onset of the employer's insolvency in respect of rights conferring on them immediate or prospective entitlement to old-age benefits, including survivors' benefits, under supplementary occupational or inter-occupational pension schemes outside the national statutory social security schemes.

CHAPTER IV

PROVISIONS CONCERNING TRANSNATIONAL SITUATIONS

Article 9

1 If an undertaking with activities in the territories of at least two Member States is in a state of insolvency within the meaning of Article 2(1), the institution responsible for meeting employees' outstanding claims shall be that in the Member State in whose territory they work or habitually work.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

2 The extent of employees' rights shall be determined by the law governing the competent guarantee institution.

3 Member States shall take the measures necessary to ensure that, in the cases referred to in paragraph 1 of this Article, decisions taken in the context of insolvency proceedings referred to in Article 2(1), which have been requested in another Member State, are taken into account when determining the employer's state of insolvency within the meaning of this Directive.

Article 10

1 For the purposes of implementing Article 9, Member States shall make provision for the sharing of relevant information between their competent administrative authorities and/or the guarantee institutions mentioned in the first paragraph of Article 3, making it possible in particular to inform the guarantee institution responsible for meeting the employees' outstanding claims.

2 Member States shall notify the Commission and the other Member States of the contact details of their competent administrative authorities and/or guarantee institutions. The Commission shall make that information publicly accessible.

CHAPTER V

GENERAL AND FINAL PROVISIONS

Article 11

This Directive shall not affect the option of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

Implementation of this Directive shall not under any circumstances be sufficient grounds for a regression in relation to the current situation in the Member States and in relation to the general level of protection of employees in the area covered by it.

Article 12

This Directive shall not affect the option of Member States:

- (a) to take the measures necessary to avoid abuses;
- (b) to refuse or reduce the liability referred to in the first paragraph of Article 3 or the guarantee obligation referred to in Article 7 if it appears that fulfilment of the obligation is unjustifiable because of the existence of special links between the employee and the employer and of common interests resulting in collusion between them;
- (c) to refuse or reduce the liability referred to in the first paragraph of Article 3 or the guarantee obligation referred to in Article 7 in cases where the employee, on his or her own or together with his or her close relatives, was the owner of an essential part of the employer's undertaking or business and had a considerable influence on its activities.

Article 13

Member States shall notify the Commission and the other Member States of the types of national insolvency proceedings falling within the scope of this Directive, and of any amendments relating thereto.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

The Commission shall publish these communications in the *Official Journal of the European Union*.

Article 14

Member States shall communicate to the Commission the text of the laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 15

By 8 October 2010 at the latest, the Commission shall submit to the European Parliament and to the Council a report on the implementation and application in the Member States of Articles 1 to 4, 9 and 10, Article 11, second paragraph, Article 12, point (c), and Articles 13 and 14.

Article 16

Directive 80/987/EEC, as amended by the acts listed in Annex I, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part C.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 17

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 18

This Directive is addressed to the Member States.