

SUMMARY

## **ECJ 10 March 2011, case C-477/09 (Charles Defossez - v &ndash; Christian Wart, in his capacity as liquidator of Sotimon Sarl and others), Insolvency**

***&lt;p&gt;Article 3 of Directive 80/987 in the pre-Directive 2002/74 version is to be interpreted as meaning that, for the payment of the outstanding claims of workers having been habitually employed in a Member State other than that where their employer was established, where the employer was declared insolvent before 8 October 2005 and that employer is not established in that other Member State and fulfils its obligation to contribute to the financing of the guarantee institution in the Member State where it is established, that institution will be liable. However, Member States may allow employees to claim under a more favourable regime.&lt;/p&gt;***

### **Facts**

Mr Defossez was employed by the French company Sotimon, for whom he worked in Belgium. Sotimon dismissed him in December 2003. He brought a claim against Sotimon and in 2006 a French court awarded him compensation. By this time, however, Sotimon had been wound up, for which reason the French court declared its judgment to be enforceable against the relevant guarantee institution under Directive 80/987, in this case the French guarantee institution “CGEA”. In 2008, another French court that dealt with the winding-up of Sotimon accepted Mr Defossez’s claim, but ruled that it could only be enforced against the relevant Belgian guarantee institution “FFE”. Mr Defossez, who preferred to bring a claim against the CGEA, appealed to the Cour de cassation, the French Supreme Court.

## **National proceedings**

The Cour de cassation referred to the ECJ questions regarding the interpretation of Article 8a of Directive 80/987, a provision that was introduced by Directive 2002/74. Article 8a deals with the complications that can arise when an undertaking with activities in more than one Member State becomes insolvent. In such a situation, the competent guarantee institution is that of the Member State in whose territory the employees work or habitually work. In this case, that was the Belgian FFE, not the French CGEA. Therefore, assuming that Mr Defossez could bring a claim against the FFE, the Cour de cassation wished to know whether Article 8a of Directive 80/987 is to be interpreted as not depriving an employee of the right to take advantage, in the place of the competent guarantee institution (i.e. the FFE), of a more favourable guarantee from the institution with which his or her employer was insured and to which it made contributions under its national law (i.e. the CGEA).

## **ECJ's findings**

1. Article 8a of Directive 80/987 was introduced by Directive 2002/74. The transposition deadline for that Directive was 8 October 2005. Therefore, given that Sotimon was wound up before that date, the insolvency did not fall within the scope of Directive 2002/74. Thus, the question referred by the Cour de cassation needs to be answered by interpreting Directive 80/987 as it read before it was amended, i.e. before Article 8a was introduced (§ 18-23).
2. In its 1997 ruling in the Masbaek case (C-117/96), the ECJ had held that the competent guarantee institution is that of the Member State in which the proceedings for the collective satisfaction of creditors' claims was opened or in which it was established that the employer's undertaking was definitely closed down. In its 1999 ruling in the Everson case (C-198/98), the ECJ had held that where the insolvent employer had a branch in the Member State where the employees were employed, the institution responsible for paying outstanding claims is that of the Member States where that branch is established (§ 24-27).
3. In the present case, where the employer was established in France, the contributions for covering potential salary claims were paid in France and the employer did not have any stable business establishment in Belgium, the relevant elements of the case have a closer resemblance to Masbaek than to Everson. Therefore, the competent guarantee institution is the French CGEA (§ 28-30).
4. Directive 80/987 does not preclude a Member State's legislation from providing that employees may avail themselves of the salary guarantee from that Member State's institution, either in addition to or instead of the guarantee offered by the competent guarantee institution under the Directive, if that guarantee results in a greater level of worker protection

(§ 31-33).

### **Ruling**

Article 3 of Directive 80/987 in the pre-Directive 2002/74 version is to be interpreted as meaning that, for the payment of the outstanding claims of workers having been habitually employed in a Member State other than that where their employer was established, where the employer was declared insolvent before 8 October 2005 and that employer is not established in that other Member State and fulfils its obligation to contribute to the financing of the guarantee institution in the Member State where it is established, that institution will be liable. However, Member States may allow employees to claim under a more favourable regime.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2011-03-10

**Case number:** C-477/09