

A SECOND CHANCE FOR ENTREPRENEURS

COM(2016)723¹ of 22. November 2016 will be adopted via the ordinary legislative procedure. JURI is the leading committee, EMPL and ECON are associated. The text has as objective to ensure that **entrepreneurs and businesses in financial difficulties** can seek support at an early stage in order to keep their businesses going. They will benefit from a flexible and efficient restructuring framework to help them bring their company back on track. The proposal will also amend directive 2012/30/EU for which the legal basis was Article 50 (1) and (2)(g) TFEU, whereas the current proposal for a directive is based on **Article 53 and 114 TFEU**. It does not harmonise the substantive insolvency laws of the Member States.

Background

Companies and individuals in the EU are increasingly establishing business activities or economic interests in EU countries other than where their core activities are located. If they become insolvent, there may be direct implications on the proper functioning of the internal market. It is said that 1.7 million jobs are lost to insolvency every year and could be saved. Offering a true second chance to entrepreneurs to restart business activities would create 3 million jobs across Europe permanently. In Member States where restructuring procedures take precedence over liquidation procedures the credit recovery rate is 83%, in comparison with 57%². The provisions of the proposal will be obviously also of vital importance for **family businesses in Europe**³

In order to establish a common framework for EU insolvency proceedings, EP and Council set up in 2015 a **regulation on insolvency proceedings** (2015/848 of 20 May 2015). It focuses on resolving the conflicts of jurisdiction and laws in cross-border insolvency proceedings, and ensures the recognition of insolvency-related judgments across the EU. It establishes common rules on the court competent to open insolvency proceedings, the applicable law and the recognition of the court's decisions when a debtor (a company, a trader or an individual) becomes insolvent.

The main objective is to avoid the transfer of assets or judicial proceedings from one EU country to another, which can improve the legal position of companies or individuals.

But despite reforms in the area of insolvency, not sufficient change has been observed facilitating the rescue of businesses and giving a second chance to entrepreneurs in financial difficulty.

The proposal for the current **directive on a second chance** does not affect the insolvency procedure itself. However, it is likely that the importance of formal insolvency proceedings will be reduced by the use of the proposed restructuring plan. There could be practical implications of the intended harmonization on the respective national insolvency law and the existing EU regulation.

Objective of the current proposal

¹ Proposal for a EP and Council Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU

² Opinion INT/810 of Economic and Social Committee , Rapporteur: Antonello PEZZINI - Co-rapporteur: Franca SALIS-MADINIER

³ European Parliament resolution of 8 September 2015 on family businesses in Europe (2014/2210(INI))

Article 1, par. 2(g) of the proposal for a directive on a second chance rules that the proposal shall **exclusively govern corporate insolvency**, as private insolvency is characterized by other challenges as corporate insolvency.

There are still several Member States where a business cannot be **restructured before it is insolvent**. Important discrepancies have remained as to the duration of the discharge period. Such differences in Member States' legal frameworks mean continuing legal uncertainty. The proposal aims to reduce barriers to cross-border investment related to differences between the Member States' restructuring and second chance frameworks, and to **increase investment and job opportunities in the single market**.

Furthermore, unnecessary liquidations of viable companies should be decreased, value for creditors, owners and the economy should be maximised, and possibilities of cross-border restructurings be increased.

Finally, the Directive is intended to improve the **effectiveness of all restructuring, insolvency and second chance procedures** with a view to reducing their length and costs.

Measures in detail

The proposed directive (COM (2016)723) will be laying down rules on:

- **Preventive restructuring** procedures available for debtors in financial difficulty when there is a likelihood of insolvency. This should help companies continue their activity and preserve jobs. Companies in financial difficulties, especially SMEs, will have access to **early warning tools to detect a deteriorating business situation** and ensure restructuring at an early stage. Flexible preventive restructuring frameworks will simplify lengthy, complex and costly court proceedings. Where necessary, national courts must be involved to safeguard the interests of stakeholders. The duration of the stay of individual enforcement actions will be limited to a maximum period of no more than four months, with an extension possible in prescribed cases
- Procedures leading to a discharge of debts incurred by over-indebted entrepreneurs and allowing them to take up a new activity. This enables entrepreneurs to **benefit from a second chance**, as they will be fully **discharged of their debt** after a maximum period of 3 years. Entrepreneurs disqualified on grounds linked to their over-indebtedness should have the benefit of short disqualification orders to offer them an effective second chance, but Member States have a large margin of discretion.
- Measures to increase the efficiency of insolvency procedures. This will reduce **length and costs of procedures**, which results in legal uncertainty for creditors and investors and low recovery rates of unpaid debts.
- Member States may apply the provisions on debt-discharge for entrepreneurs to **consumers insolvencies**. Insolvent private individuals could then benefit from a discharge period of a maximum of three years.
- **Training, specialisation of practitioners and courts**, and the use of technology (e.g. online filing of claims, notifications to creditors) shall improve the efficiency and reduce length of insolvency, restructuring and second chance procedures.

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