OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 9 September 1999 *

1. When an employee is employed in a Member State by the branch of a company incorporated in another Member State where it has its registered office and where it is put into liquidation, who will have to pay the remuneration which has not been paid because of the employer's insolvency: the guarantee institution in the Member State of the registered office where insolvency proceedings were commenced or that of the Member State of employment? That is, essentially, the question on which the Industrial Tribunal, Bristol, seeks a preliminary ruling.

To answer it, the Court of Justice will have to interpret the provisions of Directive 80/987/EEC relating to the protection of employees in the event of the insolvency of their employer [1] (hereinafter 'Directive 80/987').

I — The facts

2. The main proceedings derive from applications made by former employees of Bell Lines Ltd (hereinafter 'Bell') for the Secretary of State for Trade and Industry (hereinafter 'the Secretary of State') to order that they be paid by the United Kingdom guarantee institution the arrears of pay, holiday pay and compensatory payments in lieu of notice which they had not received from that company because it became insolvent.

3. Bell operated as a shipping agent. It was incorporated in Ireland and had its registered office in Dublin. [2] In July 1997 the High Court of Ireland ordered that it be wound up since it had become insolvent, and appointed a liquidator. Under section 426 of the United Kingdom Insolvency Act 1986, which provides for cooperation between the judicial authorities with

* Original language: Spanish.

1 — 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).

2 — In addition to operating in Ireland, the company had employees and a permanent commercial presence in the United Kingdom; it had subsidiaries in France, Germany, Italy and the Netherlands; it had an associated company in Spain and it operated, although without an office, in Austria and Luxembourg.

responsibility for insolvency matters,[3] the High Court in England recognised the appointment of the liquidator made by the Irish court and appointed joint special managers to assist in the winding up of the company's affairs in the United Kingdom.

As the Commission explained at the hearing, the fact that the United Kingdom judicial authority recognised the appointment in Ireland of a liquidator and appointed special managers to assist in the winding up of Bell in the United Kingdom was not equivalent to the commencement of proceedings for the company to be declared insolvent in that country.

4. On the date on which it ceased operations, Bell had 209 employees in the United Kingdom at six trading addresses there and both the company and its employees paid social security contributions in the United Kingdom.

5. The Bell branch at Avonmouth, near Bristol, was registered with the Registrar of Companies under section 690A and Schedule 21A of the Companies Act 1985. Those provisions brought domestic law into line with Directive 89/666/EEC concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State[4] (hereinafter 'Directive 89/666'). Registration did not give the branch corporate status or legal personality under English law.

6. When the company was declared insolvent, its employees in the United Kingdom were dismissed. The applications which they made for payment of their claims for outstanding pay were rejected by the Secretary of State on the ground that the guarantee institution responsible for settling them was the Irish one. The two cases with which these proceedings are concerned have been selected as test cases in order to decide whether the Secretary of State was entitled to reject the claims.

II — National law

7. The applications were submitted under Part XII of the Employment Rights Act 1996. Under section 182, sums owing to employees as a result of their employer's insolvency are to be paid out of the

3 — Ireland is the only Member State in relation to which section 426 is applied.

4 — Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (OJ 1989 L 395, p. 36).

National Insurance Fund, which is part of the social security system, to which both workers and employers contribute.

8. The abovementioned act does not expressly provide for cases in which a company incorporated in another Member State, with a permanent establishment in the United Kingdom, where it has employees, becomes insolvent under the legislation of the first Member State or of another Member State but not under United Kingdom law. Nevertheless, the national court dealing with the case has reached the conclusion that, in accordance with the normal rules of interpretation of English law, that act does not oblige the Secretary of State to pay the wages and other amounts claimed by them.

