REPORT FOR THE HEARING

in Case E-10/12

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Héraðsdómur Reykjavíkur (Reykjavík District Court) in the case of

Yngvi Harðarson

and

Askar Capital hf.

on the interpretation of Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

I Introduction

1. By a letter of 14 September 2012, registered at the EFTA Court on the same day, Reykjavík District Court made a request for an Advisory Opinion in a case pending before it between Yngvi Harðarson ("the plaintiff"), and his former employer Askar Capital hf., a financial undertaking in winding-up proceedings ("the defendant").

2. The case before the national court concerns, *inter alia*, whether an employee's compensation for breach of contract is to be assessed on the basis of the written contract of employment if no written document has been handed over to the employee concerning any amendments that may have been made to the main features of the contract.

II Legal background

EEA law

3. Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or

employment relationship ("the Directive")[1] was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 7/94 of 21 March 1994, amending Annex XVIII to the EEA Agreement.

4. Article 1 of the Directive reads:

Scope

1. This Directive shall apply to every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State.

…

5. Article 2 of the Directive reads:

Obligation to provide information

1. An employer shall be obliged to notify an employee to whom this Directive applies, hereinafter referred to as 'the employee', of the essential aspects of the contract or employment relationship.

2. The information referred to in paragraph 1 shall cover at least the following:

…

(h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;

…

6. Article 5 of the Directive reads:

Modification of aspects of the contract or employment relationship

1. Any change in the details referred to in Articles 2(2) and 4(1) must be the subject of a written document to be given by the employer to the employee at the earliest opportunity and not later than one month after the date of entry into effect of the change in question.

…

[1] OJ 1991 L 288, p. 32.

7. Article 6 of the Directive reads:

Form and proof of the existence of a contract or employment relationship and procedural rules

This Directive shall be without prejudice to national law and practice concerning:

- the form of the contract or employment relationship,

- proof as regards the existence and content of a contract or employment relationship,

- the relevant procedural rules.

8. Article 8 of the Directive reads:

Defence of rights

1. Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process after possible recourse to other competent authorities.

...

9. Article 9 of the Directive reads:

Final provisions

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 30 June 1993 or shall ensure by that date that the employers' and workers' representatives introduce the required provisions by way of agreement, the Member States being obliged to take the necessary steps enabling them at all times to guarantee the results imposed by this Directive.

...

National law

10. The Directive was implemented in Icelandic law by Advertisement No 503/1997, which was published in Series B of the Law Gazette on 30 June 1997. Following consultation with the principal employers' and workers' organisations, it was decided to implement the provisions of the Directive by way of collective agreements in accordance with Article 9(1) of the Directive.

11. Under Icelandic law there is no general provision laying down formal requirements in relation to contracts of employment, although such requirements exist in certain sectors. This entails, *inter alia*, that oral contracts, or contracts made with the assistance of electronic media, are, in principle, valid.

III Facts and procedure

12. On 18 December 2006, the plaintiff and the defendant concluded a contract of employment, which took effect on 1 January 2007. Article 2 of the contract provided that the notice period for the termination of the contract amounted to 12 months. According to Article 3 of the contract, the plaintiff's monthly remuneration was EUR 15 000.

13. In the course of the plaintiff's employment, several aspects of the contract of employment were modified including his title and responsibilities, his remuneration as well as the currency in which this remuneration was paid.

14. As regards his position, the plaintiff was initially hired as the Manager of the Consulting and Risk Management Department; he was then appointed as the Manager of the Risk Management Department as from summer 2007, and then as the Manager of the Hedge Fund Department as from June 2008. Finally, from October 2008 to July 2010, he was engaged as the Manager of the Risk Consulting Department.

15. As from January 2009, the plaintiff's monthly remuneration was paid in Icelandic krónur (ISK). In April 2009 – possibly as early as from January 2009 – the initial amount of EUR 15 000 per month was reduced to ISK 1 500 000 per month (equivalent to some EUR 9 000 according to exchange rates at the time). Based on the information given in the request from the national court, it is unclear whether such modification was temporary or permanent. This is due to the fact that the negotiations were undertaken orally and via emails and over a period of several months extending from December 2008 to November 2009.

