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## Press and Information

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Judgment of the Court of Justice in Case C-278/05

*Carol Marilyn Robins and Others v Secretary of State for Work and Pensions*

### **THE MEMBER STATES ARE NOT REQUIRED TO FINANCE RIGHTS TO OLD-AGE BENEFITS UNDER SUPPLEMENTARY PENSION SCHEMES THEMSELVES IN THE EVENT OF THE EMPLOYER'S INSOLVENCY**

*Nevertheless, a level of protection of those rights such as that afforded by the United Kingdom system is inadequate*

In accordance with a directive on the protection of workers in the event of the employer's insolvency,<sup>1</sup> the Member States are to ensure that the necessary measures are taken to protect the interests of employees and former employees in the event of the employer's insolvency in respect of rights conferring on them immediate or prospective entitlement to old-age benefits under supplementary occupational pension schemes.

Ms Robins and 835 other claimants are former employees of the company ASW Limited, which went into liquidation in April 2003. They were members of final-salary pension schemes funded by ASW.

The schemes were terminated in July 2002 and are in the process of being wound up. According to actuarial valuations, there will be insufficient assets to cover all the benefits of all members, and the benefits of non-pensioners will therefore be reduced.

Under the legislation in force in the United Kingdom, the claimants will not receive all the benefits to which they were entitled. Two of the claimants will receive only 20% and 49% respectively of those benefits.

Taking the view that the United Kingdom legislation did not provide them with the level of protection called for by the directive, the claimants brought an action against the Government of the United Kingdom for compensation for the loss suffered. Hearing the case, the High Court has referred three questions to the Court for a preliminary ruling: (i) are the Member States required to fund themselves the rights to old-age benefits and if so to fund them in full? (ii) is the United Kingdom legislation compatible with the directive? and (iii) what is the liability of the Member State in the case of incorrect transposition of the directive?

<sup>1</sup> Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23).

## **The funding of rights to benefits by the Member States themselves**

The Court finds that **the directive does not oblige the Member States themselves to fund the rights to old-age benefits**. Inasmuch as it states in a general manner that the Member States ‘shall ensure that the necessary measures are taken’, the directive leaves the Member States some latitude as to the means to be adopted to ensure protection. A Member State may therefore impose, for example, an obligation on employers to insure or provide for the setting up of a guarantee institution in respect of which it will lay down the detailed rules for funding, rather than provide for funding by the public authorities.

Furthermore, the Court considers that **the directive cannot be interpreted as demanding a full guarantee of the rights in question**. In so far as it does no more than prescribe in general terms the adoption of the measures necessary to ‘protect the interests’ of the persons concerned, the directive gives the Member States, in relation to the level of protection, **considerable latitude which excludes an obligation to guarantee in full**.

## **Compatibility of the United Kingdom legislation with the directive**

The Court notes that in 2004, according to figures communicated by the United Kingdom, about 65 000 members of pension schemes suffered the loss of more than 20% of expected benefits and some 35 000 of those suffered losses exceeding 50% of those benefits.

Even if no provision of the directive contains elements which make it possible to establish with any precision the minimum level of protection required, a system that may, in certain cases, lead to a guarantee of benefits limited to 20 or 49% of the expected entitlement, that is to say, of less than half of that entitlement, cannot be considered to fall within the definition of the word ‘protect’ used in the directive. A system of protection such as **the United Kingdom system is therefore incompatible with Community law**.

## **Liability of the Member State in the case of incorrect transposition**

The Court considers that, given the general nature of the wording of the directive and the considerable discretion left to the Member States, the liability of a Member State by reason of incorrect transposition of that directive is conditional on a finding of manifest and serious disregard by that State for the limits set on its discretion.

In order to determine whether that condition is satisfied, the national court must take account of all the factors which characterise the situation put before it. In the present case, those factors include the lack of clarity and precision of the directive with regard to the level of protection required, and a Commission report of 1995 concerning the transposition of the directive by the Member States, in which the Commission had concluded that ‘the abovementioned rules [adopted by the United Kingdom] appear to meet the requirements [of the Directive]’, which may have reinforced the United Kingdom’s position with regard to the transposition of the directive into domestic law.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: BG ES CS DE EN FR HU IT RO SK*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-278/05>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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