III — The question submitted by the national court

9. In the course of the proceedings before it, the Industrial Tribunal, Bristol, decided, at the request of the Secretary of State and in order to avoid differences between the judicial authorities of the Member States in their interpretation of Directive 80/987, to stay the proceedings pending a preliminary ruling from the Court of Justice under Article 177 of the EC Treaty (now Article 234 EC) on the following question:

'Where

(i) an employee works in one Member State for an employer incorporated in another Member State; and

(ii) the employer has a branch in the Member State in which the employee works, and that branch is registered under the national provisions implementing Council Directive 89/666/EEC (the Eleventh Company Law Directive), although it is not incorporated and does not have legal personality separate from that of the employer, in that Member State; and

(iii) both the employer and the employee are required to make social security contributions in the Member State in which the employee works,

under Article 3 of 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 insolvency of their

employer, which guarantee institution is responsible for the payments thereby due; is it

(a) the guarantee institution in the Member State in which insolvency proceedings have been commenced, or

(b) the guarantee institution in the Member State in which the employee works and in which the employer has a permanent commercial presence?'

IV — Community law

10. Article 2 of Directive 80/987 provides:

'For the purposes of this Directive, an employer shall be deemed to be in a state of insolvency:

(a) where a request has been made for the opening of proceedings involving the employer's assets, as provided for under the laws, regulations and administrative provisions of the Member State concerned, to satisfy collectively the claims of creditors and which make it possible to take into consideration the claims referred to in Article 1(1), and

(b) where the authority which is competent pursuant to the said laws, regulations and administrative provisions has:

— either decided to open the proceedings,

— or established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.

...'

11. Article 3 thereof, of which the Industrial Tribunal, Bristol, seeks an interpretation, provides:

'1. Member States shall take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4, payment of employees' outstanding claims resulting from contracts of employment or employment relationships and relating to pay for the period prior to a given date.

...'

12. Directive 89/666 imposes on branches an obligation to publish information in the following terms:

'Article 1

1. Documents and particulars relating to a branch opened in a Member State by a company which is governed by the law of another Member State and to which Directive 68/151/EEC applies shall be disclosed pursuant to the law of the Member State of the branch, in accordance with Article 3 of that Directive.

...

Article 2

1. The compulsory disclosure provided for in Article 1 shall cover the following documents and particulars only:

...

(c) the register in which the company file mentioned in Article 3 of Council Directive 68/151/EEC is kept, together with the registration number in that register;

...

(f) the winding up of the company, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation in

accordance with disclosure by the company as provided for in Article 2(1)(h), (j) and (k) of Directive 68/151/EEC,

— insolvency proceedings, arrangements, compositions, or any analogous proceedings to which the company is subject;

...'

13. Article 3 of Directive 68/151/EEC[5] to which the foregoing provisions refer, provides:

'1. In each Member State a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.

2. All documents and particulars which must be disclosed in pursuance of Article 2 shall be kept in the file or entered in the register; the subject matter of the entries in the register must in every case appear in the file.

...'

V — The procedure before this Court

14. Written observations were submitted within the period prescribed by Article 20 of the EC Statute of the Court of Justice by the applicants in the main proceedings, the Governments of the United Kingdom, Ireland, Italy and the Netherlands, and the Commission.

At the hearing, which was held on 6 July 1999, oral argument was presented by representatives of the applicants in the main proceedings, the Governments of the United Kingdom, Ireland, Italy and the Netherlands, and the Commission.

15. The applicants in the main proceedings, and the Governments of Ireland, Italy and the Netherlands, and the Commission agree that the obligation to pay the outstanding claims of workers must attach to the guarantee institution of the Member State in which the employee works and in which the employer is established, in the sense of

5 — First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ English Special Edition 1968(I), p. 41).

having a permanent commercial presence. The reasons which they put forward include the following: Bell contributed to the social security system in the United Kingdom in respect of the workers which it employed there, but did not contribute in respect of them in Ireland; Directive 80/987 provides for no system of set-off or reimbursement between the guarantee institutions of the Member States for sums paid by one of them on behalf of another; and it would be contrary to the principle of legal certainty for a worker in respect of whom contributions had been paid to the guarantee institution of a Member State to have to apply to the guarantee institution of another State in order to receive arrears of pay, without knowing whether he would be compensated in accordance with the laws of the State of employment or those of the State in which he made his claim.

