

SUMMARY

ECJ 24 November 2016, case C 454/15 (Webb-Sämman), Social policy

<p>Under Article 8 of Directive 2008/94, if an employer becomes insolvent in circumstances where it previously withheld funds from an employee's salary to pay into an occupational pension scheme – but then failed to make those payments – there is no requirement to exclude those funds from the scope of insolvency proceedings.</p>

Summary

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Facts

Mr Webb-Sämman had been employed on a part-time basis by Baumarkt Praktiker since 18 November 1996. On 1 October 2013, insolvency proceedings were initiated against the business.

Mr Webb-Sämman's made certain claims, including some relating to contributions to occupational pension schemes covering the three months immediately preceding the date when insolvency proceedings commenced (i.e. July to September 2013). These were honoured by the guarantee institution.

Thereafter, the only issue in dispute was the right to have social security contributions payable towards an occupational pension scheme from January to June 2013 inclusive, excluded from the scope of the insolvency proceedings. Mr Webb-Sämman invoked Article 8 of Directive

2008/94 to argue that, if he were not granted a right to have the amount payable excluded from the scope of insolvency proceedings, that provision would be infringed.

National proceedings

The Arbeitsgericht Darmstadt (Labour Court, Darmstadt) dismissed Mr Webb-Sämänn's action. Mr Webb-Sämänn appealed against the judgment to the Hessisches Landesarbeitsgericht (Higher Labour Court, Hessen, Germany). The court decided to refer the following question to the ECJ for a preliminary ruling: it asked, in essence, whether Article 8 of Directive 2008/94 must be interpreted as meaning that if an employer becomes insolvent, money withheld from a former employee's salary to be paid into a pension fund on behalf of the employee, should be excluded from the scope of insolvency proceedings.

ECJ's findings

Although pension contributions are not expressly referred to in Article 8 of Directive 2008/94, they are closely connected with the rights conferring immediate or prospective entitlement to old-age benefits, which that provision seeks to protect. Pension contributions are designed to provide employees with financial security when they retire. The ECJ had already held that failure by the employer to pay contributions could cause a supplementary occupational pension scheme to become underfunded – a situation which falls under Article 8 of the Directive. Both Article 3 and Article 8 of the Directive are relevant in the event of failure to pay pension contributions.

The two Articles have different purposes and concern two different types of protection. Article 3 of the Directive requires that the payment of outstanding claims, including not only salary, but also certain contributions in the form of salary claims, must be ensured by the guarantee institutions. Article 4(2) and (3) of Directive 2008/94 grants Member States the power to restrict the scope of Article 3 in terms of the length of the period to be covered by the guarantee institution and a cap on the level of payments. It should be noted that the protection afforded by Article 3 of the Directive concerns short-term claims.

Article 8 of Directive 2008/94, is more restricted in scope, as it seeks to protect the interests of employees in obtaining payment of their pension. Moreover, Article 8, unlike Articles 3 and 4, does not expressly provide that Member States can restrict the level of protection. Finally, unlike Article 3, Article 8 seeks to guarantee the protection of employees' long-term interests, as these may extend over the entire retirement period. Thus, Article 8 applies to outstanding pension contributions, insofar as they are not covered by Article 3.

Although Member States enjoy a wide margin of appreciation when implementing Article 8 of

Directive 2008/94, they are nonetheless obliged, in accordance with the objective pursued by that Directive, to ensure a minimum degree of protection for employees. In that regard, the ECJ had already held that a correct transposition of Article 8 required that, in the event of the insolvency of the employer, an employee should receive at least half of the pension he had accrued under any supplementary occupational pension scheme by paying contributions.

In this case, it was apparent from the evidence, and in particular from the information provided by Mr Webb-Sämman, that his monthly pension rights would be reduced by between EUR 5 and EUR 7 per month, as a result of the non-payment of pension contributions during the period at issue. Because the amount was relatively small, the ECJ found that Article 8 did not require there to be a higher level of protection than had already been granted. It found that once Member States have fulfilled their obligation to ensure the minimum level of protection required by Article 8, they had discretion as to how to protect entitlements under supplementary pension schemes if the employer became insolvent.

Ruling

Article 8 of Directive 2008/94/EC does not require that, upon an employer's insolvency, money withheld from a former employee's salary and converted into pension contributions which the employer should have paid into a pension fund on behalf of the employee, should be excluded from the scope of insolvency proceedings.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-11-24

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