16. By a ruling of 14 July 2010, the defendant was put into winding-up proceedings.

17. By a letter of 26 July 2010 to the defendant's winding-up committee, the plaintiff declared that he considered the defendant to have defaulted on the contract and that he would not accept any deviation from the terms of the written contract as regards his terms of employment, including those relating to wages. By a letter of 27 July 2010, the winding-up committee terminated the contract of employment and informed the plaintiff that it would not take over any rights and obligations under the contract.

18. On 18 November 2010, the plaintiff lodged a claim with the defendant's winding-up committee for wages during his notice period, in addition to vacation pay and social security tax, a total of EUR 252 836. The claim was based on a

12-month notice period and a monthly wage of EUR 15 000 as provided in Articles 2 and 3 of the employment contract. The claim was lodged as a priority claim in the winding up under national law.

19. The winding-up committee rejected the plaintiff's full claim on the basis that the calculation of his claim should have been based on a monthly remuneration of ISK 1 500 000 and not EUR 15 000. As a result, the winding-up committee reduced the plaintiff's claim from EUR 252 386 to EUR 150 023. Moreover, it did not consider the claim a priority claim but an ordinary one for the purpose of the winding-up proceedings. The plaintiff rejected the winding-up committee's position both with regards to the status of the claim (which is not the subject of the request for an Advisory Opinion) and the amount.

20. When attempts to resolve the dispute proved unsuccessful, it was decided to refer it to Reykjavík District Court.

21. The parties are in dispute as to the appropriate amount of compensation to be awarded as a result of the termination of the contract of employment. The plaintiff argues that Article 3 of the contract of employment providing for a monthly remuneration of EUR 15 000 should be used as the starting point in the calculation of his claim. Moreover, the plaintiff contends that, if, contrary to his argument, the remuneration was amended in the course of the employment, this was only on a temporary basis. Alternatively, if any such amendment was intended to be permanent, it should have been done in accordance with the provisions of Article 5 of the Directive, and the burden of proof rests with the defendant to prove such.

22. The defendant argues that the plaintiff's wages were amended from EUR 15 000 to ISK 1 500 000 during the course of the employment period in a binding fashion either by an oral agreement or, alternatively, in accordance with custom established between the parties. As a result, ISK 1 500 000 should be used as the reference amount for the calculation of the claim.

23. In the proceedings before the District Court, the plaintiff requested that two questions be referred to the Court. In a ruling of 7 June 2012, the District Court rejected that request. An appeal was made to the Supreme Court of Iceland. The Supreme Court set aside the District Court's ruling in relation to one of the questions, and decided that an Advisory Opinion should be sought from the Court in connection with the dispute concerning the reduction of the plaintiff's claim.

24. Consequently, Reykjavík District Court has referred the following question to the Court:

> **Should Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship be interpreted**

as meaning, in circumstances including bankruptcy proceedings or a comparable division of a limited liability company, that compensation to an employee is to be assessed on the basis of a written contract of employment if no written document has been handed over to the employee concerning amendments, temporary or permanent, that may have been made to the main features of the contract of employment or employment relationship between the parties within the time limits laid down in Article 5 of the Directive?

IV Written observations

25. Pursuant to Article 20 of the Statute of the Court and Article 97 of the Rules of Procedure, written observations have been received from:

- the plaintiff, represented by Hildur Sólveig Pétursdóttir, Supreme Court Attorney;
- the defendant, represented by Stefán Geir Þórisson, Supreme Court Attorney;
- the EFTA Surveillance Authority ("ESA"), represented by Xavier Lewis, Director, and Clémence Perrin and Maria Moustakali, Officers, Department of Legal & Executive Affairs, acting as Agents; and
- the European Commission ("the Commission"), represented by Johan Enegren, Member of its Legal Service, acting as Agent.

V Summary of the pleas and arguments submitted

The plaintiff

26. The plaintiff submits that the provisions of the Directive are to be interpreted as meaning that in the event of insolvency proceedings or comparable division of a limited company, compensation to an employee, including vacation pay and pay during the notice period, should be assessed on the basis of the written contract of employment.