16. The position taken by the United Kingdom Government differs radically from that adopted by the other parties to the proceedings, in that it submits that the guarantee institution which should be responsible for payment is that of the State in which either it was decided to commence the insolvency proceedings or that in which it is established that the employer's undertaking or business has been definitively closed down. It considers that that interpretation, given by the Court of Justice in its judgment in *Mosbæk*,[6] is of general application and must be relied on for the decision to be given in these proceedings, being a simple rule which gives a clear answer in each case.

VI — Consideration of the question

17. The question submitted by the Industrial Tribunal, Bristol, seeks to ascertain which guarantee institution, under Article 3 of Directive 80/987, must be responsible for the outstanding wage claims of the applicants in the main proceedings.

18. As I have just indicated, of all those which have submitted observations in the proceedings, the Government of the United Kingdom is the only one which contends that the answer to the question on which a preliminary ruling is requested is already to be found in the *Mosbæk*[7] judgment. The applicants in the main proceedings, the Governments of Ireland, Italy and the Netherlands, and the Commission maintain, on the other hand, that the answer given by the Court in that judgment is limited to the factual circumstances of that

6 — Case C-117/96 *Mosbæk* [1997] ECR I-5017.

7 — Cited in footnote 6 above.

case, and must not be interpreted as containing a rule of general application.

19. In view of that difference of opinion, I shall examine the factual context in which that judgment was delivered, where the Court had to decide which guarantee institution was required, in the event of the employer's insolvency, to settle the outstanding claims of a worker in a situation in which the employer was not established in the Member State where the employee resided, and was only represented there through the activity of that employee, who worked in offices rented by the employer.

20. Mrs Mosbæk, who lived in Denmark, was recruited in 1993 by the English company Colorgen Limited as commercial manager for Denmark, Norway, Sweden, and Finland and, later, Germany. The company, whose registered office was in England, was neither established nor registered in Denmark as an undertaking or for any other purpose, in particular for tax or customs purposes. In that country, it was represented solely by Mrs Mosbæk. For her to carry on her activities, the company rented an office and, whilst the employment relationship lasted, it paid her directly without any deduction of tax or social security contributions for retirement or other contingencies under Danish law.

21. After one year, Colorgen Limited was declared insolvent and its employees, including Mrs Mosbæk, were dismissed. For the purposes of Article 3 of Directive 80/987, Mrs Mosbæk declared, both to the Danish guarantee institution and to the English receiver of the company, an outstanding claim of DKK 471 996 in respect of wages, commission and disbursements. The Danish guarantee institution refused to pay the claim, on the ground that that responsibility attached to the guarantee institution of the State where the employer was established, namely the United Kingdom. In the subsequent proceedings, the Danish Østre Landsret sought a preliminary ruling from this Court.

22. The answer given by this Court in that judgment was that where the employer is established in a Member State other than that in which the employee resides and was employed, the guarantee institution responsible for the payment of that employee's claims in the event of the employer's insolvency is the institution of the State in which either it is decided to open the proceedings for the collective satisfaction

of creditors' claims or it has been established that the employer's undertaking or business has been closed down.

That finding, in precisely those terms, is what the United Kingdom proposes raising to the status of a rule of general application.

23. At the outset, I would observe that the differences in the facts of the two cases are considerable. Indeed, the only similarity appears to be that in each case a company employed someone in a Member State other than that in which it had its registered office.

The differences, however, are more numerous: first, Colorgen had only rented an office so that Mrs Mosbæk could work there as its only employee, whereas Bell had more than 200 employees in the United Kingdom. Second, Colorgen was neither established nor registered as an undertaking in Denmark, for either tax or customs purposes, whereas Bell had at least one branch in the United Kingdom which fulfilled the disclosure requirements imposed by Directive 89/666. Third, Colorgen made no deductions for social security contributions under Danish legislation whereas Bell made social security payments in respect of its employees in the United Kingdom.

What remains to be seen is whether, despite those differences, the same approach can be applied to this case and it can be held that the guarantee institution responsible for paying the outstanding claims in the United Kingdom of Bell employees who were dismissed as a result of their employer's insolvency is that of the Member State in which it was ordered to be wound up, that is to say the Irish guarantee institution.

