

SUMMARY

ECJ 16 February 2023, joined cases C-524/21 and C-525/21 (Agenția Județeană de Ocupare a Forței de Muncă Ilfov), Insolvency

***IG – Agenția Județeană de Ocupare a Forței de Muncă Ilfov (C|524/21),
Agenția Municipală pentru Ocuparea Forței de Muncă București – IM
(C-525/21), Romanian cases***

Summary

Directive 2008/94/EC precludes unreasonable recovery claims of insolvency benefits.

Questions

Must Article 1(1), Article 2(1) and the second paragraph of Article 3 of Directive 2008/94, in conjunction with Article 4(2) thereof, be interpreted as precluding national legislation which provides that the reference date for determining the period for which employees' outstanding salary claims are to be met by a guarantee institution is the date on which insolvency proceedings in respect of their employer are opened and which limits that payment to a period of three months falling within a reference period comprising the three months immediately preceding and the three months immediately following that date of opening?

Must Article 12(a) of Directive 2008/94 be interpreted as meaning that rules adopted by a Member State which provide for the recovery by a guarantee institution, from an employee, of the sums paid to such an employee outside the general limitation period, in respect of outstanding salary claims of employees, may constitute measures necessary to avoid abuses within the meaning of that provision?

Must Directive 2008/94 be interpreted as precluding the application of tax legislation of a Member State for the purposes of recovering, together with interest and late-payment

penalties, from employees, sums unduly paid by a guarantee institution in respect of employees' outstanding salary claims for periods not included in that laid down by the national legislation of that State, referred to in the first and second questions, or claimed outside the general limitation period.

Ruling

Article 1(1) and Article 2(1) of 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 must be interpreted as not precluding national legislation which provides that the reference date for determining the period for which employees' outstanding salary claims are to be met by a guarantee institution is the date on which the collective proceedings based on their employer's insolvency are opened.

The second paragraph of Article 3 and Article 4(2) of Directive 2008/94 must be interpreted as not precluding national legislation which limits the payment of employees' outstanding salary claims by a guarantee institution to a period of three months falling within a reference period comprising the three months immediately preceding, and the three months immediately following, the date on which the collective insolvency proceedings based on the employer's insolvency are opened.

Article 12(a) of Directive 2008/94 must be interpreted as meaning that rules adopted by a Member State which provide for the recovery from an employee, by a guarantee institution, of the sums paid to such an employee outside the general limitation period, in respect of outstanding salary claims, in the absence of any action or omission attributable to the employee concerned cannot constitute measures necessary to avoid abuses within the meaning of that provision.

Directive 2008/94, read in the light of the principles of equivalence and effectiveness, must be interpreted as precluding the application of tax legislation of a Member State for the purposes of recovering, together with interest and late-payment penalties, from employees, sums unduly paid by a guarantee institution in respect of employees' outstanding salary claims for periods not included in the reference period laid down in the legislation of that State, referred to in the first and second questions, or claimed outside the general limitation period, where:

the conditions for recovery laid down by that national legislation are less favourable to employees than the conditions for recovering benefits payable under the national provisions falling within the scope of the law on social protection; or

the application of the national legislation at issue makes it impossible or excessively difficult for the employees concerned to claim payment of sums due in respect of outstanding salary

claims from the guarantee institution, or the payment of interest and late-payment penalties, provided for by that national legislation, affects the protection granted to employees both by Directive 2008/94 and by the national provisions implementing that directive, in particular by undermining the minimum level of protection provided for in accordance with Article 4(2) of that directive.

Creator: European Court of Justice (ECJ)

Verdict at: 2023-02-16

Case number: C-524/21 and C-525/21