27. The plaintiff points out that, according to its preamble, the objective of the Directive is to subject employment relationships to formal requirements. Such formal requirements are designed to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labour market. This transparency consists in employees' being able to assume that their terms of employment at any given time will be in accordance with the written contracts of employment that they have signed.

28. To this end, the plaintiff continues, Article 5 of the Directive states that any change in the contract of employment must be the subject of a written document to be given by the employer to the employee not later than one month after the date of entry into effect of the change in question.

29. The plaintiff submits that, although the Directive does not itself lay down any rules of evidence, the objective of the Directive would not be achieved if the employee were unable in any way to use the information contained in the notification referred to in Article 2(1) of the Directive as evidence before the national courts, particularly in disputes concerning essential aspects of the contract or employment relationship.[2] The national courts must therefore apply and interpret their national rules on the burden of proof in light of the purpose of the Directive, giving the aspects specifically referred to in Article 2(1) of the Directive such evidential weight as to allow them to serve as factual proof of the essential aspects of the contract of employment or employment relationship and using them as the basis for resolution of the dispute by the courts.[3]

30. The plaintiff contends furthermore that, under Article 2(2) of the Directive, the employer is obliged to inform the employee in a clear manner of the essential aspects of the contract of employment.[4] The purpose of that obligation is to apprise employees of their rights and obligations vis-à-vis their employers, and not to give an indication of the practices observed as a general rule in the undertaking in the period preceding their recruitment.[5]

31. Therefore, the plaintiff's view is that the position adopted by the defendant towards his claim infringes Articles 1, 2(2) and 5 of the Directive. According to the plaintiff, the fact that he approved, from month to month, a deviation from the contract of employment in the form of a reduction of his basic wage does not alter the obligation of the defendant to pay him the basic wage (EUR 15 000) and vacation pay specified in the contract of employment for a period of 12 months, which is the notice period specified in the contract.

32. Moreover, the plaintiff submits that the employees of an employer which becomes bankrupt or insolvent do not lose their protection under Article 1 of the Directive, as is assumed in the defendant's observations to Reykjavík District Court. According to the plaintiff, this follows from Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of

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[2] Reference is made to Joined Cases C-253/96 to C-258/96 *Kampelmann and Others* [1997] ECR I-9607, paragraph 32.

[3] Reference is made to *Kampelmann and Others*, cited above, paragraph 33.

[4] Reference is made to Case C-350/99 *Lange* [2001] ECR I-1061.

[5] Reference is made to *Lange*, cited above, paragraph 18.

employees in the event of the insolvency of their employer ("Directive 2008/94").[6]

33. The plaintiff observes that he proposed to the national court that it should include a reference to Directive 2008/94 in its question to the Court. However, in its wording of the question, the national court did not make specific mention of Directive 2008/94. In the view of the plaintiff, there is no reason to believe that this indicates anything other than the fact that the national court considered it evident that Directive 2008/94 would also be taken into consideration, since the matter in dispute directly concerns the protection of employees in the event of insolvency or other comparable proceedings.

34. The plaintiff submits that the defendant bases its defence in the national proceedings on considerations which are contrary to the provisions of Directive 2008/94. According to the plaintiff, the defendant argues that the plaintiff should be deprived of the right to have his claim for wages during the 12-month notice period (including his claim for vacation pay) accorded priority status, and deprived of his agreed leave entitlement, because he held the position of manager.

35. However, in the plaintiff's view, the provisions of Directive 2008/94 preclude a reduction of an employee's rights in the manner claimed by the defendant. Article 1(1) of Directive 2008/94 applies to employees' claims arising from employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2(1) of that directive. The plaintiff submits that, in principle, higher management staff cannot be excluded from the scope of Directive 2008/94.[7] Accordingly, the plaintiff unequivocally enjoys the protection of Directive 2008/94.

36. The plaintiff is of the opinion that the protection offered by Directive 91/533 may not be reduced by a determination that employees are not to enjoy protection during the notice period for termination specified in their contracts of employment, unless the length of this period corresponds to the minimum terms specified in legislation or a collective agreement in the Member State concerned. An interpretation of that kind would, in effect, deprive employees of their freedom to negotiate the length of the notice period and render the protection granted by the Directive inapplicable in the event of the insolvency of their employer.

