

Harmonising certain aspects of insolvency law

2022/0408(COD) - 07/12/2022 - Legislative proposal

PURPOSE: to harmonise certain corporate insolvency rules across the EU, making them more efficient and helping promote cross-border investment.

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 the Council.

BACKGROUND: insolvency laws ensure the orderly winding down of companies in financial and economic distress. They are considered as one of the key factors in determining the cost of financial investments, as they allow to establish the final recovery value of investment in insolvent companies.

Insolvency rules are fragmented along national lines. As a result, they deliver different outcomes across Member States, and in particular they have different degrees of efficiency in terms of the time it takes to liquidate a company and the value that can eventually be recovered. In some Member States, this leads to lengthy insolvency procedures and a low average recovery value in liquidation cases. Differences in national regimes also create legal uncertainty as regards the outcomes of insolvency proceedings and lead to higher information and learning costs for cross-border creditors compared to those who only operate domestically

The lack of harmonised insolvency regimes has long been identified as one of the key obstacles to the freedom of capital movement in the EU and to greater integration of the EU's capital markets

Action at EU level is needed to substantially reduce the fragmentation of insolvency regimes. Measures at EU level would ensure a level playing field and avoid distortions of cross-border investment decisions caused by lack of information about and differences in the designs of insolvency regimes. This would help to facilitate cross-border investments and competition while protecting the orderly functioning of the single market

This initiative is part of the Commission's priority to advance the Capital Markets Union (CMU), a key project to further financial and economic integration in the European Union.

CONTENT: the Commission aims to **reduce differences in national insolvency laws** and hence address the issue of more inefficient insolvency laws in some Member States, increasing the predictability of insolvency proceedings in general and lowering obstacles to the free movement of capital. By harmonising targeted aspects of insolvency laws, the proposal aims, in particular, to maximise the recovery of value from the insolvent company for creditors. More uniform insolvency laws should thus expand the choice of funding available to companies across the Union.

Specific provisions of the proposal

This proposal targets the three key dimensions of insolvency law: (i) the recovery of assets from the liquidated insolvency estate; (ii) the efficiency of proceedings; and (iii) the predictable and fair distribution of recovered value among creditors.

It provides for:

- minimum set of harmonised conditions for exercising avoidance actions to protect the insolvency estate from illegitimate withdrawals of assets made prior to the commencement of insolvency proceedings;
- strengthening asset traceability through improved access by insolvency practitioners to asset registers, including in a cross-border setting;
- provisions to introduce so called ‘pre-pack’ liquidation procedures (i.e. where the sale of the business is agreed before the insolvency begins);
- **provisions on a duty of directors to timely file for insolvency to avoid potential asset value losses for creditors;**
- **simplified liquidation procedure for insolvent microenterprises;**
- **requirements for improving the representation of creditors’ interests in the proceedings through creditors’ committees;**
- **enhanced transparency** for creditors on the key features of national insolvency regimes, including on the rules governing insolvency triggers and the ranking of claims.

Budgetary implications

This proposal has implications in terms of costs and administrative burden for the Commission. These costs and burden stem from the obligation to create a system interconnecting national electronic auction systems via the European e-Justice Portal. Based on experience with other e-Justice Portal interconnection projects, the implementation costs for the Commission are estimated to be EUR 1.75 million for the current long-term budget (Multiannual Financial Framework). The additional costs will be covered through redeployment within the Justice programme.