

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;

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- 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.