37. The plaintiff emphasises that Article 11 of Directive 2008/94 provides that the Directive shall not affect the option of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees. This applies also to contracts made directly between employees and

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[6] OJ 2008 L 283, p. 3. Directive 2008/94 was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 51/2009 of 24 April 2009, amending Annex XVIII to the EEA Agreement.

[7] Reference is made to Case C-334/92 *Wagner Miret* [1993] ECR I-6911, paragraph 14.

their employers. The plaintiff notes further that Article 12(a) of Directive 2008/94 provides that the option of Member States to take the measures necessary to avoid abuses shall not be affected. In the plaintiff's view, this means that Member States are permitted to set rules only to prevent abuses of the rules of Directive 2008/94 regarding protection for employees in the event of their employers' insolvency. If, on the contrary, an employee's claim does not involve abuse of the rules (or the system), he should have his claims paid in full, in accordance with the proportion of claims that can be met by the assets of the estate.

38. In the plaintiff's view, it cannot be said that the plaintiff's contract of employment with the defendant involved abuse within the meaning of Directive 2008/94.[8] Nor does the defendant base its arguments on the view that the plaintiff engaged in such abuse. On the contrary, the plaintiff submits, the provisions of the contract of employment were lawful in every respect, and consequently there was no reason to invalidate or review them when the plaintiff's employment ended and the defendant's estate was accepted for winding-up proceedings.

39. Having regard to the foregoing, the plaintiff considers that the provisions of Directive 91/533 and Directive 2008/94 should be interpreted as meaning that, in the event of the employer's insolvency, compensation to an employee in respect of wages during the notice period should be assessed on the basis of the written contract of employment.

40. The plaintiff proposes that the Court should answer the question as follows:

> *Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship should be interpreted as meaning, in circumstances including insolvency proceedings or a comparable division of a limited liability company, that compensation to an employee is to be assessed on the basis of a written contract of employment if no written document has been handed over to the employee concerning amendments, temporary or permanent, that may have been made to the essential elements of the contract of employment or employment relationship between the parties within the time limits laid down in Article 5 of the Directive. As Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer applies directly to the protection of employees in circumstances where the employer's estate is subjected to insolvency proceedings or comparable division, including circumstances in which an employee presents his claims directly against the employer's estate (but not against a guarantee institution or insurance institution), then the employee's rights should also be protected when such proceedings or division takes place in accordance*

[8] Reference is made to Case C-201/01 *Walcher* [2003] ECR I-8827, paragraphs 34 to 52.

with the provisions of that Directive (cf. – as appropriate to the circumstances of the case – in particular Articles 1 and 11 of the Directive), providing that the employee has not forfeited his rights by engaging in activities covered by Article 12(a) of the Directive.

The defendant

41. The defendant submits that, when an essential element of a contract has not been mentioned in a written document within the meaning of Article 2 of the Directive, it does not follow from the Directive that that element will be regarded as inapplicable.

42. According to the defendant, the Directive contains no provisions to indicate directly or indirectly that an agreement on essential elements made in a form other than writing shall be deemed void and inapplicable.[9] The Directive merely provides that amendments should ideally be notified in writing. Were it the intention of the legislature that a failure to provide such notification of an agreement would render that agreement null and void, this would have to be stated clearly in the Directive.

43. The defendant submits further that the Directive does not lay down any rules of evidence. Article 6 of the Directive presupposes that national rules of proof apply when evaluating whether essential contractual elements should be ruled inapplicable or not.[10] This means that proof may be produced in any form allowed by national law, and thus, even in the absence of any written notification from the employer. The aim of the provision would be frustrated were it given a contrary interpretation.[11]

44. The defendant observes that Article 8(1) of the Directive leaves it to the Member States to introduce necessary measures to enable employees who consider themselves wronged by failure to comply with the Directive to pursue their claims by judicial process. This gives the Member States the authority to define penalties appropriate to such circumstances.[12]

45. According to the defendant, the duty to provide information to the employee can be complied with by means other than those listed in Article 6 of the Directive. Each instance must be evaluated on a case by case basis. In its view, the wording of the preamble to the Directive indicates that it was not the legislature's intention to lay down a rigid rule in the Directive. Recital 8 in the preamble to the Directive states that Member States should be able to exclude certain limited cases of employment relationship from the scope of the Directive,

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9 Reference is made to *Lange*, cited above.