A. *The application of Directive 80/987 to branches set up in a Member State by companies incorporated in another Member State, and the right of establishment*

24. One of the purposes of Directive 80/987 is indeed to guarantee employees, in the event of their employer's insolvency, minimum protection by reducing the differences as between Member States in the scope of such protection, without impinging on their right to adopt more favourable provisions. The Directive requires the Member States to set up institutions to guarantee to workers the payment of at least part of the remuneration that they have not received because of their employer's insolvency. The general rule laid down

by Article 5(b) is that employers must contribute to the financing of those institutions, unless it is fully covered by the public authorities. The guarantee institutions' obligation to pay exists regardless of fulfilment of the employers' obligation to contribute to the financing thereof.

25. For Directive 80/987 to be applicable, the employer who employed the workers affected must be in a state of insolvency. The Directive does not define the terms worker and employer, so that the meaning thereof is a matter for the various national laws.

On the other hand, it is made clear in Article 2 that an employer is to be deemed to be in a state of insolvency (i) where a request has been made for the opening of proceedings involving the employer's assets, as provided for under the laws of the Member State concerned, to satisfy collectively the claims of creditors and (ii) where the competent authority has either decided to open proceedings or has established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of proceedings.

26. The Industrial Tribunal which has requested the preliminary ruling states in its order that its national law does not expressly provide for the case in which a company incorporated in another Member State, with employees in the United Kingdom in a permanent establishment operated by it, becomes insolvent under the legislation of the first Member State or of another Member State but not under English law, with the result that the Secretary of State is not obliged to pay the outstanding claims of employees working in the United Kingdom who have been affected by the insolvency.

27. In my opinion, that situation cannot prevent the claims in respect of unpaid wages of workers employed in the United Kingdom by a branch of a company established in another Member State from being upheld if the conditions laid down by the Court for an employer to be regarded as insolvent are met. Those requirements are: that the laws, regulations and administrative provisions of the Member State concerned must provide for insolvency proceedings; that employees' claims resulting from contracts of employment or employment relationships may be taken into consideration in such proceedings; that a request has been made for such proceedings to be opened; and that the competent authority has either decided to commence proceedings or established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of proceedings. [8]

28. My view is based on a number of reasons, which I shall explain. First, the

8 — Case C-479/93 *Francovich* [1995] ECR I-3843, paragraph 18.

requirement that a company which has been declared insolvent in a Member State must also be declared insolvent in another Member State under the latter's law does not appear in Directive 80/987. Second, although no request was made in the United Kingdom for Bell to be the subject of proceedings for the satisfaction of creditors' claims and it was never decided to initiate such proceedings, the fact is that the High Court in England recognised the appointment of the liquidator made by the Irish court and appointed joint special managers to assist in winding up the company in the United Kingdom. I believe that the High Court would not have followed that course if it had not considered that Bell had ceased business at its trading addresses in the United Kingdom. Third, pursuant to Article 2(1)(f) of Directive 89/666, the commencement of insolvency proceedings in respect of Bell in Ireland and the order that it be wound up had to be disclosed in the United Kingdom. Finally, although Directive 80/987 does not affect the definition of 'employer' under national law, it seems to me to be clear that insolvency proceedings are not necessarily required to be commenced against an undertaking, whether or not it is in the form of a company, in its entirety since Article 2(1)(b) states that 'the authority which is competent ... has ... established that the employer's undertaking or *business*[9] has been definitively closed down'.

I see nothing to prevent, for the purpose of applying Directive 80/987, an application being made in a Member State for the opening of insolvency proceedings for the benefit of creditors against the branch of a company whose registered office is in another Member State and which ceases discharging its day-to-day financial obligations, or to prevent the competent authority in the first Member State from establishing that the branch has definitively been closed down and has insufficient assets available.

29. In *Mosbæk*, the Court held that, in practice, the opening of proceedings to satisfy creditors' claims collectively, thus making it possible for salary claims to be taken into consideration, is most often requested in the State in which the employer is established.[10]

30. The United Kingdom Government seems to take the view that an undertaking is established only in the Member States in which it was incorporated and where it has its registered office. I think that is why it asserts that the only guarantee institution responsible for payment will be, for all Bell's workers, that of Ireland, regardless of the Member State in which they worked

9 — Emphasis added.

