

- Community and Turkey must be interpreted as meaning that it may be relied on by Turkish nationals who hold the rights referred to in Article 6 or Article 7 of that decision.
- Article 14 of Decision No 1/80 must be interpreted as meaning that Turkish nationals who, according to the competent national authorities of the Member State concerned, constitute a genuine, present and sufficiently serious threat to one of the interests of society, may rely on Article 13 of that decision in order to oppose a ‘new restriction’, within the meaning of that provision, from being applied to them allowing those authorities to terminate their right of residence on grounds of public policy. Such a restriction may be justified under Article 14 of that decision in so far as it is suitable for securing the attainment of the objective of protecting public policy pursued and it does not go beyond what is necessary in order to attain it.

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

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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 recover-

ing, 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.

## ECJ 16 February 2023, case C-710/21 (IEF Service), Insolvency

IEF Service GmbH – v – HB, Austrian case

### Summary

In cross-border situations, where the worker works equally in two Member States, the responsible guarantee institution is the one in the Member State where the employer has its lasting presence.

### Questions

Must Article 9(1) of Directive 2008/94 be interpreted as meaning that, in order to determine which Member State's guarantee institution is responsible for meeting employees' outstanding claims, it must be held that an employer in a state of insolvency carries out activities in the territories of at least two Member States, within the meaning of that provision, where the employment contract of the worker in question provides that his or her primary and habitual place of employment is in the territory of the Member State in which the employer has

its registered office, but that, during an equal amount of his or her working time, that worker performs his or her duties remotely from another Member State where his or her main place of residence is situated?

### Ruling

Article 9(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 meaning that in order to determine which Member State's guarantee institution is responsible for meeting employees' outstanding claims, it must be considered that an employer in a state of insolvency does not carry out activities in the territories of at least two Member States, within the meaning of that provision, where the employment contract of the worker in question provides that his or her primary and habitual place of employment is in the territory of the Member State in which the employer has its registered office, but during an equal proportion of his or her working time that worker performs his or her duties remotely from another Member State where his or her main place of residence is situated.

## ECJ 16 February 2023, case C-675/21 (Strong Charon), Transfer

Strong Charon – Soluções de Segurança SA – v – 2045 – Empresa de Segurança SA, FL, Portuguese case

### Summary

The absence of a contractual link between a transferor and a transferee has no bearing on the establishment of the existence of a transfer. In a labor intensive undertaking, the fact that a only very limited number of employees is taken over, without them having specific skills and knowledge essential to the services, is not likely to establish the existence of a transfer. Unfortunately, no English translation of the case is available. Other translations are available on <https://eur-lex.europa.eu/legal-content/nl/TXT/?uri=CELEX:62021CJ0675>.