10 Reference is made to *Lange*, paragraph 27, and *Kampelmann and Others*, paragraph 30, both cited above.

11 Reference is made to *Lange*, cited above, paragraph 27.

12 Reference is made to *Lange*, cited above, paragraphs 28 and 29.

"in view of the need to maintain a certain degree of flexibility". The wording of Article 1(2)(b) of the Directive, in relation to casual work, also indicates that there is flexibility.[13]

46. The defendant emphasises that the purpose of the Directive is to make it easier for employees to prove rights and obligations and to create transparency on the labour market. In its view, therefore, the Directive should not be interpreted to preclude methods of establishing the conditions of or amendments to a contract other than by written document.[14]

47. The defendant proposes that the Court should answer the question as follows:

> *Council Directive 91/533/EEC of 14 October 1991 should be interpreted as meaning that, in circumstances including bankruptcy proceedings or comparable division of a limited liability company, compensation to an employee should not be assessed on the basis of a written contract of employment, if there is evidence which supports the existence of a verbal agreement or other types of agreements through application of national rules of proof and practise, and the agreement concerns the main features of the original written contract between the parties.*

The EFTA Surveillance Authority

48. As a preliminary remark, ESA notes that the Directive is applicable to the present case as the plaintiff can be considered a worker for the purposes of EEA labour law. The activity of the plaintiff falls within the scope of the concept of a worker as defined in the case law of the European Court of Justice ("ECJ") since he provided services to and under the direction of the defendant regularly and in return for remuneration.[15] The fact that the plaintiff was appointed as a manager and his claim is not considered a priority claim in the bankruptcy proceedings is not relevant for EEA labour law purposes and has no bearing on the fact that he was a worker falling within the scope of the Directive.

49. ESA notes that, as stated in recital 2 of its preamble, the Directive was introduced in order to provide employees with improved protection against possible infringements of their rights and create greater transparency in the labour market. The Directive thus lays down various requirements aimed at ensuring such protection, in particular by imposing the obligation on the employer to provide the employee with the required minimum amount of information concerning the employment relationship.

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[13] Reference is made to Case C-313/02 *Wippel* [2004] ECR I-9483.

[14] Reference is made to *Wippel*, cited above.

[15] Reference is made to Case C-232/09 *Danosa* [2010] ECR I-11405, paragraph 39.

50. To this end, ESA submits, both Articles 2 and 5 of the Directive require the employer to notify the employee in writing of the essential aspects of the contract, or of amendments to such aspects, within a specific time frame. In particular, Article 5 provides that any changes to an essential aspect of the contract or the employment relationship must be the subject of a written document given by the employer to the employee at the earliest opportunity and not later than one month after the date of entry into effect of the changes in question.

51. ESA submits, however, that the Directive does not affect or modify the substantive rights and obligations entered into by the parties to a contract of employment. According to ESA, the Directive does not provide for any penalty or sanction in the case of a failure to notify in writing any amendment to the contract of employment as required in Article 5 of the Directive. Instead, Article 8 of the Directive leaves to the Member States the task of defining the penalties appropriate in the case of a failure to comply with the obligations arising from the Directive. Therefore, ESA continues, it is for the national legislature to introduce the necessary measures to enable employees who consider themselves wronged by a failure to comply with the obligations arising from the Directive to pursue their claims by judicial process after possible recourse to other competent authorities.

52. ESA refers to Article 6 of the Directive, which specifically provides that the Directive shall be without prejudice to national law and practice concerning the form of the contract and proof as regards the existence and content of the contract. According to ESA, this entails that the provisions of Article 5 are to be applied in a way which allows for the introduction of amendments to the employment contract and the production of proof of such amendments in a form accepted by national law, even in the absence of any written documentation.[16]

53. Thus, ESA continues, the Directive does not aim at laying down any rules on the form of the contract and on evidence, with the breach of such to be sanctioned in a certain way. Instead, the aim is to ensure that national courts apply and interpret their national rules on evidence in the light of the purpose of the Directive, which is to provide employees with improved protection against possible infringements of their rights. Accordingly, even if the defendant failed to provide the plaintiff with the information required by a provision of the Directive, the Directive does not release either of the parties from their obligations arising under the contract.[17]

54. ESA submits that the Directive neither affects the burden of proof nor shifts it from one party to another.[18] According to ESA, it follows from Article 6

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[16] Reference is made to *Lange*, cited above, paragraph 29.

