

Preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures

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The Committee on Legal Affairs adopted the report by Angelika NIEBLER (EPP, DE) on the proposal for a directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU.

The objective of the proposed Directive is to contribute to the proper functioning of the internal market and to remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures on preventive restructuring, insolvency and second chance.

The committee responsible recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Preventive restructuring procedures: Members propose that Member States ensure that debtors and entrepreneurs have access to early warning tools which can detect a deteriorating business development and signal to the debtor or the entrepreneur the need to act as a matter of urgency. Warning tools may for example include accounting and control obligations for the debtor or the debtor's management or reporting duties under loan agreements.

Member States shall make available to the public, and in particular to SMEs, on a dedicated website how debtors and entrepreneurs can access early warning tools in their Member State.

Preventive restructuring frameworks: preventive solutions are a growing trend in modern insolvency law. The trend goes towards favouring approaches that, unlike the traditional approach of liquidating a business in crisis, have the aim of restoring it to health or, at least, saving those of its units which are still economically viable. That practice often helps to maintain jobs or reduce avoidable job losses.

Member States may provide that access to restructuring proceedings is limited to enterprises that have not been finally sentenced for serious breaches of accounting and bookkeeping obligations under national law. They may also provide for restructuring frameworks to be available at the request of creditors and workers representatives, with the agreement of the debtor. Member States shall ensure that representatives of the debtors workers receive clear and transparent information on the restructuring procedure.

Stay of individual enforcement actions: such an application should only be possible if there is not yet an obligation to apply for commencement of insolvency proceedings. The duration of the suspension of individual enforcement action would be limited to a maximum period not exceeding four months.

For reasons of legal certainty, the total duration of the stay of individual enforcement actions, including extensions and renewals, shall not exceed ten months. The total duration of the stay shall be limited to two months if the registered office of the company has been transferred to another Member State within a three-month-period prior to the filing of a request for the opening of restructuring proceedings.

Restructuring plans: these plans should be validated by a judicial or administrative authority and submitted to workers' representatives for information and consultation. They should contain information on organisational aspects relating to employment consequences, e.g. redundancies, short-time working and similar. They should not affect workers' rights and claims and should not affect occupational pension funds or schemes.

Restructuring plans that result in the loss of more than 25% of the workforce should be validated by a judicial or administrative authority.

Member States shall ensure that the procedures provided for in national law allow creditors, including workers affected by a waiver plan, to have a right to vote on the adoption of the restructuring plan, after having been duly informed about the procedure and its potential consequences for the company.

Members States shall ensure that workers rights, such as the right to collective bargaining and industrial action and the right to information and consultation should not be compromised by the restructuring process. Member States shall also ensure that workers are always treated as a preferential and secured class of creditors.

A second chance for entrepreneurs: Members propose that honest entrepreneurs who are over-indebted may be fully discharged of their debts in accordance with the directive. Entrepreneurs who violate employment or competition law shall be excluded from a full discharge. Member States shall provide entrepreneurs affected by the second chance with business support and regeneration actions which help to relaunch their entrepreneurial capacity.

Members propose that over-indebted entrepreneurs may be fully discharged from their debts for the first time after five years (instead of three years) at the latest from the date on which the judicial or administrative authority took a decision on the application to open the procedure or from the date on which implementation of the repayment plan started.

Member States may provide for longer discharge periods in cases where an entrepreneur applies for a second or any subsequent discharge procedure.

The difficulties faced by micro- and small enterprises that do not comply with the core of a repayment plan should be taken into account with regard to compliance with insolvency and restructuring procedures.

Practitioners: the Commission shall facilitate the sharing of best practices between Member States with a view to improving the quality of training across the Union, including by means of networking and the exchange of experiences and capacity building tools, and if necessary shall organise training for members of judiciary and administrative authorities dealing with restructuring, insolvency and second chance matters.

Member States shall:

- establish effective sanctions for failure to comply with the practitioners' obligations;
- ensure that information about the authorities exercising supervision or control over practitioners in the field of restructuring is publicly available;
- ensure that second chance entrepreneurs have access to relevant, up-to-date, clear, concise and user-friendly information about the availability of administrative, legal, business or financial support tailored to them and any means available to them to facilitate the setting-up of a new business;

Lastly, any debtor involved in restructuring or insolvency proceedings in one Member State who is also active in another Member State should inform the competent authority of both Member States at the start of one of those proceedings.