

Compensation for wage losses due to insolvency in France

Insolvenzrecht



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The recent decision of the French Cour de Cassation clarifies the role and tasks of the French Insolvency Benefit Fund (AGS) in cases of corporate insolvency.

When a company in France goes into insolvency, the Insolvency Benefit Fund (AGS) takes over salaries and compensation for the benefit of employees upon presentation of an appropriate payroll by the insolvency administrator or liquidator.

In the case decided, insolvency proceedings were opened over the assets of a company that was experiencing massive economic difficulties. An insolvency administrator was appointed. Shortly afterwards, the company was sold to a third party and liquidated.

The insolvency administrator then applied to the AGS for payment of the salaries and overtime to which the company's employees were entitled. As pre-condition for payment, the AGS requested proof that the company itself did not have the funds to meet the claims itself. Finally, the AGS refused to pay the costs.

The Court of Appeal of Poitiers ordered the AGS to pay the costs in a ruling of 14 June 2022. The AGS then filed an appeal.

The subject of the dispute was the question of whether the AGS has a right to object or has to pay on first demand by the insolvency administrator or liquidator.

In a judgment of 7 July 2023 (ref. no. 22-17.902), the Court of Cassation ruled that the AGS had no right to object because this was not provided for by law in the context of insolvency and liquidation proceedings - unlike in reorganization proceedings (procédure de sauvegarde).

The decision is not surprising, as it corresponds to the legal situation in France. **This legal dispute shows that the Insolvency Benefit Fund in France repeatedly tries to delay or block payments,**



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which can delay or even make impossible restructuring efforts by the insolvency administrator. It is to be welcomed that the Court of Cassation has underlined that the AGS has no right of objection, because the insolvency compensation funds can thus be applied for more quickly by the insolvency administrator with reference to this case law.

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