[17] Reference is made to *Kampelmann and Others*, cited above, paragraph 35.

[18] Reference is made to *Kampelmann and Others*, cited above, paragraph 33.

of the Directive that the burden and the standard of proof in any dispute with the employer remains governed by national law. Consequently, ESA does not accept the argument advanced by the plaintiff in the main proceedings, namely, that, according to the Directive, the burden of proof lies with the employer.

55. ESA adds that it has opened infringement proceedings against Iceland (Case No 69202) because Iceland has failed to take any measures to implement Article 8 of the Directive. In its view, however, those infringement proceedings have no bearing on the present case which concerns a dispute between the parties on their rights and obligations under the contract of employment and not the availability of means of defence and redress under national law.

56. Therefore, in relation to the question referred by Reykjavík District Court, ESA submits that the validity of the amendments to the contract of employment is, first and foremost, a question of national law and practice. Thus, it is for the national court to ascertain the facts which have given rise to the dispute before it and establish whether the contract of employment has been amended, whether or not the requirements of Article 5 of the Directive have been complied with.

57. ESA proposes that the Court should answer the question as follows:

> *Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship should not be interpreted as meaning, in circumstances including bankruptcy proceedings or a comparable division of a limited liability company, that compensation to an employee is to be assessed on the basis of a written contract of employment if no written document has been handed over to the employee concerning amendments, temporary or permanent, that may have been made to the main features of the contract of employment or employment relationship between the parties within the time limits laid down in Article 5 of the Directive.*

The European Commission

58. The Commission observes that the aim of the Directive is to make employers responsible for providing precise information in written form on the nature and content of working relations between the employer and the employee in order to remove, as far as possible, uncertainty and insecurity about terms of the employment relationship. According to the Commission, the Directive does not concern itself with the national rules of law concerning the conclusion of employment contracts. Furthermore, the aim of the written declaration required by the Directive is not to harmonise the content of employment contracts with regards to matters such as remuneration.[19]

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[19] Reference is made to the Commission's Proposal for a Council Directive on a form of proof of an employment relationship COM(90) 563 final, 8 January 1991, p. 4.

59. Consequently, according to the Commission, the provisions of the Directive have no bearing on the material content of the contract of employment. Article 6 of the Directive clearly states that it is without prejudice to national law and practice concerning the form of the contract or employment relationship, proof as regards the existence and content of a contract or employment relationship as well as the relevant procedural rules. The Commission asserts that this provision implies that proof regarding the existence of a contract or employment relationship may be produced in any form allowed under national law, and thus even in absence of any written notification from the employer.[20] Thus, the Commission continues, Article 5 of the Directive merely provides that any change in the terms of employment must be set out in a written document to be given to the employee no later than one month after the entry into force of the modification. Failure to provide such a document does not in any way affect the employment contract or relationship.

60. None the less, the Commission observes that, if the employer fails to provide written information on the terms of an employment contract or relationship, Article 8(1) of the Directive provides that the employee shall have the right to pursue a possible claim against an employer by judicial process after possible recourse to other competent authorities.[21]

61. The Commission proposes that the Court should answer the question as follows:

> *Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship must be interpreted as not requiring that, in the context of an bankruptcy proceeding or a comparable division of a limited company, the compensation to an employee be assessed on the basis of a written contract of employment if no written document has been provided to the employee concerning amendments, temporary or permanent, that may have been made to the main features of the contract of employment or employment relationship between the parties within the time limits laid down in Article 5.*

Per Christiansen
Judge-Rapporteur

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[20] Reference is made to *Lange*, cited above, paragraph 27.

[21] Reference is made to *Lange*, cited above, paragraph 28.