

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

2016/0359(COD) - 22/11/2016 - Legislative proposal

PURPOSE: to put in place an insolvency framework and encourage effective preventive restructuring, second chance, including measures to increase the efficiency of restructuring.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

BACKGROUND: insolvency matters have a strong Union dimension. An increasingly interconnected single market with stronger digital dimension means that very few companies operate at purely national level. Many investors mention uncertainty over insolvency rules or the risk of lengthy or complex insolvency procedures in another country as a main reason for not investing outside their own country.

The [2015 Insolvency Regulation](#) 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 does not harmonise the substantive insolvency laws of the Member States.

Reviews of the implementation of the [2014 Recommendation](#) on restructuring and second chance showed that, despite reforms in the area of insolvency, the latter has not led to the desired impact in terms of consistent changes across all Member States that would facilitate the rescue of businesses in financial difficulty and give a second chance to entrepreneurs. There are still several Member States where a business cannot be restructured before it is insolvent.

As regards the second chance, important discrepancies have remained as to the duration of the discharge period. Such differences in Member States' legal frameworks mean continuing legal uncertainty, additional costs for investors in assessing their risks, less developed capital markets and persisting barriers to the efficient restructuring of viable companies in the EU, including cross-border enterprise groups.

IMPACT ASSESSMENT: four options were considered in the impact assessment. The selected option was to set up a harmonised minimum legal framework for restructuring and second chance for entrepreneurs, with a non-binding provision on second chance for consumers, and to make procedures more efficient.

CONTENT : The proposed directive lays down rules on:

1) Preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency. This will 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

2) 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

3) Measures to increase the efficiency of the procedures relating to these points as well as of insolvency procedures. This will reduce the excessive length and costs of procedures in many Member States, which results in legal uncertainty for creditors and investors and low recovery rates of unpaid debts.

Lastly, training, specialisation of practitioners and courts, and the use of technology (e.g. online filing of claims, notifications to creditors) will improve the efficiency and length of insolvency, restructuring and second chance procedures.

BUDGETARY IMPLICATIONS: the proposal does not have implications for the EU budget.