



30.1.2015

## NOTICE TO MEMBERS

**Subject: Petition No 1637/2013 by Nunzia d’Aniello (Italian) on the bankruptcy of Deulemar Compagnia di Navigazione (Italy)**

### **1. Summary of petition**

The petition relates to the bankruptcy of Deulemar Compagnia di Navigazione, based in Torre del Greco. According to the petitioner, there has been fraud involved in the management of the company and the bankruptcy procedure, which have both been devoid of administrative transparency.

The bankruptcy has caused severe economic hardship to thousands of families who have invested their savings in the company and to the workers who have lost their jobs.

### **2. Admissibility**

Declared admissible on 4 June 2014. Information requested from Commission under Rule 216(6).

### **3. Commission reply, received on 30 January 2015**

#### The Commission’s observations

The Commission is aware of the insolvency proceedings opened in relation to Deulemar Compagnia di Navigazione in Italy and the negative repercussions which the collapse of this company has on bondholders and employees.

Concerning the petitioner's allegations of fraud, the Commission would like to note that the rules on directors' duties and liability in the vicinity of insolvency are currently not

harmonised at EU level. Consequently, the duties and liabilities of a company's management are determined exclusively by national law. According to the Commission's information, several members of the families owning the company have recently been convicted for carrying out illegal financial transactions as the company collapsed. It seems therefore, that the Italian law contains adequate tools to sanction fraudulent transactions by the management which are to the detriment of the company's creditors.

Irrespective of that, the Commission is currently examining the need for action at European level in this area of law. The issue of director's duties and liabilities in the vicinity of insolvency has been addressed in a study prepared for the Commission by the London School of Economics in 2012. The findings of this study will be complemented by further research on the cross-border implications of this issue for which a call for tender has recently been published. On the basis of these findings, the Commission will identify whether the differences in national insolvency laws create obstacles for the good functioning of the internal market.

Moreover, the Commission has, in March 2014, adopted a recommendation on a new approach to business failure and insolvency which encourages Member States to put in place insolvency proceedings allowing companies to address their financial difficulties at an early stage in order to increase the chances of a successful rescue of the company and to save jobs. The Commission also proposed to revise Council Regulation (EC) No 1346/2000 on insolvency proceedings which establishes a legal framework for cross-border insolvency proceedings in order to extend its scope to such rescue-oriented proceedings. Another main amendment of the revision aims at improving transparency of insolvency proceedings by requiring Member States to establish electronic insolvency registers containing minimum information about the insolvency proceedings and by providing for the interconnection of these registers. This revision is due to be adopted in early 2015.

### Conclusion

The Commission is aware of the importance to have in place an adequate legal framework which effectively sanctions abusive and dishonest managerial actions. The Commission is therefore analysing the issue of directors' liability in the vicinity of insolvency to determine whether the existing divergence of national solutions to this problem create problems for the proper functioning of the internal market. In addition, the Commission is promoting reforms of national insolvency law in order to allow viable companies in financial difficulties to continue their business, thereby saving jobs.