10 — The Court stated: 'That general tendency should be reinforced by the entry into force of the Convention on Insolvency Proceedings signed at Brussels on 23 November 1995 (not yet published in the *Official Journal of the European Communities*), Article 3(1) of which uses as the main criterion for jurisdiction "the centre of a debtor's main interests". The text of the convention, which has been signed by all the Member States with the exception of the United Kingdom, but not ratified, has been published by the American Society of International Law, *International Legal Materials*, Washington 1996, Volume XXXV, p. 1223.'

and in which they paid social security contributions. The other parties consider, on the other hand, that a company which was incorporated in a Member State, where it has its registered office, may also be established in another Member State, all that is needed for that purpose being the fact of having a branch there or, as the applicants in the main proceedings say, a 'permanent commercial presence'.

31. I concur with that second contention. Article 52 of the EC Treaty (now, after amendment, Article 43 EC) contemplates the setting up of agencies, branches or subsidiaries in a Member State by Community nationals established in another Member State as an essential feature of the right of establishment. Consequently, for the purposes of applying Community law, a company which has been incorporated in a Member State is just as established in it as a company which, having been incorporated in another Member State, exercises its right of establishment in the first State by opening a branch there.

Moreover, as stated in the third recital in the preamble to Directive 89/666, concerning disclosure requirements to be met for branches set up by certain kinds of company subject to the law of another Member State, the opening of a branch, like the creation of a subsidiary, is one of the possibilities currently open to companies in the exercise of their right of establishment in another Member State.

32. For the reasons given above, I consider that, in contrast to the position in *Mosbæk*, where the presence of the United Kingdom company in Denmark was no more than a rented office and one employee, a branch opened in a Member State by a company incorporated and having its registered office in another Member State may be regarded as an insolvent employer for the purposes of the Directive provided that, in the first State, application has been made for the commencement of proceedings leading to a declaration of insolvency and the competent authority has established that it has been definitively closed down and that the available assets are insufficient.

B. *The importance, when identifying the competent guarantee institution, of the fact that the employer contributed to its financing*

33. In *Mosbæk*, the Court also ruled that under Article 5(b) of the Directive the guarantee system is to be financed by employers, unless it is fully covered by the public authorities, and that it accords with the scheme of the directive, in the absence of any contrary indication therein, for the

guarantee institution responsible for employees' outstanding claims to be the one which levied, or at all events should have levied, the insolvent employer's contributions. [11]

34. That did not happen in the case of the Danish guarantee institution because, although the worker lived and had worked in Denmark, the employer was neither established nor registered there as a company or for any other purpose with the tax [12] or customs administration, nor did it deduct from the salary it paid her any tax or social security contribution for retirement or other contingencies under Danish law.

In the present case, in contrast, the undertaking which became insolvent not only had a branch in the United Kingdom but also participated, through its contributions, as did its employees, in the financing of the social security system of that Member State.

35. I do not agree with the United Kingdom Government's assertion that it cannot be said that the competent institution is the one in the State in which contributions have been paid since Directive 80/987 allows the Member States to finance guarantee institutions entirely out of public funds.

That is in fact an option open to the Member States in deciding how to finance their guarantee institutions. However, the United Kingdom's objection can be easily rebutted since, as I stated earlier, under Article 5(c) of the Directive, the guarantee institution's obligation to pay exists even where the employer who was required to contribute failed to do so. The lack of contributions by an employer will be felt just as much by an institution financed entirely by the public authorities as by one which, financed in part by employers, failed to receive the contributions that should have been paid by an employer who has been declared insolvent. And yet both have an obligation to pay outstanding claims of workers in respect of remuneration.

36. I must therefore conclude that the responsibility for paying the outstanding claims of workers affected by their employer's insolvency will attach to the guarantee institution which levied, or at least should

11 — *Mosbæk*, cited in footnote 6 above, paragraph 24.

12 — The Danish guarantee institution was financed directly by the State. However, since the financing was calculated on a basis of one per mil of the taxable amount for VAT purposes, it can be said that employers subject to that tax made a contribution, albeit indirect.

have levied, the insolvent employer's contributions.

