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► **M2 COUNCIL DIRECTIVE
of 20 October 1980**

on the protection of employees in the event of the insolvency of their employer

(80/987/EEC) ◀

(OJ L 283, 28.10.1980, p. 23)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Council Directive 87/164/EEC of 2 March 1987	L 66	11	11.3.1987
► <u>M2</u> Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002	L 270	10	8.10.2002

Amended by:

► <u>A1</u> Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995

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COUNCIL DIRECTIVE
of 20 October 1980

on the protection of employees in the event of the insolvency of their employer

(80/987/EEC)

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas it is necessary to provide for the protection of employees in the event of the insolvency of their employer, in particular in order to guarantee payment of their outstanding claims, while taking account of the need for balanced economic and social development in the Community;

Whereas differences still remain between the Member States as regards the extent of the protection of employees in this respect; whereas efforts should be directed towards reducing these differences, which can have a direct effect on the functioning of the common market;

Whereas the approximation of laws in this field should, therefore, be promoted while the improvement within the meaning of Article 117 of the Treaty is maintained;

Whereas as a result of the geographical situation and the present job structures in that area, the labour market in Greenland is fundamentally different from that of the other areas of the Community;

Whereas to the extent that the Hellenic Republic is to become a member of the European Economic Community on 1 January 1981 in accordance with the Act concerning the Conditions of Accession of the Hellenic Republic and the Adjustments to the Treaties, it is appropriate to stipulate in the Annex to the Directive under the heading 'Greece', those categories of employees whose claims may be excluded in accordance with Article 1 (2) of the Directive,

HAS ADOPTED THIS DIRECTIVE:

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SECTION 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

⁽¹⁾ OJ No C 135, 9. 6. 1978, p. 2.

⁽²⁾ OJ No C 39, 12. 2. 1979, p. 26.

⁽³⁾ OJ No C 105, 26. 4. 1979, p. 15.

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that these offer the persons concerned a degree of protection equivalent to that resulting from this Directive.

3. Where such provision already applies in their national legislation, Member States may continue to exclude from the scope of this Directive:

- (a) domestic servants employed by a natural person;
- (b) share-fishermen.

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) workers with a fixed-term contract within the meaning of Directive 1999/70/EC;
- (c) workers 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 workers to qualify for claims under this Directive.

4. This Directive does not prevent Member States from extending workers' 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 Section IIIa.

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SECTION II

Provisions concerning guarantee institutions**▼ M2***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.

▼ **M2***Article 4*

1. Member States shall have the option to limit the liability of the guarantee institutions referred to in Article 3.
2. When 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 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 are used for the calculation of the minimum period.

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 this Directive.

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

▼ **B***Article 5*

Member States shall lay down detailed rules for the organization, 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) 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.

SECTION 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 company or inter-company 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 inasmuch as the employees' contributions were 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 company or inter-company pension schemes outside the national statutory social security schemes.

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SECTION IIIa

Provisions concerning transnational situations*Article 8a*

1. When 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.
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, 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 8b

1. For the purposes of implementing Article 8a, Member States shall make provision for the sharing of relevant information between their competent administrative authorities and/or the guarantee institutions mentioned in 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 these communications publicly accessible.

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SECTION IV

General and final provisions*Article 9*

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.

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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 workers in the area covered by it.

▼ B*Article 10*

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 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;

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- (c) to refuse or reduce the liability referred to in 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.

▼M2*Article 10a*

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

▼B*Article 11*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 36 months of its notification. They shall forthwith inform the Commission thereof.

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

Article 12

Within 18 months of the expiry of the period of 36 months laid down in Article 11 (1), Member States shall forward all relevant information to the Commission in order to enable it to draw up a report on the application of this Directive for submission to the Council.

Article 13

This Directive is addressed to the Member States.

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