C. *The lack of any arrangements in Directive 80/987 for setting off payments between the guarantee institutions of the Member States*

37. In *Mosbæk*, the Court also took note of the fact that the Directive does not provide for a system of set-off or reimbursement of payments between the guarantee institutions of the various Member States. That confirms, in the Court's view, that the Community legislature intended, in the event of an employer's insolvency, that the guarantee institution of only one Member State should become involved, in order to prevent unnecessary entanglements between national systems and, in particular, situations in which a worker might claim the benefit of the directive in several Member States.

38. On the basis of that statement, the United Kingdom Government contends that the sole institution which should pay the outstanding claims of workers employed in branches in various Member States is that of the State in which it was decided to commence insolvency proceedings.

39. I cannot accept that interpretation. In my opinion, what the Court meant to say was that a worker must be able to approach just one guarantee institution for satisfaction of his outstanding claims, even if he has worked in several Member States in the course of his working life, so as to avoid a situation where, to have his claims upheld in one Member State, he would have to have the periods for which he worked in other Member States taken into account. That is why it referred in its reasoning to the lack of a system of set-off between the guarantee institutions of the Member States. [13]

40. Furthermore, by virtue of the principle of legal certainty, a worker employed in a Member State by an employer established there in the sense that I have indicated, to whose social security scheme both contribute, must be able to approach the guar-

13 — It is in the sphere of social security for migrant workers that, because of the system of coordination of national social security schemes, recourse is had to aggregation of insurance periods completed in the various Member States for recognition of entitlement to benefits. It is in that sphere too that a system has been set up for the reimbursement of benefits paid by a social security institution in one Member State on behalf of another Member State.

antee institution of that State for payment of arrears of wages due to him as a result of his employer's insolvency, in accordance with the laws of that State, with which the worker is familiar. It would be contrary to that principle for him to have to apply to the guarantee institution of another Member State in order to be compensated in accordance with provisions and scales in force in that other State which would be alien to him.

And of course none of the foregoing prevents the Member States from establishing more favourable procedures for employees, such as the informal cooperation which exists for those purposes between the guarantee institutions of the Nordic States. [14]

41. There are other arguments which militate in favour of the solution that I propose. First, the judicial protection of a worker will be enhanced if the payment of outstanding wages can be required from the authorities of the State in which he worked. Second, he will receive the same treatment as the remainder of the workers in that State who are employed by undertakings whose headquarters are located in that State, which would not happen if he were obliged to make a claim to the guarantee institution of another Member State.

42. There are other reasons too, as indicated by the Commission. For it to be possible to apply Directive 80/987, there must be both an employee and an insolvent employer, both of which terms are defined by the legislation of the Member States and must be appraised in each case by the national court — and for that reason both must be subject to the same legislation. And until such time as a European convention comes into operation, so that a single application can be made to obtain a declaration of insolvency for the Community as a whole, in which account would be taken of all assets and all potential creditors, the national laws continue to be based on the principle of territoriality with the result that, in proceedings initiated in a Member State, assets not located within its jurisdiction cannot be brought into account.

Last but not least, the linguistic problems which would be encountered by a worker who had to pursue his application in another Member State and which would be liable to detract from the effectiveness of the protection offered by the Directive must not be underestimated.

14 — This cooperation, which originates in a decision adopted by the Nordic Council (Nordisk Råd) in 1984, makes it possible, if the legislation of the State in which the employer is established is more advantageous to the worker than that of the State in which he works, for the worker to apply for his claim to be paid by the guarantee institution of the first State. Schaumburg-Müller: *Lønmodtagernes Garantifond, en Lovkommentar*, Munksgaard, Copenhagen, 1987, p. 167.

VII — Conclusion

43. In view of the foregoing considerations, I suggest that the Court of Justice give the following answer to the question submitted by the Industrial Tribunal, Bristol:

Where workers employed in one Member State by a branch of a company incorporated in another Member State, where it had its registered office and where insolvency proceedings were commenced, under Article 3 of 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, the guarantee institution which must accept responsibility for outstanding claims is that of the State in which the workers are employed and in which the employer pays, or ought to pay, contributions to the financing of the institution.